

Bill No. CS for SB 396

Barcode 475760

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
03/08/2007 10:30 AM

.
. .
. .
. .
. .
. .

The Committee on Judiciary (Fasano) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and 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. CS for SB 396

Barcode 475760

1 condominium unit.

2 Section 2. Subsection (11) of section 718.111, Florida
3 Statutes, as amended by section 37 of chapter 2007-1, Laws of
4 Florida, is amended to read:

5 718.111 The association.--

6 (11) INSURANCE.--In order to protect the safety,
7 health, and welfare of the people of the State of Florida and
8 to ensure consistency in the provision of insurance coverage
9 to condominiums and their unit owners, paragraphs(a), (b),
10 and (c) are deemed to apply to every residential condominium
11 in the state, regardless of the date of its declaration of
12 condominium. It is the intent of the Legislature to encourage
13 lower or stable insurance premiums for associations described
14 in this section. Therefore, the Legislature requires a report
15 to be prepared by the Office of Insurance Regulation of the
16 Department of Financial Services for publication 18 months
17 from the effective date of this act, evaluating premium
18 increases or decreases for associations, unit owner premium
19 increases or decreases, recommended changes to better define
20 common areas, or any other information the Office of Insurance
21 Regulation deems appropriate.

22 (a) A unit-owner controlled association operating a
23 residential condominium shall use its best efforts to obtain
24 and maintain adequate insurance to protect the association,
25 the association property, the common elements, and the
26 condominium property required to be insured by the association
27 pursuant to paragraph (b). If the association is developer
28 controlled, the association shall exercise due diligence to
29 obtain and maintain such insurance. Failure to obtain and
30 maintain adequate insurance during any period of developer
31 control shall constitute a breach of fiduciary responsibility

Bill No. CS for SB 396

Barcode 475760

1 by the developer-appointed members of the board of directors
2 of the association, unless said members can show that despite
3 such failure, they have exercised due diligence. The
4 declaration of condominium as originally recorded, or amended
5 pursuant to procedures provided therein, may require that
6 condominium property consisting of freestanding buildings
7 where there is no more than one building in or on such unit
8 need not be insured by the association if the declaration
9 requires the unit owner to obtain adequate insurance for the
10 condominium property. An association may also obtain and
11 maintain liability insurance for directors and officers,
12 insurance for the benefit of association employees, and flood
13 insurance for common elements, association property, and
14 units. Adequate insurance, regardless of any requirement in
15 the declaration of condominium for coverage by the association
16 for "full insurable value," "replacement cost," or the like,
17 may include reasonable deductibles as determined by the board
18 based upon available funds or predetermined assessment
19 authority at the time that the insurance is obtained.

20 1. Windstorm insurance coverage for a group of no
21 fewer than three communities created and operating under this
22 chapter, chapter 719, chapter 720, or chapter 721 may be
23 obtained and maintained for the communities if the insurance
24 coverage is sufficient to cover an amount equal to the
25 probable maximum loss for the communities for a 250-year
26 windstorm event. Such probable maximum loss must be determined
27 through the use of a competent model that has been accepted by
28 the Florida Commission on Hurricane Loss Projection
29 Methodology. Such insurance coverage is deemed adequate
30 windstorm insurance for the purposes of this section.

31 2. An association or group of associations may

Bill No. CS for SB 396

Barcode 475760

1 self-insure against claims against the association, the
 2 association property, and the condominium property required to
 3 be insured by an association, upon compliance with the
 4 applicable provisions of ss. 624.460-624.488, which shall be
 5 considered adequate insurance for the purposes of this
 6 section. A copy of each policy of insurance in effect shall be
 7 made available for inspection by unit owners at reasonable
 8 times.

9 (b) Every hazard insurance policy issued or renewed on
 10 or after January 1, 2004, to protect the condominium shall
 11 provide primary coverage for:

12 1. All portions of the condominium property located
 13 outside the units;

14 2. The condominium property located inside the units
 15 as such property was initially installed, or replacements
 16 thereof of like kind and quality and in accordance with the
 17 original plans and specifications or, if the original plans
 18 and specifications are not available, as they existed at the
 19 time the unit was initially conveyed; and

20 3. All portions of the condominium property for which
 21 the declaration of condominium requires coverage by the
 22 association.

23
 24 Anything to the contrary notwithstanding, the terms
 25 "condominium property," "building," "improvements," "insurable
 26 improvements," "common elements," "association property," or
 27 any other term found in the declaration of condominium which
 28 defines the scope of property or casualty insurance that a
 29 condominium association must obtain shall exclude all floor,
 30 wall, and ceiling coverings, electrical fixtures, appliances,
 31 air conditioner or heating equipment, water heaters, water

Bill No. CS for SB 396

Barcode 475760

1 filters, built-in cabinets and countertops, and window
2 treatments, including curtains, drapes, blinds, hardware, and
3 similar window treatment components, or replacements of any of
4 the foregoing which are located within the boundaries of a
5 unit and serve only one unit and all air conditioning
6 compressors that service only an individual unit, whether or
7 not located within the unit boundaries. The foregoing is
8 intended to establish the property or casualty insuring
9 responsibilities of the association and those of the
10 individual unit owner and do not serve to broaden or extend
11 the perils of coverage afforded by any insurance contract
12 provided to the individual unit owner. Beginning January 1,
13 2004, the association shall have the authority to amend the
14 declaration of condominium, without regard to any requirement
15 for mortgagee approval of amendments affecting insurance
16 requirements, to conform the declaration of condominium to the
17 coverage requirements of this section.

