

By the Committee on Regulated Industries; and Senators  
 Margolis and Fasano

580-1856-07

1    A bill to be entitled  
 2    An act relating to community associations;  
 3    amending s. 718.103, F.S.; redefining the term  
 4    "land"; amending s. 718.115, F.S.; providing  
 5    that common expenses include the costs of  
 6    windstorm insurance or self-insurance; amending  
 7    s. 718.116, F.S.; requiring notice of special  
 8    assessments for windstorm insurance; amending  
 9    s. 718.503, F.S.; requiring additional  
 10    disclosures in contracts for sale or lease of  
 11    residential units; requiring copies of budgets  
 12    to be furnished to buyers when a closing occurs  
 13    more than 12 months after an offering circular  
 14    is filed with the state; amending s. 718.504,  
 15    F.S.; requiring certain information relating to  
 16    the budget to be included in the offering  
 17    circular; requiring that an association budget  
 18    be prepared in good faith; amending s. 718.616,  
 19    F.S.; requiring that certain disclosures be  
 20    compiled in a report; revising the items  
 21    required to be disclosed; requiring  
 22    supplemental reports in certain situations;  
 23    amending s. 718.618, F.S.; revising certain  
 24    requirements for reserve accounts; revising the  
 25    method of computing the amounts required to  
 26    fund additional converter reserve accounts;  
 27    deleting references to specific items that are  
 28    covered by an implied warranty of fitness in  
 29    the absence of reserve accounts; requiring that  
 30    a developer disclose in a contract of sale  
 31    compliance with certain obligations regarding

1 the maintenance of improvements; amending s.  
2 719.104, F.S.; providing for cooperative  
3 associations and similar organizations to  
4 acquire and maintain windstorm insurance;  
5 amending s. 719.107, F.S.; providing that  
6 common expenses include costs of windstorm  
7 insurance; amending s. 719.108, F.S.; providing  
8 for notice of special assessments levied in  
9 conjunction with windstorm insurance; amending  
10 s. 719.503, F.S.; requiring additional  
11 disclosures in contracts for sale or lease of  
12 residential units; requiring copies of budgets  
13 to be furnished to buyers when a closing occurs  
14 more than 12 months after an offering circular  
15 is filed with the state; amending s. 719.504,  
16 F.S.; requiring certain information relating to  
17 the budget to be included in the offering  
18 circular; requiring that an association budget  
19 be prepared in good faith; amending s. 720.303,  
20 F.S.; providing for homeowners' associations to  
21 acquire and maintain windstorm insurance;  
22 amending s. 720.308, F.S.; providing for  
23 homeowners' associations to levy assessments  
24 for insurance; providing an effective date.

25  
26 Be It Enacted by the Legislature of the State of Florida:

27  
28 Section 1. Subsection (18) of section 718.103, Florida  
29 Statutes, is amended to read:

30 718.103 Definitions.--As used in this chapter, the  
31 term:

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

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

16           718.115 Common expenses and common surplus.--

17           (1)

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

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

25           718.116 Assessments; liability; lien and priority;  
26 interest; collection.--

27           (10) The specific purpose or purposes of any special  
28 assessment, including any contingent special assessment levied  
29 in conjunction with the purchase of a windstorm insurance  
30 policy authorized by s. 718.111(11), approved in accordance  
31 with the condominium documents shall be set forth in a written

1 notice of such assessment sent or delivered to each unit  
2 owner. The funds collected pursuant to a special assessment  
3 shall be used only for the specific purpose or purposes set  
4 forth in such notice. However, upon completion of such  
5 specific purpose or purposes, any excess funds will be  
6 considered common surplus, and may, at the discretion of the  
7 board, either be returned to the unit owners or applied as a  
8 credit toward future assessments.

9 Section 4. Paragraph (a) of subsection (1) of section  
10 718.503, Florida Statutes, is amended, and paragraph (c) is  
11 added to that subsection, to read:

12 718.503 Developer disclosure prior to sale;  
13 nondeveloper unit owner disclosure prior to sale;  
14 voidability.--

15 (1) DEVELOPER DISCLOSURE.--

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

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

1 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS  
2 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL  
3 TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET  
4 DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE  
5 CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN  
6 APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND  
7 CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE  
8 BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED  
9 THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE  
10 MATERIAL ADVERSE CHANGES IN THE OFFERING.

