

By Senator Fasano

11-00506B-10

20101196

1 A bill to be entitled
2 An act relating to community associations; creating s.
3 627.714, F.S.; requiring that coverage under a unit
4 owner's policy for certain assessments include at
5 least a minimum amount of loss assessment coverage;
6 requiring that every property insurance policy to an
7 individual unit owner contain a specified provision;
8 amending s. 633.0215, F.S.; providing an exemption for
9 certain condominiums from installing a manual fire
10 alarm system as required in the Life Safety Code if
11 certain conditions are met; amending s. 718.110, F.S.;
12 providing for the application of certain amendments to
13 a declaration of condominium to certain unit owners;
14 amending s. 718.111, F.S.; providing penalties for any
15 person who knowingly or intentionally defaces or
16 destroys certain records of an association with the
17 intent to harm the association or any of its members;
18 providing that an association is not responsible for
19 the use or misuse of certain information obtained
20 pursuant to state law requiring the maintenance of
21 certain records of an association; providing an
22 exception; providing that, notwithstanding the other
23 requirements, certain records are not accessible to
24 unit owners; requiring that any rules adopted for the
25 purpose of setting forth accounting principles or
26 addressing financial reporting requirements include
27 certain provisions and standards; extending the
28 deadline by which an association must mail a copy of
29 its annual financial report; revising the ranges of

11-00506B-10

20101196

30 annual revenue upon which certain requirements
31 relating to an association's financial statements are
32 based; amending s. 718.112, F.S.; revising
33 requirements for the reappointment of certain board
34 members; revising board eligibility requirements;
35 revising notice requirements for board candidates;
36 establishing requirements for newly elected board
37 members; providing that a director or officer
38 delinquent in the payment of a fee, fine, regular
39 assessment, or special assessment by more than a
40 specified number of days is deemed to have abandoned
41 the office; requiring that a director charged by
42 information or indictment of certain offenses
43 involving an association's funds or property be
44 removed from office; amending s. 718.115, F.S.;
45 requiring that certain services obtained pursuant to a
46 bulk contract as provided in the declaration be deemed
47 a common expense; requiring that such contracts
48 contain certain provisions; authorizing the
49 cancellation of certain contracts; amending s.
50 718.116, F.S.; limiting the amount of certain costs to
51 the unit owner; providing an exception; authorizing an
52 association to demand future regular assessments
53 related to the condominium unit under specified
54 conditions; providing that the demand is continuing in
55 nature; requiring that a tenant continue to pay
56 assessments until the occurrence of specified events;
57 requiring the delivery of notice of such demand;
58 limiting the liability of a tenant; amending s.

11-00506B-10

20101196

59 718.303, F.S.; authorizing an association to suspend
60 for a reasonable time the right of a unit owner or the
61 unit's occupant, licensee, or invitee to use certain
62 common elements under certain circumstances; excluding
63 certain common elements from such authorization;
64 prohibiting a fine from being levied or a suspension
65 from being imposed unless the association meets
66 certain notice requirements; providing circumstances
67 under which such notice requirements do not apply;
68 providing procedures and notice requirements for
69 levying a fine or imposing a suspension; authorizing
70 an association to suspend voting rights due to
71 nonpayment of assessments, fines, or other charges
72 delinquent by a specified number of days under certain
73 circumstances; amending s. 718.103, F.S.; expanding
74 the definition of "developer" to include a bulk
75 assignee or bulk buyer; amending s. 718.301, F.S.;
76 revising conditions under which unit owners other than
77 the developer may elect not less than a majority of
78 the members of the board of administration of an
79 association; creating part VII of ch. 718, F.S.;
80 providing a short title; providing legislative
81 findings and intent; defining the terms "bulk
82 assignee" and "bulk buyer"; providing for the
83 assignment of developer rights by a bulk assignee;
84 specifying liabilities of bulk assignees and bulk
85 buyers; providing exceptions; providing additional
86 responsibilities of bulk assignees and bulk buyers;
87 authorizing certain entities to assign developer

11-00506B-10

20101196

88 rights to a bulk assignee; limiting the number of bulk
89 assignees at any given time; providing for the
90 transfer of control of a board of administration;
91 providing effects of such transfer on parcels acquired
92 by a bulk assignee; providing obligations of a bulk
93 assignee upon the transfer of control of a board of
94 administration; requiring that a bulk assignee certify
95 certain information in writing; providing for the
96 resolution of a conflict between specified provisions
97 of state law; providing that the failure of a bulk
98 assignee or bulk buyer to comply with specified
99 provisions of state law results in the loss of certain
100 protections and exemptions; requiring that a bulk
101 assignee or bulk buyer file certain information with
102 the Division of Florida Condominiums, Timeshares, and
103 Mobile Homes of the Department of Business and
104 Professional Regulation before offering any units for
105 sale or lease in excess of a specified term; requiring
106 that a copy of such information be provided to a
107 prospective purchaser; requiring that certain
108 contracts and disclosure statements contain specified
109 statements; requiring that a bulk assignee or bulk
110 buyer comply with certain disclosure requirements;
111 prohibiting a bulk assignee from taking certain
112 actions on behalf of an association while the bulk
113 assignee is in control of the board of administration
114 of the association and requiring that such bulk
115 assignee comply with certain requirements; requiring
116 that a bulk assignee or bulk buyer comply with certain

11-00506B-10

20101196

117 requirements regarding certain contracts; providing
118 unit owners with specified protections regarding
119 certain contracts; requiring that a bulk buyer comply
120 with certain requirements regarding the transfer of a
121 unit; prohibiting a person from being classified as a
122 bulk assignee or bulk buyer unless condominium parcels
123 were acquired before a specified date; providing for
124 the determination of the date of acquisition of a
125 parcel; providing that the assignment of developer
126 rights to a bulk assignee does not release a developer
127 from certain liabilities; preserving certain
128 liabilities for certain parties; amending s. 719.108,
129 F.S.; authorizing an association to recover charges
130 incurred in connection with collecting a delinquent
131 assessment up to a specified maximum amount; providing
132 a prioritized list for disbursement of payments
133 received by an association; providing for a lien by an
134 association on a condominium unit for certain fees and
135 costs; providing procedures and notice requirements
136 for the filing of a lien by an association;
137 authorizing an association to demand future regular
138 assessments related to a unit under specified
139 conditions; amending s. 720.304, F.S.; providing that
140 a flagpole and any flagpole display are subject to
141 certain codes and regulations; amending s. 720.305,
142 F.S.; authorizing the association to suspend certain
143 rights under certain circumstances; providing that
144 certain provisions regarding the suspension-of-use
145 rights of an association do not apply to certain

11-00506B-10

20101196

146 portions of common areas; providing procedures and
147 notice requirements for levying a fine or imposing a
148 suspension; amending s. 720.3085, F.S.; authorizing an
149 association to demand future regular assessments
150 related to a parcel under specified conditions;
151 amending s. 720.31, F.S.; authorizing an association
152 to enter into certain agreements; requiring that
153 certain items be stated and fully described in the
154 declaration; limiting an association's power to enter
155 into such agreements after a specified period
156 following the recording of a declaration; requiring
157 that certain agreements be approved by a specified
158 percentage of voting interests of an association when
159 the declaration is silent as to the authority of an
160 association to enter into such agreement; authorizing
161 an association to join with other associations or a
162 master association under certain circumstances and for
163 specified purposes; repealing s. 553.509(2), F.S.,
164 relating to public elevators and emergency operation
165 plans in certain condominiums and multifamily
166 dwellings; amending s. 720.303, F.S.; revising
167 provisions relating to homeowners' association board
168 meetings, inspection and copying of records, and
169 reserve accounts of budgets; prohibiting certain
170 association personnel from receiving a salary or
171 compensation; providing exceptions; amending s.
172 720.306, F.S.; providing requirements for secret
173 ballots; creating s. 720.315, F.S.; prohibiting the
174 board of directors of a homeowners' association from

11-00506B-10

20101196

175 levying a special assessment before turnover of the
176 association by the developer unless certain conditions
177 are met; providing an effective date.

