

By the Committees on Judiciary; Regulated Industries; and
Senators Margolis and Fasano

590-1992-07

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

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

28
29 Be It Enacted by the Legislature of the State of Florida:
30
31

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

3 718.103 Definitions.--As used in this chapter, the
4 term:

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

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

19 718.111 The association.--

20 (11) INSURANCE.--In order to protect the safety,
21 health, and welfare of the people of the State of Florida and
22 to ensure consistency in the provision of insurance coverage
23 to condominiums and their unit owners, paragraphs (a), (b),
24 and (c) are deemed to apply to every residential condominium
25 in the state, regardless of the date of its declaration of
26 condominium. It is the intent of the Legislature to encourage
27 lower or stable insurance premiums for associations described
28 in this section. Therefore, the Legislature requires a report
29 to be prepared by the Office of Insurance Regulation of the
30 Department of Financial Services for publication 18 months
31 from the effective date of this act, evaluating premium

1 | increases or decreases for associations, unit owner premium
2 | increases or decreases, recommended changes to better define
3 | common areas, or any other information the Office of Insurance
4 | Regulation deems appropriate.

5 | (a) A unit-owner controlled association operating a
6 | residential condominium shall use its best efforts to obtain
7 | and maintain adequate insurance to protect the association,
8 | the association property, the common elements, and the
9 | condominium property required to be insured by the association
10 | pursuant to paragraph (b). If the association is developer
11 | controlled, the association shall exercise due diligence to
12 | obtain and maintain such insurance. Failure to obtain and
13 | maintain adequate insurance during any period of developer
14 | control shall constitute a breach of fiduciary responsibility
15 | by the developer-appointed members of the board of directors
16 | of the association, unless said members can show that despite
17 | such failure, they have exercised due diligence. The
18 | declaration of condominium as originally recorded, or amended
19 | pursuant to procedures provided therein, may require that
20 | condominium property consisting of freestanding buildings
21 | where there is no more than one building in or on such unit
22 | need not be insured by the association if the declaration
23 | requires the unit owner to obtain adequate insurance for the
24 | condominium property. An association may also obtain and
25 | maintain liability insurance for directors and officers,
26 | insurance for the benefit of association employees, and flood
27 | insurance for common elements, association property, and
28 | units. Adequate insurance, regardless of any requirement in
29 | the declaration of condominium for coverage by the association
30 | for "full insurable value," "replacement cost," or the like,
31 | may include reasonable deductibles as determined by the board

1 based upon available funds or predetermined assessment
2 authority at the time that the insurance is obtained.

3 1. Windstorm insurance coverage for a group of no
4 fewer than three communities created and operating under this
5 chapter, chapter 719, chapter 720, or chapter 721 may be
6 obtained and maintained for the communities if the insurance
7 coverage is sufficient to cover an amount equal to the
8 probable maximum loss for the communities for a 250-year
9 windstorm event. Such probable maximum loss must be determined
10 through the use of a competent model that has been accepted by
11 the Florida Commission on Hurricane Loss Projection
12 Methodology. Such insurance coverage is deemed adequate
13 windstorm insurance for the purposes of this section.

14 2. An association or group of associations may
15 self-insure against claims against the association, the
16 association property, and the condominium property required to
17 be insured by an association, upon compliance with the
18 applicable provisions of ss. 624.460-624.488, which shall be
19 considered adequate insurance for the purposes of this
20 section. A copy of each policy of insurance in effect shall be
21 made available for inspection by unit owners at reasonable
22 times.

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

26 1. All portions of the condominium property located
27 outside the units;

28 2. The condominium property located inside the units
29 as such property was initially installed, or replacements
30 thereof of like kind and quality and in accordance with the
31 original plans and specifications or, if the original plans

1 and specifications are not available, as they existed at the
2 time the unit was initially conveyed; and

3 3. All portions of the condominium property for which
4 the declaration of condominium requires coverage by the
5 association.

