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LEGISLATIVE ACTION

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

1           **Senate Substitute for Amendment (335666) (with title**  
2 **amendment)**

3  
4           Between lines 909 and 910  
5 insert:

6           Section 7. Subsection (16) of section 718.103, Florida  
7 Statutes, is amended to read:

8           718.103 Definitions.—As used in this chapter, the term:

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



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12           (a) An owner or lessee of a condominium or cooperative unit  
13 who has acquired the unit for his or her own occupancy; ~~or~~  
14 ~~does it include~~

15           (b) A cooperative association which creates a condominium  
16 by conversion of an existing residential cooperative after  
17 control of the association has been transferred to the unit  
18 owners if, following the conversion, the unit owners will be the  
19 same persons who were unit owners of the cooperative and no  
20 units are offered for sale or lease to the public as part of the  
21 plan of conversion; ~~or~~

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

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

28           Section 8. Subsection (1) of section 718.301, Florida  
29 Statutes, is amended to read:

30           718.301 Transfer of association control; claims of defect  
31 by association.—

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

40           (a) Three years after 50 percent of the units that will be



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41 operated ultimately by the association have been conveyed to  
42 purchasers;

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

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

50 (d) When some of the units have been conveyed to purchasers  
51 and none of the others are being constructed or offered for sale  
52 by the developer in the ordinary course of 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 whichever occurs first. The developer is entitled to elect at  
68 least one member of the board of administration of an  
69 association as long as the developer holds for sale in the



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70 ordinary course of business at least 5 percent, in condominiums  
71 with fewer than 500 units, and 2 percent, in condominiums with  
72 more than 500 units, of the units in a condominium operated by  
73 the association. Following the time the developer relinquishes  
74 control of the association, the developer may exercise the right  
75 to vote any developer-owned units in the same manner as any  
76 other unit owner except for purposes of reacquiring control of  
77 the association or selecting the majority members of the board  
78 of administration.

79 Section 9. Part VII of chapter 718, Florida Statutes,  
80 consisting of sections 718.701, 718.702, 718.703, 718.704,  
81 718.705, 718.706, 718.707, and 718.708, is created to read:

82 718.701 Short title.—This part may be cited as the  
83 “Distressed Condominium Relief Act.”

84 718.702 Legislative intent.—

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



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

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



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

131 718.703 Definitions.—As used in this part, the term:

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

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

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

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

145 718.704 Assignment and assumption of developer rights by  
146 bulk assignee; bulk buyer.—

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

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

153 (b) The obligation to:

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

156 2. Provide converter warranties on any portion of the



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

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

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

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

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

181 (2) A bulk assignee receiving the assignment of the rights  
182 of the developer to guarantee the level of assessments and fund  
183 budgetary deficits pursuant to s. 718.116 shall be deemed to  
184 have assumed and is liable for all obligations of the developer  
185 with respect to such guarantee, including any applicable funding



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

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

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

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

214 718.105 Board of administration; transfer of control.-





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

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

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



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244 materials referenced in the certificate as otherwise required  
245 under ss. 718.112 and 718.301 and this part. The responsibility  
246 of the bulk assignee for the audit required by s. 718.301(4)  
247 shall commence as of the date on which the bulk assignee elected  
248 a majority of the members of the board of administration.

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

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

256 718.706 Specific provisions pertaining to offering of units  
257 by a bulk assignee or bulk buyer.—

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

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

267 (b) An updated Frequently Asked Questions and Answers  
268 sheet;

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

271 (d) The financial information required by s. 718.111(13).

272 However, if a financial information report does not exist for



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273 the fiscal year before acquisition of title by the bulk assignee  
274 or bulk buyer, or accounting records cannot be obtained in good  
275 faith by the bulk assignee or the bulk buyer which would permit  
276 preparation of the required financial information report, the  
277 bulk assignee or bulk buyer is excused from the requirement of  
278 this paragraph. However, the bulk assignee or bulk buyer must  
279 include in the purchase contract the following statement in  
280 conspicuous type:

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

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

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

292 (b) The following statement in conspicuous type:

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

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

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



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



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  
367  
368 ===== T I T L E   A M E N D M E N T =====

369 And the title is amended as follows:

370       Delete line 66

371 and insert:

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



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



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418 certain contracts; requiring that a bulk buyer comply  
419 with certain requirements regarding the transfer of a  
420 unit; prohibiting a person from being classified as a  
421 bulk assignee or bulk buyer unless condominium parcels  
422 were acquired before a specified date; providing for  
423 the determination of the date of acquisition of a  
424 parcel; providing that the assignment of developer  
425 rights to a bulk assignee does not release a developer  
426 from certain liabilities; preserving certain  
427 liabilities for certain parties; amending s. 719.108,