

By Senator Clary

4-1403-03

1                                   A bill to be entitled  
 2           An act relating to condominiums; creating s.  
 3           718.3027, F.S.; requiring prelitigation  
 4           disclosure to and approval by owners; requiring  
 5           a disclosure; providing that a prelitigation  
 6           disclosure is not admissible in evidence;  
 7           amending s. 718.301, F.S.; providing for the  
 8           effect of actions taken by members of the board  
 9           of administration of an association; amending  
 10          s. 718.503, F.S.; providing requirements for  
 11          developer disclosure in certain contracts for  
 12          the sale or lease of a residential unit;  
 13          amending s. 718.506, F.S.; abrogating the right  
 14          to a cause of action against a developer for an  
 15          oral representation or information that is not  
 16          in certain required developer's promotional  
 17          materials; providing an effective date.

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 19 Be It Enacted by the Legislature of the State of Florida:

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 21           Section 1. Section 718.3027, Florida Statutes, is  
 22           created to read:

23           718.3027 Prelitigation disclosure to and approval by  
 24           owners.--

25           (1) Before commencing litigation against any party in  
 26           the name of the association involving amounts in controversy  
 27           in excess of \$100,000 and not involving a dispute that relates  
 28           to title to a unit or common element or the levy or collection  
 29           of a fee or assessment or that is governed by s. 718.1255, the  
 30           association must furnish to each owner, other than the  
 31           developer, a separate document entitled "Litigation Disclosure

1 Notice." The division shall, by rule, establish a standard  
2 format for the Litigation Disclosure Notice.

3 (2) A Litigation Disclosure Notice must inform each  
4 owner other than the developer of the basis for the  
5 association's contemplated litigation or adversarial  
6 proceeding; the professional qualifications of the person  
7 making the allegations supporting the association's claim; the  
8 response of the adverse party to the allegations and whether  
9 the adverse party has refused or offered to perform remedial  
10 work; the efforts made to mediate or resolve the claim; the  
11 projected attorney's fees, expert fees, and other costs to the  
12 association of the proposed litigation; the association's  
13 probability of success in the litigation; the association's  
14 probability of collecting a judgment resulting from the  
15 litigation; and the probability of association liability for  
16 attorney's fees and costs associated with the litigation.

17 (3) Litigation based upon the matter described in the  
18 Litigation Disclosure Notice may not be commenced unless  
19 approved in advance by a majority of the owners other than the  
20 developer, or by such greater number of the owners other than  
21 the developer as is required by the declaration of the  
22 condominium operated by the association. At any meeting of  
23 unit owners regarding the proposed litigation, the adverse  
24 party may be excluded from the meeting, and the adverse  
25 party's units do not count against the quorum requirement. At  
26 any meeting of the board of administration, a director  
27 nominated or appointed by the developer, if the developer is  
28 an adverse party, may be excluded from the meeting, and the  
29 seat does not count against the quorum requirement.

30 (4) The Litigation Disclosure Notice must carry the  
31 following legend, in conspicuous type on the top of the first

1 page: THIS DOCUMENT HAS BEEN PREPARED BY THE ASSOCIATION AND  
2 ITS ATTORNEYS IN ANTICIPATION OF LITIGATION, AND IS A  
3 PROTECTED LAWYER-CLIENT COMMUNICATION.

4 (5) A Litigation Disclosure Notice is confidential,  
5 exempt from discovery by a developer, and inadmissible in any  
6 trial or hearing. A unit owner may not waive the  
7 confidentiality of a Litigation Disclosure Notice; only the  
8 board of administration of the association may authorize a  
9 waiver of confidentiality of a Litigation Disclosure Notice.

10 Section 2. Present subsection (6) of section 718.301,  
11 Florida Statutes, is redesignated as subsection (7) of that  
12 section, and a new subsection (6) is added to that section, to  
13 read:

14 718.301 Transfer of association control.--

15 (6) Actions taken by members of the board of  
16 administration designated by the developer are considered  
17 actions taken by the developer, and the developer is  
18 responsible to the association and its members for all such  
19 actions.