6
7 Anything to the contrary notwithstanding, the terms
8 "condominium property," "building," "improvements," "insurable
9 improvements," "common elements," "association property," or
10 any other term found in the declaration of condominium which
11 defines the scope of property or casualty insurance that a
12 condominium association must obtain shall exclude all floor,
13 wall, and ceiling coverings, electrical fixtures, appliances,
14 air conditioner or heating equipment, water heaters, water
15 filters, built-in cabinets and countertops, and window
16 treatments, including curtains, drapes, blinds, hardware, and
17 similar window treatment components, or replacements of any of
18 the foregoing which are located within the boundaries of a
19 unit and serve only one unit and all air conditioning
20 compressors that service only an individual unit, whether or
21 not located within the unit boundaries. The foregoing is
22 intended to establish the property or casualty insuring
23 responsibilities of the association and those of the
24 individual unit owner and do not serve to broaden or extend
25 the perils of coverage afforded by any insurance contract
26 provided to the individual unit owner. Beginning January 1,
27 2004, the association shall have the authority to amend the
28 declaration of condominium, without regard to any requirement
29 for mortgagee approval of amendments affecting insurance
30 requirements, to conform the declaration of condominium to the
31 coverage requirements of this section.

1 (c) Every hazard insurance policy issued or renewed on
2 or after January 1, 2004, to an individual unit owner shall
3 provide that the coverage afforded by such policy is excess
4 over the amount recoverable under any other policy covering
5 the same property. Each insurance policy issued to an
6 individual unit owner providing such coverage shall be without
7 rights of subrogation against the condominium association that
8 operates the condominium in which such unit owner's unit is
9 located. All real or personal property located within the
10 boundaries of the unit owner's unit which is excluded from the
11 coverage to be provided by the association as set forth in
12 paragraph (b) shall be insured by the individual unit owner.

13 (d) The association shall obtain and maintain adequate
14 insurance or fidelity bonding of all persons who control or
15 disburse funds of the association. The insurance policy or
16 fidelity bond must cover the maximum funds that will be in the
17 custody of the association or its management agent at any one
18 time. As used in this paragraph, the term "persons who control
19 or disburse funds of the association" includes, but is not
20 limited to, those individuals authorized to sign checks and
21 the president, secretary, and treasurer of the association.
22 The association shall bear the cost of bonding.

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

27 718.115 Common expenses and common surplus.--

28 (1)

29 (f) Common expenses include the costs of insurance
30 acquired by the association under the authority of s.
31 718.111(11), including costs and contingent expenses required

1 to participate in a self-insurance fund authorized and
2 approved pursuant to s. 624.462.

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

5 718.116 Assessments; liability; lien and priority;
6 interest; collection.--

7 (10) The specific purpose or purposes of any special
8 assessment, including any contingent special assessment levied
9 in conjunction with the purchase of an insurance policy
10 authorized by s. 718.111(11), approved in accordance with the
11 condominium documents shall be set forth in a written notice
12 of such assessment sent or delivered to each unit owner. The
13 funds collected pursuant to a special assessment shall be used
14 only for the specific purpose or purposes set forth in such
15 notice. However, upon completion of such specific purpose or
16 purposes, any excess funds will be considered common surplus,
17 and may, at the discretion of the board, either be returned to
18 the unit owners or applied as a credit toward future
19 assessments.

20 Section 5. Paragraph (a) of subsection (1) of section
21 718.503, Florida Statutes, is amended, and paragraph (c) is
22 added to that subsection, to read:

23 718.503 Developer disclosure prior to sale;
24 nondeveloper unit owner disclosure prior to sale;
25 voidability.--

26 (1) DEVELOPER DISCLOSURE.--

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

30 1. Contain the following legend in conspicuous type:

31 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN

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

22 2. Contain the following caveat in conspicuous type on
23 the first page of the contract: ORAL REPRESENTATIONS CANNOT
24 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE
25 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE
26 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION
27 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A
28 BUYER OR LESSEE.

