

1                   A bill to be entitled  
2           An act relating to community associations; amending s.  
3           718.103, F.S.; revising the definition of the term  
4           "developer" to exclude a bulk assignee or bulk buyer;  
5           creating part VII of ch. 718, F.S., relating to distressed  
6           condominium relief; providing a short title; providing  
7           legislative findings and intent; defining the terms "bulk  
8           assignee" and "bulk buyer"; providing for the assignment  
9           of developer rights to and the assumption of developer  
10          rights by a bulk assignee; specifying liabilities of bulk  
11          assignees and bulk buyers; providing exceptions; providing  
12          additional responsibilities of bulk assignees and bulk  
13          buyers; authorizing certain entities to assign developer  
14          rights to a bulk assignee; limiting the number of bulk  
15          assignees at any given time; providing for the transfer of  
16          control of a board of administration; providing effects of  
17          such transfer on parcels acquired by a bulk assignee;  
18          providing obligations of a bulk assignee upon the transfer  
19          of control of a board of administration; requiring that a  
20          bulk assignee certify certain information in writing;  
21          providing for the resolution of a conflict between  
22          specified provisions of state law; providing that the  
23          failure of a bulk assignee or bulk buyer to comply with  
24          specified provisions of state law results in the loss of  
25          certain protections and exemptions; requiring that a bulk  
26          assignee or bulk buyer file certain information with the  
27          Division of Florida Condominiums, Timeshares, and Mobile  
28          Homes of the Department of Business and Professional

29 | Regulation before offering any units for sale or lease in  
30 | excess of a specified term; requiring that a copy of such  
31 | information be provided to a prospective purchaser;  
32 | requiring that certain contracts and disclosure statements  
33 | contain specified statements; requiring that a bulk  
34 | assignee or bulk buyer comply with certain disclosure  
35 | requirements; prohibiting a bulk assignee from taking  
36 | certain actions on behalf of an association while the bulk  
37 | assignee is in control of the board of administration of  
38 | the association and requiring that such bulk assignee  
39 | comply with certain requirements; requiring that a bulk  
40 | assignee or bulk buyer comply with certain requirements  
41 | regarding certain contracts; providing unit owners with  
42 | specified protections regarding certain contracts;  
43 | requiring that a bulk buyer comply with certain  
44 | requirements regarding the transfer of a unit; prohibiting  
45 | a person from being classified as a bulk assignee or bulk  
46 | buyer unless condominium parcels were acquired before a  
47 | specified date; providing for the determination of the  
48 | date of acquisition of a parcel; providing that the  
49 | assignment of developer rights to a bulk assignee or bulk  
50 | buyer does not release a developer from certain  
51 | liabilities; preserving certain liabilities for certain  
52 | parties; providing an effective date.

53 |  
54 | Be It Enacted by the Legislature of the State of Florida:

55 |  
56 | Section 1. Subsection (16) of section 718.103, Florida

57 Statutes, is amended to read:

58 718.103 Definitions.—As used in this chapter, the term:

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

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

65 (b) A cooperative association that ~~which~~ creates a  
66 condominium by conversion of an existing residential cooperative  
67 after control of the association has been transferred to the  
68 unit owners if, following the conversion, the unit owners will  
69 be the same persons who were unit owners of the cooperative and  
70 no units are offered for sale or lease to the public as part of  
71 the plan of conversion;  
72 ~~;~~

73 (c) A bulk assignee or bulk buyer as defined in s.  
74 718.703; or

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

79 Section 2. 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 PART VII

83 DISTRESSED CONDOMINIUM RELIEF

84 718.701 Short title.—This part may be cited as the  
"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  
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 erode 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 the potential of  
111 accompanying liabilities inherited from the original developer,  
112 which are potentially by definition imputed to the successor

113 purchaser, including a foreclosing mortgagee. This results in  
 114 the potential purchaser having unknown and unquantifiable risks,  
 115 and potential successor purchasers are unwilling to accept such  
 116 risks. The result is that condominium projects stagnate, leaving  
 117 all parties involved at an impasse without the ability to find a  
 118 solution.