178
179 Be It Enacted by the Legislature of the State of Florida:

180
181 Section 1. Section 627.714, Florida Statutes, is created to
182 read:

183 627.714 Residential condominium unit owner coverage; loss
184 assessment coverage required; excess coverage provision
185 required.—For policies issued or renewed on or after July 1,
186 2010, coverage under a unit owner's residential property policy
187 shall include property loss assessment coverage of at least
188 \$2,000 for all assessments made as a result of the same direct
189 loss to the property, regardless of the number of assessments,
190 owned by all members of the association collectively when such
191 loss is of the type of loss covered by the unit owner's
192 residential property insurance policy, to which a deductible
193 shall apply of no more than \$250 per direct property loss. If a
194 deductible was or will be applied to other property loss
195 sustained by the unit owner resulting from the same direct loss
196 to the property, no deductible shall apply to the loss
197 assessment coverage. Every individual unit owner's residential
198 property policy must contain a provision stating that the
199 coverage afforded by such policy is excess coverage over the
200 amount recoverable under any other policy covering the same
201 property.

202 Section 2. Subsection (13) is added to section 633.0215,
203 Florida Statutes, to read:

11-00506B-10

20101196__

204 633.0215 Florida Fire Prevention Code.-

205 (13) A condominium that is one or two stories in height and
206 has an exterior means of egress corridor is exempt from
207 installing a manual fire alarm system as required in s. 9.6 of
208 the most recent edition of the Life Safety Code adopted in the
209 Florida Fire Prevention Code.

210 Section 3. Subsection (13) of section 718.110, Florida
211 Statutes, is amended to read:

212 718.110 Amendment of declaration; correction of error or
213 omission in declaration by circuit court.-

214 (13) Any amendment prohibiting ~~restricting~~ unit owners from
215 renting their units or altering the duration of the rental term
216 or the number of times unit owners are entitled to rent their
217 units during a specified period ~~owners' rights relating to the~~
218 ~~rental of units~~ applies only to unit owners who consent to the
219 amendment and unit owners who acquire title to ~~purchase~~ their
220 units after the effective date of that amendment.

221 Section 4. Subsections (12) and (13) of section 718.111,
222 Florida Statutes, are amended to read:

223 718.111 The association.-

224 (12) OFFICIAL RECORDS.-

225 (a) From the inception of the association, the association
226 shall maintain each of the following items, when applicable,
227 which shall constitute the official records of the association:

228 1. A copy of the plans, permits, warranties, and other
229 items provided by the developer pursuant to s. 718.301(4).

230 2. A photocopy of the recorded declaration of condominium
231 of each condominium operated by the association and of each
232 amendment to each declaration.

11-00506B-10

20101196

233 3. A photocopy of the recorded bylaws of the association
234 and of each amendment to the bylaws.

235 4. A certified copy of the articles of incorporation of the
236 association, or other documents creating the association, and of
237 each amendment thereto.

238 5. A copy of the current rules of the association.

239 6. A book or books which contain the minutes of all
240 meetings of the association, of the board of administration, and
241 of unit owners, which minutes shall be retained for a period of
242 not less than 7 years.

243 7. A current roster of all unit owners and their mailing
244 addresses, unit identifications, voting certifications, and, if
245 known, telephone numbers. The association shall also maintain
246 the electronic mailing addresses and the numbers designated by
247 unit owners for receiving notice sent by electronic transmission
248 of those unit owners consenting to receive notice by electronic
249 transmission. The electronic mailing addresses and numbers
250 provided by unit owners to receive notice by electronic
251 transmission shall be removed from association records when
252 consent to receive notice by electronic transmission is revoked.
253 However, the association is not liable for an erroneous
254 disclosure of the electronic mail address or the number for
255 receiving electronic transmission of notices.

256 8. All current insurance policies of the association and
257 condominiums operated by the association.

258 9. A current copy of any management agreement, lease, or
259 other contract to which the association is a party or under
260 which the association or the unit owners have an obligation or
261 responsibility.

11-00506B-10

20101196__

262 10. Bills of sale or transfer for all property owned by the
263 association.

264 11. Accounting records for the association and separate
265 accounting records for each condominium which the association
266 operates. All accounting records shall be maintained for a
267 period of not less than 7 years. Any person who knowingly or
268 intentionally defaces or destroys accounting records required to
269 be created and maintained by this chapter during the period for
270 which such records are required to be maintained pursuant to
271 this chapter, or who knowingly or intentionally fails to create
272 or maintain accounting records required to be maintained by this
273 chapter, with the intent of causing harm to the association or
274 one or more of its members, is personally subject to a civil
275 penalty pursuant to s. 718.501(1)(d). The accounting records
276 shall include, but are not limited to:

277 a. Accurate, itemized, and detailed records of all receipts
278 and expenditures.

279 b. A current account and a monthly, bimonthly, or quarterly
280 statement of the account for each unit designating the name of
281 the unit owner, the due date and amount of each assessment, the
282 amount paid upon the account, and the balance due.

283 c. All audits, reviews, accounting statements, and
284 financial reports of the association or condominium.

285 d. All contracts for work to be performed. Bids for work to
286 be performed shall also be considered official records and shall
287 be maintained by the association.

288 12. Ballots, sign-in sheets, voting proxies, and all other
289 papers relating to voting by unit owners, which shall be
290 maintained for a period of 1 year from the date of the election,

11-00506B-10

20101196

291 vote, or meeting to which the document relates, notwithstanding
292 paragraph (b).

293 13. All rental records, when the association is acting as
294 agent for the rental of condominium units.

295 14. A copy of the current question and answer sheet as
296 described by s. 718.504.

297 15. All other records of the association not specifically
298 included in the foregoing which are related to the operation of
299 the association.

300 16. A copy of the inspection report as provided for in s.
301 718.301(4)(p).