29 3. If the unit has been occupied by someone other than
30 the buyer, contain a statement that the unit has been
31 occupied.

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

6 5. If the contract is for the lease of a unit for a
7 term of 5 years or more, include as an exhibit a copy of the
8 proposed lease.

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

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

21 8. If the contract is for the sale or transfer of a
22 unit in a condominium in which timeshare estates have been or
23 may be created, contain within the text in conspicuous type:
24 UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.
25 The contract for the sale of a fee interest in a timeshare
26 estate shall also contain, in conspicuous type, the following:
27 FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS
28 LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A
29 TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED
30 THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO
31 CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR

1 | TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194,
2 | FLORIDA STATUTES.

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

17 | Section 6. Present paragraph (d) of subsection (21) of
18 | section 718.504, Florida Statutes, is redesignated as
19 | paragraph (f) and new paragraphs (d) and (e) are added to that
20 | subsection to read:

21 | 718.504 Prospectus or offering circular.--Every
22 | developer of a residential condominium which contains more
23 | than 20 residential units, or which is part of a group of
24 | residential condominiums which will be served by property to
25 | be used in common by unit owners of more than 20 residential
26 | units, shall prepare a prospectus or offering circular and
27 | file it with the Division of Florida Land Sales, Condominiums,
28 | and Mobile Homes prior to entering into an enforceable
29 | contract of purchase and sale of any unit or lease of a unit
30 | for more than 5 years and shall furnish a copy of the
31 | prospectus or offering circular to each buyer. In addition to

1 | the prospectus or offering circular, each buyer shall be
2 | furnished a separate page entitled "Frequently Asked Questions
3 | and Answers," which shall be in accordance with a format
4 | approved by the division and a copy of the financial
5 | information required by s. 718.111. This page shall, in
6 | readable language, inform prospective purchasers regarding
7 | their voting rights and unit use restrictions, including
8 | restrictions on the leasing of a unit; shall indicate whether
9 | and in what amount the unit owners or the association is
10 | obligated to pay rent or land use fees for recreational or
11 | other commonly used facilities; shall contain a statement
12 | identifying that amount of assessment which, pursuant to the
13 | budget, would be levied upon each unit type, exclusive of any
14 | special assessments, and which shall further identify the
15 | basis upon which assessments are levied, whether monthly,
16 | quarterly, or otherwise; shall state and identify any court
17 | cases in which the association is currently a party of record
18 | in which the association may face liability in excess of
19 | \$100,000; and which shall further state whether membership in
20 | a recreational facilities association is mandatory, and if so,
21 | shall identify the fees currently charged per unit type. The
22 | division shall by rule require such other disclosure as in its
23 | judgment will assist prospective purchasers. The prospectus or
24 | offering circular may include more than one condominium,
25 | although not all such units are being offered for sale as of
26 | the date of the prospectus or offering circular. The
27 | prospectus or offering circular must contain the following
28 | information:

29 | (21) An estimated operating budget for the condominium
30 | and the association, and a schedule of the unit owner's
31 |

1 expenses shall be attached as an exhibit and shall contain the
2 following information:

3 (d) The following statement in conspicuous type: THE
4 BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED
5 IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH
6 ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE
7 EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME
8 OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE
9 ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE
10 MATERIAL ADVERSE CHANGES IN THE OFFERING.

11 (e) Each budget for an association prepared by a
12 developer consistent with this subsection shall be prepared in
13 good faith and shall reflect accurate estimated amounts for
14 the required items in paragraph (c) at the time of the filing
15 of the offering circular with the division, and subsequent
16 increased amounts of any item included in the association's
17 estimated budget which are beyond the control of the developer
18 shall not be considered an amendment that would give rise to
19 recission rights set forth in s. 718.503(1)(a) or (b), nor
20 shall such increases modify, void, or otherwise affect any
21 guarantee of the developer contained in the offering circular
22 or any purchase contract. It is the intent of this paragraph
23 to clarify existing law.

