

1                   A bill to be entitled  
2           An act relating to condominium associations; amending s.  
3           718.111, F.S.; specifying that requirements relating to  
4           acquisition and maintenance of adequate insurance apply to  
5           all residential condominiums; revising provisions relating  
6           to condominium and condominium owner insurance coverage;  
7           authorizing an association or group of associations to  
8           provide adequate hazard insurance through a self-insurance  
9           fund; requiring associations to exercise best efforts to  
10          obtain and maintain certain kinds of insurance; requiring  
11          insurance coverage or bonding of certain persons with  
12          respect to association funds; providing coverage  
13          requirements for policies entered into after a specified  
14          date; requiring owners to provide evidence of a currently  
15          effective policy of hazard and liability insurance upon  
16          request by the association; providing applicability to  
17          condominiums operated as a single condominium by a  
18          multicondominium association; specifying responsibility  
19          for reconstruction work under specified circumstances;  
20          specifying common expense responsibilities of the  
21          association and owners; amending s. 718.113, F.S.;  
22          revising application of provision relating to the material  
23          alteration or substantial additions to the common elements  
24          or to real property which is association property to apply  
25          to certain associations; creating s. 718.1265, F.S.;  
26          authorizing a condominium association board to exercise  
27          specified emergency powers during an emergency created by

28 | declared disaster; providing a limitation; providing an  
 29 | effective date.

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

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

35 | (Substantial rewording of subsection. See  
 36 | s. 718.111(11), F.S., for present text.)

37 | 718.111 The association.--

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

48 | (a) Adequate insurance.--

49 | 1. A unit-owner controlled association operating a  
 50 | residential condominium shall use its best efforts to obtain and  
 51 | maintain adequate insurance to protect the association, the  
 52 | association property, the common elements, and the condominium  
 53 | property required to be insured by the association pursuant to  
 54 | this subsection.

55        2. If the association is developer controlled, the  
56 association shall exercise best efforts to obtain and maintain  
57 such insurance. Failure to obtain and maintain adequate  
58 insurance during any period of developer control shall  
59 constitute a breach of fiduciary responsibility by the  
60 developer-appointed members of the board of directors of the  
61 association, unless those members can show that despite such  
62 failure, they have made their best efforts.

63        3. Regardless of any requirement in the declaration of  
64 condominium for coverage by the association for "full insurable  
65 value," "replacement cost," or the like, adequate insurance  
66 shall be based upon the replacement cost of the property to be  
67 insured as determined by an independent insurance appraisal or  
68 update of a prior appraisal. The full insurable value shall be  
69 determined not less frequently than every 36 months.

70        4. An association or group of associations may provide  
71 adequate hazard insurance through a self-insurance fund that  
72 complies with the applicable provisions of ss. 624.460-624.488.

73        5. The association may provide adequate hazard insurance  
74 coverage individually or for a group of no fewer than three  
75 communities created and operating under this chapter, chapter  
76 719, chapter 720, or chapter 721, by obtaining and maintaining  
77 for the communities insurance coverage sufficient to cover an  
78 amount equal to the probable maximum loss for the communities  
79 for a 250-year windstorm event; however, such probable maximum  
80 loss must be determined through the use of a competent model  
81 that has been accepted by the Florida Commission on Hurricane  
82 Loss Projection Methodology.

83        6. In determining the association's adequate hazard  
84 insurance coverage, the association may consider deductibles as  
85 determined by this subsection. Policies may include deductibles  
86 as determined by the board. The deductibles shall be consistent  
87 with industry standards and prevailing practice for communities  
88 of like size and age and having similar construction and  
89 facilities in the locale where the condominium property is  
90 situated. The deductibles may be based upon available funds,  
91 including reserve accounts, or predetermined assessment  
92 authority at the time that the insurance is obtained. The board  
93 shall establish the level of deductibles based upon the level of  
94 available funds and predetermined assessment authority at a  
95 properly noticed meeting of the board. The notice of such  
96 meeting shall state the proposed deductible and the available  
97 funds and the assessment authority relied upon by the board and  
98 shall estimate any potential assessment amount against each  
99 unit, if any. The meeting described in this subparagraph may be  
100 held in conjunction with a meeting to consider the proposed  
101 budget or an amendment to the budget.

102        7. The association shall obtain and maintain adequate  
103 insurance or fidelity bonding of all persons who control or  
104 disburse funds of the association. The insurance policy or  
105 fidelity bond must cover the maximum funds that will be in the  
106 custody of the association or its management agent at any one  
107 time. As used in this paragraph, the term "persons who control  
108 or disburse funds of the association" includes, but is not  
109 limited to, those individuals authorized to sign checks and the

110 president, secretary, and treasurer of the association. The  
 111 association shall bear the cost of bonding.