302 (b) The official records of the association shall be
303 maintained within the state for at least 7 years. The records of
304 the association shall be made available to a unit owner within
305 45 miles of the condominium property or within the county in
306 which the condominium property is located within 5 working days
307 after receipt of written request by the board or its designee.
308 However, such distance requirement does not apply to an
309 association governing a timeshare condominium. This paragraph
310 may be complied with by having a copy of the official records of
311 the association available for inspection or copying on the
312 condominium property or association property, or the association
313 may offer the option of making the records of the association
314 available to a unit owner either electronically via the Internet
315 or by allowing the records to be viewed in electronic format on
316 a computer screen and printed upon request. The association is
317 not responsible for the use or misuse of the information
318 provided to an association member or his or her authorized
319 representative pursuant to the compliance requirements of this

11-00506B-10

20101196

320 chapter unless the association has an affirmative duty not to
321 disclose such information pursuant to this chapter.

322 (c) The official records of the association are open to
323 inspection by any association member or the authorized
324 representative of such member at all reasonable times. The right
325 to inspect the records includes the right to make or obtain
326 copies, at the reasonable expense, if any, of the association
327 member. The association may adopt reasonable rules regarding the
328 frequency, time, location, notice, and manner of record
329 inspections and copying. The failure of an association to
330 provide the records within 10 working days after receipt of a
331 written request shall create a rebuttable presumption that the
332 association willfully failed to comply with this paragraph. A
333 unit owner who is denied access to official records is entitled
334 to the actual damages or minimum damages for the association's
335 willful failure to comply with this paragraph. The minimum
336 damages shall be \$50 per calendar day up to 10 days, the
337 calculation to begin on the 11th working day after receipt of
338 the written request. The failure to permit inspection of the
339 association records as provided herein entitles any person
340 prevailing in an enforcement action to recover reasonable
341 attorney's fees from the person in control of the records who,
342 directly or indirectly, knowingly denied access to the records
343 for inspection. Any person who knowingly or intentionally
344 defaces or destroys accounting records that are required by this
345 chapter to be maintained during the period for which such
346 records are required to be maintained pursuant to this chapter,
347 or who knowingly or intentionally fails to create or maintain
348 accounting records that are required to be created or maintained

11-00506B-10

20101196__

349 by this chapter, with the intent of causing harm to the
350 association or one or more of its members, is personally subject
351 to a civil penalty pursuant to s. 718.501(1)(d). The association
352 shall maintain an adequate number of copies of the declaration,
353 articles of incorporation, bylaws, and rules, and all amendments
354 to each of the foregoing, as well as the question and answer
355 sheet provided for in s. 718.504 and year-end financial
356 information required in this section, on the condominium
357 property to ensure their availability to unit owners and
358 prospective purchasers, and may charge its actual costs for
359 preparing and furnishing these documents to those requesting the
360 documents ~~same~~. Notwithstanding the provisions of this
361 paragraph, the following records shall not be accessible to unit
362 owners:

363 1. Any record protected by the lawyer-client privilege as
364 described in s. 90.502; and any record protected by the work-
365 product privilege, including any record prepared by an
366 association attorney or prepared at the attorney's express
367 direction; which reflects a mental impression, conclusion,
368 litigation strategy, or legal theory of the attorney or the
369 association, and which was prepared exclusively for civil or
370 criminal litigation or for adversarial administrative
371 proceedings, or which was prepared in anticipation of imminent
372 civil or criminal litigation or imminent adversarial
373 administrative proceedings until the conclusion of the
374 litigation or adversarial administrative proceedings.

375 2. Information obtained by an association in connection
376 with the approval of the lease, sale, or other transfer of a
377 unit.

11-00506B-10

20101196__

378 3. Personnel records of association employees, including,
379 but not limited to, disciplinary, payroll, health, and insurance
380 records.

381 ~~4.3.~~ Medical records of unit owners.

382 ~~5.4.~~ Social security numbers, driver's license numbers,
383 credit card numbers, e-mail addresses, telephone numbers,
384 emergency contact information, any addresses of a unit owner
385 other than as provided to fulfill the association's notice
386 requirements, and other personal identifying information of any
387 person, excluding the person's name, unit designation, mailing
388 address, and property address.

389 6. Any electronic security measure that is used by the
390 association to safeguard data, including passwords.

391 7. The software and operating system used by the
392 association which allows manipulation of data, even if the owner
393 owns a copy of the same software used by the association. The
394 data is part of the official records of the association.

395 (13) FINANCIAL REPORTING.—Within 90 days after the end of
396 the fiscal year, or annually on a date provided in the bylaws,
397 the association shall prepare and complete, or contract for the
398 preparation and completion of, a financial report for the
399 preceding fiscal year. Within 21 days after the final financial
400 report is completed by the association or received from the
401 third party, but not later than 180 ~~120~~ days after the end of
402 the fiscal year or other date as provided in the bylaws, the
403 association shall mail to each unit owner at the address last
404 furnished to the association by the unit owner, or hand deliver
405 to each unit owner, a copy of the financial report or a notice
406 that a copy of the financial report will be mailed or hand

11-00506B-10

20101196

407 delivered to the unit owner, without charge, upon receipt of a
408 written request from the unit owner. The division shall adopt
409 rules setting forth uniform accounting principles and standards
410 to be used by all associations and shall adopt rules addressing
411 financial reporting requirements for multicondominium
412 associations. The rules shall include, but not be limited to,
413 standards for presenting a summary of association reserves,
414 including, but not limited to, a good faith estimate disclosing
415 the annual amount of reserve funds that would be necessary for
416 the association to fully fund reserves for each reserve item
417 based on the straight-line accounting method. This disclosure is
418 not applicable to reserves funded via the pooling method ~~uniform~~
419 ~~accounting principles and standards for stating the disclosure~~
420 ~~of at least a summary of the reserves, including information as~~
421 ~~to whether such reserves are being funded at a level sufficient~~
422 ~~to prevent the need for a special assessment and, if not, the~~
423 ~~amount of assessments necessary to bring the reserves up to the~~
424 ~~level necessary to avoid a special assessment. The person~~
425 ~~preparing the financial reports shall be entitled to rely on an~~
426 ~~inspection report prepared for or provided to the association to~~
427 ~~meet the fiscal and fiduciary standards of this chapter. In~~
428 adopting such rules, the division shall consider the number of
429 members and annual revenues of an association. Financial reports
430 shall be prepared as follows:

431 (a) An association that meets the criteria of this
432 paragraph shall prepare or cause to be prepared a complete set
433 of financial statements in accordance with generally accepted
434 accounting principles. The financial statements shall be based
435 upon the association's total annual revenues, as follows:

11-00506B-10

20101196__

436 1. An association with total annual revenues of \$400,000
 437 ~~\$100,000~~ or more, but less than \$600,000 ~~\$200,000~~, shall prepare
 438 compiled financial statements.

439 2. An association with total annual revenues of at least
 440 \$600,000 ~~\$200,000~~, but less than \$800,000 ~~\$400,000~~, shall
 441 prepare reviewed financial statements.

442 3. An association with total annual revenues of \$800,000
 443 ~~\$400,000~~ or more shall prepare audited financial statements.

444 (b)1. An association with total annual revenues of less
 445 than \$400,000 ~~\$100,000~~ shall prepare a report of cash receipts
 446 and expenditures.