24 Section 7. Section 718.616, Florida Statutes, is
25 amended to read:

26 718.616 Disclosure of condition of building and
27 estimated replacement costs and notification of
28 municipalities.--

29 (1) Each developer of a residential condominium
30 created by converting existing, previously occupied
31 improvements to such form of ownership shall prepare a report

1 that discloses ~~disclose~~ the condition of the improvements and
2 the condition of certain components and their current
3 estimated replacement costs as of the date of the report.

4 (2) The following information shall be stated
5 concerning the improvements:

6 (a) The date and type of construction.

7 (b) The prior use.

8 (c) Whether there is termite damage or infestation and
9 whether the termite damage or infestation, if any, has been
10 properly treated. The statement shall be substantiated by
11 including, as an exhibit, an inspection report by a certified
12 pest control operator.

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

16 1. Roof.

17 2. Structure.

18 3. ~~Fireproofing and~~ Fire protection systems.

19 4. Elevators.

20 5. Heating and cooling systems.

21 6. Plumbing.

22 7. Electrical systems.

23 8. Swimming pool.

24 9. Seawalls, pilings, and docks.

25 10. Pavement and concrete, including roadways,
26 walkways, and parking areas.

27 11. Drainage systems.

28 12. Irrigation systems.

29 (b) For each component, the following information
30 shall be disclosed and substantiated by attaching a copy of a
31

1 certificate under seal of an architect or engineer authorized
2 to practice in this state:

3 1. The age of the component as of the date of the
4 report.

5 2. The estimated remaining useful life of the
6 component as of the date of the report.

7 3. The estimated current replacement cost of the
8 component as of the date of the report, expressed:

9 a. As a total amount; and

10 b. As a per-unit amount, based upon each unit's
11 proportional share of the common expenses.

12 4. The structural and functional soundness of the
13 component.

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

16 (d) A supplemental report shall be prepared for any
17 structure or component that is renovated or repaired after
18 completion of the original report and prior to the recording
19 of the declaration of condominium. If the declaration is not
20 recorded within 1 year after the date of the original report,
21 the developer shall update the report annually prior to
22 recording the declaration of condominium.

23 (e) The report may not contain representations on
24 behalf of the development concerning future improvements or
25 repairs and must be limited to the current condition of the
26 improvements.

27 (4) If the proposed condominium is situated within a
28 municipality, the disclosure shall include a letter from the
29 municipality acknowledging that the municipality has been
30 notified of the proposed creation of a residential condominium
31 by conversion of existing, previously occupied improvements

1 and, in any county, as defined in s. 125.011(1), acknowledging
2 compliance with applicable zoning requirements as determined
3 by the municipality.

4 Section 8. Section 718.618, Florida Statutes, is
5 amended to read:

6 718.618 Converter reserve accounts; warranties.--

7 (1) When existing improvements are converted to
8 ownership as a residential condominium, the developer shall
9 establish converter reserve accounts for capital expenditures
10 and deferred maintenance, ~~or~~ give warranties as provided by
11 subsection (6), or post a surety bond as provided by
12 subsection (7). The developer shall fund the converter reserve
13 accounts in amounts calculated as follows:

14 (a)1. When the existing improvements include an
15 air-conditioning system serving more than one unit or property
16 which the association is responsible to repair, maintain, or
17 replace, the developer shall fund an air-conditioning reserve
18 account. The amount of the reserve account shall be the
19 product of the estimated current replacement cost of the
20 system, as disclosed and substantiated pursuant to s.
21 718.616(3)(b), multiplied by a fraction, the numerator of
22 which shall be the lesser of the age of the system in years or
23 9, and the denominator of which shall be 10. When such
24 air-conditioning system is within 1,000 yards of the seacoast,
25 the numerator shall be the lesser of the age of the system in
26 years or 3, and the denominator shall be 4.

