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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/14/2009	.	
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The Committee on Community Affairs (Deutch) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (16) of section 718.103, Florida  
Statutes, is amended to read:

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

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

(a) An owner or lessee of a condominium or cooperative unit



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12 who has acquired the unit for his or her own occupancy; ~~nor~~  
13 ~~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  
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; ~~nor~~

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

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

26 Section 2. Subsection (1) of section 718.301, Florida  
27 Statutes, is amended to read:

28 718.301 Transfer of association control; claims of defect  
29 by association.—

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

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



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

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

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

51 (e) When the developer files a petition seeking protection  
52 in bankruptcy;

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

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



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

77 Section 3. Part VII of chapter 718, Florida Statutes,  
78 consisting of sections 718.701, 718.702, 718.703, 718.704,  
79 718.705, 718.706, 718.707, and 718.708, is created to read:

80 718.701 Short title.—This part may be cited as the  
81 “Distressed Condominium Relief Act.”

82 718.702 Legislative intent.—

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

97 (2) The Legislature recognizes that all of the factors  
98 listed in this section lead to condominiums becoming distressed,



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

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



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128 condominium inventory for a specific and defined period.  
129 718.703 Definitions.—As used in this part, the term:  
130 (1) "Bulk assignee" means a person who:  
131 (a) Acquires more than seven condominium parcels as set  
132 forth in s. 718.707; and  
133 (b) Receives an assignment of some or all of the rights of  
134 the developer as are set forth in the declaration of condominium  
135 or in this chapter by a written instrument recorded in the  
136 public records of the county in which the condominium is  
137 located.  
138 (2) "Bulk buyer" means a person who acquires more than  
139 seven condominium parcels as set forth in s. 718.707 but who  
140 does not receive an assignment of any developer rights other  
141 than the right to conduct sales, leasing, and marketing  
142 activities within the condominium.  
143 718.704 Assignment and assumption of developer rights by  
144 bulk assignee; bulk buyer.—  
145 (1) A bulk assignee shall be deemed to have assumed and is  
146 liable for all duties and responsibilities of the developer  
147 under the declaration and this chapter, except:  
148 (a) Warranties of the developer under s. 718.203(1) or s.  
149 718.618, except for design, construction, development, or repair  
150 work performed by or on behalf of such bulk assignee;  
151 (b) The obligation to:  
152 1. Fund converter reserves under s. 718.618 for a unit  
153 which was not acquired by the bulk assignee; or  
154 2. Provide converter warranties on any portion of the  
155 condominium property except as may be expressly provided by the  
156 bulk assignee in the contract for purchase and sale executed



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157 with a purchaser and pertaining to any design, construction,  
158 development, or repair work performed by or on behalf of the  
159 bulk assignee;

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

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

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

174  
175 Further, the bulk assignee is responsible for delivering  
176 documents and materials in accordance with s. 718.705(3). A bulk  
177 assignee may expressly assume some or all of the obligations of  
178 the developer described in paragraphs (a)-(e).

179 (2) A bulk assignee receiving the assignment of the rights  
180 of the developer to guarantee the level of assessments and fund  
181 budgetary deficits pursuant to s. 718.116 shall be deemed to  
182 have assumed and is liable for all obligations of the developer  
183 with respect to such guarantee, including any applicable funding  
184 of reserves to the extent required by law, for as long as the  
185 guarantee remains in effect. A bulk assignee not receiving an



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186 assignment of the right of the developer to guarantee the level  
187 of assessments and fund budgetary deficits pursuant to s.  
188 718.116 or a bulk buyer is not deemed to have assumed and is not  
189 liable for the obligations of the developer with respect to such  
190 guarantee, but is responsible for payment of assessments in the  
191 same manner as all other owners of condominium parcels.

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

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

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

212 718.105 Board of administration; transfer of control.—

213 (1) For purposes of determining the timing for transfer of  
214 control of the board of administration of the association to





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215 unit owners other than the developer under ss. 718.301(1)(a) and  
216 (b), if a bulk assignee is entitled to elect a majority of the  
217 members of the board, a condominium parcel acquired by the bulk  
218 assignee shall not be deemed to be conveyed to a purchaser, or  
219 to be owned by an owner other than the developer, until such  
220 condominium parcel is conveyed to an owner who is not a bulk  
221 assignee.