11           2. Contain the following caveat in conspicuous type on  
12 the first page of the contract: ORAL REPRESENTATIONS CANNOT  
13 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE  
14 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE  
15 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION  
16 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A  
17 BUYER OR LESSEE.

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

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

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

29           6. If the contract is for the sale or lease of a unit  
30 that is subject to a lien for rent payable under a lease of a  
31 recreational facility or other commonly used facility, contain

1 within the text the following statement in conspicuous type:  
2 THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO  
3 A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED  
4 FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF  
5 THE LIEN.

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

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

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

10 718.504 Prospectus or offering circular.--Every  
11 developer of a residential condominium which contains more  
12 than 20 residential units, or which is part of a group of  
13 residential condominiums 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 shall be in accordance with a format  
24 approved by the division and a copy of the financial  
25 information required by s. 718.111. This page shall, in  
26 readable language, inform prospective purchasers regarding  
27 their voting rights and unit use restrictions, including  
28 restrictions on the leasing of a unit; shall indicate whether  
29 and in what amount the unit owners or the association is  
30 obligated to pay rent or land use fees for recreational or  
31 other commonly used facilities; shall contain a statement

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

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

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

30 (e) Each budget for an association prepared by a  
31 developer consistent with this subsection shall be prepared in



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

12 Section 6. Section 718.616, Florida Statutes, is  
13 amended to read:

14 718.616 Disclosure of condition of building and  
15 estimated replacement costs and notification of  
16 municipalities.--

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

23 (2) The following information shall be stated  
24 concerning the improvements:

25 (a) The date and type of construction.

26 (b) The prior use.

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

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

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

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

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

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

3           (d) A supplemental report shall be prepared for any  
4 structure or component that is renovated or repaired after  
5 completion of the original report and prior to the recording  
6 of the declaration of condominium. If the declaration is not  
7 recorded within 1 year after the date of the original report,  
8 the developer shall update the report annually prior to  
9 recording the declaration of condominium.

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

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

22           Section 7. Section 718.618, Florida Statutes, is  
23 amended to read:

24           718.618 Converter reserve accounts; warranties.--

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

1           (a)1. When the existing improvements include an  
2 air-conditioning system serving more than one unit or property  
3 which the association is responsible to repair, maintain, or  
4 replace, the developer shall fund an air-conditioning reserve  
5 account. The amount of the reserve account shall be the  
6 product of the estimated current replacement cost of the  
7 system, as disclosed and substantiated pursuant to s.  
8 718.616(3)(b), multiplied by a fraction, the numerator of  
9 which shall be the lesser of the age of the system in years or  
10 9, and the denominator of which shall be 10. When such  
11 air-conditioning system is within 1,000 yards of the seacoast,  
12 the numerator shall be the lesser of the age of the system in  
13 years or 3, and the denominator shall be 4.

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

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

29

30           Roof Type	Numerator	Denominator
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31

1	a. Built-up roof		
2	without insulation	4	5
3	b. Built-up roof		
4	with insulation	4	5
5	c. Cement tile roof	45	50
6	d. Asphalt shingle roof	14	15
7	e. Copper roof		
8	f. Wood shingle roof	9	10
9	g. All other types	18	20

10

11 (b) The age of any component or structure for which  
12 the developer is required to fund a reserve account shall be  
13 measured in years, rounded to the nearest whole year. The  
14 amount of converter reserves to be funded by the developer for  
15 each structure or component shall be based on the age of the  
16 structure or component as disclosed in the inspection report.  
17 The architect or engineer shall determine the age of the  
18 component from the later of:

19 1. The date when the component or structure was  
20 replaced or substantially renewed, if the replacement or  
21 renewal of the component at least met the requirements of the  
22 then-applicable building code; or

23 2. The date when the installation or construction of  
24 the existing component or structure was completed.