112 (b) Scope of casualty coverage.--

113 1. Every hazard insurance policy issued or renewed on or  
 114 after January 1, 2009, to the association to protect the  
 115 condominium shall provide primary coverage for:

116 a. All portions of the condominium property as originally  
 117 installed or property replacement of like kind and quality, in  
 118 accordance with the original plans and specifications.

119 b. All alterations or additions made to the condominium  
 120 property or association property by the association pursuant to  
 121 s. 718.113(2).

122  
 123 The coverage shall exclude all personal property of the unit  
 124 owners wherever situated on the condominium property, including:  
 125 floor, wall, and ceiling coverings; electrical fixtures;  
 126 appliances; water heaters; water filters; built-in cabinets and  
 127 countertops; window treatments, including curtains, drapes,  
 128 blinds, hardware, and similar window treatment components.  
 129 Coverage shall also exclude replacements of any of the foregoing  
 130 items located within the units.

131 2. Every hazard insurance policy issued or renewed on or  
 132 after January 1, 2009, to an individual unit owner shall provide  
 133 coverage for all portions of the condominium property excluded  
 134 from the association's coverage under this paragraph and all  
 135 unit owner personal property, provided the coverage afforded by  
 136 such policy is in excess of the amount recoverable under any  
 137 other policy covering the same property and shall include

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138 special assessment coverage of not less than \$2,000 per  
139 occurrence. Each insurance policy issued to an individual unit  
140 owner providing such coverage shall be without rights of  
141 subrogation against the condominium association that operates  
142 the condominium in which such unit owner's unit is located.  
143 Notwithstanding any provision in this subsection to the  
144 contrary, the association shall not be obligated to insure any  
145 improvements installed by a current or former owner of the unit  
146 or by the developer where the improvement benefits only the unit  
147 for which it was installed and is not part of the standard  
148 improvements installed by the developer on all units as part of  
149 original construction, whether or not such improvement is  
150 located within the unit, except to the extent of any insurance  
151 recovery specifically for any such improvements. Further, to the  
152 extent provided in the declaration as originally recorded or as  
153 amended under the amendatory provisions thereof, all other  
154 improvements or additions to the condominium property that  
155 benefit less than all unit owners shall be insured by the unit  
156 owner or owners having the use thereof or may be insured by the  
157 association at the cost and expense of the unit owners having  
158 the use thereof.

159 3. The association may require each owner to provide  
160 evidence of a currently effective policy of hazard and liability  
161 insurance upon request, but not more frequently than annually.  
162 Upon the failure of an owner to obtain the required insurance or  
163 to provide a certificate of insurance issued by an insurer  
164 approved to write such insurance in the state within 30 days of  
165 a written request, the association shall be entitled, but shall

166 not be obligated to, purchase a policy of insurance on behalf of  
167 an owner, and the cost thereof, together with reconstruction  
168 costs undertaken by the association but which are the  
169 responsibility of the unit owner may be collected in the manner  
170 provided for collection of assessments in s. 718.116.

171 4. The provisions of subparagraphs 1.-3. are intended to  
172 establish the property or casualty insuring responsibilities of  
173 the association and those of the individual unit owner and do  
174 not serve to broaden or extend the perils of coverage afforded  
175 by any insurance contract provided to the individual unit owner.

176 5. The declaration of condominium as originally recorded,  
177 or amended pursuant to procedures provided therein, may require  
178 that any condominium property consisting of freestanding  
179 buildings where there is no more than one building in or on such  
180 unit need not be insured by the association if the declaration  
181 requires the unit owner to obtain adequate insurance for the  
182 condominium property. An association may also obtain and  
183 maintain liability insurance for directors and officers,  
184 insurance for the benefit of association employees, and flood  
185 insurance for common elements, association property, and units.

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

194 treated as an amendment to the declaration of all condominiums  
195 operated by the association and the costs of insurance shall be  
196 stated in the association budget. The amendments shall be  
197 recorded as required by s. 718.110.

198 7. The association has the authority to amend the  
199 declaration of condominium, without regard to any requirement  
200 for mortgagee approval of amendments affecting insurance  
201 requirements, to the coverage requirements of this subsection.

202 (c) Reconstruction after casualty.--

203 1. All reconstruction work following a casualty loss  
204 shall be undertaken by the association except as otherwise  
205 permitted in this paragraph. A unit owner may undertake  
206 reconstruction work on portions of the unit which the  
207 association is required to insure under paragraph (b) only with  
208 the prior written consent of the board of administration, which  
209 may be conditioned upon the approval of the repair methods, the  
210 qualifications of the proposed contractor, and the contract that  
211 is used for that purpose. A unit owner shall obtain all required  
212 governmental permits and approvals prior to commencing any  
213 reconstruction.

