

1                   A bill to be entitled  
2           An act relating to community associations; amending s.  
3           718.111, F.S.; revising and providing provisions relating  
4           to condominium and condominium owner insurance coverage;  
5           authorizing an association or group of associations to  
6           provide adequate hazard insurance through a self-insurance  
7           fund; requiring associations to exercise best efforts to  
8           obtain and maintain certain kinds of insurance; providing  
9           that policies may include deductibles as determined by the  
10          board; providing requirements for deductibles; providing  
11          coverage requirements for policies entered into after a  
12          specified date; providing requirements for hazard  
13          insurance policies; requiring owners to provide evidence  
14          of a currently effective policy of hazard and liability  
15          insurance upon request by the association; authorizing  
16          operation of multiple condominiums as a single condominium  
17          for insurance purposes under certain circumstances;  
18          requiring an association to obtain and maintain adequate  
19          insurance or fidelity bonding of all persons who control  
20          or disburse funds of the association; specifying  
21          responsibility for repair or reconstruction work under  
22          specified circumstances; amending s. 718.115, F.S.;  
23          specifying common expense responsibilities of the  
24          association and unit owners; amending s. 718.116, F.S.;  
25          providing persons that may request a certificate signed by  
26          an officer or agent of the association stating all  
27          assessments and other moneys owed to the association;  
28          providing requirements for the charging of certain fees by

29 | the board; amending s. 718.117, F.S.; revising priority  
 30 | standards for the distribution of certain proceeds from  
 31 | any sale of condominium properties and assets; creating s.  
 32 | 720.3087, F.S.; providing requirements for the request and  
 33 | provision of estoppel certificates; providing an effective  
 34 | date.

36 | Be It Enacted by the Legislature of the State of Florida:

38 | Section 1. Subsection (11) of section 718.111, Florida  
 39 | Statutes, is amended to read:

40 | 718.111 The association.--  
 41 | (Substantial rewording of subsection. See  
 42 | s. 718.111(11), F.S., for current text.)

43 | (11) INSURANCE.--In order to protect the health, safety,  
 44 | and welfare of the people of this state and to ensure  
 45 | consistency in the provision of insurance coverage to  
 46 | condominiums and their unit owners, this subsection shall be  
 47 | deemed to apply to every residential condominium in the state,  
 48 | regardless of the date of its declaration of condominium. It is  
 49 | the intent of the Legislature to encourage lower or stable  
 50 | insurance premiums for associations described in this  
 51 | subsection.

52 | (a) Adequate hazard insurance, regardless of any  
 53 | requirement in the declaration of condominium for coverage by  
 54 | the association for full insurable value, replacement cost, or  
 55 | similar coverages, shall be based upon the replacement cost of  
 56 | the property to be insured as determined by an independent

57 insurance appraisal or update of a prior appraisal. The full  
58 insurable value shall be determined not less frequently than  
59 every 36 months.

60 1. An association or group of associations may provide  
61 adequate hazard insurance through a self-insurance fund that  
62 complies with the requirements of ss. 624.460-624.488.

63 2. An association may also provide adequate hazard  
64 insurance, individually or for a group of no fewer than three  
65 communities created and operating under this chapter, chapter  
66 719, chapter 720, or chapter 721, by obtaining and maintaining  
67 for the communities insurance coverage sufficient to cover an  
68 amount equal to the probable maximum loss for the communities  
69 for a 250-year windstorm event, provided such probable maximum  
70 loss must be determined through the use of a competent model  
71 that has been accepted by the Florida Commission on Hurricane  
72 Loss Projection Methodology. Any policy providing such coverage  
73 issued after July 1, 2008, must be approved by the Office of  
74 Insurance Regulation before the coverage is deemed adequate.

75 3. In determining the adequate hazard insurance, an  
76 association may consider deductibles as determined by this  
77 subsection.

78 (b) If an association is controlled by a developer, the  
79 association shall exercise best efforts to obtain and maintain  
80 adequate hazard insurance. Failure to obtain and maintain  
81 adequate hazard insurance during any period of control by a  
82 developer constitutes a breach of fiduciary responsibility by  
83 the members of the board of directors of the association  
84 appointed by the developer unless such members can show that

85 despite such failure they have made their best efforts to obtain  
86 and maintain such insurance.