447 2. An association that ~~which~~ operates fewer ~~less~~ than 75 ~~50~~
 448 units, regardless of the association's annual revenues, shall
 449 prepare a report of cash receipts and expenditures in lieu of
 450 financial statements required by paragraph (a).

451 3. A report of cash receipts and disbursements must
 452 disclose the amount of receipts by accounts and receipt
 453 classifications and the amount of expenses by accounts and
 454 expense classifications, including, but not limited to, the
 455 following, as applicable: costs for security, professional and
 456 management fees and expenses, taxes, costs for recreation
 457 facilities, expenses for refuse collection and utility services,
 458 expenses for lawn care, costs for building maintenance and
 459 repair, insurance costs, administration and salary expenses, and
 460 reserves accumulated and expended for capital expenditures,
 461 deferred maintenance, and any other category for which the
 462 association maintains reserves.

463 (c) An association may prepare or cause to be prepared,
 464 without a meeting of or approval by the unit owners:

11-00506B-10

20101196__

465 1. Compiled, reviewed, or audited financial statements, if
466 the association is required to prepare a report of cash receipts
467 and expenditures;

468 2. Reviewed or audited financial statements, if the
469 association is required to prepare compiled financial
470 statements; or

471 3. Audited financial statements if the association is
472 required to prepare reviewed financial statements.

473 (d) If approved by a majority of the voting interests
474 present at a properly called meeting of the association, an
475 association may prepare or cause to be prepared:

476 1. A report of cash receipts and expenditures in lieu of a
477 compiled, reviewed, or audited financial statement;

478 2. A report of cash receipts and expenditures or a compiled
479 financial statement in lieu of a reviewed or audited financial
480 statement; or

481 3. A report of cash receipts and expenditures, a compiled
482 financial statement, or a reviewed financial statement in lieu
483 of an audited financial statement.

484

485 Such meeting and approval must occur before ~~prior to~~ the end of
486 the fiscal year and is effective only for the fiscal year in
487 which the vote is taken, except that the approval also may be
488 effective for the following fiscal year. With respect to an
489 association to which the developer has not turned over control
490 of the association, all unit owners, including the developer,
491 may vote on issues related to the preparation of financial
492 reports for the first 2 fiscal years of the association's
493 operation, beginning with the fiscal year in which the

11-00506B-10

20101196

494 declaration is recorded. Thereafter, all unit owners except the
495 developer may vote on such issues until control is turned over
496 to the association by the developer. Any audit or review
497 prepared under this section shall be paid for by the developer
498 if done prior to turnover of control of the association. An
499 association may not waive the financial reporting requirements
500 of this section for more than 3 consecutive years.

501 Section 5. Paragraphs (d), (n), and (o) of subsection (2)
502 of section 718.112, Florida Statutes, are amended to read:

503 718.112 Bylaws.—

504 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
505 following and, if they do not do so, shall be deemed to include
506 the following:

507 (d) *Unit owner meetings*.—

508 1. There shall be an annual meeting of the unit owners held
509 at the location provided in the association bylaws and, if the
510 bylaws are silent as to the location, the meeting shall be held
511 within 45 miles of the condominium property. However, such
512 distance requirement does not apply to an association governing
513 a timeshare condominium. Unless the bylaws provide otherwise, a
514 vacancy on the board caused by the expiration of a director's
515 term shall be filled by electing a new board member, and the
516 election shall be by secret ballot; however, if the number of
517 vacancies equals or exceeds the number of candidates, no
518 election is required. The terms of all members of the board
519 shall expire at the annual meeting and such board members may
520 stand for reelection unless otherwise permitted by the bylaws.
521 In the event that the bylaws permit staggered terms of no more
522 than 2 years and upon approval of a majority of the total voting

11-00506B-10

20101196__

523 interests, the association board members may serve 2-year
524 staggered terms. If the number ~~no person is interested in or~~
525 ~~demonstrates an intention to run for the position~~ of a board
526 members ~~member~~ whose terms have ~~term has~~ expired according to
527 the provisions of this subparagraph exceeds the number of
528 eligible members showing interest in or demonstrating an
529 intention to run for the vacant positions, each ~~such~~ board
530 member whose term has expired shall become eligible for
531 reappointment ~~be automatically reappointed~~ to the board of
532 administration and need not stand for reelection. In a
533 condominium association of more than 10 units, coowners of a
534 unit may not serve as members of the board of directors at the
535 same time unless they own more than one unit and are not co-
536 occupants of a unit or unless there are not enough owners to
537 fill the vacancies on the board. Any unit owner desiring to be a
538 candidate for board membership shall comply with sub-
539 subparagraph ~~subparagraph~~ 3.a. A person who has been suspended
540 or removed by the division under this chapter, or who is
541 delinquent in the payment of any fee, fine, or special or
542 regular assessment as provided in paragraph (n), is not eligible
543 for board membership. A person who has been convicted of any
544 felony in this state or in a United States District or
545 Territorial Court, or who has been convicted of any offense in
546 another jurisdiction that would be considered a felony if
547 committed in this state, is not eligible for board membership
548 unless such felon's civil rights have been restored for a period
549 of no less than 5 years as of the date on which such person
550 seeks election to the board. The validity of an action by the
551 board is not affected if it is later determined that a member of

11-00506B-10

20101196

552 the board is ineligible for board membership due to having been
553 convicted of a felony.

554 2. The bylaws shall provide the method of calling meetings
555 of unit owners, including annual meetings. Written notice, which
556 notice must include an agenda, shall be mailed, hand delivered,
557 or electronically transmitted to each unit owner at least 14
558 days prior to the annual meeting and shall be posted in a
559 conspicuous place on the condominium property at least 14
560 continuous days preceding the annual meeting. Upon notice to the
561 unit owners, the board shall by duly adopted rule designate a
562 specific location on the condominium property or association
563 property upon which all notices of unit owner meetings shall be
564 posted; however, if there is no condominium property or
565 association property upon which notices can be posted, this
566 requirement does not apply. In lieu of or in addition to the
567 physical posting of notice of any meeting of the unit owners on
568 the condominium property, the association may, by reasonable
569 rule, adopt a procedure for conspicuously posting and repeatedly
570 broadcasting the notice and the agenda on a closed-circuit cable
571 television system serving the condominium association. However,
572 if broadcast notice is used in lieu of a notice posted
573 physically on the condominium property, the notice and agenda
574 must be broadcast at least four times every broadcast hour of
575 each day that a posted notice is otherwise required under this
576 section. When broadcast notice is provided, the notice and
577 agenda must be broadcast in a manner and for a sufficient
578 continuous length of time so as to allow an average reader to
579 observe the notice and read and comprehend the entire content of
580 the notice and the agenda. Unless a unit owner waives in writing

11-00506B-10

20101196

581 the right to receive notice of the annual meeting, such notice
582 shall be hand delivered, mailed, or electronically transmitted
583 to each unit owner. Notice for meetings and notice for all other
584 purposes shall be mailed to each unit owner at the address last
585 furnished to the association by the unit owner, or hand
586 delivered to each unit owner. However, if a unit is owned by
587 more than one person, the association shall provide notice, for
588 meetings and all other purposes, to that one address which the
589 developer initially identifies for that purpose and thereafter
590 as one or more of the owners of the unit shall so advise the
591 association in writing, or if no address is given or the owners
592 of the unit do not agree, to the address provided on the deed of
593 record. An officer of the association, or the manager or other
594 person providing notice of the association meeting, shall
595 provide an affidavit or United States Postal Service certificate
596 of mailing, to be included in the official records of the
597 association affirming that the notice was mailed or hand
598 delivered, in accordance with this provision.