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

222 association shall be a common expense of the condominium,  
 223 provided, however, that:

224 a. An association may, upon the approval of a majority of  
 225 the total voting interests in the association, opt out of the  
 226 provisions of this paragraph requiring that hazard insurance  
 227 deductibles, uninsured losses, and other losses in excess of  
 228 hazard insurance coverage under the hazard insurance policy  
 229 maintained by the association be treated as common expenses and  
 230 allocate such repair or reconstruction expenses in the manner  
 231 provided in the declaration as originally recorded or as amended  
 232 pursuant to the amendatory provisions thereof. Such vote may be  
 233 approved by the voting interests of the association without  
 234 regard to any mortgagee consent requirements.

235 (I) In a multicondominium association that has not  
 236 consolidated its financial operations under subsection (6), any  
 237 condominium operated by the association may opt out of the  
 238 provisions of this paragraph with the approval of a majority of  
 239 the total voting interests in that condominium. Such vote may be  
 240 approved by the voting interests without regard to any mortgagee  
 241 consent requirements.

242 (II) Any association or condominium voting to opt out of  
 243 the guidelines for repair or reconstruction expenses in this  
 244 paragraph must record a notice verifying that the association  
 245 has obtained the vote required under this paragraph to opt out,  
 246 setting forth the date of the opt out vote and the official  
 247 records book and page at which the declaration is recorded. The  
 248 opt out shall be effective upon the date of recording of the  
 249 notice in the public records by the association.

250        (III) An association that has voted to opt out of the  
251 provisions of this paragraph may reverse that decision by the  
252 same vote required under sub-sub-subparagraph (I) and notice  
253 shall be recorded in the official records, shall comply with all  
254 of the requirements of the notice of the opt out vote, and shall  
255 reference the official records book and page at which the notice  
256 of the opt out vote was recorded. The required notices shall be  
257 executed with the formality of a deed and, regardless of the  
258 provisions of subsection (12), the record of the opt out vote  
259 shall be kept for as long as the opt out remains in effect.

260        b. A unit owner shall be responsible for the costs of  
261 reconstruction, repair, or replacement of any portion of the  
262 condominium property not paid for by insurance proceeds when  
263 such damage is caused by intentional conduct, negligence, or  
264 failure to comply with the terms of the declaration or the rules  
265 of the association by a unit owner, the members of his or her  
266 family, unit occupants, tenants, guests, or invitees and without  
267 compromise of the subrogation rights of any insurer as set forth  
268 in paragraph (b).

269        c. The association shall not be obligated to pay for  
270 casualty losses as a common expense where the casualty losses  
271 were known or should have been known to a unit owner and were  
272 not reported to the association until after the insurance claim  
273 of the association for that casualty has been settled and  
274 resolved with finality or is considered untimely filed by the  
275 insurer and denied on that basis.

276        d. Any portion of the condominium property that the unit  
277 owner is required to insure against casualty loss pursuant to

278 paragraph (b) that is damaged by casualty shall be  
 279 reconstructed, repaired, or replaced, as necessary, by the unit  
 280 owner at the unit owner's expense, and any such reconstruction  
 281 work undertaken by the association shall be chargeable to the  
 282 unit and enforceable as an assessment pursuant to s. 718.116.  
 283 The association is hereby designated as an additional named  
 284 insured and loss payee on all casualty insurance policies issued  
 285 to unit owners in the condominium operated by the association.

286 3. To the extent the cost of repair or reconstruction for  
 287 which the unit owner is responsible under subparagraph 2. is  
 288 reimbursed to the association by insurance proceeds and to the  
 289 extent the association has collected the cost of such repair or  
 290 reconstruction from the unit owner, the association shall  
 291 reimburse the unit owner without the waiver of any rights of  
 292 subrogation.

293 4. The provisions of subparagraph 2. regarding the  
 294 financial responsibility of a unit owner for the costs of  
 295 repairing or replacing other portions of the condominium  
 296 property shall also be applicable to the costs of repair or  
 297 replacement of personal property of other unit owners or the  
 298 association, as well as other property, whether real or  
 299 personal, that the unit owners are required to insure under  
 300 paragraph (b).

301 Section 2. Paragraph (a) of subsection (2) of section  
 302 718.113, Florida Statutes, is amended to read:

303 718.113 Maintenance; limitation upon improvement; display  
 304 of flag; hurricane shutters.--

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305           (2) (a) Except as otherwise provided in this section, there  
306 shall be no material alteration or substantial additions to the  
307 common elements or to real property which is association  
308 property, except in a manner provided in the declaration as  
309 originally recorded or as amended under the procedures provided  
310 therein. If the declaration as originally recorded or as amended  
311 under the procedures provided therein does not specify the  
312 procedure for approval of material alterations or substantial  
313 additions, 75 percent of the total voting interests of the  
314 association must approve the alterations or additions. This  
315 paragraph is intended to clarify existing law and applies to  
316 associations existing on the effective date of this act.

