

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Robaina offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 1528 and 1529, insert:

5 Section 10. Subsection (16) of section 718.103, Florida
6 Statutes, is amended to read:

7 718.103 Definitions.--As used in this chapter, the term:

8 (16) "Developer" means a person who creates a condominium
9 or offers condominium parcels for sale or lease in the ordinary
10 course of business, but does not include:

11 (a) An owner or lessee of a condominium or cooperative
12 unit who has acquired the unit for his or her own occupancy;
13 ~~nor does it include~~

14 (b) A cooperative association which creates a condominium
15 by conversion of an existing residential cooperative after
16 control of the association has been transferred to the unit

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

17 owners if, following the conversion, the unit owners will be the
18 same persons who were unit owners of the cooperative and no
19 units are offered for sale or lease to the public as part of the
20 plan of conversion;—

21 (c) A bulk assignee or bulk buyer as defined in s.
22 718.703; or

23 (d) A state, county, or municipal entity is not a
24 developer for any purposes under this act when it is acting as a
25 lessor and not otherwise named as a developer in the declaration
26 of condominium association.

27 Section 11. Subsection (1) of section 718.301, Florida
28 Statutes, is amended to read:

29 718.301 Transfer of association control; claims of defect
30 by association.--

31 (1) When unit owners other than the developer own 15
32 percent or more of the units in a condominium that will be
33 operated ultimately by an association, the unit owners other
34 than the developer shall be entitled to elect no less than one-
35 third of the members of the board of administration of the
36 association. Unit owners other than the developer are entitled
37 to elect not less than a majority of the members of the board of
38 administration of an association:

39 (a) Three years after 50 percent of the units that will be
40 operated ultimately by the association have been conveyed to
41 purchasers;

42 (b) Three months after 90 percent of the units that will
43 be operated ultimately by the association have been conveyed to
44 purchasers;

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

45 (c) When all the units that will be operated ultimately by
46 the association have been completed, some of them have been
47 conveyed to purchasers, and none of the others are being offered
48 for sale by the developer in the ordinary course of business;

49 (d) When some of the units have been conveyed to
50 purchasers and none of the others are being constructed or
51 offered for sale by the developer in the ordinary course of
52 business;

53 (e) When the developer files a petition seeking protection
54 in bankruptcy;

55 (f) When a receiver for the developer is appointed by a
56 circuit court and is not discharged within 30 days after such
57 appointment, unless the court determines within 30 days after
58 appointment of the receiver that transfer of control would be
59 detrimental to the association or its members; or

60 (g) Seven years after recordation of the declaration of
61 condominium; or, in the case of an association which may
62 ultimately operate more than one condominium, 7 years after
63 recordation of the declaration for the first condominium it
64 operates; or, in the case of an association operating a phase
65 condominium created pursuant to s. 718.403, 7 years after
66 recordation of the declaration creating the initial phase,
67
68 whichever occurs first. The developer is entitled to elect at
69 least one member of the board of administration of an
70 association as long as the developer holds for sale in the
71 ordinary course of business at least 5 percent, in condominiums
72 with fewer than 500 units, and 2 percent, in condominiums with
333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

73 more than 500 units, of the units in a condominium operated by
74 the association. Following the time the developer relinquishes
75 control of the association, the developer may exercise the right
76 to vote any developer-owned units in the same manner as any
77 other unit owner except for purposes of reacquiring control of
78 the association or selecting the majority members of the board
79 of administration.

80 Section 12. Part VII of chapter 718, Florida Statutes,
81 consisting of sections 718.701, 718.702, 718.703, 718.704,
82 718.705, 718.706, 718.707, and 718.708, is created to read:

83 718.701 Short title.--This part may be cited as the
84 "Distressed Condominium Relief Act."

