

1 A bill to be entitled
2 An act relating to real property; amending s.
3 215.555, F.S.; redefining the term "covered
4 policy" for purposes of the Florida Hurricane
5 Catastrophe Fund to include commercial
6 self-insurance funds; amending s. 718.103,
7 F.S.; redefining the term "land"; amending s.
8 718.111, F.S.; specifying that requirements
9 relating to acquisition and maintenance of
10 adequate insurance apply to all residential
11 condominiums; amending s. 718.115, F.S.;
12 providing that common expenses include the
13 costs of certain insurance or self-insurance;
14 amending s. 718.116, F.S.; requiring notice of
15 special assessments for certain insurance;
16 amending s. 718.503, F.S.; requiring additional
17 disclosures in contracts for sale or lease of
18 residential units; requiring copies of budgets
19 to be furnished to buyers when a closing occurs
20 more than 12 months after an offering circular
21 is filed with the state; amending s. 718.504,
22 F.S.; requiring certain information relating to
23 the budget to be included in the offering
24 circular; requiring that an association budget
25 be prepared in good faith; amending s. 718.616,
26 F.S.; requiring that certain disclosures be
27 compiled in a report; revising the items
28 required to be disclosed; requiring
29 supplemental reports in certain situations;
30 amending s. 718.618, F.S.; revising certain
31 requirements for reserve accounts; revising the

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

1 Be It Enacted by the Legislature of the State of Florida:

2
3 Section 1. Paragraph (c) of subsection (2) of section
4 215.555, Florida Statutes, as amended by section 2 of chapter
5 2007-1, Laws of Florida, is amended to read:

6 215.555 Florida Hurricane Catastrophe Fund.--

7 (2) DEFINITIONS.--As used in this section:

8 (c) "Covered policy" means any insurance policy
9 covering residential property in this state, including, but
10 not limited to, any homeowner's, mobile home owner's, farm
11 owner's, condominium association, condominium unit owner's,
12 tenant's, or apartment building policy, or any other policy
13 covering a residential structure or its contents issued by any
14 authorized insurer, including a commercial self-insurance fund
15 holding a certificate of authority issued by the Office of
16 Insurance Regulation under s. 624.462, the Citizens Property
17 Insurance Corporation, and any joint underwriting association
18 or similar entity created under ~~pursuant to~~ law. The term
19 "covered policy" includes any collateral protection insurance
20 policy covering personal residences which protects both the
21 borrower's and the lender's financial interests, in an amount
22 at least equal to the coverage for the dwelling in place under
23 the lapsed homeowner's policy, if such policy can be
24 accurately reported as required in subsection (5).
25 Additionally, covered policies include policies covering the
26 peril of wind removed from the Florida Residential Property
27 and Casualty Joint Underwriting Association or from the
28 Citizens Property Insurance Corporation, created under
29 ~~pursuant to~~ s. 627.351(6), or from the Florida Windstorm
30 Underwriting Association, created under ~~pursuant to~~ s.
31 627.351(2), by an authorized insurer under the terms and

1 conditions of an executed assumption agreement between the
2 authorized insurer and such association or Citizens Property
3 Insurance Corporation. Each assumption agreement between the
4 association and such authorized insurer or Citizens Property
5 Insurance Corporation must be approved by the Office of
6 Insurance Regulation before ~~prior to~~ the effective date of the
7 assumption, and the Office of Insurance Regulation must
8 provide written notification to the board within 15 working
9 days after such approval. "Covered policy" does not include
10 any policy that excludes wind coverage or hurricane coverage
11 or any reinsurance agreement and does not include any policy
12 otherwise meeting this definition which is issued by a surplus
13 lines insurer or a reinsurer. All commercial residential
14 excess policies and all deductible buy-back policies that,
15 based on sound actuarial principles, require individual
16 ratemaking shall be excluded by rule if the actuarial
17 soundness of the fund is not jeopardized. For this purpose,
18 the term "excess policy" means a policy that provides
19 insurance protection for large commercial property risks and
20 that provides a layer of coverage above a primary layer
21 insured by another insurer.

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

24 718.103 Definitions.--As used in this chapter, the
25 term:

26 (18) "Land" means the surface of a legally described
27 parcel of real property and includes, unless otherwise
28 specified in the declaration and whether separate from or
29 including such surface, airspace lying above and subterranean
30 space lying below such surface. However, if so defined in the
31 declaration, the term "land" may mean all or any portion of

1 the airspace or subterranean space between two legally
2 identifiable elevations and may exclude the surface of a
3 parcel of real property and may mean any combination of the
4 foregoing, whether or not contiguous, or may mean a
5 condominium unit.

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

9 718.111 The association.--

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

26 (a) A unit-owner controlled association operating a
27 residential condominium shall use its best efforts to obtain
28 and maintain adequate insurance to protect the association,
29 the association property, the common elements, and the
30 condominium property required to be insured by the association
31 pursuant to paragraph (b). If the association is developer

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

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

1 the Florida Commission on Hurricane Loss Projection
2 Methodology. Such insurance coverage is deemed adequate
3 windstorm insurance for the purposes of this section.

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

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

16 1. All portions of the condominium property located
17 outside the units;

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

24 3. All portions of the condominium property for which
25 the declaration of condominium requires coverage by the
26 association.

