

Bill No. SB 396

Barcode 240622

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Comm: RCS
02/06/2007 12:17 PM

.
. .
. .
. .
. .
. .

The Committee on Regulated Industries (Geller) recommended the following amendment:

Senate Amendment (with title amendment)

On page 1, line 21,

insert:

Section 1. Subsection (18) of section 718.103, Florida Statutes, is amended to read:

718.103 Definitions.--As used in this chapter, the term:

(18) "Land" means the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a

Bill No. SB 396

Barcode 240622

1 condominium unit.

2 Section 2. Present paragraph (f) of subsection (1) of
3 section 718.115, Florida Statutes, is redesignated as
4 paragraph (g), and a new paragraph (f) is added to that
5 subsection to read:

6 718.115 Common expenses and common surplus.--

7 (1)

8 (f) Common expenses will include the costs of
9 windstorm insurance acquired by the association under the
10 authority of s. 718.111(11), including costs and contingent
11 expenses required to participate in a self-insurance fund
12 authorized and approved pursuant to s. 624.462.

13 Section 3. Subsection (10) of section 718.116, Florida
14 Statutes, is amended to read:

15 718.116 Assessments; liability; lien and priority;
16 interest; collection.--

17 (10) The specific purpose or purposes of any special
18 assessment, including any contingent special assessment levied
19 in conjunction with the purchase of a windstorm insurance
20 policy authorized by s. 718.111(11), approved in accordance
21 with the condominium documents shall be set forth in a written
22 notice of such assessment sent or delivered to each unit
23 owner. The funds collected pursuant to a special assessment
24 shall be used only for the specific purpose or purposes set
25 forth in such notice. However, upon completion of such
26 specific purpose or purposes, any excess funds will be
27 considered common surplus, and may, at the discretion of the
28 board, either be returned to the unit owners or applied as a
29 credit toward future assessments.

30 Section 4. Paragraph (a) of subsection (1) of section
31 718.503, Florida Statutes, is amended, and paragraph (c) is

Bill No. SB 396

Barcode 240622

1 added to that subsection, to read:

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

5 (1) DEVELOPER DISCLOSURE.--

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

9 1. Contain the following legend in conspicuous type:

10 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN
11 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
12 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND
13 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED
14 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA
15 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY
16 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL
17 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF
18 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING
19 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED
20 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.
21 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE
22 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS
23 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL
24 TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET
25 DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE
26 CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN
27 APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND
28 CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE
29 BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED
30 THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE
31 MATERIAL ADVERSE CHANGES IN THE OFFERING.

Bill No. SB 396

Barcode 240622

1 2. Contain the following caveat in conspicuous type on
2 the first page of the contract: ORAL REPRESENTATIONS CANNOT
3 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
4 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
5 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
6 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
7 BUYER OR LESSEE.

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

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

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

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

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

31 8. If the contract is for the sale or transfer of a

Bill No. SB 396

Barcode 240622

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

13 (c) Subsequent estimates; when provided.--If the
 14 closing on a contract occurs more than 12 months after the
 15 filing of the offering circular with the division, the
 16 developer shall provide a copy of the current estimated
 17 operating budget of the association to the buyer at closing,
 18 which shall not be considered an amendment that modifies the
 19 offering provided any changes to the association's budget from
 20 the budget given to the buyer at the time of contract signing
 21 were the result of matters beyond the developer's control.
 22 Changes in budgets of any master association, recreation
 23 association, or club and similar budgets for entities other
 24 than the association shall likewise not be considered
 25 amendments that modify the offering. It is the intent of this
 26 paragraph to clarify existing law.