222 (2) Unless control of the board of administration of the  
223 association has already been relinquished pursuant to s.  
224 718.301(1), the bulk assignee is obligated to relinquish control  
225 of the association in accordance with s. 718.301 and this part.

226 (3) When a bulk assignee relinquishes control of the board  
227 of administration as set forth in s. 718.301, the bulk assignee  
228 shall deliver all of those items required by s. 718.301(4).  
229 However, the bulk assignee is not required to deliver items and  
230 documents not in the possession of the bulk assignee during the  
231 period during which the bulk assignee was the owner of  
232 condominium parcels. In conjunction with acquisition of  
233 condominium parcels, a bulk assignee shall undertake a good  
234 faith effort to obtain the documents and materials required to  
235 be provided to the association pursuant to s. 718.301(4). To the  
236 extent the bulk assignee is not able to obtain all of such  
237 documents and materials, the bulk assignee shall certify in  
238 writing to the association the names or descriptions of the  
239 documents and materials that were not obtainable by the bulk  
240 assignee. Delivery of the certificate relieves the bulk assignee  
241 of responsibility for the delivery of the documents and  
242 materials referenced in the certificate as otherwise required  
243 under ss. 718.112 and 718.301 and this part. The responsibility



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244 of the bulk assignee for the audit required by s. 718.301(4)  
245 shall commence as of the date on which the bulk assignee elected  
246 a majority of the members of the board of administration.

247 (4) If a conflict arises between the provisions or  
248 application of this section and s. 718.301, this section shall  
249 prevail.

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

254 718.706 Specific provisions pertaining to offering of units  
255 by a bulk assignee or bulk buyer.-

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

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

265 (b) An updated Frequently Asked Questions and Answers  
266 sheet;

267 (c) The executed escrow agreement if required under s.  
268 718.202; and

269 (d) The financial information required by s. 718.111(13).  
270 However, if a financial information report does not exist for  
271 the fiscal year before acquisition of title by the bulk assignee  
272 or bulk buyer, or accounting records cannot be obtained in good



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273 faith by the bulk assignee or the bulk buyer which would permit  
274 preparation of the required financial information report, the  
275 bulk assignee or bulk buyer is excused from the requirement of  
276 this paragraph. However, the bulk assignee or bulk buyer must  
277 include in the purchase contract the following statement in  
278 conspicuous type:

279 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.  
280 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR  
281 OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE  
282 CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT  
283 ACCOUNTING RECORDS OF THE ASSOCIATION.

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

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

290 (b) The following statement in conspicuous type:  
291 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE  
292 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS  
293 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,  
294 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF  
295 OF SELLER; and

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

298 SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR  
299 TO PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON  
300 ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS MAY  
301 BE EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT



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302       FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE  
303       PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,  
304       CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY  
305       OR ON BEHALF OF THE SELLER.

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

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

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

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

322       (5) A bulk assignee, while it is in control of the board of  
323       administration of the association, shall comply with the  
324       requirements imposed upon developers to transfer control of the  
325       association to the unit owners in accordance with s. 718.301.

326       (6) A bulk assignee or a bulk buyer shall comply with all  
327       the requirements of s. 718.302 regarding any contracts entered  
328       into by the association during the period the bulk assignee or  
329       bulk buyer maintains control of the board of administration.

330       Unit owners shall be afforded all the protections contained in



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331 s. 718.302 regarding agreements entered into by the association  
332 before unit owners other than the developer, bulk assignee, or  
333 bulk buyer elected a majority of the board of administration.

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

340 718.707 Time limitation for classification as bulk assignee  
341 or bulk buyer.—A person acquiring condominium parcels may not be  
342 classified as a bulk assignee or bulk buyer unless the  
343 condominium parcels were acquired before July 1, 2011. The date  
344 of such acquisition shall be determined by the date of recording  
345 of a deed or other instrument of conveyance for such parcels in  
346 the public records of the county in which the condominium is  
347 located, or by the date of issuance of a certificate of title in  
348 a foreclosure proceeding with respect to such condominium  
349 parcels.