18 (c) Every hazard insurance policy issued or renewed on
19 or after January 1, 2004, to an individual unit owner shall
20 provide that the coverage afforded by such policy is excess
21 over the amount recoverable under any other policy covering
22 the same property. Each insurance policy issued to an
23 individual unit owner providing such coverage shall be without
24 rights of subrogation against the condominium association that
25 operates the condominium in which such unit owner's unit is
26 located. All real or personal property located within the
27 boundaries of the unit owner's unit which is excluded from the
28 coverage to be provided by the association as set forth in
29 paragraph (b) shall be insured by the individual unit owner.

30 (d) The association shall obtain and maintain adequate
31 insurance or fidelity bonding of all persons who control or

Bill No. CS for SB 396

Barcode 475760

1 disburse funds of the association. The insurance policy or
 2 fidelity bond must cover the maximum funds that will be in the
 3 custody of the association or its management agent at any one
 4 time. As used in this paragraph, the term "persons who control
 5 or disburse funds of the association" includes, but is not
 6 limited to, those individuals authorized to sign checks and
 7 the president, secretary, and treasurer of the association.
 8 The association shall bear the cost of bonding.

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

13 718.115 Common expenses and common surplus.--

14 (1)

15 (f) Common expenses include the costs of insurance
 16 acquired by the association under the authority of s.
 17 718.111(11), including costs and contingent expenses required
 18 to participate in a self-insurance fund authorized and
 19 approved pursuant to s. 624.462.

20 Section 4. Subsection (10) of section 718.116, Florida
 21 Statutes, is amended to read:

22 718.116 Assessments; liability; lien and priority;
 23 interest; collection.--

24 (10) The specific purpose or purposes of any special
 25 assessment, including any contingent special assessment levied
 26 in conjunction with the purchase of an insurance policy
 27 authorized by s. 718.111(11), approved in accordance with the
 28 condominium documents shall be set forth in a written notice
 29 of such assessment sent or delivered to each unit owner. The
 30 funds collected pursuant to a special assessment shall be used
 31 only for the specific purpose or purposes set forth in such

Bill No. CS for SB 396

Barcode 475760

1 notice. However, upon completion of such specific purpose or
 2 purposes, any excess funds will be considered common surplus,
 3 and may, at the discretion of the board, either be returned to
 4 the unit owners or applied as a credit toward future
 5 assessments.

6 Section 5. Paragraph (a) of subsection (1) of section
 7 718.503, Florida Statutes, is amended, and paragraph (c) is
 8 added to that subsection, to read:

9 718.503 Developer disclosure prior to sale;
 10 nondeveloper unit owner disclosure prior to sale;
 11 voidability.--

12 (1) DEVELOPER DISCLOSURE.--

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

16 1. Contain the following legend in conspicuous type:
 17 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN
 18 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
 19 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND
 20 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED
 21 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA
 22 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY
 23 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL
 24 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF
 25 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING
 26 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED
 27 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.
 28 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE
 29 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS
 30 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL
 31 TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET

Barcode 475760

1 DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE
 2 CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN
 3 APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND
 4 CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE
 5 BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED
 6 THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE
 7 MATERIAL ADVERSE CHANGES IN THE OFFERING.

8 2. Contain the following caveat in conspicuous type on
 9 the first page of the contract: ORAL REPRESENTATIONS CANNOT
 10 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
 11 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
 12 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
 13 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
 14 BUYER OR LESSEE.

15 3. If the unit has been occupied by someone other than
 16 the buyer, contain a statement that the unit has been
 17 occupied.

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

23 5. If the contract is for the lease of a unit for a
 24 term of 5 years or more, include as an exhibit a copy of the
 25 proposed lease.

26 6. If the contract is for the sale or lease of a unit
 27 that is subject to a lien for rent payable under a lease of a
 28 recreational facility or other commonly used facility, contain
 29 within the text the following statement in conspicuous type:
 30 THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO
 31 A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED

Bill No. CS for SB 396

Barcode 475760

1 FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF
2 THE LIEN.

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

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

20 (c) Subsequent estimates; when provided.--If the
21 closing on a contract occurs more than 12 months after the
22 filing of the offering circular with the division, the
23 developer shall provide a copy of the current estimated
24 operating budget of the association to the buyer at closing,
25 which shall not be considered an amendment that modifies the
26 offering provided any changes to the association's budget from
27 the budget given to the buyer at the time of contract signing
28 were the result of matters beyond the developer's control.
29 Changes in budgets of any master association, recreation
30 association, or club and similar budgets for entities other
31 than the association shall likewise not be considered

Bill No. CS for SB 396

Barcode 475760

1 amendments that modify the offering. It is the intent of this
2 paragraph to clarify existing law.