317           Section 3. Section 718.1265, Florida Statutes, is created  
318 to read:

319           718.1265 Association emergency powers.--

320           (1) To the extent allowed by law and unless specifically  
321 prohibited by the declaration of condominium, the articles, or  
322 the bylaws of an association, and consistent with the provisions  
323 of s. 617.0830, the board of administration, in response to  
324 damage caused by an event for which a state of emergency is  
325 declared pursuant to s. 252.36 in the locale in which the  
326 condominium is located, may, but is not required to, exercise  
327 the following powers:

328           (a) Conduct board meetings and membership meetings with  
329 notice given as is practicable. Such notice may be given in any  
330 practicable manner, including publication, radio, United States  
331 mail, the Internet, public service announcements, and  
332 conspicuous posting on the condominium property or any other

333 means the board deems reasonable under the circumstances. Notice  
 334 of board decisions may be communicated as provided in this  
 335 paragraph.

336 (b) Cancel and reschedule any association meeting.

337 (c) Name as assistant officers persons who are not  
 338 directors, which assistant officers shall have the same  
 339 authority as the executive officers to whom they are assistants  
 340 during the state of emergency to accommodate the incapacity or  
 341 unavailability of any officer of the association.

342 (d) Relocate the association's principal office or  
 343 designate alternative principal offices.

344 (e) Enter into agreements with local counties and  
 345 municipalities to assist counties and municipalities with debris  
 346 removal.

347 (f) Implement a disaster plan before or immediately  
 348 following the event for which a state of emergency is declared  
 349 that may include, but is not limited to, shutting down or off  
 350 elevators; electricity; water, sewer, or security systems; or  
 351 air conditioners.

352 (g) Declare any portion of the condominium property  
 353 unavailable for entry or occupancy by unit owners, family  
 354 members, tenants, guests, agents, or invitees to protect the  
 355 health, safety, or welfare of such persons.

356 (h) Require the evacuation of the condominium property in  
 357 the event of a mandatory evacuation order in the locale in which  
 358 the condominium is located. Should any unit owner or other  
 359 occupant of a condominium fail or refuse to evacuate the  
 360 condominium property where the board has required evacuation,

361 the association shall be immune from liability or injury to  
 362 persons or property arising from such failure or refusal.

363 (i) Determine whether the condominium property can be  
 364 safely inhabited or occupied. However, such determination is not  
 365 conclusive as to any determination of habitability pursuant to  
 366 the declaration.

367 (j) Mitigate further damage, including taking action to  
 368 contract for the removal of debris; and prevent or mitigate the  
 369 spread of fungus, including, but not limited to, mold or mildew,  
 370 by removing and disposing of wet drywall, insulation, carpet,  
 371 cabinetry, or other fixtures, on or within the condominium  
 372 property, even if the unit owner is obligated by the declaration  
 373 or law to insure or replace those fixtures and to remove  
 374 personal property from a unit.

375 (k) Contract, on behalf of any unit owner or owners, for  
 376 items or services for which the owners are otherwise  
 377 individually responsible for, but which are necessary to prevent  
 378 further damage to the condominium property. In such event, the  
 379 unit owner or owners on whose behalf the board has contracted  
 380 are responsible for reimbursing the association for the actual  
 381 costs of the items or services, and the association may use its  
 382 lien authority provided by s. 718.116 to enforce collection of  
 383 the charges. Without limitation, such items or services may  
 384 include the drying of units, the boarding of broken windows or  
 385 doors, and the replacement of damaged air conditioners or air  
 386 handlers to provide climate control in the units or other  
 387 portions of the property.

388 (l) Regardless of any provision to the contrary and even

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389 if such authority does not specifically appear in the  
390 declaration of condominium, articles, or bylaws of the  
391 association, levy special assessments without a vote of the  
392 owners.

393 (m) Without unit owner approval, borrow money and pledge  
394 association assets as collateral to fund emergency repairs and  
395 carry out the duties of the association when operating funds are  
396 insufficient. This paragraph does not limit the general  
397 authority of the association to borrow money, subject to such  
398 restrictions as are contained in the declaration of condominium,  
399 articles, or bylaws of the association.

400 (2) The special powers authorized under subsection (1)  
401 shall be limited to that time reasonably necessary to protect  
402 the health, safety, and welfare of the association, the unit  
403 owners, their family members, tenants, guests, agents, or  
404 invitees and shall be reasonably necessary to mitigate further  
405 damage and make emergency repairs.

406 Section 4. This act shall take effect July 1, 2008.