

HB 1507

2004

A bill to be entitled

An act relating to condominiums; creating s. 718.3027, F.S.; requiring prelitigation disclosure to and approval by owners; requiring a disclosure; providing that a prelitigation disclosure is not admissible in evidence; amending s. 718.301, F.S.; providing for the effect of actions taken by members of the board of administration of an association; amending s. 718.503, F.S.; providing requirements for developer disclosure in certain contracts for the sale or lease of a residential unit; amending s. 718.506, F.S.; abrogating 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; providing an effective date.

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

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

718.3027 Prelitigation disclosure to and approval by owners.--

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

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

31 (2) A Litigation Disclosure Notice must inform each owner
32 other than the developer of the basis for the association's
33 contemplated litigation or adversarial proceeding; the
34 professional qualifications of the person making the allegations
35 supporting the association's claim; the response of the adverse
36 party to the allegations and whether the adverse party has
37 refused or offered to perform remedial work; the efforts made to
38 mediate or resolve the claim; the projected attorney's fees,
39 expert fees, and other costs to the association of the proposed
40 litigation; the association's probability of success in the
41 litigation; the association's probability of collecting a
42 judgment resulting from the litigation; and the probability of
43 association liability for attorney's fees and costs associated
44 with the litigation.

45 (3) Litigation based upon the matter described in the
46 Litigation Disclosure Notice may not be commenced unless
47 approved in advance by a majority of the owners other than the
48 developer, or by the greater number of the owners other than the
49 developer which is required by the declaration of the
50 condominium operated by the association. At any meeting of unit
51 owners regarding the proposed litigation, the adverse party may
52 be excluded from the meeting and the adverse party's units do
53 not count against the quorum requirement. At any meeting of the
54 board of administration, a director nominated or appointed by
55 the developer, if the developer is an adverse party, may be
56 excluded from the meeting and the seat does not count against
57 the quorum requirement.

58 (4) The Litigation Disclosure Notice must carry the
 59 following legend, in conspicuous type on the top of the first
 60 page: THIS DOCUMENT HAS BEEN PREPARED BY THE ASSOCIATION AND ITS
 61 ATTORNEYS IN ANTICIPATION OF LITIGATION, AND IS A PROTECTED
 62 LAWYER-CLIENT COMMUNICATION.

63 (5) A Litigation Disclosure Notice is confidential, exempt
 64 from discovery by a developer, and inadmissible in any trial or
 65 hearing. A unit owner may not waive the confidentiality of a
 66 Litigation Disclosure Notice. The confidentiality of a
 67 Litigation Disclosure Notice may be waived only by the board of
 68 administration of the association.

69 Section 2. Subsection (6) of section 718.301, Florida
 70 Statutes, is redesignated as subsection (7), and a new
 71 subsection (6) is added to said section, to read:

72 718.301 Transfer of association control.--

73 (6) Actions taken by members of the board of
 74 administration designated by the developer are considered
 75 actions taken by the developer, and the developer is responsible
 76 to the association and its members for all such actions.

77 Section 3. Paragraph (a) of subsection (1) of section
 78 718.503, Florida Statutes, is amended to read:

79 718.503 Developer disclosure prior to sale; nondeveloper
 80 unit owner disclosure prior to sale; voidability.--

81 (1) DEVELOPER DISCLOSURE.--

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

85 1. Contain the following legend in conspicuous type: THIS
 86 AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF

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87 THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF
 88 EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER
 89 OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY
 90 THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS
 91 AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE
 92 OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE
 93 OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY
 94 ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO
 95 THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS
 96 SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR
 97 A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED
 98 ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT
 99 SHALL TERMINATE AT CLOSING.

100 2. Contain the following caveat in conspicuous type on the
 101 first page of the contract: ORAL REPRESENTATIONS CANNOT BE
 102 RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
 103 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
 104 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
 105 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
 106 BUYER OR LESSEE. A PURCHASER HAS NO CLAIM OR CAUSE OF ACTION
 107 AGAINST THE DEVELOPER FOR THE PURCHASER'S RELIANCE ON ORAL
 108 REPRESENTATIONS OR INFORMATION NOT CONTAINED IN THIS CONTRACT OR
 109 IN THE PROSPECTUS. A PURCHASER MAY MAKE A CLAIM OR INSTITUTE A
 110 CAUSE OF ACTION AGAINST THE DEVELOPER ONLY FOR THE PURCHASER'S
 111 RELIANCE ON THE TERMS OF THIS CONTRACT OR ON MATTERS SET FORTH
 112 IN THE PROSPECTUS.

113 3. If the unit has been occupied by someone other than the
 114 buyer, contain a statement that the unit has been occupied.

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115 4. If the contract is for the sale or transfer of a unit
 116 subject to a lease, include as an exhibit a copy of the executed
 117 lease and shall contain within the text in conspicuous type:
 118 THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

119 5. If the contract is for the lease of a unit for a term
 120 of 5 years or more, include as an exhibit a copy of the proposed
 121 lease.

122 6. If the contract is for the sale or lease of a unit that
 123 is subject to a lien for rent payable under a lease of a
 124 recreational facility or other commonly used facility, contain
 125 within the text the following statement in conspicuous type:
 126 THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A
 127 LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES.
 128 FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

129 7. State the name and address of the escrow agent required
 130 by s. 718.202 and state that the purchaser may obtain a receipt
 131 for his or her deposit from the escrow agent upon request.

132 8. If the contract is for the sale or transfer of a unit
 133 in a condominium in which timeshare estates have been or may be
 134 created, contain within the text in conspicuous type: UNITS IN
 135 THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES. The contract
 136 for the sale of a fee interest in a timeshare estate shall also
 137 contain, in conspicuous type, the following: FOR THE PURPOSE OF
 138 AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING
 139 AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE
 140 MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER
 141 FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A
 142 TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO
 143 THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

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

146 718.506 Publication of false and misleading information.--

147 (3) A person has no cause of action against a developer
 148 for any oral representation or information that is not contained
 149 in the developer's advertising and promotional materials,
 150 including, but not limited to, a prospectus, the items required
 151 as exhibits to a prospectus, brochures, or newspaper
 152 advertising.

153 Section 5. This act shall take effect July 1, 2004.