87 (c) Policies may include deductibles as determined by the  
88 board.

89 1. The deductibles shall be consistent with industry  
90 standards and prevailing practice for communities of like size  
91 and age and having similar construction as facilities in the  
92 locale where the condominium property is situated.

93 2. The deductibles may be based upon available funds,  
94 including reserve accounts, or predetermined assessment  
95 authority at the time the insurance is obtained.

96 3. At a meeting of the board, which shall be open to all  
97 unit owners in the manner set forth in s. 718.112(2)(e), the  
98 board shall establish the level of deductibles based upon the  
99 level of available funds and predetermined assessment authority.  
100 The notice of such meeting shall state the proposed deductibles,  
101 the available funds, and the assessment authority relied upon by  
102 the board and shall estimate any potential assessment amount  
103 against each unit, if any. The meeting described in this  
104 subparagraph may be held in conjunction with a meeting to  
105 consider the proposed budget or an amendment to the proposed  
106 budget.

107 (d) An association controlled by unit owners and operating  
108 a residential condominium shall use its best efforts to obtain  
109 and maintain adequate insurance to protect the association, the  
110 association property, the common elements, and the condominium  
111 property required to be insured by the association pursuant to  
112 this subsection.

113       (e) The declaration of condominium as originally recorded,  
 114 or as amended pursuant to procedures provided in the  
 115 declaration, may require that condominium property consisting of  
 116 freestanding buildings where there is no more than one building  
 117 in or on such unit need not be insured by the association if the  
 118 declaration requires the unit owner to obtain adequate insurance  
 119 for the condominium property. An association may also obtain and  
 120 maintain liability insurance for directors and officers,  
 121 insurance for the benefit of association employees, and flood  
 122 insurance for common elements, association property, and units.

123       (f)1. Every hazard insurance policy issued or renewed on  
 124 or after January 1, 2009, to protect the condominium shall  
 125 provide primary coverage for:

126           a. All portions of the condominium property as originally  
 127 installed or any replacement of like kind and quality, in  
 128 accordance with the original plans and specifications.

129           b. All alterations or additions made to the condominium  
 130 property or association property pursuant to s. 718.113(2).

131       2. The coverage shall exclude all personal property within  
 132 the unit or limited common elements, and floor, wall, and  
 133 ceiling coverings, electrical fixtures, appliances, water  
 134 heaters, water filters, built-in cabinets and countertops, and  
 135 window treatments, including curtains, drapes, blinds, hardware,  
 136 and similar window treatment components, or replacements of any  
 137 such items.

138       3. This paragraph is intended to establish the property or  
 139 casualty insuring responsibilities of the association and the  
 140 individual unit owner and does not serve to broaden or extend

141 the perils of coverage afforded by any insurance contract  
142 provided to the individual unit owner.

143 (g) Every hazard insurance policy issued or renewed on or  
144 after January 1, 2009, to an individual unit owner shall provide  
145 that the coverage afforded by such policy is in excess of the  
146 amount recoverable under any other policy covering the same  
147 property and shall include special assessment coverage of not  
148 less than \$2,000 per occurrence. Each insurance policy issued to  
149 an individual unit owner providing such coverage shall be  
150 without rights of subrogation against the condominium  
151 association that operates the condominium in which such unit  
152 owner's unit is located.

153 1. All improvements or additions to the condominium  
154 property that benefit less than all unit owners shall be insured  
155 by any unit owners having the use of such property or may be  
156 insured by the association at the cost and expense of the unit  
157 owners having the use of such property.

158 2. The association shall require each unit owner to  
159 provide evidence of a currently effective policy of hazard and  
160 liability insurance upon request but not more frequently than  
161 annually. Upon the failure of a unit owner to provide a  
162 certificate of insurance issued by an insurer approved to write  
163 such insurance in this state within 30 days after a written  
164 request, the association is entitled but is not obligated to  
165 purchase a policy of insurance on behalf of an owner and the  
166 cost of such policy, together with reconstruction costs  
167 undertaken by the association but which are the responsibility  
168 of the unit owner, may be collected in the manner provided for

169 collection of assessments in s. 718.116.