599 3.a. The members of the board shall be elected by written
600 ballot or voting machine. Proxies shall in no event be used in
601 electing the board, either in general elections or elections to
602 fill vacancies caused by recall, resignation, or otherwise,
603 unless otherwise provided in this chapter. Not less than 60 days
604 before a scheduled election, the association shall mail,
605 deliver, or electronically transmit, whether by separate
606 association mailing or included in another association mailing,
607 delivery, or transmission, including regularly published
608 newsletters, to each unit owner entitled to a vote, a first
609 notice of the date of the election ~~along with a certification~~

11-00506B-10

20101196

610 ~~form provided by the division attesting that he or she has read~~
611 ~~and understands, to the best of his or her ability, the~~
612 ~~governing documents of the association and the provisions of~~
613 ~~this chapter and any applicable rules.~~ Any unit owner or other
614 eligible person desiring to be a candidate for the board must
615 give written notice of his or her intent to be a candidate to
616 the association not less than 40 days before a scheduled
617 election. Together with the written notice and agenda as set
618 forth in subparagraph 2., the association shall mail, deliver,
619 or electronically transmit a second notice of the election to
620 all unit owners entitled to vote therein, together with a ballot
621 which shall list all candidates. Upon request of a candidate,
622 ~~the association shall include~~ an information sheet, no larger
623 than 8 1/2 inches by 11 inches, which must be furnished by the
624 candidate not less than 35 days before the election, shall ~~along~~
625 ~~with the signed certification form provided for in this~~
626 ~~subparagraph,~~ to be included with the mailing, delivery, or
627 transmission of the ballot, with the costs of mailing, delivery,
628 or electronic transmission and copying to be borne by the
629 association. The association is not liable for the contents of
630 the information sheets prepared by the candidates. In order to
631 reduce costs, the association may print or duplicate the
632 information sheets on both sides of the paper. The division
633 shall by rule establish voting procedures consistent with the
634 provisions contained herein, including rules establishing
635 procedures for giving notice by electronic transmission and
636 rules providing for the secrecy of ballots. Elections shall be
637 decided by a plurality of those ballots cast. There shall be no
638 quorum requirement; however, at least 20 percent of the eligible

11-00506B-10

20101196

639 voters must cast a ballot in order to have a valid election of
640 members of the board. No unit owner shall permit any other
641 person to vote his or her ballot, and any such ballots
642 improperly cast shall be deemed invalid, provided any unit owner
643 who violates this provision may be fined by the association in
644 accordance with s. 718.303. A unit owner who needs assistance in
645 casting the ballot for the reasons stated in s. 101.051 may
646 obtain assistance in casting the ballot. The regular election
647 shall occur on the date of the annual meeting. The provisions of
648 this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare
649 condominium associations. Notwithstanding the provisions of this
650 sub-subparagraph ~~subparagraph~~, an election is not required
651 unless more candidates file notices of intent to run or are
652 nominated than board vacancies exist.

653 b. Within 90 days after being elected or appointed to the
654 board, each newly elected or appointed director shall certify in
655 writing to the secretary of the association that he or she has
656 read the association's declaration of condominium, articles of
657 incorporation, bylaws, and current written policies; that he or
658 she will work to uphold such documents and policies to the best
659 of his or her ability; and that he or she will faithfully
660 discharge his or her fiduciary responsibility to the
661 association's members. In lieu of this written certification,
662 the newly elected or appointed director may submit a certificate
663 of satisfactory completion of the educational curriculum
664 administered by a division-approved condominium education
665 provider. A director who fails to timely file the written
666 certification or educational certificate is suspended from
667 service on the board until he or she complies with the

11-00506B-10

20101196

668 provisions of this subparagraph. The board may temporarily fill
669 the vacancy during the period of suspension. The secretary shall
670 cause the association to retain a director's written
671 certification or educational certificate for inspection by the
672 members for 5 years after a director's election. Failure to have
673 such written certification or educational certificate on file
674 does not affect the validity of any action.

675 4. Any approval by unit owners called for by this chapter
676 or the applicable declaration or bylaws, including, but not
677 limited to, the approval requirement in s. 718.111(8), shall be
678 made at a duly noticed meeting of unit owners and shall be
679 subject to all requirements of this chapter or the applicable
680 condominium documents relating to unit owner decisionmaking,
681 except that unit owners may take action by written agreement,
682 without meetings, on matters for which action by written
683 agreement without meetings is expressly allowed by the
684 applicable bylaws or declaration or any statute that provides
685 for such action.

686 5. Unit owners may waive notice of specific meetings if
687 allowed by the applicable bylaws or declaration or any statute.
688 If authorized by the bylaws, notice of meetings of the board of
689 administration, unit owner meetings, except unit owner meetings
690 called to recall board members under paragraph (j), and
691 committee meetings may be given by electronic transmission to
692 unit owners who consent to receive notice by electronic
693 transmission.

694 6. Unit owners shall have the right to participate in
695 meetings of unit owners with reference to all designated agenda
696 items. However, the association may adopt reasonable rules

11-00506B-10

20101196__

697 governing the frequency, duration, and manner of unit owner
698 participation.

699 7. Any unit owner may tape record or videotape a meeting of
700 the unit owners subject to reasonable rules adopted by the
701 division.

702 8. Unless otherwise provided in the bylaws, any vacancy
703 occurring on the board before the expiration of a term may be
704 filled by the affirmative vote of the majority of the remaining
705 directors, even if the remaining directors constitute less than
706 a quorum, or by the sole remaining director. In the alternative,
707 a board may hold an election to fill the vacancy, in which case
708 the election procedures must conform to the requirements of sub-
709 subparagraph ~~subparagraph~~ 3.a. unless the association governs 10
710 units or fewer ~~less~~ and has opted out of the statutory election
711 process, in which case the bylaws of the association control.
712 Unless otherwise provided in the bylaws, a board member
713 appointed or elected under this section shall fill the vacancy
714 for the unexpired term of the seat being filled. Filling
715 vacancies created by recall is governed by paragraph (j) and
716 rules adopted by the division.

717
718 Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-
719 subparagraph (d)3.a., an association of 10 or fewer units may,
720 by the affirmative vote of a majority of the total voting
721 interests, provide for different voting and election procedures
722 in its bylaws, which vote may be by a proxy specifically
723 delineating the different voting and election procedures. The
724 different voting and election procedures may provide for
725 elections to be conducted by limited or general proxy.

