

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; providing coverage requirements for policies entered
8 into after a specified date; providing that policies may
9 include deductibles as determined by the board; providing
10 requirements for deductibles; requiring associations to
11 exercise best efforts to obtain and maintain certain kinds
12 of insurance; providing requirements for hazard insurance
13 policies; requiring owners to provide evidence of a
14 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; authorizing the
21 amendment of the condominium declaration by the
22 association for certain purposes; specifying
23 responsibility for repair or reconstruction work under
24 specified circumstances; providing an exception; amending
25 s. 718.115, F.S.; specifying common responsibilities of
26 the association and unit owners; amending s. 718.116,
27 F.S.; providing persons that may request a certificate
28 signed by an officer or agent of the association stating

29 | all assessments and other moneys owed to the association;
 30 | providing requirements for the charging of certain fees by
 31 | the board; amending s. 718.117, F.S.; revising priority
 32 | standards for the distribution of certain proceeds from
 33 | any sale of condominium properties and assets; creating s.
 34 | 720.3087, F.S.; providing requirements for the request and
 35 | provision of estoppel certificates; providing an effective
 36 | date.

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

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

42 | 718.111 The association.--

43 | (Substantial rewording of subsection. See
 44 | s. 718.111(11), F.S., for current text.)

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

54 | (a) Adequate hazard insurance, regardless of any
 55 | requirement in the declaration of condominium for coverage by
 56 | the association for full insurable value, replacement cost, or

57 similar coverages, shall be based upon the replacement cost of
58 the property to be insured as determined by an independent
59 insurance appraisal or update of a prior appraisal. The full
60 insurable value shall be determined not less frequently than
61 every 36 months.

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

65 2. An association may also provide adequate hazard
66 insurance coverage individually or for a group of no fewer than
67 three communities created and operating under this chapter,
68 chapter 719, chapter 720, or chapter 721 by obtaining and
69 maintaining for such communities insurance coverage sufficient
70 to cover an amount equal to the probable maximum loss for the
71 communities for a 250-year windstorm event. Such probable
72 maximum loss must be determined through the use of a competent
73 model that has been accepted by the Florida Commission on
74 Hurricane Loss Projection Methodology. No policy or program
75 providing such coverage shall be issued or renewed after July 1,
76 2008, unless it has been reviewed and approved by the Office of
77 Insurance Regulation. The review and approval shall include
78 approval of the policy and related forms pursuant to ss. 627.410
79 and 627.411, approval of the rates pursuant to s. 627.062, a
80 determination that the loss model approved by the commission was
81 accurately and appropriately applied to the insured structures
82 to determine the 250-year probable maximum loss, and a
83 determination that complete and accurate disclosure of all

84 material provisions is provided to condominium unit owners prior
85 to execution of the agreement by a condominium association.

86 3. In determining the adequate hazard insurance, an
87 association may consider deductibles as determined by this
88 subsection.

89 (b) If an association is controlled by a developer, the
90 association shall exercise best efforts to obtain and maintain
91 adequate hazard insurance. Failure to obtain and maintain
92 adequate hazard insurance during any period of control by a
93 developer constitutes a breach of fiduciary responsibility by
94 the members of the board of directors of the association
95 appointed by the developer unless such members can show that
96 despite such failure they have made their best efforts to obtain
97 and maintain such insurance.

98 (c) Policies may include deductibles as determined by the
99 board.

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

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

107 3. At a meeting of the board, which shall be open to all
108 unit owners in the manner set forth in s. 718.112(2)(e), the
109 board shall establish the level of deductibles based upon the
110 level of available funds and predetermined assessment authority.
111 The notice of such meeting shall state the proposed deductibles,

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112 the available funds, and the assessment authority relied upon by
113 the board and shall estimate any potential assessment amount
114 against each unit, if any. The meeting described in this
115 subparagraph may be held in conjunction with a meeting to
116 consider the proposed budget or an amendment to the proposed
117 budget.

118 (d) An association controlled by unit owners and operating
119 a residential condominium shall use its best efforts to obtain
120 and maintain adequate insurance to protect the association, the
121 association property, the common elements, and the condominium
122 property required to be insured by the association pursuant to
123 this subsection.

124 (e) The declaration of condominium as originally recorded,
125 or as amended pursuant to procedures provided in the
126 declaration, may require that condominium property consisting of
127 freestanding buildings where there is no more than one building
128 in or on such unit need not be insured by the association if the
129 declaration requires the unit owner to obtain adequate insurance
130 for the condominium property. An association may also obtain and
131 maintain liability insurance for directors and officers,
132 insurance for the benefit of association employees, and flood
133 insurance for common elements, association property, and units.