25 (c) When the age of a component or structure is to be  
26 measured from the date of replacement or renewal, the  
27 developer shall provide the division with a certificate, under  
28 the seal of an architect or engineer authorized to practice in  
29 this state, verifying:

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

31

1           2. That the replacement or renewal at least met the  
2 requirements of the then-applicable building code.

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

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

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

31

1 This paragraph applies only when the developer has funded  
2 reserve accounts as provided by paragraph (a).

3 (3) The use of reserve account funds is limited as  
4 follows:

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

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

14 (4) The developer shall establish the reserve account  
15 in the name of the association at a bank, savings and loan  
16 association, or trust company located in this state.

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

25 (6) A developer makes no implied warranties when  
26 existing improvements are converted to ownership as a  
27 residential condominium and reserve accounts are funded in  
28 accordance with this section. As an alternative to  
29 establishing such reserve accounts, or when a developer fails  
30 to establish the reserve accounts in accordance with this  
31 section, the developer shall be deemed to have granted to the

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

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

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

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

26 (7) When a developer desires to post a surety bond,  
27 the developer shall, after notification to the buyer, acquire  
28 a surety bond issued by a company licensed to do business in  
29 this state, if such a bond is readily available in the open  
30 market, in an amount which would be equal to the total amount  
31



1 of all reserve accounts required under subsection (1), payable  
2 to the association.

3 (8) The amended provisions of this section do not  
4 affect a conversion of existing improvements when a developer  
5 has filed a notice of intended conversion and the documents  
6 required by s. 718.503 or s. 718.504, as applicable, with the  
7 division prior to the effective date of this law, provided:

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

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

11 1. Records a declaration for such filing in accordance  
12 with part I.

13 2. Gives a notice of intended conversion.

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

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

24 Section 8. Subsection (3) of section 719.104, Florida  
25 Statutes, is amended to read:

26 719.104 Cooperatives; access to units; records;  
27 financial reports; assessments; purchase of leases.--

28 (3) INSURANCE.--The association shall use its best  
29 efforts to obtain and maintain adequate insurance to protect  
30 the association property. The association may also obtain and  
31 maintain liability insurance for directors and officers,

1 insurance for the benefit of association employees, and flood  
2 insurance. A copy of each policy of insurance in effect shall  
3 be made available for inspection by unit owners at reasonable  
4 times.

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

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

22 Section 9. Paragraph (e) is added to subsection (1) of  
23 section 719.107, Florida Statutes, to read:

24 719.107 Common expenses; assessment.--

25 (1)

26 (e) Common expenses include the costs of windstorm  
27 insurance acquired by the association under the authority of  
28 s. 718.111(11), including costs and contingent expenses  
29 required to participate in a self-insurance fund authorized  
30 and approved pursuant to s. 624.462.

31

1           Section 10. Subsection (9) of section 719.108, Florida  
2 Statutes, is amended to read:

3           719.108 Rents and assessments; liability; lien and  
4 priority; interest; collection; cooperative ownership.--

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

18           Section 11. Paragraph (a) of subsection (1) of section  
19 719.503, Florida Statutes, is amended, and paragraph (c) is  
20 added to that subsection, to read:

21           719.503 Disclosure prior to sale.--

22           (1) DEVELOPER DISCLOSURE.--

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

26           1. The following legend in conspicuous type: THIS  
27 AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF  
28 THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE  
29 OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY  
30 BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR  
31 HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES.

1 THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN  
2 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER  
3 THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH  
4 MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS  
5 ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE  
6 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE  
7 TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER  
8 THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S  
9 RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.  
10 FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER  
11 PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT ARE ESTIMATES  
12 ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED  
13 ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE  
14 PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF  
15 SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN  
16 COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE  
17 OFFERING.

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

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

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

1           5. If the contract is for the lease of a unit for a  
2 term of 5 years or more, the contract shall include as an  
3 exhibit a copy of the proposed lease.

4           6. If the contract is for the sale or lease of a unit  
5 that is subject to a lien for rent payable under a lease of a  
6 recreational facility or other common areas, the contract  
7 shall contain within the text the following statement in  
8 conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT  
9 THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF  
10 COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF  
11 THE LIEN.