85 718.702 Legislative intent.--

86 (1) The Legislature acknowledges the massive downturn in
87 the condominium market which has transpired throughout the state
88 and the impact of such downturn on developers, lenders, unit
89 owners, and condominium associations. Numerous condominium
90 projects have either failed or are in the process of failing,
91 whereby the condominium has a small percentage of third-party
92 unit owners as compared to the unsold inventory of units. As a
93 result of the inability to find purchasers for this inventory of
94 units, which results in part from the devaluing of real estate
95 in this state, developers are unable to satisfy the requirements
96 of their lenders, leading to defaults on mortgages.
97 Consequently, lenders are faced with the task of finding a
98 solution to the problem in order to be paid for their
99 investments.

100 (2) The Legislature recognizes that all of the factors

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

101 listed in this section lead to condominiums becoming distressed,
102 resulting in detriment to the unit owners and the condominium
103 association on account of the resulting shortage of assessment
104 moneys available to support the financial requirements for
105 proper maintenance of the condominium. Such shortage and the
106 resulting lack of proper maintenance further erodes property
107 values. The Legislature finds that individuals and entities
108 within Florida and in other states have expressed interest in
109 purchasing unsold inventory in one or more condominium projects,
110 but are reticent to do so because of accompanying liabilities
111 inherited from the original developer, which are by definition
112 imputed to the successor purchaser, including a foreclosing
113 mortgagee. This results in the potential purchaser having
114 unknown and unquantifiable risks, and potential successor
115 purchasers are unwilling to accept such risks. The result is
116 that condominium projects stagnate, leaving all parties involved
117 at an impasse without the ability to find a solution.

118 (3) The Legislature finds and declares that it is the
119 public policy of this state to protect the interests of
120 developers, lenders, unit owners, and condominium associations
121 with regard to distressed condominiums, and that there is a need
122 for relief from certain provisions of the Florida Condominium
123 Act geared toward enabling economic opportunities within these
124 condominiums for successor purchasers, including foreclosing
125 mortgagees. Such relief would benefit existing unit owners and
126 condominium associations. The Legislature further finds and
127 declares that this situation cannot be open-ended without
128 potentially prejudicing the rights of unit owners and

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

129 condominium associations, and thereby declares that the
130 provisions of this part shall be used by purchasers of
131 condominium inventory for a specific and defined period.

132 718.703 Definitions.--As used in this part, the term:

133 (1) "Bulk assignee" means a person who:

134 (a) Acquires more than seven condominium parcels as set
135 forth in s. 718.707; and

136 (b) Receives an assignment of some or all of the rights of
137 the developer as are set forth in the declaration of condominium
138 or in this chapter by a written instrument recorded as an
139 exhibit to the deed or as a separate instrument in the public
140 records of the county in which the condominium is located.

141 (2) "Bulk buyer" means a person who acquires more than
142 seven condominium parcels as set forth in s. 718.707 but who
143 does not receive an assignment of any developer rights other
144 than the right to conduct sales, leasing, and marketing
145 activities within the condominium.

146 718.704 Assignment and assumption of developer rights by
147 bulk assignee; bulk buyer.--

148 (1) A bulk assignee shall be deemed to have assumed and is
149 liable for all duties and responsibilities of the developer
150 under the declaration and this chapter, except:

151 (a) Warranties of the developer under s. 718.203(1) or s.
152 718.618, except for design, construction, development, or repair
153 work performed by or on behalf of such bulk assignee;

154 (b) The obligation to:

155 1. Fund converter reserves under s. 718.618 for a unit
156 which was not acquired by the bulk assignee; or

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

157 2. Provide converter warranties on any portion of the
158 condominium property except as may be expressly provided by the
159 bulk assignee in the contract for purchase and sale executed
160 with a purchaser and pertaining to any design, construction,
161 development, or repair work performed by or on behalf of the
162 bulk assignee;

163 (c) The requirement to provide the association with a
164 cumulative audit of the association's finances from the date of
165 formation of the condominium association as required by s.
166 718.301. However, the bulk assignee shall provide an audit for
167 the period for which the bulk assignee elects a majority of the
168 members of the board of administration;

169 (d) Any liability arising out of or in connection with
170 actions taken by the board of administration or the developer-
171 appointed directors before the bulk assignee elects a majority
172 of the members of the board of administration; and

173 (e) Any liability for or arising out of the developer's
174 failure to fund previous assessments or to resolve budgetary
175 deficits in relation to a developer's right to guarantee
176 assessments, except as otherwise provided in subsection (2).