3 Section 6. Present paragraph (d) of subsection (21) of
4 section 718.504, Florida Statutes, is redesignated as
5 paragraph (f) and new paragraphs (d) and (e) are added to that
6 subsection to read:

7 718.504 Prospectus or offering circular.--Every
8 developer of a residential condominium which contains more
9 than 20 residential units, or which is part of a group of
10 residential condominiums which will be served by property to
11 be used in common by unit owners of more than 20 residential
12 units, shall prepare a prospectus or offering circular and
13 file it with the Division of Florida Land Sales, Condominiums,
14 and Mobile Homes prior to entering into an enforceable
15 contract of purchase and sale of any unit or lease of a unit
16 for more than 5 years and shall furnish a copy of the
17 prospectus or offering circular to each buyer. In addition to
18 the prospectus or offering circular, each buyer shall be
19 furnished a separate page entitled "Frequently Asked Questions
20 and Answers," which shall be in accordance with a format
21 approved by the division and a copy of the financial
22 information required by s. 718.111. This page shall, in
23 readable language, inform prospective purchasers regarding
24 their voting rights and unit use restrictions, including
25 restrictions on the leasing of a unit; shall indicate whether
26 and in what amount the unit owners or the association is
27 obligated to pay rent or land use fees for recreational or
28 other commonly used facilities; shall contain a statement
29 identifying that amount of assessment which, pursuant to the
30 budget, would be levied upon each unit type, exclusive of any
31 special assessments, and which shall further identify the

Bill No. CS for SB 396

Barcode 475760

1 basis upon which assessments are levied, whether monthly,
 2 quarterly, or otherwise; shall state and identify any court
 3 cases in which the association is currently a party of record
 4 in which the association may face liability in excess of
 5 \$100,000; and which shall further state whether membership in
 6 a recreational facilities association is mandatory, and if so,
 7 shall identify the fees currently charged per unit type. The
 8 division shall by rule require such other disclosure as in its
 9 judgment will assist prospective purchasers. The prospectus or
 10 offering circular may include more than one condominium,
 11 although not all such units are being offered for sale as of
 12 the date of the prospectus or offering circular. The
 13 prospectus or offering circular must contain the following
 14 information:

15 (21) An estimated operating budget for the condominium
 16 and the association, and a schedule of the unit owner's
 17 expenses shall be attached as an exhibit and shall contain the
 18 following information:

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

27 (e) Each budget for an association prepared by a
 28 developer consistent with this subsection shall be prepared in
 29 good faith and shall reflect accurate estimated amounts for
 30 the required items in paragraph (c) at the time of the filing
 31 of the offering circular with the division, and subsequent

Bill No. CS for SB 396

Barcode 475760

1 increased amounts of any item included in the association's
 2 estimated budget which are beyond the control of the developer
 3 shall not be considered an amendment that would give rise to
 4 recission rights set forth in s. 718.503(1)(a) or (b), nor
 5 shall such increases modify, void, or otherwise affect any
 6 guarantee of the developer contained in the offering circular
 7 or any purchase contract. It is the intent of this paragraph
 8 to clarify existing law.

9 Section 7. Section 718.616, Florida Statutes, is
 10 amended to read:

11 718.616 Disclosure of condition of building and
 12 estimated replacement costs and notification of
 13 municipalities.--

14 (1) Each developer of a residential condominium
 15 created by converting existing, previously occupied
 16 improvements to such form of ownership shall prepare a report
 17 that discloses ~~disclose~~ the condition of the improvements and
 18 the condition of certain components and their current
 19 estimated replacement costs as of the date of the report.

20 (2) The following information shall be stated
 21 concerning the improvements:

22 (a) The date and type of construction.

23 (b) The prior use.

24 (c) Whether there is termite damage or infestation and
 25 whether the termite damage or infestation, if any, has been
 26 properly treated. The statement shall be substantiated by
 27 including, as an exhibit, an inspection report by a certified
 28 pest control operator.

29 (3)(a) Disclosure of condition shall be made for each
 30 of the following components that the existing improvements may
 31 include:

Bill No. CS for SB 396

Barcode 475760

- 1 1. Roof.
- 2 2. Structure.
- 3 3. ~~Fireproofing and~~ Fire protection systems.
- 4 4. Elevators.
- 5 5. Heating and cooling systems.
- 6 6. Plumbing.
- 7 7. Electrical systems.
- 8 8. Swimming pool.
- 9 9. Seawalls, pilings, and docks.
- 10 10. Pavement and concrete, including roadways,
- 11 walkways, and parking areas.
- 12 11. Drainage systems.
- 13 12. Irrigation systems.