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

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

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

142 2. The coverage shall exclude all personal property within
143 the unit or limited common elements, and floor, wall, and
144 ceiling coverings, electrical fixtures, appliances, water
145 heaters, water filters, built-in cabinets and countertops, and
146 window treatments, including curtains, drapes, blinds, hardware,
147 and similar window treatment components, or replacements of any
148 such items.

149 3. This paragraph is intended to establish the property or
150 casualty insuring responsibilities of the association and the
151 individual unit owner and does not serve to broaden or extend
152 the perils of coverage afforded by any insurance contract
153 provided to the individual unit owner.

154 (g) Every hazard insurance policy issued or renewed on or
155 after January 1, 2009, to an individual unit owner shall provide
156 that the coverage afforded by such policy is in excess of the
157 amount recoverable under any other policy covering the same
158 property and shall include special assessment coverage of not
159 less than \$2,000 per occurrence. Each insurance policy issued to
160 an individual unit owner providing such coverage shall be
161 without rights of subrogation against the condominium
162 association that operates the condominium in which such unit
163 owner's unit is located.

164 1. All improvements or additions to the condominium
165 property that benefit less than all unit owners shall be insured
166 by any unit owners having the use of such property or may be
167 insured by the association at the cost and expense of the unit

168 owners having the use of such property.

169 2. The association shall require each unit owner to
170 provide evidence of a currently effective policy of hazard and
171 liability insurance upon request but not more frequently than
172 annually. Upon the failure of a unit owner to provide a
173 certificate of insurance issued by an insurer approved to write
174 such insurance in this state within 30 days after a written
175 request, the association is entitled but is not obligated to
176 purchase a policy of insurance on behalf of an owner and the
177 cost of such policy, together with reconstruction costs
178 undertaken by the association but which are the responsibility
179 of the unit owner, may be collected in the manner provided for
180 collection of assessments in s. 718.116.

181 3. All reconstruction work after a casualty loss shall be
182 undertaken by the association except as otherwise permitted in
183 this subparagraph. A unit owner may undertake reconstruction
184 work on portions of the unit with the prior written consent of
185 the board of administration, which may be conditioned upon the
186 approval of the repair methods, the qualifications of the
187 proposed contractor, and the contract that is used for that
188 purpose. A unit owner shall obtain all required governmental
189 permits and approvals prior to commencing reconstruction.

190 4. Unit owners shall be responsible for the cost of
191 reconstruction of any portion of the condominium property for
192 which the unit owner is required to carry casualty insurance and
193 any such reconstruction work undertaken by the association shall
194 be chargeable to the unit and enforceable as an assessment
195 pursuant to s. 718.116. The association is designated as an

196 additional named insured and loss payee on all casualty
 197 insurance policies issued to unit owners in the condominium
 198 operated by the association.

199 5. A multicondominium association may elect by a majority
 200 vote of the collective members of the condominiums operated by
 201 the association to operate such condominiums as a single
 202 condominium for purposes of insurance matters, including, but
 203 not limited to, the purchase of the hazard insurance required by
 204 this section and the apportionment of deductibles and damages in
 205 excess of coverage. The election to aggregate the treatment of
 206 insurance premiums, deductibles, and excess damages shall be
 207 treated as an amendment to the declaration of all condominiums
 208 operated by the association and the costs of insurance shall be
 209 stated in the association budget. The amendments shall be
 210 recorded as required by s. 718.110.

211 (h) The association shall obtain and maintain adequate
 212 insurance or fidelity bonding of all persons who control or
 213 disburse funds of the association. The insurance policy or
 214 fidelity bond must cover the maximum funds that will be in the
 215 custody of the association or its management agent at any one
 216 time. As used in this paragraph, the term "persons who control
 217 or disburse funds of the association" includes, but is not
 218 limited to, those individuals authorized to sign checks and the
 219 president, secretary, and treasurer of the association. The
 220 association shall bear the cost of bonding.

221 (i) An association may amend the declaration of
 222 condominium, without regard to any requirement for mortgagee
 223 approval of amendments affecting insurance requirements, to

224 conform the declaration of condominium to the coverage
225 requirements of this subsection.