170 3. All reconstruction work after a casualty loss shall be  
171 undertaken by the association except as otherwise permitted in  
172 this subparagraph. A unit owner may undertake reconstruction  
173 work on portions of the unit with the prior written consent of  
174 the board of administration, which may be conditioned upon the  
175 approval of the repair methods, the qualifications of the  
176 proposed contractor, and the contract that is used for that  
177 purpose. A unit owner shall obtain all required governmental  
178 permits and approvals prior to commencing reconstruction.

179 4. Unit owners shall be responsible for the cost of  
180 reconstruction of any portion of the condominium property for  
181 which the unit owner is required to carry casualty insurance and  
182 any such reconstruction work undertaken by the association shall  
183 be chargeable to the unit and enforceable as an assessment  
184 pursuant to s. 718.116. The association is designated as an  
185 additional named insured and loss payee on all casualty  
186 insurance policies issued to unit owners in the condominium  
187 operated by the association.

188 5. A multicondominium association may elect by a majority  
189 vote of the collective members of the condominiums operated by  
190 the association to operate such condominiums as a single  
191 condominium for purposes of insurance matters, including, but  
192 not limited to, the purchase of the hazard insurance required by  
193 this section and the apportionment of deductibles and damages in  
194 excess of coverage. The election to aggregate the treatment of  
195 insurance premiums, deductibles, and excess damages shall be  
196 treated as an amendment to the declaration of all condominiums

197 operated by the association and the costs of insurance shall be  
198 stated in the association budget. The amendments shall be  
199 recorded as required by s. 718.110.

200 (h) The association shall obtain and maintain adequate  
201 insurance or fidelity bonding of all persons who control or  
202 disburse funds of the association. The insurance policy or  
203 fidelity bond must cover the maximum funds that will be in the  
204 custody of the association or its management agent at any one  
205 time. As used in this paragraph, the term "persons who control  
206 or disburse funds of the association" includes, but is not  
207 limited to, those individuals authorized to sign checks and the  
208 president, secretary, and treasurer of the association. The  
209 association shall bear the cost of bonding.

210 (i) An association may amend the declaration of  
211 condominium, without regard to any requirement for mortgagee  
212 approval of amendments affecting insurance requirements, to  
213 conform the declaration of condominium to the coverage  
214 requirements of this subsection.

215 (j) Any portion of the condominium property the  
216 association is required to insure against casualty loss pursuant  
217 to paragraph (f) that is damaged by a casualty shall be  
218 reconstructed, repaired, or replaced as necessary by the  
219 association as a common expense. All hazard insurance  
220 deductibles, uninsured losses, and other damages in excess of  
221 hazard insurance coverage under the hazard insurance policies  
222 maintained by the association shall be a common expense of the  
223 condominium, provided:

224 1. A unit owner shall be responsible for the costs of



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225 repair or replacement of any portion of the condominium property  
226 not paid for by insurance proceeds when such damage is caused by  
227 intentional conduct, negligence, or failure to comply with the  
228 terms of the declaration or the rules of the association by a  
229 unit owner, the members of his or her family, or unit occupants,  
230 tenants, guests, or invitees and without compromise of the  
231 subrogation rights of any insurer as set forth in paragraph (g).

232 2. The provisions of subparagraph 1. relating to the  
233 financial responsibility of a unit owner for the costs of  
234 repairing or replacing other portions of the condominium  
235 property also apply to the costs of repairing or replacing  
236 personal property of other unit owners or the association as  
237 well as other property, whether real or personal, the unit  
238 owners are required to insure under paragraph (g).

239 3. To the extent the cost of repair or reconstruction for  
240 which the unit owner is responsible under this paragraph is  
241 reimbursed to the association by insurance proceeds and to the  
242 extent the association has collected the cost of such repair or  
243 reconstruction from the unit owner, the association shall  
244 reimburse the unit owner without the waiver of any rights of  
245 subrogation.

246 4. The association is not obligated to pay for repair or  
247 reconstruction or repairs of casualty losses as a common expense  
248 when the casualty losses were known or should have been known to  
249 a unit owner and were not reported to the association until  
250 after the insurance claim of the association for that casualty  
251 loss has been settled and resolved with finality or is  
252 considered untimely filed by the insurer and denied on that

253 basis.