27 Section 5. Present paragraph (d) of subsection (21) of
 28 section 718.504, Florida Statutes, is redesignated as
 29 paragraph (f) and new paragraphs (d) and (e) are added to that
 30 subsection to read:

31 718.504 Prospectus or offering circular.--Every

Bill No. SB 396

Barcode 240622

1 developer of a residential condominium which contains more
2 than 20 residential units, or which is part of a group of
3 residential condominiums which will be served by property to
4 be used in common by unit owners of more than 20 residential
5 units, shall prepare a prospectus or offering circular and
6 file it with the Division of Florida Land Sales, Condominiums,
7 and Mobile Homes prior to entering into an enforceable
8 contract of purchase and sale of any unit or lease of a unit
9 for more than 5 years and shall furnish a copy of the
10 prospectus or offering circular to each buyer. In addition to
11 the prospectus or offering circular, each buyer shall be
12 furnished a separate page entitled "Frequently Asked Questions
13 and Answers," which shall be in accordance with a format
14 approved by the division and a copy of the financial
15 information required by s. 718.111. This page shall, in
16 readable language, inform prospective purchasers regarding
17 their voting rights and unit use restrictions, including
18 restrictions on the leasing of a unit; shall indicate whether
19 and in what amount the unit owners or the association is
20 obligated to pay rent or land use fees for recreational or
21 other commonly used facilities; shall contain a statement
22 identifying that amount of assessment which, pursuant to the
23 budget, would be levied upon each unit type, exclusive of any
24 special assessments, and which shall further identify the
25 basis upon which assessments are levied, whether monthly,
26 quarterly, or otherwise; shall state and identify any court
27 cases in which the association is currently a party of record
28 in which the association may face liability in excess of
29 \$100,000; and which shall further state whether membership in
30 a recreational facilities association is mandatory, and if so,
31 shall identify the fees currently charged per unit type. The

Bill No. SB 396

Barcode 240622

1 | division shall by rule require such other disclosure as in its
2 | judgment will assist prospective purchasers. The prospectus or
3 | offering circular may include more than one condominium,
4 | although not all such units are being offered for sale as of
5 | the date of the prospectus or offering circular. The
6 | prospectus or offering circular must contain the following
7 | information:

8 | (21) An estimated operating budget for the condominium
9 | and the association, and a schedule of the unit owner's
10 | expenses shall be attached as an exhibit and shall contain the
11 | following information:

12 | (d) The following statement in conspicuous type: THE
13 | BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED
14 | IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH
15 | ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE
16 | EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME
17 | OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE
18 | ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE
19 | MATERIAL ADVERSE CHANGES IN THE OFFERING.

20 | (e) Each budget for an association prepared by a
21 | developer consistent with this subsection shall be prepared in
22 | good faith and shall reflect accurate estimated amounts for
23 | the required items in paragraph (c) at the time of the filing
24 | of the offering circular with the division, and subsequent
25 | increased amounts of any item included in the association's
26 | estimated budget which are beyond the control of the developer
27 | shall not be considered an amendment that would give rise to
28 | recission rights set forth in s. 718.504(1)(a) or (b), nor
29 | shall such increases modify, void, or otherwise affect any
30 | guarantee of the developer contained in the offering circular
31 | or any purchase contract. It is the intent of this paragraph

Bill No. SB 396

Barcode 240622

1 to clarify existing law.

2

3 (Redesignate subsequent sections.)

4

5

6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 On page 1, line 3, following the semicolon

9

10 insert:

11 amending s. 718.103, F.S.; redefining the term

12 "land"; amending s. 718.115, F.S.; providing

13 that common expenses include the costs of

14 windstorm insurance or self-insurance; amending

15 s. 718.116, F.S.; requiring notice of special

16 assessments for windstorm insurance; amending

17 s. 718.503, F.S.; requiring additional

18 disclosures in contracts for sale or lease of

19 residential units; requiring copies of budgets

20 to be furnished to buyers when a closing occurs

21 more than 12 months after an offering circular

22 is filed with the state; amending s. 718.504,

23 F.S.; requiring certain information relating to

24 the budget to be included in the offering

25 circular; requiring that an association budget

26 be prepared in good faith;

27

28

29

30

31