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

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

28           (c) Subsequent estimates; when provided.--If the  
29 closing on a contract occurs more than 12 months after the  
30 filing of the offering circular with the division, the  
31 developer shall provide a copy of the current estimated

1 operating budget of the association to the buyer at closing,  
2 which shall not be considered an amendment that modifies the  
3 offering provided any changes to the association's budget from  
4 the budget given to the buyer at the time of contract signing  
5 were the result of matters beyond the developer's control.  
6 Changes in budgets of any master association, recreation  
7 association, or club and similar budgets for entities other  
8 than the association shall likewise not be considered  
9 amendments that modify the offering. It is the intent of this  
10 paragraph to clarify existing law.

11           Section 12. Present paragraph (d) of subsection (20)  
12 of section 719.504, Florida Statutes, is redesignated as  
13 paragraph (f) and new paragraphs (d) and (e) are added to that  
14 subsection to read:

15           719.504 Prospectus or offering circular.--Every  
16 developer of a residential cooperative which contains more  
17 than 20 residential units, or which is part of a group of  
18 residential cooperatives which will be served by property to  
19 be used in common by unit owners of more than 20 residential  
20 units, shall prepare a prospectus or offering circular and  
21 file it with the Division of Florida Land Sales, Condominiums,  
22 and Mobile Homes prior to entering into an enforceable  
23 contract of purchase and sale of any unit or lease of a unit  
24 for more than 5 years and shall furnish a copy of the  
25 prospectus or offering circular to each buyer. In addition to  
26 the prospectus or offering circular, each buyer shall be  
27 furnished a separate page entitled "Frequently Asked Questions  
28 and Answers," which must be in accordance with a format  
29 approved by the division. This page must, in readable  
30 language: inform prospective purchasers regarding their  
31 voting rights and unit use restrictions, including

1 | restrictions on the leasing of a unit; indicate whether and in  
2 | what amount the unit owners or the association is obligated to  
3 | pay rent or land use fees for recreational or other commonly  
4 | used facilities; contain a statement identifying that amount  
5 | of assessment which, pursuant to the budget, would be levied  
6 | upon each unit type, exclusive of any special assessments, and  
7 | which identifies the basis upon which assessments are levied,  
8 | whether monthly, quarterly, or otherwise; state and identify  
9 | any court cases in which the association is currently a party  
10 | of record in which the association may face liability in  
11 | excess of \$100,000; and state whether membership in a  
12 | recreational facilities association is mandatory and, if so,  
13 | identify the fees currently charged per unit type. The  
14 | division shall by rule require such other disclosure as in its  
15 | judgment will assist prospective purchasers. The prospectus or  
16 | offering circular may include more than one cooperative,  
17 | although not all such units are being offered for sale as of  
18 | the date of the prospectus or offering circular. The  
19 | prospectus or offering circular must contain the following  
20 | information:

21 |           (20) An estimated operating budget for the cooperative  
22 | and the association, and a schedule of the unit owner's  
23 | expenses shall be attached as an exhibit and shall contain the  
24 | following information:

25 |           (d) The following statement in conspicuous type: THE  
26 | BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED  
27 | IN ACCORDANCE WITH THE COOPERATIVE ACT AND IS A GOOD FAITH  
28 | ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE  
29 | EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME  
30 | OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE  
31 |

1 ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE  
2 MATERIAL ADVERSE CHANGES IN THE OFFERING.

3 (e) Each budget for an association prepared by a  
4 developer consistent with this subsection shall be prepared in  
5 good faith and shall reflect accurate estimated amounts for  
6 the required items in paragraph (c) at the time of the filing  
7 of the offering circular with the division, and subsequent  
8 increased amounts of any item included in the association's  
9 estimated budget which are beyond the control of the developer  
10 shall not be considered an amendment that would give rise to  
11 recission rights set forth in s. 718.504(1)(a) or (b), nor  
12 shall such increases modify, void, or otherwise affect any  
13 guarantee of the developer contained in the offering circular  
14 or any purchase contract. It is the intent of this paragraph  
15 to clarify existing law.