27
28 Anything to the contrary notwithstanding, the terms
29 "condominium property," "building," "improvements," "insurable
30 improvements," "common elements," "association property," or
31 any other term found in the declaration of condominium which

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

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

1 coverage to be provided by the association as set forth in
2 paragraph (b) shall be insured by the individual unit owner.

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

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

17 718.115 Common expenses and common surplus.--

18 (1)

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

24 Section 5. Subsection (10) of section 718.116, Florida
25 Statutes, is amended to read:

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

28 (10) The specific purpose or purposes of any special
29 assessment, including any contingent special assessment levied
30 in conjunction with the purchase of an insurance policy
31 authorized by s. 718.111(11), approved in accordance with the

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

10 Section 6. Paragraph (a) of subsection (1) of section
11 718.503, Florida Statutes, is amended, and paragraph (c) is
12 added to that subsection, to read:

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

16 (1) DEVELOPER DISCLOSURE.--

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

20 1. Contain the following legend in conspicuous type:
21 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN
22 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
23 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND
24 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED
25 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA
26 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY
27 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL
28 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF
29 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING
30 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED
31 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31

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

14 Section 8. Section 718.616, Florida Statutes, is
15 amended to read:

16 718.616 Disclosure of condition of building and
17 estimated replacement costs and notification of
18 municipalities.--

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

25 (2) The following information shall be stated
26 concerning the improvements:

27 (a) The date and type of construction.

28 (b) The prior use.

29 (c) Whether there is termite damage or infestation and
30 whether the termite damage or infestation, if any, has been
31 properly treated. The statement shall be substantiated by

1 including, as an exhibit, an inspection report by a certified
2 pest control operator.

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

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

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

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

1 4. The structural and functional soundness of the
2 component.

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

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

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

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

24 Section 9. Section 718.618, Florida Statutes, is
25 amended to read:

26 718.618 Converter reserve accounts; warranties.--

27 (1) When existing improvements are converted to
28 ownership as a residential condominium, the developer shall
29 establish converter reserve accounts for capital expenditures
30 and deferred maintenance, ~~or~~ give warranties as provided by
31 subsection (6), or post a surety bond as provided by

1 subsection (7). The developer shall fund the converter reserve
2 accounts in amounts calculated as follows:

3 (a)1. When the existing improvements include an
4 air-conditioning system serving more than one unit or property
5 which the association is responsible to repair, maintain, or
6 replace, the developer shall fund an air-conditioning reserve
7 account. The amount of the reserve account shall be the
8 product of the estimated current replacement cost of the
9 system, as disclosed and substantiated pursuant to s.

10 718.616(3)(b), multiplied by a fraction, the numerator of
11 which shall be the lesser of the age of the system in years or
12 9, and the denominator of which shall be 10. When such
13 air-conditioning system is within 1,000 yards of the seacoast,
14 the numerator shall be the lesser of the age of the system in
15 years or 3, and the denominator shall be 4.

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

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

31

1	Roof Type	Numerator	Denominator
2			
3	a. Built-up roof		
4	without insulation	4	5
5	b. Built-up roof		
6	with insulation	4	5
7	c. Cement tile roof	45	50
8	d. Asphalt shingle roof	14	15
9	e. Copper roof		
10	f. Wood shingle roof	9	10
11	g. All other types	18	20
12			
13	(b) The age of any component or structure for which		
14	the developer is required to fund a reserve account shall be		
15	measured in years, <u>rounded to the nearest whole year.</u> The		
16	<u>amount of converter reserves to be funded by the developer for</u>		
17	<u>each structure or component shall be based on the age of the</u>		
18	<u>structure or component as disclosed in the inspection report.</u>		
19	<u>The architect or engineer shall determine the age of the</u>		
20	<u>component</u> from the later of:		
21	1. The date when the component or structure was		
22	replaced or substantially renewed, if the replacement or		
23	renewal of the component at least met the requirements of the		
24	then-applicable building code; or		
25	2. The date when the installation or construction of		
26	the existing component or structure was completed.		
27	(c) When the age of a component or structure is to be		
28	measured from the date of replacement or renewal, the		
29	developer shall provide the division with a certificate, under		
30	the seal of an architect or engineer authorized to practice in		
31	this state, verifying:		

- 1 1. The date of the replacement or renewal; and
- 2 2. That the replacement or renewal at least met the
- 3 requirements of the then-applicable building code.

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

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

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

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

3 (3) The use of reserve account funds, as provided in
4 this section, is limited as 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 as provided in this section, in the name of the association at
16 a bank, savings and loan association, or trust company located
17 in this state.

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

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

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

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

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

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

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

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 converter 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 10. 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 11. Paragraph (e) is added to subsection (1)
23 of section 719.107, Florida Statutes, to read:

24 719.107 Common expenses; assessment.--

25 (1)

26 (e) Common expenses include the costs of insurance
27 acquired by the association under the authority of s.
28 719.104(3), including costs and contingent expenses required
29 to participate in a self-insurance fund authorized and
30 approved pursuant to s. 624.462.

31

1 Section 12. 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 an 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 13. 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 14. 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. 719.503(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 15. 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 16. 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
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1 | 1, 1995 ~~the effective date of this act~~, together with any
2 | approved modifications thereto.
3 | Section 17. This act shall take effect upon becoming a
4 | law.
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