

By the Committee on Comprehensive Planning; and Senator Clary

316-2378A-04

1 A bill to be entitled
2 An act relating to condominiums; amending s.
3 718.301, F.S.; providing for the effect of
4 actions taken by members of the board of
5 administration of an association; providing
6 that, in certain claims of defect brought by an
7 association against a developer, the defect
8 must be examined by an appropriate licensed
9 professional; amending s. 718.503, F.S.;
10 providing requirements for developer disclosure
11 in certain contracts for the sale or lease of a
12 residential unit; amending s. 718.506, F.S.;
13 abrogating the right to a cause of action
14 against a developer for an oral representation
15 or information that is not in certain required
16 developer's promotional materials; providing an
17 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 718.301, Florida Statutes, is
22 amended to read:

23 718.301 Transfer of association control; claims of
24 defect by association.--

25 (1) When unit owners other than the developer own 15
26 percent or more of the units in a condominium that will be
27 operated ultimately by an association, the unit owners other
28 than the developer shall be entitled to elect no less than
29 one-third of the members of the board of administration of the
30 association. Unit owners other than the developer are

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1 entitled to elect not less than a majority of the members of
2 the board of administration of an association:

3 (a) Three years after 50 percent of the units that
4 will be operated ultimately by the association have been
5 conveyed to purchasers;

6 (b) Three months after 90 percent of the units that
7 will be operated ultimately by the association have been
8 conveyed to purchasers;

9 (c) When all the units that will be operated
10 ultimately by the association have been completed, some of
11 them have been conveyed to purchasers, and none of the others
12 are being offered for sale by the developer in the ordinary
13 course of business;

14 (d) When some of the units have been conveyed to
15 purchasers and none of the others are being constructed or
16 offered for sale by the developer in the ordinary course of
17 business; or

18 (e) Seven years after recordation of the declaration
19 of condominium; or, in the case of an association which may
20 ultimately operate more than one condominium, 7 years after
21 recordation of the declaration for the first condominium it
22 operates; or, in the case of an association operating a phase
23 condominium created pursuant to s. 718.403, 7 years after
24 recordation of the declaration creating the initial phase,
25
26 whichever occurs first. The developer is entitled to elect at
27 least one member of the board of administration of an
28 association as long as the developer holds for sale in the
29 ordinary course of business at least 5 percent, in
30 condominiums with fewer than 500 units, and 2 percent, in
31 condominiums with more than 500 units, of the units in a

1 condominium operated by the association. Following the time
2 the developer relinquishes control of the association, the
3 developer may exercise the right to vote any developer-owned
4 units in the same manner as any other unit owner except for
5 purposes of reacquiring control of the association or
6 selecting the majority members of the board of administration.

7 (2) Within 75 days after the unit owners other than
8 the developer are entitled to elect a member or members of the
9 board of administration of an association, the association
10 shall call, and give not less than 60 days' notice of an
11 election for the members of the board of administration. The
12 election shall proceed as provided in s. 718.112(2)(d). The
13 notice may be given by any unit owner if the association fails
14 to do so. Upon election of the first unit owner other than
15 the developer to the board of administration, the developer
16 shall forward to the division the name and mailing address of
17 the unit owner board member.

18 (3) If a developer holds units for sale in the
19 ordinary course of business, none of the following actions may
20 be taken without approval in writing by the developer:

21 (a) Assessment of the developer as a unit owner for
22 capital improvements.

23 (b) Any action by the association that would be
24 detrimental to the sales of units by the developer. However,
25 an increase in assessments for common expenses without
26 discrimination against the developer shall not be deemed to be
27 detrimental to the sales of units.

28 (4) At the time that unit owners other than the
29 developer elect a majority of the members of the board of
30 administration of an association, the developer shall
31 relinquish control of the association, and the unit owners

1 shall accept control. Simultaneously, or for the purposes of
2 paragraph (c) not more than 90 days thereafter, the developer
3 shall deliver to the association, at the developer's expense,
4 all property of the unit owners and of the association which
5 is held or controlled by the developer, including, but not
6 limited to, the following items, if applicable, as to each
7 condominium operated by the association:

8 (a)1. The original or a photocopy of the recorded
9 declaration of condominium and all amendments thereto. If a
10 photocopy is provided, it shall be certified by affidavit of
11 the developer or an officer or agent of the developer as being
12 a complete copy of the actual recorded declaration.

13 2. A certified copy of the articles of incorporation
14 of the association or, if the association was created prior to
15 the effective date of this act and it is not incorporated,
16 copies of the documents creating the association.

17 3. A copy of the bylaws.

18 4. The minute books, including all minutes, and other
19 books and records of the association, if any.

20 5. Any house rules and regulations which have been
21 promulgated.

22 (b) Resignations of officers and members of the board
23 of administration who are required to resign because the
24 developer is required to relinquish control of the
25 association.

26 (c) The financial records, including financial
27 statements of the association, and source documents from the
28 incorporation of the association through the date of turnover.
29 The records shall be audited for the period from the
30 incorporation of the association or from the period covered by
31 the last audit, if an audit has been performed for each fiscal

1 year since incorporation, by an independent certified public
2 accountant. All financial statements shall be prepared in
3 accordance with generally accepted accounting principles and
4 shall be audited in accordance with generally accepted
5 auditing standards, as prescribed by the Florida Board of
6 Accountancy, pursuant to chapter 473. The accountant
7 performing the audit shall examine to the extent necessary
8 supporting documents and records, including the cash
9 disbursements and related paid invoices to determine if
10 expenditures were for association purposes and the billings,
11 cash receipts, and related records to determine that the
12 developer was charged and paid the proper amounts of
13 assessments.

14 (d) Association funds or control thereof.