119 (3) The Legislature finds and declares that it is the  
 120 public policy of this state to protect the interests of  
 121 developers, lenders, unit owners, and condominium associations  
 122 with regard to distressed condominiums, and that there is a need  
 123 for relief from certain provisions of the Florida Condominium  
 124 Act geared toward enabling economic opportunities within these  
 125 condominiums for successor purchasers, including foreclosing  
 126 mortgagees, while at the same time clarifying the ambiguity in  
 127 the law. Such relief would benefit existing unit owners and  
 128 condominium associations. The Legislature further finds and  
 129 declares that this situation cannot be open-ended without  
 130 potentially prejudicing the rights of unit owners and  
 131 condominium associations, and thereby declares that the  
 132 provisions of this part shall be used by purchasers of  
 133 condominium inventory for a specific and defined period.

134 718.703 Definitions.—As used in this part, the term:

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

136 (a) Acquires more than seven condominium parcels in a  
 137 single condominium as set forth in s. 718.707; and

138 (b) Receives an assignment of all or substantially all of  
 139 the rights of the developer as are set forth in the declaration  
 140 of condominium or in this chapter by a written instrument

141 recorded as an exhibit to the deed or as a separate instrument  
 142 in the public records of the county in which the condominium is  
 143 located.

144 (2) "Bulk buyer" means a person who acquires more than  
 145 seven condominium parcels in a single condominium as set forth  
 146 in s. 718.707 but who does not receive an assignment of any  
 147 developer rights other than, at the bulk buyer's option, the  
 148 right to conduct sales, leasing, and marketing activities within  
 149 the condominium; the right to be exempt from the payment of  
 150 working capital contributions to the condominium association  
 151 arising out of or in connection with the bulk buyer's  
 152 acquisition of a bulk number of units; and the right to be  
 153 exempt from any rights of first refusal which may be held by the  
 154 condominium association and would otherwise be applicable to  
 155 subsequent transfers of title from the bulk buyer to any third-  
 156 party purchaser concerning one or more units.

157 718.704 Assignment of developer rights to and assumption  
 158 of developer rights by bulk assignee; bulk buyer.-

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

162 (a) Warranties of a developer under s. 718.203(1) or s.  
 163 718.618, except for design, construction, development, or repair  
 164 work performed by or on behalf of such bulk assignee.

165 (b) The obligation to:

166 1. Fund converter reserves under s. 718.618 for a unit  
 167 that was not acquired by the bulk assignee; or

168 2. Provide converter warranties on any portion of the

169 condominium property except as may be expressly provided by the  
170 bulk assignee in the contract for purchase and sale executed  
171 with a purchaser and pertaining to any design, construction,  
172 development, or repair work performed by or on behalf of the  
173 bulk assignee.

174 (c) The requirement to provide the association with a  
175 cumulative audit of the association's finances from the date of  
176 formation of the condominium association as required by s.  
177 718.301. However, the bulk assignee shall provide an audit for  
178 the period for which the bulk assignee elects a majority of the  
179 members of the board of administration.

180 (d) Any liability arising out of or in connection with  
181 actions taken by the board of administration or the developer-  
182 appointed directors before the bulk assignee elects a majority  
183 of the members of the board of administration.

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

188  
189 Further, the bulk assignee is responsible for delivering  
190 documents and materials in accordance with s. 718.705(3). A bulk  
191 assignee may expressly assume some or all of the obligations of  
192 the developer described in paragraphs (a)-(e).

193 (2) A bulk assignee receiving the assignment of the rights  
194 of the developer to guarantee the level of assessments and fund  
195 budgetary deficits pursuant to s. 718.116 shall be deemed to  
196 have assumed and is liable for all obligations of the developer

197 with respect to such guarantee, including any applicable funding  
 198 of reserves to the extent required by law, for as long as the  
 199 guarantee remains in effect. A bulk assignee not receiving an  
 200 assignment of the right of the developer to guarantee the level  
 201 of assessments and fund budgetary deficits pursuant to s.  
 202 718.116 or a bulk buyer is not deemed to have assumed and is not  
 203 liable for the obligations of the developer with respect to such  
 204 guarantee, but is responsible for payment of assessments in the  
 205 same manner as all other owners of condominium parcels.

206 (3) A bulk buyer is liable for the duties and  
 207 responsibilities of the developer under the declaration and this  
 208 chapter only to the extent provided in this part, together with  
 209 any other duties or responsibilities of the developer expressly  
 210 assumed in writing by the bulk buyer.