11-00506B-10

20101196

726 (n) *Director or officer delinquencies.*—A director or
727 officer more than 90 days delinquent in the payment of any
728 monetary obligation due the association ~~regular assessments~~
729 shall be deemed to have abandoned the office, creating a vacancy
730 in the office to be filled according to law.

731 (o) *Director or officer offenses.*—A director or officer
732 charged by information or indictment with a felony theft or
733 embezzlement offense involving the association's funds or
734 property shall be removed from office, creating a vacancy in the
735 office to be filled according to law until the end of the period
736 of the suspension or the end of the director's term of office,
737 whichever occurs first. While such director or officer has such
738 criminal charge pending, he or she may not be appointed or
739 elected to a position as a director or officer. However, should
740 the charges be resolved without a finding of guilt, the director
741 or officer shall be reinstated for the remainder of his or her
742 term of office, if any.

743 Section 6. Paragraph (d) of subsection (1) of section
744 718.115, Florida Statutes, is amended to read:

745 718.115 Common expenses and common surplus.—

746 (1)

747 (d) If so provided in the declaration, the cost of
748 communications services as defined in chapter 202, information
749 services, or Internet services ~~a master antenna television~~
750 ~~system or duly franchised cable television service~~ obtained
751 pursuant to a bulk contract shall be deemed a common expense. If
752 the declaration does not provide for the cost of communications
753 services as defined in chapter 202, information services, or
754 Internet services ~~a master antenna television system or duly~~

11-00506B-10

20101196

755 ~~franchised cable television service~~ obtained under a bulk
756 contract as a common expense, the board may enter into such a
757 contract, and the cost of the service will be a common expense
758 but allocated on a per-unit basis rather than a percentage basis
759 if the declaration provides for other than an equal sharing of
760 common expenses, and any contract entered into before July 1,
761 1998, in which the cost of the service is not equally divided
762 among all unit owners, may be changed by vote of a majority of
763 the voting interests present at a regular or special meeting of
764 the association, to allocate the cost equally among all units.
765 The contract shall be for a term of not less than 2 years.

766 1. Any contract made by the board after the effective date
767 hereof for communications services as defined in chapter 202,
768 information services, or Internet services ~~a community antenna~~
769 ~~system or duly franchised cable television service~~ may be
770 canceled by a majority of the voting interests present at the
771 next regular or special meeting of the association. Any member
772 may make a motion to cancel the ~~said~~ contract, but if no motion
773 is made or if such motion fails to obtain the required majority
774 at the next regular or special meeting, whichever occurs ~~is~~
775 sooner, following the making of the contract, ~~then~~ such contract
776 shall be deemed ratified for the term therein expressed.

777 2. Any such contract shall provide, and shall be deemed to
778 provide if not expressly set forth, that any hearing-impaired or
779 legally blind unit owner who does not occupy the unit with a
780 non-hearing-impaired or sighted person, or any unit owner
781 receiving supplemental security income under Title XVI of the
782 Social Security Act or food stamps as administered by the
783 Department of Children and Family Services pursuant to s.

11-00506B-10

20101196__

784 414.31, may discontinue the cable or video service without
785 incurring disconnect fees, penalties, or subsequent service
786 charges, and, as to such units, the owners shall not be required
787 to pay any common expenses charge related to such service. If
788 fewer ~~less~~ than all members of an association share the expenses
789 of cable or video service ~~television~~, the expense shall be
790 shared equally by all participating unit owners. The association
791 may use the provisions of s. 718.116 to enforce payment of the
792 shares of such costs by the unit owners receiving cable or video
793 service ~~television~~.

794 Section 7. Paragraph (b) of subsection (5) of section
795 718.116, Florida Statutes, is amended, and subsection (11) is
796 added to that section, to read:

797 718.116 Assessments; liability; lien and priority;
798 interest; collection.-

799 (5)

800 (b) To be valid, a claim of lien must state the description
801 of the condominium parcel, the name of the record owner, the
802 name and address of the association, the amount due, and the due
803 dates. It must be executed and acknowledged by an officer or
804 authorized agent of the association. No such lien shall be
805 effective longer than 1 year after the claim of lien was
806 recorded unless, within that time, an action to enforce the lien
807 is commenced. The 1-year period shall automatically be extended
808 for any length of time during which the association is prevented
809 from filing a foreclosure action by an automatic stay resulting
810 from a bankruptcy petition filed by the parcel owner or any
811 other person claiming an interest in the parcel. The claim of
812 lien shall secure all unpaid assessments which are due and which

11-00506B-10

20101196

813 may accrue subsequent to the recording of the claim of lien and
814 before ~~prior to~~ the entry of a certificate of title, as well as
815 interest and all reasonable costs and attorney's fees incurred
816 by the association incident to the collection process. Costs to
817 the unit owner secured by the association's claim of lien with
818 regard to collection letters or any other collection efforts by
819 management companies or licensed managers as to any delinquent
820 installment of an assessment may not exceed \$75 unless the
821 management company prepares any letter or estoppel certificate
822 required by this chapter and charges a reasonable fee related to
823 the preparation of such letter or estoppel certificate. Upon
824 payment in full, the person making the payment is entitled to a
825 satisfaction of the lien.

826
827 After notice of contest of lien has been recorded, the clerk of
828 the circuit court shall mail a copy of the recorded notice to
829 the association by certified mail, return receipt requested, at
830 the address shown in the claim of lien or most recent amendment
831 to it and shall certify to the service on the face of the
832 notice. Service is complete upon mailing. After service, the
833 association has 90 days in which to file an action to enforce
834 the lien; and, if the action is not filed within the 90-day
835 period, the lien is void. However, the 90-day period shall be
836 extended for any length of time that the association is
837 prevented from filing its action because of an automatic stay
838 resulting from the filing of a bankruptcy petition by the unit
839 owner or by any other person claiming an interest in the parcel.

840 (11) If the unit is occupied by a tenant and the unit owner
841 is delinquent in the payment of any monetary obligation due to

11-00506B-10

20101196

842 the association, the association may demand that the tenant pay
843 to the association the future monetary obligations related to
844 the condominium unit. The demand is continuing in nature, and
845 upon demand, the tenant shall continue to pay the monetary
846 obligations to the association until the association releases
847 the tenant or the tenant discontinues tenancy in the unit. The
848 association shall mail written notice to the unit owner of the
849 association's demand that the tenant make payments to the
850 association. The tenant is not liable for increases in the
851 amount of the monetary obligations due unless the tenant was
852 reasonably notified of the increase before the day on which the
853 rent is due. The liability of the tenant may not exceed the
854 amount due from the tenant to the tenant's landlord. The
855 tenant's landlord shall provide the tenant a credit against
856 rents due to the unit owner in the amount of monies paid to the
857 association under this section. The association shall, upon
858 request, provide the tenant with written receipts for payments
859 made. The association may issue notices under s. 83.56 and may
860 sue for eviction under ss. 83.59-83.625 as if the association
861 were a landlord under part II of chapter 83 if the tenant fails
862 to pay a required assessment to the association. However, the
863 association is not otherwise considered a landlord under chapter
864 83 and specifically has no duties under s. 83.51. The tenant
865 does not, by virtue of payment of monetary obligations to the
866 association, have any of the rights of a unit owner to vote in
867 any election or to examine the books and records of the
868 association. A court may supersede the effect of this subsection
869 by appointing a receiver.