15 (e) All tangible personal property that is property of
16 the association, which is represented by the developer to be
17 part of the common elements or which is ostensibly part of the
18 common elements, and an inventory of that property.

19 (f) A copy of the plans and specifications utilized in
20 the construction or remodeling of improvements and the
21 supplying of equipment to the condominium and in the
22 construction and installation of all mechanical components
23 serving the improvements and the site with a certificate in
24 affidavit form of the developer or the developer's agent or an
25 architect or engineer authorized to practice in this state
26 that such plans and specifications represent, to the best of
27 his or her knowledge and belief, the actual plans and
28 specifications utilized in the construction and improvement of
29 the condominium property and for the construction and
30 installation of the mechanical components serving the
31 improvements. If the condominium property has been declared a

1 condominium more than 3 years after the completion of
2 construction or remodeling of the improvements, the
3 requirements of this paragraph do not apply.

4 (g) A list of the names and addresses, of which the
5 developer had knowledge at any time in the development of the
6 condominium, of all contractors, subcontractors, and suppliers
7 utilized in the construction or remodeling of the improvements
8 and in the landscaping of the condominium or association
9 property.

10 (h) Insurance policies.

11 (i) Copies of any certificates of occupancy which may
12 have been issued for the condominium property.

13 (j) Any other permits applicable to the condominium
14 property which have been issued by governmental bodies and are
15 in force or were issued within 1 year prior to the date the
16 unit owners other than the developer take control of the
17 association.

18 (k) All written warranties of the contractor,
19 subcontractors, suppliers, and manufacturers, if any, that are
20 still effective.

21 (l) A roster of unit owners and their addresses and
22 telephone numbers, if known, as shown on the developer's
23 records.

24 (m) Leases of the common elements and other leases to
25 which the association is a party.

26 (n) Employment contracts or service contracts in which
27 the association is one of the contracting parties or service
28 contracts in which the association or the unit owners have an
29 obligation or responsibility, directly or indirectly, to pay
30 some or all of the fee or charge of the person or persons
31 performing the service.

1 (o) All other contracts to which the association is a
2 party.

3 (5) If, during the period prior to the time that the
4 developer relinquishes control of the association pursuant to
5 subsection (4), any provision of the Condominium Act or any
6 rule promulgated thereunder is violated by the association,
7 the developer is responsible for such violation and is subject
8 to the administrative action provided in this chapter for such
9 violation or violations and is liable for such violation or
10 violations to third parties. This subsection is intended to
11 clarify existing law.

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

17 (7) In any claim against the developer by an
18 association alleging a defect in design, structural elements,
19 construction, mechanical, electrical, fire protection,
20 plumbing, or any other element that requires a licensed
21 professional for design or installation under chapter 455,
22 chapter 471, chapter 481, chapter 489, or chapter 633, the
23 defect must be examined and certified by the same type of
24 licensed professional.

25 ~~(8)~~(6) The division has authority to adopt rules
26 pursuant to the Administrative Procedure Act to ensure the
27 efficient and effective transition from developer control of a
28 condominium to the establishment of a unit-owner controlled
29 association.

30 Section 2. Paragraph (a) of subsection (1) of section
31 718.503, Florida Statutes, is amended to read:

1 718.503 Developer disclosure prior to sale;
2 nondeveloper unit owner disclosure prior to sale;
3 voidability.--

4 (1) DEVELOPER DISCLOSURE.--

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

8 1. Contain the following legend in conspicuous type:

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

24 2. Contain the following caveat in conspicuous type on
25 the first page of the contract: ORAL REPRESENTATIONS CANNOT
26 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
27 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
28 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
29 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
30 BUYER OR LESSEE. A PURCHASER HAS NO CLAIM OR CAUSE OF ACTION
31 AGAINST THE DEVELOPER FOR THE PURCHASER'S RELIANCE ON ORAL

1 REPRESENTATIONS OR INFORMATION NOT CONTAINED IN THIS CONTRACT
2 OR IN THE PROSPECTUS. A PURCHASER MAY MAKE A CLAIM OR
3 INSTITUTE A CAUSE OF ACTION AGAINST THE DEVELOPER ONLY FOR THE
4 PURCHASER'S RELIANCE ON THE TERMS OF THIS CONTRACT OR ON
5 MATTERS SET FORTH IN THE PROSPECTUS.

6 3. If the unit has been occupied by someone other than
7 the buyer, contain a statement that the unit has been
8 occupied.

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

14 5. If the contract is for the lease of a unit for a
15 term of 5 years or more, include as an exhibit a copy of the
16 proposed lease.

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

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

29 8. If the contract is for the sale or transfer of a
30 unit in a condominium in which timeshare estates have been or
31 may be created, contain within the text in conspicuous type:

1 UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.
2 The contract for the sale of a fee interest in a timeshare
3 estate shall also contain, in conspicuous type, the following:
4 FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS
5 LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A
6 TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED
7 THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO
8 CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR
9 TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194,
10 FLORIDA STATUTES.

11 Section 3. Subsection (3) is added to section 718.506,
12 Florida Statutes, to read:

13 718.506 Publication of false and misleading
14 information.--

15 (3) A person has no cause of action against a
16 developer for any oral representation or information that is
17 not contained in the developer's advertising and promotional
18 materials, including, but not limited to, a prospectus, the
19 items required as exhibits to a prospectus, brochures, or
20 newspaper advertising.

21 Section 4. This act shall take effect July 1, 2004.

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23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
24 COMMITTEE SUBSTITUTE FOR
Senate Bill 298

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26 The committee substitute deletes language requiring a
27 condominium association to provide unit owners with a
28 Litigation Disclosure Notice prior to commencing certain
litigation and deletes several other provisions relating to
such notice.

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