177
178 Further, the bulk assignee is responsible for delivering
179 documents and materials in accordance with s. 718.705(3). A bulk
180 assignee may expressly assume some or all of the obligations of
181 the developer described in paragraphs (a)-(e).

182 (2) A bulk assignee receiving the assignment of the rights
183 of the developer to guarantee the level of assessments and fund
184 budgetary deficits pursuant to s. 718.116 shall be deemed to

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

185 have assumed and is liable for all obligations of the developer
186 with respect to such guarantee, including any applicable funding
187 of reserves to the extent required by law, for as long as the
188 guarantee remains in effect. A bulk assignee not receiving an
189 assignment of the right of the developer to guarantee the level
190 of assessments and fund budgetary deficits pursuant to s.
191 718.116 or a bulk buyer is not deemed to have assumed and is not
192 liable for the obligations of the developer with respect to such
193 guarantee, but is responsible for payment of assessments in the
194 same manner as all other owners of condominium parcels.

195 (3) A bulk buyer is liable for the duties and
196 responsibilities of the developer under the declaration and this
197 chapter only to the extent provided in this part, together with
198 any other duties or responsibilities of the developer expressly
199 assumed in writing by the bulk buyer.

200 (4) An acquirer of condominium parcels is not considered a
201 bulk assignee or a bulk buyer if the transfer to such acquirer
202 was made with the intent to hinder, delay, or defraud any
203 purchaser, unit owner, or the association, or if the acquirer is
204 a person who would constitute an insider under s. 726.102(7).

205 (5) An assignment of developer rights to a bulk assignee
206 may be made by the developer, a previous bulk assignee, or a
207 court of competent jurisdiction acting on behalf of the
208 developer or the previous bulk assignee. At any particular time,
209 there may be no more than one bulk assignee within a
210 condominium, but there may be more than one bulk buyer. If more
211 than one acquirer of condominium parcels receives an assignment
212 of developer rights from the same person, the bulk assignee is

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

213 the acquirer whose instrument of assignment is recorded first in
214 applicable public records.

215 718.705 Board of administration; transfer of control.--

216 (1) For purposes of determining the timing for transfer of
217 control of the board of administration of the association to
218 unit owners other than the developer under ss. 718.301(1)(a) and
219 (b), if a bulk assignee is entitled to elect a majority of the
220 members of the board, a condominium parcel acquired by the bulk
221 assignee shall not be deemed to be conveyed to a purchaser, or
222 to be owned by an owner other than the developer, until such
223 condominium parcel is conveyed to an owner who is not a bulk
224 assignee.

225 (2) Unless control of the board of administration of the
226 association has already been relinquished pursuant to s.
227 718.301(1), the bulk assignee is obligated to relinquish control
228 of the association in accordance with s. 718.301 and this part.

229 (3) When a bulk assignee relinquishes control of the board
230 of administration as set forth in s. 718.301, the bulk assignee
231 shall deliver all of those items required by s. 718.301(4).
232 However, the bulk assignee is not required to deliver items and
233 documents not in the possession of the bulk assignee during the
234 period during which the bulk assignee was the owner of
235 condominium parcels. In conjunction with acquisition of
236 condominium parcels, a bulk assignee shall undertake a good
237 faith effort to obtain the documents and materials required to
238 be provided to the association pursuant to s. 718.301(4). To the
239 extent the bulk assignee is not able to obtain all of such
240 documents and materials, the bulk assignee shall certify in

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

241 writing to the association the names or descriptions of the
242 documents and materials that were not obtainable by the bulk
243 assignee. Delivery of the certificate relieves the bulk assignee
244 of responsibility for the delivery of the documents and
245 materials referenced in the certificate as otherwise required
246 under ss. 718.112 and 718.301 and this part. The responsibility
247 of the bulk assignee for the audit required by s. 718.301(4)
248 shall commence as of the date on which the bulk assignee elected
249 a majority of the members of the board of administration.