870 Section 8. Section 718.303, Florida Statutes, is amended to

11-00506B-10

20101196__

871 read:

872 718.303 Obligations of owners and occupants; waiver; levy
873 of fines, suspension of use or voting rights, and other
874 nonexclusive remedies in law or equity ~~fine against unit~~ by an
875 association.-

876 (1) Each unit owner, each tenant and other invitee, and
877 each association shall be governed by, and shall comply with the
878 provisions of, this chapter, the declaration, the documents
879 creating the association, and the association bylaws and the
880 provisions thereof shall be deemed expressly incorporated into
881 any lease of a unit. Actions for damages or for injunctive
882 relief, or both, for failure to comply with these provisions may
883 be brought by the association or by a unit owner against:

884 (a) The association.

885 (b) A unit owner.

886 (c) Directors designated by the developer, for actions
887 taken by them prior to the time control of the association is
888 assumed by unit owners other than the developer.

889 (d) Any director who willfully and knowingly fails to
890 comply with these provisions.

891 (e) Any tenant leasing a unit, and any other invitee
892 occupying a unit.

893

894 The prevailing party in any such action or in any action in
895 which the purchaser claims a right of voidability based upon
896 contractual provisions as required in s. 718.503(1)(a) is
897 entitled to recover reasonable attorney's fees. A unit owner
898 prevailing in an action between the association and the unit
899 owner under this section, in addition to recovering his or her

11-00506B-10

20101196

900 reasonable attorney's fees, may recover additional amounts as
901 determined by the court to be necessary to reimburse the unit
902 owner for his or her share of assessments levied by the
903 association to fund its expenses of the litigation. This relief
904 does not exclude other remedies provided by law. Actions arising
905 under this subsection shall not be deemed to be actions for
906 specific performance.

907 (2) A provision of this chapter may not be waived if the
908 waiver would adversely affect the rights of a unit owner or the
909 purpose of the provision, except that unit owners or members of
910 a board of administration may waive notice of specific meetings
911 in writing if provided by the bylaws. Any instruction given in
912 writing by a unit owner or purchaser to an escrow agent may be
913 relied upon by an escrow agent, whether or not such instruction
914 and the payment of funds thereunder might constitute a waiver of
915 any provision of this chapter.

916 (3) If a unit owner is delinquent for more than 90 days in
917 the payment of a monetary obligation due to the association or
918 if the declaration or bylaws so provide, the association may
919 suspend, for a reasonable time, the right of a unit owner or a
920 unit's occupant, licensee, or invitee to use common elements,
921 common facilities, or any other association property. This
922 subsection does not apply to limited common elements intended to
923 be used only by that unit, common elements that must be used to
924 access the unit, utility services provided to the unit, parking
925 spaces, or elevators. The association may also levy reasonable
926 fines ~~against a unit~~ for the failure of the owner of the unit,
927 or its occupant, licensee, or invitee, to comply with any
928 provision of the declaration, the association bylaws, or

11-00506B-10

20101196

929 reasonable rules of the association. No fine will become a lien
930 against a unit. A ~~No~~ fine may not exceed \$100 per violation.
931 However, a fine may be levied on the basis of each day of a
932 continuing violation, with a single notice and opportunity for
933 hearing, provided that no such fine shall in the aggregate
934 exceed \$1,000. A ~~No~~ fine may not be levied and a suspension may
935 not be imposed unless the association first gives ~~except after~~
936 ~~giving~~ reasonable notice and opportunity for a hearing to the
937 unit owner and, if applicable, its occupant, licensee, or
938 invitee. The hearing must be held before a committee of other
939 unit owners who are neither board members nor persons residing
940 in a board member's household. If the committee does not agree
941 with the fine or suspension, the fine or suspension may not be
942 levied or imposed. ~~The provisions of this subsection do not~~
943 ~~apply to unoccupied units.~~

944 (4) The notice and hearing requirements of subsection (3)
945 do not apply to the imposition of suspensions or fines against a
946 unit owner or a unit's occupant, licensee, or invitee because of
947 the failure to pay any amounts due the association. If such a
948 fine or suspension is imposed, the association must levy the
949 fine or impose a reasonable suspension at a properly noticed
950 board meeting, and after the imposition of such fine or
951 suspension, the association must notify the unit owner and, if
952 applicable, the unit's occupant, licensee, or invitee by mail or
953 hand delivery.

954 (5) An association may also suspend the voting rights of a
955 member due to nonpayment of any monetary obligation due to the
956 association which is delinquent in excess of 90 days.

957 Section 9. Subsection (16) of section 718.103, Florida

11-00506B-10

20101196__

958 Statutes, is amended to read:

959 718.103 Definitions.—As used in this chapter, the term:

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

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

966 (b) A cooperative association that ~~which~~ creates a
967 condominium by conversion of an existing residential cooperative
968 after control of the association has been transferred to the
969 unit owners if, following the conversion, the unit owners will
970 be the same persons who were unit owners of the cooperative and
971 no units are offered for sale or lease to the public as part of
972 the plan of conversion;-

973 (c) A bulk assignee or bulk buyer as defined in s. 718.703;
974 or

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

979 Section 10. Subsection (1) of section 718.301, Florida
980 Statutes, is amended to read:

981 718.301 Transfer of association control; claims of defect
982 by association.—

983 (1) When unit owners other than the developer own 15
984 percent or more of the units in a condominium that will be
985 operated ultimately by an association, the unit owners other
986 than the developer shall be entitled to elect no less than one-

11-00506B-10

20101196__

987 third of the members of the board of administration of the
988 association. Unit owners other than the developer are entitled
989 to elect not less than a majority of the members of the board of
990 administration of an association:

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

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

997 (c) When all the units that will be operated ultimately by
998 the association have been completed, some of them have been
999 conveyed to purchasers, and none of the others are being offered
1000 for sale by the developer in the ordinary course of business;

1001 (d) When some of the units have been conveyed to purchasers
1002 and none of the others are being constructed or offered for sale
1003 by the developer in the ordinary course of business;

1004 (e) When the developer files a petition seeking protection
1005 in bankruptcy;

1006 (f) When a receiver for the developer is appointed by a
1007 circuit court and is not discharged within 30 days after such
1008 appointment, unless the court determines within 30 days after
1009 appointment of the receiver that transfer of control would be
1010 detrimental to the association or its members; or

1011 (g) Seven years after recordation of the declaration of
1012 condominium; or, in the case of an association which may
1013 ultimately operate more than one condominium, 7 years after
1014 recordation of the declaration for the first condominium it
1015 operates; or, in the case of an association operating a phase

11-00506B-10

20101196

1016 condominium created pursuant to s. 718.403, 7 years after
1017 recordation of the declaration creating the initial phase,
1018 whichever occurs first. The developer is entitled to elect at
1019 least one member of the board of administration of an
1020 association as long as the developer holds for sale in the
1021 ordinary course of business at least 5 percent, in condominiums
1022 with fewer than 500 units, and 2 percent, in condominiums with
1023 more than 500 units, of the units in a condominium operated by
1024 the association. Following the time the developer relinquishes
1025 control of the association, the developer may exercise the right
1026 to vote any developer-owned units in the same manner as any
1027 other unit owner except for purposes of reacquiring control of
1028 the association or selecting the majority members of the board
1029 of administration.