254 (k) An association may, upon the approval of a majority of  
255 the total voting interests in the association, opt out of the  
256 provisions of paragraph (j) for the allocation of repair or  
257 reconstruction expenses and allocate repair or reconstruction  
258 expenses in the manner provided in the declaration as originally  
259 recorded or as amended. Such vote may be approved by the voting  
260 interests of the association without regard to any mortgagee  
261 consent requirements.

262 (l) In a multicondominium association that has not  
263 consolidated its financial operations under subsection (6), any  
264 condominium operated by the association may opt out of the  
265 provisions of paragraph (j) with the approval of a majority of  
266 the total voting interests in that condominium. Such vote may be  
267 approved by the voting interests without regard to any mortgagee  
268 consent requirements.

269 (m) Any association or condominium voting to opt out of  
270 the guidelines for repair or reconstruction expenses in  
271 paragraph (j) shall record a notice setting forth the date of  
272 the opt-out vote and the official records book and page at which  
273 the declaration is recorded. The opt out shall be effective upon  
274 the date of recording of the notice in the public records by the  
275 association. An association that has voted to opt out of  
276 paragraph (j) may reverse that decision by the same vote  
277 required under paragraphs (k) and (l), and notice of such  
278 reversal shall be recorded in the official records.

279 (n) An association shall not be obligated to pay for any  
280 reconstruction or repair expenses due to casualty loss to any

281 improvements installed by a current or former unit owner or by  
 282 the developer when the improvement benefits only the unit for  
 283 which it was installed and is not part of the standard  
 284 improvements installed by the developer on all units as part of  
 285 original construction, whether or not such improvement is  
 286 located within the unit, except to the extent of any insurance  
 287 recovery specifically for any such improvements.

288 Section 2. Paragraph (a) of subsection (1) of section  
 289 718.115, Florida Statutes, is amended to read:

290 718.115 Common expenses and common surplus.--

291 (1) (a) Common expenses include the expenses of the  
 292 operation, maintenance, repair, replacement, or protection of  
 293 the common elements and association property, costs of carrying  
 294 out the powers and duties of the association, and any other  
 295 expense, whether or not included in the foregoing, designated as  
 296 common expense by this chapter, the declaration, the documents  
 297 creating the association, or the bylaws. Common expenses also  
 298 include reasonable transportation services, insurance for  
 299 directors and officers, road maintenance and operation expenses,  
 300 in-house communications, and security services, which are  
 301 reasonably related to the general benefit of the unit owners  
 302 even if such expenses do not attach to the common elements or  
 303 property of the condominium. However, such common expenses must  
 304 either have been services or items provided on or after the date  
 305 control of the association is transferred from the developer to  
 306 the unit owners or must be services or items provided for in the  
 307 condominium documents or bylaws. Unless the manner of payment or  
 308 allocation of expenses is otherwise addressed in the declaration

309 of condominium, the expenses of any items or services required  
 310 by federal, state, or local government or required by any other  
 311 governmental entity to be installed, maintained, or supplied to  
 312 the condominium property by the association, including, but not  
 313 limited to, fire safety equipment, or water and sewer service  
 314 where a master meter serves the condominium, shall be common  
 315 expenses whether or not such items or services are specifically  
 316 identified as common expenses in the declaration of condominium  
 317 or articles of incorporation or bylaws of the association. Such  
 318 statement is intended to clarify existing law.

319 Section 3. Subsection (8) of section 718.116, Florida  
 320 Statutes, is amended to read:

321 718.116 Assessments; liability; lien and priority;  
 322 interest; collection.--

323 (8) Within 15 days after receiving a written request  
 324 therefor from a unit owner or a designee of a unit owner  
 325 ~~purchaser~~, or unit mortgagee or a designee of a unit mortgagee,  
 326 the association shall provide a certificate signed by an officer  
 327 or agent of the association stating all assessments and other  
 328 moneys owed to the association by the unit owner with respect to  
 329 the condominium parcel.

330 (a) Any person other than the owner who relies upon such  
 331 certificate shall be protected thereby.

332 (b) A summary proceeding pursuant to s. 51.011 may be  
 333 brought to compel compliance with this subsection, and in any  
 334 such action the prevailing party is entitled to recover  
 335 reasonable attorney's fees.