27 2. The developer shall fund a plumbing reserve
28 account. The amount of the funding shall be the product of the
29 estimated current replacement cost of the plumbing component,
30 as disclosed and substantiated pursuant to s. 718.616(3)(b),
31 multiplied by a fraction, the numerator of which shall be the

1 lesser of the age of the plumbing in years or 36, and the
2 denominator of which shall be 40.

3 3. The developer shall fund a roof reserve account.
4 The amount of the funding shall be the product of the
5 estimated current replacement cost of the roofing component,
6 as disclosed and substantiated pursuant to s. 718.616(3)(b),
7 multiplied by a fraction, the numerator of which shall be the
8 lesser of the age of the roof in years or the numerator listed
9 in the following table. The denominator of the fraction shall
10 be determined based on the roof type, as follows:

11	Roof Type	Numerator	Denominator
12			
13			
14	a. Built-up roof		
15	without insulation	4	5
16	b. Built-up roof		
17	with insulation	4	5
18	c. Cement tile roof	45	50
19	d. Asphalt shingle roof	14	15
20	e. Copper roof		
21	f. Wood shingle roof	9	10
22	g. All other types	18	20
23			

24 (b) The age of any component or structure for which
25 the developer is required to fund a reserve account shall be
26 measured in years, rounded to the nearest whole year. The
27 amount of converter reserves to be funded by the developer for
28 each structure or component shall be based on the age of the
29 structure or component as disclosed in the inspection report.
30 The architect or engineer shall determine the age of the
31 component from the later of:

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

5 2. The date when the installation or construction of
6 the existing component or structure was completed.

7 (c) When the age of a component or structure is to be
8 measured from the date of replacement or renewal, the
9 developer shall provide the division with a certificate, under
10 the seal of an architect or engineer authorized to practice in
11 this state, verifying:

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

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

15 (d) In addition to establishing the reserve accounts
16 specified above, the developer shall establish those other
17 reserve accounts required by s. 718.112(2)(f), and shall fund
18 those accounts in accordance with the formula provided
19 therein. The vote to waive or reduce the funding or reserves
20 required by s. 718.112(2)(f) does not affect or negate the
21 obligations arising under this section.

22 (2)(a) The developer shall fund the reserve account
23 required by subsection (1), on a pro rata basis upon the sale
24 of each unit. The developer shall deposit in the reserve
25 account not less than a percentage of the total amount to be
26 deposited in the reserve account equal to the percentage of
27 ownership of the common elements allocable to the unit sold.
28 When a developer deposits amounts in excess of the minimum
29 reserve account funding, later deposits may be reduced to the
30 extent of the excess funding. For the purposes of this
31 subsection, a unit is considered sold when a fee interest in

1 the unit is transferred to a third party or the unit is leased
2 for a period in excess of 5 years.

3 (b) When an association makes an expenditure of
4 converter reserve account funds before the developer has sold
5 all units, the developer shall make a deposit in the reserve
6 account. Such deposit shall be at least equal to that portion
7 of the expenditure which would be charged against the reserve
8 account deposit that would have been made for any such unit
9 had the unit been sold. Such deposit may be reduced to the
10 extent the developer has funded the reserve account in excess
11 of the minimum reserve account funding required by this
12 subsection. This paragraph applies only when the developer has
13 funded reserve accounts as provided by paragraph (a).

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

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

19 (b) Reserve account funds may be expended only for
20 repair or replacement of the specific components for which the
21 funds were deposited, unless, after assumption of control of
22 the association by unit owners other than the developer, it is
23 determined by three-fourths of the voting interests in the
24 condominium to expend the funds for other purposes.

25 (4) The developer shall establish the reserve account,
26 as provided in this section, in the name of the association at
27 a bank, savings and loan association, or trust company located
28 in this state.

29 (5) A developer may establish and fund additional
30 converter reserve accounts. The amount of funding shall be the
31 product of the estimated current replacement cost of a

1 component, as disclosed and substantiated pursuant to s.
2 718.616(3)(b), multiplied by a fraction, the numerator of
3 which is the age of the component in years and the denominator
4 of which is the total estimated life of the component in
5 years.