226 (j) Any portion of the condominium property the
227 association is required to insure against casualty loss pursuant
228 to paragraph (f) that is damaged by a casualty shall be
229 reconstructed, repaired, or replaced as necessary by the
230 association as a common expense. All hazard insurance
231 deductibles, uninsured losses, and other damages in excess of
232 hazard insurance coverage under the hazard insurance policies
233 maintained by the association shall be a common expense of the
234 condominium, provided:

235 1. A unit owner shall be responsible for the costs of
236 repair or replacement of any portion of the condominium property
237 not paid for by insurance proceeds when such damage is caused by
238 intentional conduct, negligence, or failure to comply with the
239 terms of the declaration or the rules of the association by a
240 unit owner, the members of his or her family, or unit occupants,
241 tenants, guests, or invitees and without compromise of the
242 subrogation rights of any insurer as set forth in paragraph (g).

243 2. The provisions of subparagraph 1. relating to the
244 financial responsibility of a unit owner for the costs of
245 repairing or replacing other portions of the condominium
246 property also apply to the costs of repairing or replacing
247 personal property of other unit owners or the association as
248 well as other property, whether real or personal, the unit
249 owners are required to insure under paragraph (g).

250 3. To the extent the cost of repair or reconstruction for
251 which the unit owner is responsible under this paragraph is

252 reimbursed to the association by insurance proceeds and to the
253 extent the association has collected the cost of such repair or
254 reconstruction from the unit owner, the association shall
255 reimburse the unit owner without the waiver of any rights of
256 subrogation.

257 4. The association is not obligated to pay for repair or
258 reconstruction or repairs of casualty losses as a common expense
259 when the casualty losses were known or should have been known to
260 a unit owner and were not reported to the association until
261 after the insurance claim of the association for that casualty
262 loss has been settled and resolved with finality or is
263 considered untimely filed by the insurer and denied on that
264 basis.

265 (k) An association may, upon the approval of a majority of
266 the total voting interests in the association, opt out of the
267 provisions of paragraph (j) for the allocation of repair or
268 reconstruction expenses and allocate repair or reconstruction
269 expenses in the manner provided in the declaration as originally
270 recorded or as amended. Such vote may be approved by the voting
271 interests of the association without regard to any mortgagee
272 consent requirements.

273 (l) In a multicondominium association that has not
274 consolidated its financial operations under subsection (6), any
275 condominium operated by the association may opt out of the
276 provisions of paragraph (j) with the approval of a majority of
277 the total voting interests in that condominium. Such vote may be
278 approved by the voting interests without regard to any mortgagee
279 consent requirements.

280 (m) Any association or condominium voting to opt out of
 281 the guidelines for repair or reconstruction expenses in
 282 paragraph (j) shall record a notice setting forth the date of
 283 the opt-out vote and the official records book and page at which
 284 the declaration is recorded. The opt out shall be effective upon
 285 the date of recording of the notice in the public records by the
 286 association. An association that has voted to opt out of
 287 paragraph (j) may reverse that decision by the same vote
 288 required under paragraphs (k) and (l), and notice of such
 289 reversal shall be recorded in the official records.

290 (n) An association shall not be obligated to pay for any
 291 reconstruction or repair expenses due to casualty loss to any
 292 improvements installed by a current or former unit owner or by
 293 the developer when the improvement benefits only the unit for
 294 which it was installed and is not part of the standard
 295 improvements installed by the developer on all units as part of
 296 original construction, whether or not such improvement is
 297 located within the unit, except to the extent of any insurance
 298 recovery specifically for any such improvements.

299 (o) The provisions of this subsection shall not apply to
 300 timeshare condominium associations. Insurance for timeshare
 301 condominium associations shall be maintained pursuant to s.
 302 721.165.

303 Section 2. Paragraph (a) of subsection (1) of section
 304 718.115, Florida Statutes, is amended to read:

305 718.115 Common expenses and common surplus.--

306 (1)(a) Common expenses include the expenses of the
 307 operation, maintenance, repair, replacement, or protection of

308 the common elements and association property, costs of carrying
309 out the powers and duties of the association, and any other
310 expense, whether or not included in the foregoing, designated as
311 common expense by this chapter, the declaration, the documents
312 creating the association, or the bylaws. Common expenses also
313 include reasonable transportation services, insurance for
314 directors and officers, road maintenance and operation expenses,
315 in-house communications, and security services, which are
316 reasonably related to the general benefit of the unit owners
317 even if such expenses do not attach to the common elements or
318 property of the condominium. However, such common expenses must
319 either have been services or items provided on or after the date
320 control of the association is transferred from the developer to
321 the unit owners or must be services or items provided for in the
322 condominium documents or bylaws. Unless the manner of payment or
323 allocation of expenses is otherwise addressed in the declaration
324 of condominium, the expenses of any items or services required
325 by federal, state, or local government or required by any other
326 governmental entity to be installed, maintained, or supplied to
327 the condominium property by the association, including, but not
328 limited to, fire safety equipment, or water and sewer service
329 where a master meter serves the condominium, shall be common
330 expenses whether or not such items or services are specifically
331 identified as common expenses in the declaration of condominium
332 or articles of incorporation or bylaws of the association. Such
333 statement is intended to clarify existing law.