336        (c) Notwithstanding any limitation on transfer fees  
337 contained in s. 718.112(2)(i), the association or its authorized  
338 agent may charge a reasonable fee for the preparation of the  
339 certificate, which fee shall be set forth in the certificate.

340        (d) The authority to charge a fee under this section shall  
341 be established by written resolution adopted by the board in  
342 advance of the charge or provided by written management,  
343 bookkeeping, or maintenance contract. The fee shall be payable  
344 upon the preparation of the certificate; and, if the certificate  
345 is requested in conjunction with the sale or mortgage of the  
346 unit and the closing does not take place, the fee shall be  
347 promptly refunded upon written notice from the person requesting  
348 the certificate stating that the sale or mortgage was not  
349 effectuated. The fee for a certificate in conjunction with a  
350 sale or mortgage that is not effectuated and a refund that is  
351 paid to the party requesting the certificate shall be an  
352 obligation of the unit owner and shall be collectible in the  
353 same manner as an assessment provided by this section.

354        Section 4. Paragraph (c) of subsection (17) of section  
355 718.117, Florida Statutes, is amended to read:

356        718.117 Termination of condominium.--

357        (17) DISTRIBUTION.--

358        (c) The proceeds from any sale of condominium property or  
359 association property and any remaining condominium property or  
360 association property, common surplus, and other assets shall be  
361 distributed in the following priority:

362        1. To pay the reasonable termination trustee's fees and  
363 costs and accounting fees and costs.

364           2. To lienholders of liens recorded prior to the recording  
365 of the declaration.

366           3. To purchase-money lienholders on units to the extent  
367 necessary to satisfy their liens, but in no event shall the  
368 distribution exceed a unit's share of the proceeds.

369           4. To lienholders of liens of the association which have  
370 been consented to under s. 718.121(1).

371           5. To creditors of the association, as their interests  
372 appear.

373           6. To unit owners, the proceeds of any sale of condominium  
374 property subject to satisfaction of liens on each unit in their  
375 order of priority, in shares specified in the plan of  
376 termination, unless objected to by a unit owner or lienor as  
377 provided in paragraph (b).

378           7. To unit owners, the remaining condominium property,  
379 subject to satisfaction of liens on each unit in their order of  
380 priority, in shares specified in the plan of termination, unless  
381 objected to by a unit owner or a lienor as provided in paragraph  
382 (b).

383           8. To unit owners, the proceeds of any sale of association  
384 property, the remaining association property, common surplus,  
385 and other assets of the association, subject to satisfaction of  
386 liens on each unit in their order of priority, in shares  
387 specified in the plan of termination, unless objected to by a  
388 unit owner or a lienor as provided in paragraph (b).

389           Section 5. Section 720.3087, Florida Statutes, is created  
390 to read:

391           720.3087 Estoppel certificates.--Within 15 days after

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392 receiving a written request therefor from a parcel owner or the  
393 designee of a parcel owner, or a parcel mortgagee or the  
394 designee of a parcel mortgagee, the association shall provide a  
395 certificate signed by an officer or agent of the association  
396 stating all assessments and other moneys owed to the association  
397 by the parcel owner with respect to the parcel.

398 (1) Any person other than the parcel owner who relies upon  
399 such certificate shall be protected thereby.

400 (2) A summary procedure pursuant to s. 51.011 may be  
401 brought to compel compliance with this section, and in any such  
402 action the prevailing party is entitled to recover reasonable  
403 attorney's fees.

404 (3) The authority to charge a fee under this section shall  
405 be established by written resolution adopted by the board in  
406 advance of the charge or provided by written management,  
407 bookkeeping, or maintenance contract. The fee shall be payable  
408 upon the preparation of the certificate; and, if the certificate  
409 is requested in conjunction with the sale or mortgage of the  
410 parcel and the closing does not take place, the fee shall be  
411 promptly refunded upon written notice from the person requesting  
412 the certificate stating that the sale or mortgage was not  
413 effectuated. The fee for a certificate in conjunction with a  
414 sale or mortgage that is not effectuated and a refund that is  
415 paid to the party requesting the certificate shall be an  
416 obligation of the parcel owner and shall be collectible as an  
417 assessment provided by this chapter.

418 Section 6. This act shall take effect July 1, 2008.