250 (4) If a conflict arises between the provisions or
251 application of this section and s. 718.301, this section shall
252 prevail.

253 (5) Failure of a bulk assignee or bulk buyer to comply
254 with all the requirements contained in this part shall result in
255 the loss of any and all protections or exemptions provided under
256 this part.

257 718.706 Specific provisions pertaining to offering of
258 units by a bulk assignee or bulk buyer.--

259 (1) Before offering any units for sale or for lease for a
260 term exceeding 5 years, a bulk assignee or a bulk buyer shall
261 file the following documents with the division and provide such
262 documents to a prospective purchaser:

263 (a) An updated prospectus or offering circular, or a
264 supplement to the prospectus or offering circular, filed by the
265 creating developer prepared in accordance with s. 718.504, which
266 shall include the form of contract for purchase and sale in
267 compliance with s. 718.503(2);

268 (b) An updated Frequently Asked Questions and Answers

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

269 sheet;

270 (c) The executed escrow agreement if required under s.
271 718.202; and

272 (d) The financial information required by s. 718.111(13).
273 However, if a financial information report does not exist for
274 the fiscal year before acquisition of title by the bulk assignee
275 or bulk buyer, or accounting records cannot be obtained in good
276 faith by the bulk assignee or the bulk buyer which would permit
277 preparation of the required financial information report, the
278 bulk assignee or bulk buyer is excused from the requirement of
279 this paragraph. However, the bulk assignee or bulk buyer must
280 include in the purchase contract the following statement in
281 conspicuous type:

282 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
283 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE
284 ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER
285 AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE
286 ASSOCIATION.

287 (2) Before offering any units for sale or for lease for a
288 term exceeding 5 years, a bulk assignee shall file with the
289 division and provide to a prospective purchaser a disclosure
290 statement that must include, but is not limited to:

291 (a) A description to the purchaser of any rights of the
292 developer which have been assigned to the bulk assignee;

293 (b) The following statement in conspicuous type:

294 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER
295 UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR
296 DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

297 OR ON BEHALF OF SELLER; and

298 (c) If the condominium is a conversion subject to part VI,
299 the following statement in conspicuous type:

300 SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO
301 PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF
302 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF
303 THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
304 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,
305 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
306 BEHALF OF THE SELLER.

307 (3) In addition to the requirements set forth in
308 subsection (1), a bulk assignee or bulk buyer must comply with
309 the nondeveloper disclosure requirements set forth in s.
310 718.503(2) before offering any units for sale or for lease for a
311 term exceeding 5 years.

312 (4) A bulk assignee, while it is in control of the board
313 of administration of the association, may not authorize, on
314 behalf of the association:

315 (a) The waiver of reserves or the reduction of funding of
316 the reserves in accordance with s. 718.112(2)(f)2., unless
317 approved by a majority of the voting interests not controlled by
318 the developer, bulk assignee, and bulk buyer; or

319 (b) The use of reserve expenditures for other purposes in
320 accordance with s. 718.112(2)(f)3., unless approved by a
321 majority of the voting interests not controlled by the
322 developer, bulk assignee, and bulk buyer.

323 (5) A bulk assignee, while it is in control of the board
324 of administration of the association, shall comply with the

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

325 requirements imposed upon developers to transfer control of the
326 association to the unit owners in accordance with s. 718.301.

327 (6) A bulk assignee or a bulk buyer shall comply with all
328 the requirements of s. 718.302 regarding any contracts entered
329 into by the association during the period the bulk assignee or
330 bulk buyer maintains control of the board of administration.
331 Unit owners shall be afforded all the protections contained in
332 s. 718.302 regarding agreements entered into by the association
333 before unit owners other than the developer, bulk assignee, or
334 bulk buyer elected a majority of the board of administration.

335 (7) A bulk buyer shall comply with the requirements
336 contained in the declaration regarding any transfer of a unit,
337 including sales, leases, and subleases. A bulk buyer is not
338 entitled to any exemptions afforded a developer or successor
339 developer under this chapter regarding any transfer of a unit,
340 including sales, leases, or subleases.