14 (b) For each component, the following information
 15 shall be disclosed and substantiated by attaching a copy of a
 16 certificate under seal of an architect or engineer authorized
 17 to practice in this state:

- 18 1. The age of the component as of the date of the
- 19 report.
- 20 2. The estimated remaining useful life of the
- 21 component as of the date of the report.
- 22 3. The estimated current replacement cost of the
- 23 component as of the date of the report, expressed:
- 24 a. As a total amount; and
- 25 b. As a per-unit amount, based upon each unit's
- 26 proportional share of the common expenses.
- 27 4. The structural and functional soundness of the
- 28 component.

29 (c) Each unit owner and the association are
 30 third-party beneficiaries of the report.

31 (d) A supplemental report shall be prepared for any

Bill No. CS for SB 396

Barcode 475760

1 structure or component that is renovated or repaired after
 2 completion of the original report and prior to the recording
 3 of the declaration of condominium. If the declaration is not
 4 recorded within 1 year after the date of the original report,
 5 the developer shall update the report annually prior to
 6 recording the declaration of condominium.

7 (e) The report may not contain representations on
 8 behalf of the development concerning future improvements or
 9 repairs and must be limited to the current condition of the
 10 improvements.

11 (4) If the proposed condominium is situated within a
 12 municipality, the disclosure shall include a letter from the
 13 municipality acknowledging that the municipality has been
 14 notified of the proposed creation of a residential condominium
 15 by conversion of existing, previously occupied improvements
 16 and, in any county, as defined in s. 125.011(1), acknowledging
 17 compliance with applicable zoning requirements as determined
 18 by the municipality.

19 Section 8. Section 718.618, Florida Statutes, is
 20 amended to read:

21 718.618 Converter reserve accounts; warranties.--

22 (1) When existing improvements are converted to
 23 ownership as a residential condominium, the developer shall
 24 establish converter reserve accounts for capital expenditures
 25 and deferred maintenance, ~~or~~ give warranties as provided by
 26 subsection (6), or post a surety bond as provided by
 27 subsection (7). The developer shall fund the converter reserve
 28 accounts in amounts calculated as follows:

29 (a)1. When the existing improvements include an
 30 air-conditioning system serving more than one unit or property
 31 which the association is responsible to repair, maintain, or

Barcode 475760

1 replace, the developer shall fund an air-conditioning reserve
 2 account. The amount of the reserve account shall be the
 3 product of the estimated current replacement cost of the
 4 system, as disclosed and substantiated pursuant to s.
 5 718.616(3)(b), multiplied by a fraction, the numerator of
 6 which shall be the lesser of the age of the system in years or
 7 9, and the denominator of which shall be 10. When such
 8 air-conditioning system is within 1,000 yards of the seacoast,
 9 the numerator shall be the lesser of the age of the system in
 10 years or 3, and the denominator shall be 4.

11 2. The developer shall fund a plumbing reserve
 12 account. The amount of the funding shall be the product of the
 13 estimated current replacement cost of the plumbing component,
 14 as disclosed and substantiated pursuant to s. 718.616(3)(b),
 15 multiplied by a fraction, the numerator of which shall be the
 16 lesser of the age of the plumbing in years or 36, and the
 17 denominator of which shall be 40.

18 3. The developer shall fund a roof reserve account.
 19 The amount of the funding shall be the product of the
 20 estimated current replacement cost of the roofing component,
 21 as disclosed and substantiated pursuant to s. 718.616(3)(b),
 22 multiplied by a fraction, the numerator of which shall be the
 23 lesser of the age of the roof in years or the numerator listed
 24 in the following table. The denominator of the fraction shall
 25 be determined based on the roof type, as follows:

Roof Type	Numerator	Denominator
a. Built-up roof		
without insulation	4	5
	15	
8:17 AM 03/07/07		s0396.ju11.001

Bill No. CS for SB 396

Barcode 475760

1	b. Built-up roof		
2	with insulation	4	5
3	c. Cement tile roof	45	50
4	d. Asphalt shingle roof	14	15
5	e. Copper roof		
6	f. Wood shingle roof	9	10
7	g. All other types	18	20

8

9 (b) The age of any component or structure for which

10 the developer is required to fund a reserve account shall be

11 measured in years, rounded to the nearest whole year. The

12 amount of converter reserves to be funded by the developer for

13 each structure or component shall be based on the age of the

14 structure or component as disclosed in the inspection report.

15 The architect or engineer shall determine the age of the

16 component from the later of:

17 1. The date when the component or structure was

18 replaced or substantially renewed, if the replacement or

19 renewal of the component at least met the requirements of the

20 then-applicable building code; or

21 2. The date when the installation or construction of

22 the existing component or structure was completed.

23 (c) When the age of a component or structure is to be

24 measured from the date of replacement or renewal, the

25 developer shall provide the division with a certificate, under

26 the seal of an architect or engineer authorized to practice in

27 this state, verifying:

28 1. The date of the replacement or renewal; and

29 2. That the replacement or renewal at least met the

30 requirements of the then-applicable building code.