6 (6) A developer makes no implied warranties when
7 existing improvements are converted to ownership as a
8 residential condominium and reserve accounts are funded in
9 accordance with this section. As an alternative to
10 establishing such reserve accounts, or when a developer fails
11 to establish the reserve accounts in accordance with this
12 section, the developer shall be deemed to have granted to the
13 purchaser of each unit an implied warranty of fitness and
14 merchantability for the purposes or uses intended, ~~as to the~~
15 ~~roof and structural components of the improvements; as to~~
16 ~~fireproofing and fire protection systems; and as to~~
17 ~~mechanical, electrical, and plumbing elements serving the~~
18 ~~improvements, except mechanical elements serving only one~~
19 ~~unit.~~ The warranty shall be for a period beginning with the
20 notice of intended conversion and continuing for 3 years
21 thereafter, or the recording of the declaration to condominium
22 and continuing for 3 years thereafter, or 1 year after owners
23 other than the developer obtain control of the association,
24 whichever occurs last, but in no event more than 5 years.

25 (a) The warranty provided for in this section is
26 conditioned upon routine maintenance being performed, unless
27 the maintenance is an obligation of the developer or a
28 developer-controlled association.

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

31

1 (c) Existing improvements converted to residential
2 condominium may be covered by an insured warranty program
3 underwritten by an insurance company authorized to do business
4 in this state, if such warranty program meets the minimum
5 requirements of this chapter. To the degree that the warranty
6 program does not meet the minimum requirements of this
7 chapter, such requirements shall apply.

8 (7) When a developer desires to post a surety bond,
9 the developer shall, after notification to the buyer, acquire
10 a surety bond issued by a company licensed to do business in
11 this state, if such a bond is readily available in the open
12 market, in an amount which would be equal to the total amount
13 of all reserve accounts required under subsection (1), payable
14 to the association.

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

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

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

23 1. Records a declaration for such filing in accordance
24 with part I.

25 2. Gives a notice of intended conversion.

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

30 (10) A developer who sells a condominium parcel that
31 is subject to this part shall disclose in conspicuous type in

1 the contract of sale whether the developer has established
2 converter reserve accounts, provided a warranty of fitness and
3 merchantability, or posted a surety bond for purposes of
4 complying with this section.

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

7 719.104 Cooperatives; access to units; records;
8 financial reports; assessments; purchase of leases.--

9 (3) INSURANCE.--The association shall use its best
10 efforts to obtain and maintain adequate insurance to protect
11 the association property. The association may also obtain and
12 maintain liability insurance for directors and officers,
13 insurance for the benefit of association employees, and flood
14 insurance. A copy of each policy of insurance in effect shall
15 be made available for inspection by unit owners at reasonable
16 times.

17 (a) Windstorm insurance coverage for a group of no
18 fewer than three communities created and operating under
19 chapter 718, this chapter, chapter 720, or chapter 721 may be
20 obtained and maintained for the communities if the insurance
21 coverage is sufficient to cover an amount equal to the
22 probable maximum loss for the communities for a 250-year
23 windstorm event. Such probable maximum loss must be determined
24 through the use of a competent model that has been accepted by
25 the Florida Commission on Hurricane Loss Projection
26 Methodology. Such insurance coverage is deemed adequate
27 windstorm insurance for the purposes of this section.

28 (b) An association or group of associations may
29 self-insure against claims against the association, the
30 association property, and the cooperative property required to
31 be insured by an association, upon compliance with the

1 applicable provisions of ss. 624.460-624.488, which shall be
2 considered adequate insurance for purposes of this section.

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

5 719.107 Common expenses; assessment.--

6 (1)

7 (e) Common expenses include the costs of insurance
8 acquired by the association under the authority of s.
9 719.104(3), including costs and contingent expenses required
10 to participate in a self-insurance fund authorized and
11 approved pursuant to s. 624.462.