350 718.708 Liability of developers and others.—An assignment  
351 of developer rights to a bulk assignee or bulk buyer does not  
352 release the developer from any liabilities under the declaration  
353 or this chapter. This part does not limit the liability of the  
354 developer for claims brought by unit owners, bulk assignees, or  
355 bulk buyers for violations of this chapter by the developer,  
356 unless specifically excluded in this part. Nothing contained  
357 within this part waives, releases, compromises, or limits the  
358 liability of contractors, subcontractors, materialmen,  
359 manufacturers, architects, engineers, or any participant in the



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360 design or construction of a condominium for any claim brought by  
361 an association, unit owners, bulk assignees, or bulk buyers  
362 arising from the design of the condominium, construction  
363 defects, misrepresentations associated with condominium  
364 property, or violations of this chapter, unless specifically  
365 excluded in this part.

366 Section 4. This act shall take effect upon becoming a law.

367

368

369 ===== T I T L E A M E N D M E N T =====

370 And the title is amended as follows:

371 Delete everything before the enacting clause  
372 and insert:

373 A bill to be entitled

374 An act relating to community associations; amending s.  
375 718.103, F.S.; expanding the definition of "developer"  
376 to include a bulk assignee or bulk buyer; amending s.  
377 718.301, F.S.; revising conditions under which unit  
378 owners other than the developer may elect not less  
379 than a majority of the members of the board of  
380 administration of an association; creating part VII of  
381 ch. 718, F.S.; providing a short title; providing  
382 legislative findings and intent; defining the terms  
383 "bulk assignee" and "bulk buyer"; providing for the  
384 assignment of developer rights by a bulk assignee;  
385 specifying liabilities of bulk assignees and bulk  
386 buyers; providing exceptions; providing additional  
387 responsibilities of bulk assignees and bulk buyers;  
388 authorizing certain entities to assign developer



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389 rights to a bulk assignee; limiting the number of bulk  
390 assignees at any given time; providing for the  
391 transfer of control of a board of administration;  
392 providing effects of such transfer on parcels acquired  
393 by a bulk assignee; providing obligations of a bulk  
394 assignee upon the transfer of control of a board of  
395 administration; requiring that a bulk assignee certify  
396 certain information in writing; providing for the  
397 resolution of a conflict between specified provisions  
398 of state law; providing that the failure of a bulk  
399 assignee or bulk buyer to comply with specified  
400 provisions of state law results in the loss of certain  
401 protections and exemptions; requiring that a bulk  
402 assignee or bulk buyer file certain information with  
403 the Division of Florida Condominiums, Timeshares, and  
404 Mobile Homes of the Department of Business and  
405 Professional Regulation before offering any units for  
406 sale or lease in excess of a specified term; requiring  
407 that a copy of such information be provided to a  
408 prospective purchaser; requiring that certain  
409 contracts and disclosure statements contain specified  
410 statements; requiring that a bulk assignee or bulk  
411 buyer comply with certain disclosure requirements;  
412 prohibiting a bulk assignee from taking certain  
413 actions on behalf of an association while the bulk  
414 assignee is in control of the board of administration  
415 of the association and requiring that such bulk  
416 assignee comply with certain requirements; requiring  
417 that a bulk assignee or bulk buyer comply with certain



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418 requirements regarding certain contracts; providing  
419 unit owners with specified protections regarding  
420 certain contracts; requiring that a bulk buyer comply  
421 with certain requirements regarding the transfer of a  
422 unit; prohibiting a person from being classified as a  
423 bulk assignee or bulk buyer unless condominium parcels  
424 were acquired before a specified date; providing for  
425 the determination of the date of acquisition of a  
426 parcel; providing that the assignment of developer  
427 rights to a bulk assignee does not release a developer  
428 from certain liabilities; preserving certain  
429 liabilities for certain parties; providing an  
430 effective date.