31 (d) In addition to establishing the reserve accounts

Bill No. CS for SB 396

Barcode 475760

1 specified above, the developer shall establish those other
 2 reserve accounts required by s. 718.112(2)(f), and shall fund
 3 those accounts in accordance with the formula provided
 4 therein. The vote to waive or reduce the funding or reserves
 5 required by s. 718.112(2)(f) does not affect or negate the
 6 obligations arising under this section.

7 (2)(a) The developer shall fund the reserve account
 8 required by subsection (1), on a pro rata basis upon the sale
 9 of each unit. The developer shall deposit in the reserve
 10 account not less than a percentage of the total amount to be
 11 deposited in the reserve account equal to the percentage of
 12 ownership of the common elements allocable to the unit sold.
 13 When a developer deposits amounts in excess of the minimum
 14 reserve account funding, later deposits may be reduced to the
 15 extent of the excess funding. For the purposes of this
 16 subsection, a unit is considered sold when a fee interest in
 17 the unit is transferred to a third party or the unit is leased
 18 for a period in excess of 5 years.

19 (b) When an association makes an expenditure of
 20 converter reserve account funds before the developer has sold
 21 all units, the developer shall make a deposit in the reserve
 22 account. Such deposit shall be at least equal to that portion
 23 of the expenditure which would be charged against the reserve
 24 account deposit that would have been made for any such unit
 25 had the unit been sold. Such deposit may be reduced to the
 26 extent the developer has funded the reserve account in excess
 27 of the minimum reserve account funding required by this
 28 subsection. This paragraph applies only when the developer has
 29 funded reserve accounts as provided by paragraph (a).

30 (3) The use of reserve account funds, as provided in
 31 this section, is limited as follows:

Bill No. CS for SB 396

Barcode 475760

1 (a) Reserve account funds may be spent prior to the
2 assumption of control of the association by unit owners other
3 than the developer; and

4 (b) Reserve account funds may be expended only for
5 repair or replacement of the specific components for which the
6 funds were deposited, unless, after assumption of control of
7 the association by unit owners other than the developer, it is
8 determined by three-fourths of the voting interests in the
9 condominium to expend the funds for other purposes.

10 (4) The developer shall establish the reserve account,
11 as provided in this section, in the name of the association at
12 a bank, savings and loan association, or trust company located
13 in this state.

14 (5) A developer may establish and fund additional
15 converter reserve accounts. The amount of funding shall be the
16 product of the estimated current replacement cost of a
17 component, as disclosed and substantiated pursuant to s.
18 718.616(3)(b), multiplied by a fraction, the numerator of
19 which is the age of the component in years and the denominator
20 of which is the total estimated life of the component in
21 years.

22 (6) A developer makes no implied warranties when
23 existing improvements are converted to ownership as a
24 residential condominium and reserve accounts are funded in
25 accordance with this section. As an alternative to
26 establishing such reserve accounts, or when a developer fails
27 to establish the reserve accounts in accordance with this
28 section, the developer shall be deemed to have granted to the
29 purchaser of each unit an implied warranty of fitness and
30 merchantability for the purposes or uses intended, ~~as to the~~
31 ~~roof and structural components of the improvements; as to~~

Bill No. CS for SB 396

Barcode 475760

1 ~~fireproofing and fire protection systems; and as to~~
2 ~~mechanical, electrical, and plumbing elements serving the~~
3 ~~improvements, except mechanical elements serving only one~~
4 ~~unit.~~ The warranty shall be for a period beginning with the
5 notice of intended conversion and continuing for 3 years
6 thereafter, or the recording of the declaration to condominium
7 and continuing for 3 years thereafter, or 1 year after owners
8 other than the developer obtain control of the association,
9 whichever occurs last, but in no event more than 5 years.

10 (a) The warranty provided for in this section is
11 conditioned upon routine maintenance being performed, unless
12 the maintenance is an obligation of the developer or a
13 developer-controlled association.

14 (b) The warranty shall inure to the benefit of each
15 owner and successor owner.

16 (c) Existing improvements converted to residential
17 condominium may be covered by an insured warranty program
18 underwritten by an insurance company authorized to do business
19 in this state, if such warranty program meets the minimum
20 requirements of this chapter. To the degree that the warranty
21 program does not meet the minimum requirements of this
22 chapter, such requirements shall apply.

23 (7) When a developer desires to post a surety bond,
24 the developer shall, after notification to the buyer, acquire
25 a surety bond issued by a company licensed to do business in
26 this state, if such a bond is readily available in the open
27 market, in an amount which would be equal to the total amount
28 of all reserve accounts required under subsection (1), payable
29 to the association.

30 (8) The amended provisions of this section do not
31 affect a conversion of existing improvements when a developer

Bill No. CS for SB 396

Barcode 475760

1 has filed a notice of intended conversion and the documents
2 required by s. 718.503 or s. 718.504, as applicable, with the
3 division prior to the effective date of this law, provided:

4 (a) The documents are proper for filing purposes.