16 Section 13. Subsection (11) is added to section  
17 720.303, Florida Statutes, to read:

18 720.303 Association powers and duties; meetings of  
19 board; official records; budgets; financial reporting;  
20 association funds; recalls.--

21 (11) WINDSTORM INSURANCE.--Windstorm insurance  
22 coverage for a group of no fewer than three communities  
23 created and operating under chapter 718, chapter 719, this  
24 chapter, or chapter 721 may be obtained and maintained for the  
25 communities if the insurance coverage is sufficient to cover  
26 an amount equal to the probable maximum loss for the  
27 communities for a 250-year windstorm event. Such probable  
28 maximum loss must be determined through the use of a competent  
29 model that has been accepted by the Florida Commission on  
30 Hurricane Loss Projection Methodology. Such insurance coverage  
31



1 is deemed adequate windstorm coverage for purposes of this  
2 chapter.

3 Section 14. Section 720.308, Florida Statutes, is  
4 amended to read:

5 720.308 Assessments and charges.--For any community  
6 created after October 1, 1995, the governing documents must  
7 describe the manner in which expenses are shared and specify  
8 the member's proportional share thereof.

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

15 (2) While the developer is in control of the  
16 homeowners' association, it may be excused from payment of its  
17 share of the operating expenses and assessments related to its  
18 parcels for any period of time for which the developer has, in  
19 the declaration, obligated itself to pay any operating  
20 expenses incurred that exceed the assessments receivable from  
21 other members and other income of the association.

22 (3) Assessments or contingent assessments may be  
23 levied by the board of directors of the association to secure  
24 the obligation of the homeowners' association for insurance  
25 acquired from a self-insurance fund authorized and operating  
26 pursuant to s. 624.462.

27 (4) This section does not apply to an association, no  
28 matter when created, if the association is created in a  
29 community that is included in an effective  
30 development-of-regional-impact development order as of October  
31

1 1, 1995 ~~the effective date of this act~~, together with any  
2 approved modifications thereto.  
3           Section 15. This act shall take effect upon becoming a  
4 law.  
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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 396

4 The committee substitute amends the definition of "Land" in s.  
5 718.103(18) by including a condominium unit.

6 It defines "common expenses" in s. 718.115, F.S., to include  
7 the costs of windstorm insurance acquired by the association  
8 under the authority of s. 718.111(11), F.S., and costs and  
9 contingent expenses required to participate in self-insurance  
10 fund authorized and approved pursuant to s. 624.462, F.S.

11 The committee substitute amends s. 718.116, F.S., to provide  
12 that any special assessment may include any contingent special  
13 assessment levied in conjunction with the purchase of a  
14 windstorm insurance policy authorized by s. 718.111(11), F.S.

15 It amends s. 718.503, F.S. to provide that the figures  
16 contained in any budget are only estimates and represent an  
17 approximation of future expenses based on facts and  
18 circumstances which exist at the time the developer prepares  
19 the budget. It further provides that the actual costs of  
20 items may exceed the estimated costs and that such changes do  
21 not constitute material adverse changes in the offering.

22 It amends s. 718.503(1)(c), F.S., to provide that updated  
23 estimates of the operating budget be provided at closing if  
24 the association is in a new budget year. The estimate is not  
25 to be considered an amendment that modifies the offering if  
26 the changes to the budget were the result of matters beyond  
27 the developer's control. Changes in budgets of any master  
28 association, recreation association, or club and similar  
29 budgets for entities other than the association are also not  
30 to be considered amendments that modify the offering.

31 It amends s. 718.504(21), F.S., to require a statement in  
conspicuous type that the budget is prepared in accordance  
with the condominium act, is a good faith estimate and  
represents an approximation of future expenses based on facts  
and circumstances existing at the time of preparation. It  
further provides that any changes in actual cost from the  
estimated cost do not constitute material adverse changes in  
the offering.

It creates s. 718.504(21)(e), F.S., to provide that the budget  
is a good faith estimate made at the time of the filing of the  
offering circular with the division and any subsequent  
increased amounts on any item which are beyond the developer's  
control are not considered amendments that give rise to  
rescission rights as provided in the section nor do such  
increases, modify, void, or otherwise affect any guarantee of  
the developer.