341 718.707 Time limitation for classification as bulk
342 assignee or bulk buyer.--A person acquiring condominium parcels
343 may not be classified as a bulk assignee or bulk buyer unless
344 the condominium parcels were acquired before July 1, 2011. The
345 date of such acquisition shall be determined by the date of
346 recording of a deed or other instrument of conveyance for such
347 parcels in the public records of the county in which the
348 condominium is located, or by the date of issuance of a
349 certificate of title in a foreclosure proceeding with respect to
350 such condominium parcels.

351 718.708 Liability of developers and others.--An assignment
352 of developer rights to a bulk assignee or bulk buyer does not

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

353 release the developer from any liabilities under the declaration
354 or this chapter. This part does not limit the liability of the
355 developer for claims brought by unit owners, bulk assignees, or
356 bulk buyers for violations of this chapter by the developer,
357 unless specifically excluded in this part. Nothing contained
358 within this part waives, releases, compromises, or limits the
359 liability of contractors, subcontractors, materialmen,
360 manufacturers, architects, engineers, or any participant in the
361 design or construction of a condominium for any claim brought by
362 an association, unit owners, bulk assignees, or bulk buyers
363 arising from the design of the condominium, construction
364 defects, misrepresentations associated with condominium
365 property, or violations of this chapter, unless specifically
366 excluded in this part.

367
368
369
370 -----
371 **T I T L E A M E N D M E N T**

372 Remove line 65 and insert:

373 agreements and arbitration awards; amending s. 718.103, F.S.;

374 expanding the definition of "developer" to include a bulk

375 assignee or bulk buyer; amending s. 718.301, F.S.; revising

376 conditions under which unit owners other than the developer may

377 elect not less than a majority of the members of the board of

378 administration of an association; creating part VII of ch. 718,

379 F.S.; providing a short title; providing legislative findings

380 and intent; defining the terms "bulk assignee" and "bulk buyer";

333777

Amendment No.

381 providing for the assignment of developer rights by a bulk
382 assignee; specifying liabilities of bulk assignees and bulk
383 buyers; providing exceptions; providing additional
384 responsibilities of bulk assignees and bulk buyers; authorizing
385 certain entities to assign developer rights to a bulk assignee;
386 limiting the number of bulk assignees at any given time;
387 providing for the transfer of control of a board of
388 administration; providing effects of such transfer on parcels
389 acquired by a bulk assignee; providing obligations of a bulk
390 assignee upon the transfer of control of a board of
391 administration; requiring that a bulk assignee certify certain
392 information in writing; providing for the resolution of a
393 conflict between specified provisions of state law; providing
394 that the failure of a bulk assignee or bulk buyer to comply with
395 specified provisions of state law results in the loss of certain
396 protections and exemptions; requiring that a bulk assignee or
397 bulk buyer file certain information with the Division of Florida
398 Condominiums, Timeshares, and Mobile Homes of the Department of
399 Business and Professional Regulation before offering any units
400 for sale or lease in excess of a specified term; requiring that
401 a copy of such information be provided to a prospective
402 purchaser; requiring that certain contracts and disclosure
403 statements contain specified statements; requiring that a bulk
404 assignee or bulk buyer comply with certain disclosure
405 requirements; prohibiting a bulk assignee from taking certain
406 actions on behalf of an association while the bulk assignee is
407 in control of the board of administration of the association and
408 requiring that such bulk assignee comply with certain

333777

Approved For Filing: 4/21/2009 1:58:29 PM

Amendment No.

409 requirements; requiring that a bulk assignee or bulk buyer
410 comply with certain requirements regarding certain contracts;
411 providing unit owners with specified protections regarding
412 certain contracts; requiring that a bulk buyer comply with
413 certain requirements regarding the transfer of a unit;
414 prohibiting a person from being classified as a bulk assignee or
415 bulk buyer unless condominium parcels were acquired before a
416 specified date; providing for the determination of the date of
417 acquisition of a parcel; providing that the assignment of
418 developer rights to a bulk assignee does not release a developer
419 from certain liabilities; preserving certain liabilities for
420 certain parties; providing an effective

333777