5 (b) The developer, not later than 6 months after such
6 filing:

7 1. Records a declaration for such filing in accordance
8 with part I.

9 2. Gives a notice of intended conversion.

10 (9) This section applies only to the conversion of
11 existing improvements where construction of the improvement
12 was commenced prior to its designation by the developer as a
13 condominium. In such circumstances, s. 718.203 does not apply.

14 (10) A developer who sells a condominium parcel that
15 is subject to this part shall disclose in conspicuous type in
16 the contract of sale whether the developer has established
17 converter reserve accounts, provided a warranty of fitness and
18 merchantability, or posted a surety bond for purposes of
19 complying with this section.

20 Section 9. Subsection (3) of section 719.104, Florida
21 Statutes, is amended to read:

22 719.104 Cooperatives; access to units; records;
23 financial reports; assessments; purchase of leases.--

24 (3) INSURANCE.--The association shall use its best
25 efforts to obtain and maintain adequate insurance to protect
26 the association property. The association may also obtain and
27 maintain liability insurance for directors and officers,
28 insurance for the benefit of association employees, and flood
29 insurance. A copy of each policy of insurance in effect shall
30 be made available for inspection by unit owners at reasonable
31 times.

Bill No. CS for SB 396

Barcode 475760

1 (a) Windstorm insurance coverage for a group of no
2 fewer than three communities created and operating under
3 chapter 718, this chapter, chapter 720, or chapter 721 may be
4 obtained and maintained for the communities if the insurance
5 coverage is sufficient to cover an amount equal to the
6 probable maximum loss for the communities for a 250-year
7 windstorm event. Such probable maximum loss must be determined
8 through the use of a competent model that has been accepted by
9 the Florida Commission on Hurricane Loss Projection
10 Methodology. Such insurance coverage is deemed adequate
11 windstorm insurance for the purposes of this section.

12 (b) An association or group of associations may
13 self-insure against claims against the association, the
14 association property, and the cooperative property required to
15 be insured by an association, upon compliance with the
16 applicable provisions of ss. 624.460-624.488, which shall be
17 considered adequate insurance for purposes of this section.

18 Section 10. Paragraph (e) is added to subsection (1)
19 of section 719.107, Florida Statutes, to read:

20 719.107 Common expenses; assessment.--

21 (1)

22 (e) Common expenses include the costs of insurance
23 acquired by the association under the authority of s.
24 719.104(3), including costs and contingent expenses required
25 to participate in a self-insurance fund authorized and
26 approved pursuant to s. 624.462.

27 Section 11. Subsection (9) of section 719.108, Florida
28 Statutes, is amended to read:

29 719.108 Rents and assessments; liability; lien and
30 priority; interest; collection; cooperative ownership.--

31 (9) The specific purposes of any special assessment,

Bill No. CS for SB 396

Barcode 475760

1 including any contingent special assessment levied in
2 conjunction with the purchase of an insurance policy
3 authorized by s. 719.104(3), approved in accordance with the
4 cooperative documents shall be set forth in a written notice
5 of such assessment sent or delivered to each unit owner. The
6 funds collected pursuant to a special assessment shall be used
7 only for the specific purpose or purposes set forth in such
8 notice or returned to the unit owners. However, upon
9 completion of such specific purposes, any excess funds shall
10 be considered common surplus and may, at the discretion of the
11 board, either be returned to the unit owners or applied as a
12 credit toward future assessments.

13 Section 12. Paragraph (a) of subsection (1) of section
14 719.503, Florida Statutes, is amended, and paragraph (c) is
15 added to that subsection, to read:

16 719.503 Disclosure prior to sale.--

17 (1) DEVELOPER DISCLOSURE.--

18 (a) Contents of contracts.--Any contracts for the sale
19 of a unit or a lease thereof for an unexpired term of more
20 than 5 years shall contain:

21 1. The following legend in conspicuous type: THIS
22 AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF
23 THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE
24 OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY
25 BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR
26 HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES.
27 THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN
28 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
29 THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH
30 MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS
31 ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE

Bill No. CS for SB 396

Barcode 475760

1 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE
 2 TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER
 3 THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S
 4 RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.
 5 FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER
 6 PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT ARE ESTIMATES
 7 ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED
 8 ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE
 9 PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF
 10 SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN
 11 COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE
 12 OFFERING.

13 2. The following caveat in conspicuous type shall be
 14 placed upon the first page of the contract: ORAL
 15 REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE
 16 REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT
 17 REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND
 18 THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES,
 19 TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

20 3. If the unit has been occupied by someone other than
 21 the buyer, a statement that the unit has been occupied.

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

27 5. If the contract is for the lease of a unit for a
 28 term of 5 years or more, the contract shall include as an
 29 exhibit a copy of the proposed lease.

30 6. If the contract is for the sale or lease of a unit
 31 that is subject to a lien for rent payable under a lease of a

Bill No. CS for SB 396

Barcode 475760

1 recreational facility or other common areas, the contract
 2 shall contain within the text the following statement in
 3 conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT
 4 THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF
 5 COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF
 6 THE LIEN.