It amends s. 719.104, F.S., to authorize cooperatives to  
participate in the self-insurance programs authorized in the  
2007 Special Session A.

It creates s. 719.107(1)(e), F.S., to provide that common  
expenses include the costs of windstorm insurance acquired by

1 the association under the authority of s. 718.111(11), F.S.,  
2 including costs and contingent expenses required to  
3 participate in a self-insurance fund authorized and approved  
4 pursuant to s. 624.462, F.S.

5 It amends s. 719.108(9), F.S., to provide that any special  
6 assessment may include any contingent special assessment  
7 levied in conjunction with the purchase of a windstorm  
8 insurance policy authorized by s. 719.104(3), F.S., and that  
9 any excess funds may, at the discretion of the board, either  
10 be returned to the unit owners or applied as a credit toward  
11 future assessments.

12 It amends the disclosure language for cooperative contracts in  
13 s. 719.503(1)(a), F.S., to provide that figures contained in  
14 any budget delivered to the buyer, prepared in accordance with  
15 the Cooperative Act are estimates only and represent an  
16 approximation of future expenses based on facts and  
17 circumstances existing at the time of the preparation of the  
18 budget by the developer. The actual costs of the items may  
19 exceed the estimated cost but do not constitute material  
20 adverse changes in the offering.

21 It creates s. 719.503(1)(c), F.S., to provide that if the  
22 closing on a contract occurs more than 12 months after the  
23 filing of the offering circular with the division, the  
24 developer shall provide a copy of the current estimated  
25 operating budget of the association to the buyer at closing.  
26 The estimate is not to be considered an amendment that  
27 modifies the offering if the changes to the budget were the  
28 result of matters beyond the developer's control. It further  
29 provides that changes in budgets of any master association,  
30 recreation association, or club and similar budgets for  
31 entities other than the association shall not be considered  
amendments that modify the offering.

It creates s. 719.504(20)(d), F.S., to provide that the  
estimated operating budget for the cooperative and the  
association, and a schedule of the unit owner's expenses that  
is attached as an exhibit contain a statement in conspicuous  
type that the budget contained in the offering circular is  
prepared in accordance with the cooperative act and is a good  
faith estimate only and represents an approximation of future  
expenses based on facts and circumstances existing at the time  
of its preparation. The actual costs may exceed the estimate  
but such changes do not constitute material adverse changes in  
the offering.

It creates s. 719.504(20)(e), F.S., to provide that each  
budget the developer prepares for an association be done in  
good faith and reflect accurate estimated amounts for the  
required items in the section at the time of filing of the  
offering circulars with the division, and subsequent increased  
amounts of any item included in the association's estimated  
budget which are beyond the control of the developer are not  
considered an amendment that gives rise to rescission rights  
provided in this section nor shall the increases modify, void,  
or otherwise affect any guarantee of the developer contained  
in the offering circular or any purchase contract.

It creates s. 720.303(11), F.S., to provide that windstorm  
insurance coverage for a group of no fewer than three

1 communities created and operating under ch.718, ch 719,  
2 ch.720, and ch.721, F.S., may be obtained and maintained if  
3 the insurance is sufficient to cover an amount equal to the  
4 probable maximum loss for the communities for a 250 year  
5 windstorm event. The probable maximum loss is determined  
6 through the use of a competent model that has been accepted by  
7 the Florida Commission on Hurricane Loss Projection  
8 Methodology. The insurance coverage is deemed adequate  
9 windstorm coverage for purposes of this chapter.

10 It amends s. 720.308(3), F.S., to authorize a mandatory  
11 homeowners' association board of directors to make assessments  
12 in conjunction with the self-insurance funds authorized and  
13 operating pursuant to s. 624.462, F.S.

14 It amends s. 720.308(4), F.S., to provide that the section  
15 does not apply to an association if the association was  
16 created in a community that is included in an effective  
17 development-of-regional-impact development order as of October  
18 1, 1995.

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