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

14 719.108 Rents and assessments; liability; lien and
15 priority; interest; collection; cooperative ownership.--

16 (9) The specific purposes of any special assessment,
17 including any contingent special assessment levied in
18 conjunction with the purchase of an insurance policy
19 authorized by s. 719.104(3), approved in accordance with the
20 cooperative documents shall be set forth in a written notice
21 of such assessment sent or delivered to each unit owner. The
22 funds collected pursuant to a special assessment shall be used
23 only for the specific purpose or purposes set forth in such
24 notice or returned to the unit owners. However, upon
25 completion of such specific purposes, any excess funds shall
26 be considered common surplus and may, at the discretion of the
27 board, either be returned to the unit owners or applied as a
28 credit toward future assessments.

29 Section 12. Paragraph (a) of subsection (1) of section
30 719.503, Florida Statutes, is amended, and paragraph (c) is
31 added to that subsection, to read:

1 719.503 Disclosure prior to sale.--
2 (1) DEVELOPER DISCLOSURE.--
3 (a) Contents of contracts.--Any contracts for the sale
4 of a unit or a lease thereof for an unexpired term of more
5 than 5 years shall contain:
6 1. The following legend in conspicuous type: THIS
7 AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF
8 THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE
9 OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY
10 BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR
11 HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES.
12 THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN
13 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
14 THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH
15 MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS
16 ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE
17 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE
18 TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER
19 THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S
20 RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.
21 FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER
22 PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT ARE ESTIMATES
23 ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED
24 ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE
25 PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF
26 SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN
27 COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE
28 OFFERING.
29 2. The following caveat in conspicuous type shall be
30 placed upon the first page of the contract: ORAL
31 REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE

1 REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT
2 REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND
3 THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES,
4 TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

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

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

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

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

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

27 8. If the contract is for the sale or transfer of a
28 unit in a cooperative in which timeshare estates have been or
29 may be created, the following text in conspicuous type: UNITS
30 IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES. The
31 contract for the sale of a timeshare estate must also contain,

1 in conspicuous type, the following: FOR THE PURPOSE OF AD
2 VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING
3 AUTHORITIES AGAINST A TIMESHARE ESTATE, THE MANAGING ENTITY IS
4 GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE
5 THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY
6 RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS
7 OF CHAPTER 194, FLORIDA STATUTES.

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

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

26 719.504 Prospectus or offering circular.--Every
27 developer of a residential cooperative which contains more
28 than 20 residential units, or which is part of a group of
29 residential cooperatives which will be served by property to
30 be used in common by unit owners of more than 20 residential
31 units, shall prepare a prospectus or offering circular and

1 file it with the Division of Florida Land Sales, Condominiums,
2 and Mobile Homes prior to entering into an enforceable
3 contract of purchase and sale of any unit or lease of a unit
4 for more than 5 years and shall furnish a copy of the
5 prospectus or offering circular to each buyer. In addition to
6 the prospectus or offering circular, each buyer shall be
7 furnished a separate page entitled "Frequently Asked Questions
8 and Answers," which must be in accordance with a format
9 approved by the division. This page must, in readable
10 language: inform prospective purchasers regarding their
11 voting rights and unit use restrictions, including
12 restrictions on the leasing of a unit; indicate whether and in
13 what amount the unit owners or the association is obligated to
14 pay rent or land use fees for recreational or other commonly
15 used facilities; contain a statement identifying that amount
16 of assessment which, pursuant to the budget, would be levied
17 upon each unit type, exclusive of any special assessments, and
18 which identifies the basis upon which assessments are levied,
19 whether monthly, quarterly, or otherwise; state and identify
20 any court cases in which the association is currently a party
21 of record in which the association may face liability in
22 excess of \$100,000; and state whether membership in a
23 recreational facilities association is mandatory and, if so,
24 identify the fees currently charged per unit type. The
25 division shall by rule require such other disclosure as in its
26 judgment will assist prospective purchasers. The prospectus or
27 offering circular may include more than one cooperative,
28 although not all such units are being offered for sale as of
29 the date of the prospectus or offering circular. The
30 prospectus or offering circular must contain the following
31 information:

1 (20) An estimated operating budget for the cooperative
2 and the association, and a schedule of the unit owner's
3 expenses shall be attached as an exhibit and shall contain the
4 following information:

5 (d) The following statement in conspicuous type: THE
6 BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED
7 IN ACCORDANCE WITH THE COOPERATIVE ACT AND IS A GOOD FAITH
8 ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE
9 EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME
10 OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE
11 ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE
12 MATERIAL ADVERSE CHANGES IN THE OFFERING.