211 (4) An acquirer of condominium parcels is not considered a  
 212 bulk assignee or a bulk buyer if the transfer to such acquirer  
 213 was made prior to the effective date of this Distressed  
 214 Condominium Relief Act or was made with the intent to hinder,  
 215 delay, or defraud any purchaser, unit owner, or the association,  
 216 or if the acquirer is a person who would constitute an insider  
 217 under s. 726.102(7).

218 (5) An assignment of developer rights to a bulk assignee  
 219 may be made by the developer, a previous bulk assignee, or a  
 220 court of competent jurisdiction acting on behalf of the  
 221 developer or the previous bulk assignee. At any particular time,  
 222 there may be no more than one bulk assignee within a  
 223 condominium, but there may be more than one bulk buyer. If more  
 224 than one acquirer of condominium parcels in the same condominium



225 receives an assignment of developer rights from the same person,  
226 the bulk assignee is the acquirer whose instrument of assignment  
227 is recorded first in applicable public records.

228 718.705 Board of administration; transfer of control.—

229 (1) For purposes of determining the timing for transfer of  
230 control of the board of administration of the association to  
231 unit owners other than the developer under s. 718.301(1)(a) and  
232 (b), if a bulk assignee is entitled to elect a majority of the  
233 members of the board, any condominium parcel acquired by the  
234 bulk assignee shall not be deemed to be conveyed to a purchaser,  
235 or to be owned by an owner other than the developer, until such  
236 condominium parcel is conveyed to an owner who is not a bulk  
237 assignee.

238 (2) Unless control of the board of administration of the  
239 association has already been relinquished pursuant to s.  
240 718.301(1), the bulk assignee is obligated to relinquish control  
241 of the association in accordance with s. 718.301(1) or (2) and  
242 this part as if the bulk assignee were the developer.

243 (3) When a bulk assignee relinquishes control of the board  
244 of administration, the bulk assignee shall deliver all of those  
245 items required by s. 718.301(4). However, the bulk assignee is  
246 not required to deliver items and documents not in the  
247 possession of the bulk assignee during the period during which  
248 the bulk assignee was entitled to elect not less than a majority  
249 of the members of the board of administration. In conjunction  
250 with the acquisition of condominium parcels, a bulk assignee  
251 shall undertake a good faith effort to obtain the documents and  
252 materials required to be provided to the association pursuant to

253 s. 718.301(4). To the extent the bulk assignee is not able to  
 254 obtain all of such documents and materials, the bulk assignee  
 255 shall certify in writing to the association the names or  
 256 descriptions of the documents and materials that were not  
 257 obtainable by the bulk assignee. Delivery of the certificate  
 258 relieves the bulk assignee of responsibility for the delivery of  
 259 the documents and materials referenced in the certificate as  
 260 otherwise required under ss. 718.112 and 718.301 and this part.  
 261 The responsibility of the bulk assignee for the audit required  
 262 by s. 718.301(4) shall commence as of the date on which the bulk  
 263 assignee elected a majority of the members of the board of  
 264 administration.

265 (4) If a conflict arises between the provisions or  
 266 application of this section and s. 718.301, this section shall  
 267 prevail.

268 (5) Failure of a bulk assignee or bulk buyer to  
 269 substantially comply with all the requirements contained in this  
 270 part shall result in the loss of all protections or exemptions  
 271 provided under this part.

272 718.706 Specific provisions pertaining to offering of  
 273 units by a bulk assignee or bulk buyer.—

274 (1) Before offering any units for sale or for lease for a  
 275 term exceeding 5 years, a bulk assignee or a bulk buyer shall  
 276 file the following documents with the division and provide such  
 277 documents to a prospective purchaser or tenant:

278 (a) An updated prospectus or offering circular, or a  
 279 supplement to the prospectus or offering circular, filed by the  
 280 creating developer prepared in accordance with s. 718.504, which

281 shall include the form of contract for purchase and sale in  
282 compliance with s. 718.503(1) (a);

283 (b) An updated Frequently Asked Questions and Answers  
284 sheet;

285 (c) The executed escrow agreement if required under s.  
286 718.202; and

287 (d) The financial information required by s. 718.111(13).  
288 However, if a financial information report does not exist for  
289 the fiscal year before acquisition of title by the bulk assignee  
290 or bulk buyer, or accounting records cannot be obtained in good  
291 faith by the bulk assignee or the bulk buyer which would permit  
292 preparation of the required financial information report, the  
293 bulk assignee or bulk buyer is excused from the requirement of  
294 this paragraph. However, the bulk assignee or bulk buyer must  
295 include in the purchase contract the following statement in  
296 conspicuous type:

297  
298 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER  
299 SECTION 718.111(13), FLORIDA STATUTES, FOR THE  
300 IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION  
301 IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS  
302 A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE  
303 ASSOCIATION.