7 7. The contract shall state the name and address of
 8 the escrow agent required by s. 719.202 and shall state that
 9 the purchaser may obtain a receipt for his or her deposit from
 10 the escrow agent, upon request.

11 8. If the contract is for the sale or transfer of a
 12 unit in a cooperative in which timeshare estates have been or
 13 may be created, the following text in conspicuous type: UNITS
 14 IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES. The
 15 contract for the sale of a timeshare estate must also contain,
 16 in conspicuous type, the following: FOR THE PURPOSE OF AD
 17 VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING
 18 AUTHORITIES AGAINST A TIMESHARE ESTATE, THE MANAGING ENTITY IS
 19 GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE
 20 THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY
 21 RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS
 22 OF CHAPTER 194, FLORIDA STATUTES.

23 (c) Subsequent estimates; when provided.--If the
 24 closing on a contract occurs more than 12 months after the
 25 filing of the offering circular with the division, the
 26 developer shall provide a copy of the current estimated
 27 operating budget of the association to the buyer at closing,
 28 which shall not be considered an amendment that modifies the
 29 offering provided any changes to the association's budget from
 30 the budget given to the buyer at the time of contract signing
 31 were the result of matters beyond the developer's control.

Bill No. CS for SB 396

Barcode 475760

1 Changes in budgets of any master association, recreation
 2 association, or club and similar budgets for entities other
 3 than the association shall likewise not be considered
 4 amendments that modify the offering. It is the intent of this
 5 paragraph to clarify existing law.

6 Section 13. Present paragraph (d) of subsection (20)
 7 of section 719.504, Florida Statutes, is redesignated as
 8 paragraph (f) and new paragraphs (d) and (e) are added to that
 9 subsection to read:

10 719.504 Prospectus or offering circular.--Every
 11 developer of a residential cooperative which contains more
 12 than 20 residential units, or which is part of a group of
 13 residential cooperatives which will be served by property to
 14 be used in common by unit owners of more than 20 residential
 15 units, shall prepare a prospectus or offering circular and
 16 file it with the Division of Florida Land Sales, Condominiums,
 17 and Mobile Homes prior to entering into an enforceable
 18 contract of purchase and sale of any unit or lease of a unit
 19 for more than 5 years and shall furnish a copy of the
 20 prospectus or offering circular to each buyer. In addition to
 21 the prospectus or offering circular, each buyer shall be
 22 furnished a separate page entitled "Frequently Asked Questions
 23 and Answers," which must be in accordance with a format
 24 approved by the division. This page must, in readable
 25 language: inform prospective purchasers regarding their
 26 voting rights and unit use restrictions, including
 27 restrictions on the leasing of a unit; indicate whether and in
 28 what amount the unit owners or the association is obligated to
 29 pay rent or land use fees for recreational or other commonly
 30 used facilities; contain a statement identifying that amount
 31 of assessment which, pursuant to the budget, would be levied

Bill No. CS for SB 396

Barcode 475760

1 upon each unit type, exclusive of any special assessments, and
 2 which identifies the basis upon which assessments are levied,
 3 whether monthly, quarterly, or otherwise; state and identify
 4 any court cases in which the association is currently a party
 5 of record in which the association may face liability in
 6 excess of \$100,000; and state whether membership in a
 7 recreational facilities association is mandatory and, if so,
 8 identify the fees currently charged per unit type. The
 9 division shall by rule require such other disclosure as in its
 10 judgment will assist prospective purchasers. The prospectus or
 11 offering circular may include more than one cooperative,
 12 although not all such units are being offered for sale as of
 13 the date of the prospectus or offering circular. The
 14 prospectus or offering circular must contain the following
 15 information:

16 (20) An estimated operating budget for the cooperative
 17 and the association, and a schedule of the unit owner's
 18 expenses shall be attached as an exhibit and shall contain the
 19 following information:

20 (d) The following statement in conspicuous type: THE
 21 BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED
 22 IN ACCORDANCE WITH THE COOPERATIVE ACT AND IS A GOOD FAITH
 23 ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE
 24 EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME
 25 OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE
 26 ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE
 27 MATERIAL ADVERSE CHANGES IN THE OFFERING.

28 (e) Each budget for an association prepared by a
 29 developer consistent with this subsection shall be prepared in
 30 good faith and shall reflect accurate estimated amounts for
 31 the required items in paragraph (c) at the time of the filing

Bill No. CS for SB 396

Barcode 475760

1 of the offering circular with the division, and subsequent
 2 increased amounts of any item included in the association's
 3 estimated budget which are beyond the control of the developer
 4 shall not be considered an amendment that would give rise to
 5 recission rights set forth in s. 719.503(1)(a) or (b), nor
 6 shall such increases modify, void, or otherwise affect any
 7 guarantee of the developer contained in the offering circular
 8 or any purchase contract. It is the intent of this paragraph
 9 to clarify existing law.