13 (e) Each budget for an association prepared by a
14 developer consistent with this subsection shall be prepared in
15 good faith and shall reflect accurate estimated amounts for
16 the required items in paragraph (c) at the time of the filing
17 of the offering circular with the division, and subsequent
18 increased amounts of any item included in the association's
19 estimated budget which are beyond the control of the developer
20 shall not be considered an amendment that would give rise to
21 recission rights set forth in s. 719.503(1)(a) or (b), nor
22 shall such increases modify, void, or otherwise affect any
23 guarantee of the developer contained in the offering circular
24 or any purchase contract. It is the intent of this paragraph
25 to clarify existing law.

26 Section 14. Subsection (11) is added to section
27 720.303, Florida Statutes, to read:

28 720.303 Association powers and duties; meetings of
29 board; official records; budgets; financial reporting;
30 association funds; recalls.--

31

1 (11) WINDSTORM INSURANCE.--Windstorm insurance
2 coverage for a group of no fewer than three communities
3 created and operating under chapter 718, chapter 719, this
4 chapter, or chapter 721 may be obtained and maintained for the
5 communities if the insurance coverage is sufficient to cover
6 an amount equal to the probable maximum loss for the
7 communities for a 250-year windstorm event. Such probable
8 maximum loss must be determined through the use of a competent
9 model that has been accepted by the Florida Commission on
10 Hurricane Loss Projection Methodology. Such insurance coverage
11 is deemed adequate windstorm coverage for purposes of this
12 chapter.

13 Section 15. Section 720.308, Florida Statutes, is
14 amended to read:

15 720.308 Assessments and charges.--For any community
16 created after October 1, 1995, the governing documents must
17 describe the manner in which expenses are shared and specify
18 the member's proportional share thereof.

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

25 (2) While the developer is in control of the
26 homeowners' association, it may be excused from payment of its
27 share of the operating expenses and assessments related to its
28 parcels for any period of time for which the developer has, in
29 the declaration, obligated itself to pay any operating
30 expenses incurred that exceed the assessments receivable from
31 other members and other income of the association.

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

6 (4) This section does not apply to an association, no
7 matter when created, if the association is created in a
8 community that is included in an effective
9 development-of-regional-impact development order as of October
10 1, 1995 ~~the effective date of this act~~, together with any
11 approved modifications thereto.

12 Section 16. This act shall take effect upon becoming a
13 law.

14
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 CS Senate Bill 396

18 The committee substitute:

- 19 -- Amends s. 718.111(11), F.S., so that provisions directing
20 a unit-owner controlled association to provide adequate
21 insurance also apply to all residential condominiums in
22 the state, regardless of the date of its declaration of
23 condominium.
24 -- Removes the word "windstorm" when referring to insurance
25 in ss. 718.115(1)(f), 718.116(10), 719.107(1)(e), and
26 719.108(9), F.S., to allow for condominiums and
27 cooperatives to have the option of both windstorm and
28 self insurance, as provided in s. 718.111(11), F.S., as
29 amended during the 2007 special session on insurance.
30 -- Confirms the law by adding the terms "converter" and "as
31 provided in this section" to s. 718.618, F.S., to modify
reserve accounts in order to better differentiate between
converter reserve accounts and regular reserve accounts.
-- Corrects two technical deficiencies in the
cross-references provided in ss. 718.504(21)(e) and
719.504(20)(e), F.S.