304  
305 (2) Before offering any units for sale or for lease for a  
306 term exceeding 5 years, a bulk assignee shall file with the  
307 division and provide to a prospective purchaser a disclosure  
308 statement that must include, but is not limited to:

309 (a) A description of any rights of the developer which  
 310 have been assigned to the bulk assignee;

311 (b) The following statement in conspicuous type:

312  
 313 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF  
 314 THE DEVELOPER UNDER SECTION 718.203(1) OR SECTION  
 315 718.618, FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR  
 316 DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK  
 317 PERFORMED BY OR ON BEHALF OF SELLER.

318  
 319 (c) If the condominium is a conversion subject to part VI,  
 320 the following statement in conspicuous type:

321  
 322 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER  
 323 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER  
 324 SECTION 718.618, FLORIDA STATUTES, ON ANY PORTION OF  
 325 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY  
 326 REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE  
 327 AND SALE EXECUTED BY THE SELLER AND THE DEVELOPER AND  
 328 PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT,  
 329 OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE  
 330 SELLER.

331  
 332 (3) In addition to the requirements set forth in  
 333 subsection (1), a bulk assignee or bulk buyer must comply with  
 334 the nondeveloper disclosure requirements set forth in s.  
 335 718.503(2) before offering any units for sale or for lease for a  
 336 term exceeding 5 years.

337 (4) While in control of the board of administration of the  
338 association, a bulk assignee may not authorize, on behalf of the  
339 association:

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

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

348 (5) A bulk assignee or bulk buyer shall comply with all  
349 the requirements of s. 718.302 regarding any contracts entered  
350 into by the association during the period the bulk assignee or  
351 bulk buyer maintains control of the board of administration.  
352 Unit owners shall be afforded all the protections contained in  
353 s. 718.302 regarding agreements entered into by the association  
354 before unit owners other than the developer, bulk assignee, or  
355 bulk buyer elected a majority of the board of administration.

356 (6) A bulk buyer shall comply with the requirements  
357 contained in the declaration regarding any transfer of a unit,  
358 including sales, leases, and subleases. A bulk buyer is not  
359 entitled to any exemptions afforded a developer or successor  
360 developer under this chapter regarding any transfer of a unit,  
361 including sales, leases, or subleases.

362 718.707 Time limitation for classification as bulk  
363 assignee or bulk buyer.—A person acquiring condominium parcels  
364 may not be classified as a bulk assignee or bulk buyer unless

365 the condominium parcels were acquired before July 1, 2012. The  
 366 date of such acquisition shall be determined by the date of  
 367 recording of a deed or other instrument of conveyance for such  
 368 parcels in the public records of the county in which the  
 369 condominium is located or by the date of issuance of a  
 370 certificate of title in a foreclosure proceeding with respect to  
 371 such condominium parcels.

372 718.708 Liability of developers and others.—An assignment  
 373 of developer rights to a bulk assignee or bulk buyer does not  
 374 release the creating developer from any liabilities under the  
 375 declaration or this chapter. This part does not limit the  
 376 liability of the creating developer for claims brought by unit  
 377 owners, bulk assignees, or bulk buyers for violations of this  
 378 chapter by the creating developer, unless specifically excluded  
 379 in this part. Nothing contained within this part waives,  
 380 releases, compromises, or limits the liability of contractors,  
 381 subcontractors, materialmen, manufacturers, architects,  
 382 engineers, or any participant in the design or construction of a  
 383 condominium for any claim brought by an association, unit  
 384 owners, bulk assignees, or bulk buyers arising from the design  
 385 of the condominium, construction defects, misrepresentations  
 386 associated with condominium property, or violations of this  
 387 chapter, unless specifically excluded in this part.

388 Section 3. This act shall take effect upon becoming a law.