10 Section 14. Subsection (11) is added to section
 11 720.303, Florida Statutes, to read:

12 720.303 Association powers and duties; meetings of
 13 board; official records; budgets; financial reporting;
 14 association funds; recalls.--

15 (11) WINDSTORM INSURANCE.--Windstorm insurance
 16 coverage for a group of no fewer than three communities
 17 created and operating under chapter 718, chapter 719, this
 18 chapter, or chapter 721 may be obtained and maintained for the
 19 communities if the insurance coverage is sufficient to cover
 20 an amount equal to the probable maximum loss for the
 21 communities for a 250-year windstorm event. Such probable
 22 maximum loss must be determined through the use of a competent
 23 model that has been accepted by the Florida Commission on
 24 Hurricane Loss Projection Methodology. Such insurance coverage
 25 is deemed adequate windstorm coverage for purposes of this
 26 chapter.

27 Section 15. Section 720.308, Florida Statutes, is
 28 amended to read:

29 720.308 Assessments and charges.--For any community
 30 created after October 1, 1995, the governing documents must
 31 describe the manner in which expenses are shared and specify

Bill No. CS for SB 396

Barcode 475760

1 the member's proportional share thereof.

2 (1) Assessments levied pursuant to the annual budget
3 or special assessment must be in the member's proportional
4 share of expenses as described in the governing document,
5 which share may be different among classes of parcels based
6 upon the state of development thereof, levels of services
7 received by the applicable members, or other relevant factors.

8 (2) While the developer is in control of the
9 homeowners' association, it may be excused from payment of its
10 share of the operating expenses and assessments related to its
11 parcels for any period of time for which the developer has, in
12 the declaration, obligated itself to pay any operating
13 expenses incurred that exceed the assessments receivable from
14 other members and other income of the association.

15 (3) Assessments or contingent assessments may be
16 levied by the board of directors of the association to secure
17 the obligation of the homeowners' association for insurance
18 acquired from a self-insurance fund authorized and operating
19 pursuant to s. 624.462.

20 (4) This section does not apply to an association, no
21 matter when created, if the association is created in a
22 community that is included in an effective
23 development-of-regional-impact development order as of October
24 1, 1995 ~~the effective date of this act~~, together with any
25 approved modifications thereto.

26 Section 16. This act shall take effect upon becoming a
27 law.

28
29

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

31 And the title is amended as follows:

Bill No. CS for SB 396

Barcode 475760

1 Delete everything before the enacting clause

2

3 and insert:

4 A bill to be entitled

5 An act relating to community associations;
6 amending s. 718.103, F.S.; redefining the term
7 "land"; amending s. 718.111, F.S.; specifying
8 that requirements relating to acquisition and
9 maintenance of adequate insurance apply to all
10 residential condominiums; amending s. 718.115,
11 F.S.; providing that common expenses include
12 the costs of certain insurance or
13 self-insurance; amending s. 718.116, F.S.;
14 requiring notice of special assessments for
15 certain insurance; amending s. 718.503, F.S.;
16 requiring additional disclosures in contracts
17 for sale or lease of residential units;
18 requiring copies of budgets to be furnished to
19 buyers when a closing occurs more than 12
20 months after an offering circular is filed with
21 the state; amending s. 718.504, F.S.; requiring
22 certain information relating to the budget to
23 be included in the offering circular; requiring
24 that an association budget be prepared in good
25 faith; amending s. 718.616, F.S.; requiring
26 that certain disclosures be compiled in a
27 report; revising the items required to be
28 disclosed; requiring supplemental reports in
29 certain situations; amending s. 718.618, F.S.;
30 revising certain requirements for reserve
31 accounts; revising the method of computing the

Bill No. CS for SB 396

Barcode 475760

1 amounts required to fund additional converter
2 reserve accounts; deleting references to
3 specific items that are covered by an implied
4 warranty of fitness in the absence of reserve
5 accounts; requiring that a developer disclose
6 in a contract of sale compliance with certain
7 obligations regarding the maintenance of
8 improvements; amending s. 719.104, F.S.;
9 providing for cooperative associations and
10 similar organizations to acquire and maintain
11 windstorm insurance; amending s. 719.107, F.S.;
12 providing that common expenses include costs of
13 certain insurance; amending s. 719.108, F.S.;
14 providing for notice of special assessments
15 levied in conjunction with certain insurance;
16 amending s. 719.503, F.S.; requiring additional
17 disclosures in contracts for sale or lease of
18 residential units; requiring copies of budgets
19 to be furnished to buyers when a closing occurs
20 more than 12 months after an offering circular
21 is filed with the state; amending s. 719.504,
22 F.S.; requiring certain information relating to
23 the budget to be included in the offering
24 circular; requiring that an association budget
25 be prepared in good faith; amending s. 720.303,
26 F.S.; providing for homeowners' associations to
27 acquire and maintain windstorm insurance;
28 amending s. 720.308, F.S.; providing for
29 homeowners' associations to levy assessments
30 for insurance; providing an effective date.

31