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

336 718.116 Assessments; liability; lien and priority;
337 interest; collection.--

338 (8) Within 15 days after receiving a written request
339 therefor from a unit owner or a designee of a unit owner
340 ~~purchaser~~, or unit mortgagee or a designee of a unit mortgagee,
341 the association shall provide a certificate signed by an officer
342 or agent of the association stating all assessments and other
343 moneys owed to the association by the unit owner with respect to
344 the condominium parcel.

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

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

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

355 (d) The authority to charge a fee for a certificate under
356 this section shall be established by written resolution adopted
357 by the board or provided by written management, bookkeeping, or
358 maintenance contract. The fee is payable upon the preparation of
359 the certificate. If the certificate is requested in conjunction
360 with the sale or mortgage of a unit, the closing does not occur,
361 and no later than 30 days after the closing date for which the
362 certificate was sought the preparer receives from a payor who is
363 not the unit owner a written request accompanied with reasonable

364 documentation that the sale did not occur, then the fee shall be
 365 refunded to that payor within 30 days after the preparer's
 366 receipt of the refund request. The amount of the refund shall
 367 then become the obligation of the unit owner, which sum is
 368 collectable from the unit owner in the same manner as an
 369 assessment as provided in this section.

370 Section 4. Paragraph (c) of subsection (17) of section
 371 718.117, Florida Statutes, is amended to read:

372 718.117 Termination of condominium.--

373 (17) DISTRIBUTION.--

374 (c) The proceeds from any sale of condominium property or
 375 association property and any remaining condominium property or
 376 association property, common surplus, and other assets shall be
 377 distributed in the following priority:

378 1. To pay the reasonable termination trustee's fees and
 379 costs and accounting fees and costs.

380 2. To lienholders of liens recorded prior to the recording
 381 of the declaration.

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

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

387 5. To creditors of the association, as their interests
 388 appear.

389 6. To unit owners, the proceeds of any sale of condominium
 390 property subject to satisfaction of liens on each unit in their
 391 order of priority, in shares specified in the plan of

392 termination, unless objected to by a unit owner or lienor as
 393 provided in paragraph (b).

394 7. To unit owners, the remaining condominium property,
 395 subject to satisfaction of liens on each unit in their order of
 396 priority, in shares specified in the plan of termination, unless
 397 objected to by a unit owner or a lienor as provided in paragraph
 398 (b).

399 8. To unit owners, the proceeds of any sale of association
 400 property, the remaining association property, common surplus,
 401 and other assets of the association, subject to satisfaction of
 402 liens on each unit in their order of priority, in shares
 403 specified in the plan of termination, unless objected to by a
 404 unit owner or a lienor as provided in paragraph (b).

405 Section 5. Section 720.3087, Florida Statutes, is created
 406 to read:

407 720.3087 Estoppel certificates.--Within 15 days after
 408 receiving a written request therefor from a parcel owner or the
 409 designee of a parcel owner, or a parcel mortgagee or the
 410 designee of a parcel mortgagee, the association shall provide a
 411 certificate signed by an officer or agent of the association
 412 stating all assessments and other moneys owed to the association
 413 by the parcel owner with respect to the parcel.

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

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

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420 (3) The authority to charge a fee under this section shall
421 be established by written resolution adopted by the board in
422 advance of the charge or provided by written management,
423 bookkeeping, or maintenance contract. The fee shall be payable
424 upon the preparation of the certificate; and, if the certificate
425 is requested in conjunction with the sale or mortgage of the
426 parcel and the closing does not take place, the fee shall be
427 promptly refunded upon written notice from the person requesting
428 the certificate stating that the sale or mortgage was not
429 effectuated. The fee for a certificate in conjunction with a
430 sale or mortgage that is not effectuated and a refund that is
431 paid to the party requesting the certificate shall be an
432 obligation of the parcel owner and shall be collectible as an
433 assessment provided by this chapter.

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