20 Section 3. Paragraph (a) of subsection (1) of section  
21 718.503, Florida Statutes, is amended to read:

22 718.503 Developer disclosure prior to sale;  
23 nondeveloper unit owner disclosure prior to sale;  
24 voidability.--

25 (1) DEVELOPER DISCLOSURE.--

26 (a) Contents of contracts.--Any contract for the sale  
27 of a residential unit or a lease thereof for an unexpired term  
28 of more than 5 years shall:

29 1. Contain the following legend in conspicuous type:  
30 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN  
31 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER

1 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND  
2 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED  
3 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA  
4 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY  
5 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL  
6 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF  
7 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING  
8 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED  
9 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.  
10 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE  
11 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS  
12 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL  
13 TERMINATE AT CLOSING.

14 2. Contain the following caveat in conspicuous type on  
15 the first page of the contract: ORAL REPRESENTATIONS CANNOT  
16 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE  
17 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE  
18 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION  
19 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A  
20 BUYER OR LESSEE. A PURCHASER HAS NO CLAIM OR CAUSE OF ACTION  
21 AGAINST THE DEVELOPER FOR THE PURCHASER'S RELIANCE ON ORAL  
22 REPRESENTATIONS OR INFORMATION NOT CONTAINED IN THIS CONTRACT  
23 OR IN THE PROSPECTUS. A PURCHASER MAY MAKE A CLAIM OR  
24 INSTITUTE A CAUSE OF ACTION AGAINST THE DEVELOPER ONLY FOR THE  
25 PURCHASER'S RELIANCE ON THE TERMS OF THIS CONTRACT OR ON  
26 MATTERS SET FORTH IN THE PROSPECTUS.

27 3. If the unit has been occupied by someone other than  
28 the buyer, contain a statement that the unit has been  
29 occupied.

30 4. If the contract is for the sale or transfer of a  
31 unit subject to a lease, include as an exhibit a copy of the

1 | executed lease and shall contain within the text in  
2 | conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR  
3 | SUBLEASE).

4 |         5. If the contract is for the lease of a unit for a  
5 | term of 5 years or more, include as an exhibit a copy of the  
6 | proposed lease.

7 |         6. If the contract is for the sale or lease of a unit  
8 | that is subject to a lien for rent payable under a lease of a  
9 | recreational facility or other commonly used facility, contain  
10 | within the text the following statement in conspicuous type:  
11 | THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO  
12 | A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED  
13 | FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF  
14 | THE LIEN.

15 |         7. State the name and address of the escrow agent  
16 | required by s. 718.202 and state that the purchaser may obtain  
17 | a receipt for his or her deposit from the escrow agent upon  
18 | request.

19 |         8. If the contract is for the sale or transfer of a  
20 | unit in a condominium in which timeshare estates have been or  
21 | may be created, contain within the text in conspicuous type:  
22 | UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.  
23 | The contract for the sale of a fee interest in a timeshare  
24 | estate shall also contain, in conspicuous type, the following:  
25 | FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS  
26 | LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A  
27 | TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED  
28 | THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO  
29 | CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR  
30 | TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194,  
31 | FLORIDA STATUTES.

1           Section 4. Subsection (3) is added to section 718.506,  
2 Florida Statutes, to read:

3           718.506 Publication of false and misleading  
4 information.--

5           (3) A person has no cause of action against a  
6 developer for any oral representation or information that is  
7 not contained in the developer's advertising and promotional  
8 materials, including, but not limited to, a prospectus, the  
9 items required as exhibits to a prospectus, brochures, and  
10 newspaper advertising.

11           Section 5. This act shall take effect July 1, 2003.

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14           SENATE SUMMARY

15           Requires prelitigation disclosure to and approval by  
16 condominium owners. Requires a disclosure. Provides that  
17 a prelitigation disclosure is not admissible in evidence.  
18 Provides for the effect of actions taken by members of  
19 the board of administration of an association. Provides  
20 requirements for developer disclosure in certain  
contracts for the sale or lease of a residential unit.  
Abrogates the right to a cause of action against a  
developer for an oral representation or information that  
is not in certain required developer's promotional  
materials.

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