1030 Section 11. Part VII of chapter 718, Florida Statutes,
1031 consisting of sections 718.701, 718.702, 718.703, 718.704,
1032 718.705, 718.706, 718.707, and 718.708, is created to read:

1033 718.701 Short title.—This part may be cited as the
1034 “Distressed Condominium Relief Act.”

1035 718.702 Legislative intent.—

1036 (1) The Legislature acknowledges the massive downturn in
1037 the condominium market which has transpired throughout the state
1038 and the impact of such downturn on developers, lenders, unit
1039 owners, and condominium associations. Numerous condominium
1040 projects have either failed or are in the process of failing,
1041 whereby the condominium has a small percentage of third-party
1042 unit owners as compared to the unsold inventory of units. As a
1043 result of the inability to find purchasers for this inventory of
1044 units, which results in part from the devaluing of real estate

11-00506B-10

20101196__

1045 in this state, developers are unable to satisfy the requirements
1046 of their lenders, leading to defaults on mortgages.
1047 Consequently, lenders are faced with the task of finding a
1048 solution to the problem in order to be paid for their
1049 investments.

1050 (2) The Legislature recognizes that all of the factors
1051 listed in this section lead to condominiums becoming distressed,
1052 resulting in detriment to the unit owners and the condominium
1053 association on account of the resulting shortage of assessment
1054 moneys available to support the financial requirements for
1055 proper maintenance of the condominium. Such shortage and the
1056 resulting lack of proper maintenance further erodes property
1057 values. The Legislature finds that individuals and entities
1058 within Florida and in other states have expressed interest in
1059 purchasing unsold inventory in one or more condominium projects,
1060 but are reticent to do so because of accompanying liabilities
1061 inherited from the original developer, which are by definition
1062 imputed to the successor purchaser, including a foreclosing
1063 mortgagee. This results in the potential purchaser having
1064 unknown and unquantifiable risks, and potential successor
1065 purchasers are unwilling to accept such risks. The result is
1066 that condominium projects stagnate, leaving all parties involved
1067 at an impasse without the ability to find a solution.

1068 (3) The Legislature finds and declares that it is the
1069 public policy of this state to protect the interests of
1070 developers, lenders, unit owners, and condominium associations
1071 with regard to distressed condominiums, and that there is a need
1072 for relief from certain provisions of the Florida Condominium
1073 Act geared toward enabling economic opportunities within these

11-00506B-10

20101196

1074 condominiums for successor purchasers, including foreclosing
 1075 mortgagees. Such relief would benefit existing unit owners and
 1076 condominium associations. The Legislature further finds and
 1077 declares that this situation cannot be open-ended without
 1078 potentially prejudicing the rights of unit owners and
 1079 condominium associations, and thereby declares that the
 1080 provisions of this part shall be used by purchasers of
 1081 condominium inventory for a specific and defined period.

1082 718.703 Definitions.—As used in this part, the term:

1083 (1) "Bulk assignee" means a person who:

1084 (a) Acquires more than seven condominium parcels as set
 1085 forth in s. 718.707; and

1086 (b) Receives an assignment of some or all of the rights of
 1087 the developer as are set forth in the declaration of condominium
 1088 or in this chapter by a written instrument recorded as an
 1089 exhibit to the deed or as a separate instrument in the public
 1090 records of the county in which the condominium is located.

1091 (2) "Bulk buyer" means a person who acquires more than
 1092 seven condominium parcels as set forth in s. 718.707 but who
 1093 does not receive an assignment of any developer rights other
 1094 than the right to conduct sales, leasing, and marketing
 1095 activities within the condominium.

1096 718.704 Assignment and assumption of developer rights by
 1097 bulk assignee; bulk buyer.—

1098 (1) A bulk assignee shall be deemed to have assumed and is
 1099 liable for all duties and responsibilities of the developer
 1100 under the declaration and this chapter, except:

1101 (a) Warranties of the developer under s. 718.203(1) or s.
 1102 718.618, except for design, construction, development, or repair

11-00506B-10

20101196__

1103 work performed by or on behalf of such bulk assignee;
1104 (b) The obligation to:
1105 1. Fund converter reserves under s. 718.618 for a unit that
1106 was not acquired by the bulk assignee; or
1107 2. Provide converter warranties on any portion of the
1108 condominium property except as may be expressly provided by the
1109 bulk assignee in the contract for purchase and sale executed
1110 with a purchaser and pertaining to any design, construction,
1111 development, or repair work performed by or on behalf of the
1112 bulk assignee;
1113 (c) The requirement to provide the association with a
1114 cumulative audit of the association's finances from the date of
1115 formation of the condominium association as required by s.
1116 718.301. However, the bulk assignee shall provide an audit for
1117 the period for which the bulk assignee elects a majority of the
1118 members of the board of administration;
1119 (d) Any liability arising out of or in connection with
1120 actions taken by the board of administration or the developer-
1121 appointed directors before the bulk assignee elects a majority
1122 of the members of the board of administration; and
1123 (e) Any liability for or arising out of the developer's
1124 failure to fund previous assessments or to resolve budgetary
1125 deficits in relation to a developer's right to guarantee
1126 assessments, except as otherwise provided in subsection (2).
1127
1128 Further, the bulk assignee is responsible for delivering
1129 documents and materials in accordance with s. 718.705(3). A bulk
1130 assignee may expressly assume some or all of the obligations of
1131 the developer described in paragraphs (a)-(e).

11-00506B-10

20101196

1132 (2) A bulk assignee receiving the assignment of the rights
1133 of the developer to guarantee the level of assessments and fund
1134 budgetary deficits pursuant to s. 718.116 shall be deemed to
1135 have assumed and is liable for all obligations of the developer
1136 with respect to such guarantee, including any applicable funding
1137 of reserves to the extent required by law, for as long as the
1138 guarantee remains in effect. A bulk assignee not receiving an
1139 assignment of the right of the developer to guarantee the level
1140 of assessments and fund budgetary deficits pursuant to s.
1141 718.116 or a bulk buyer is not deemed to have assumed and is not
1142 liable for the obligations of the developer with respect to such
1143 guarantee, but is responsible for payment of assessments in the
1144 same manner as all other owners of condominium parcels.

1145 (3) A bulk buyer is liable for the duties and
1146 responsibilities of the developer under the declaration and this
1147 chapter only to the extent provided in this part, together with
1148 any other duties or responsibilities of the developer expressly
1149 assumed in writing by the bulk buyer.

1150 (4) An acquirer of condominium parcels is not considered a
1151 bulk assignee or a bulk buyer if the transfer to such acquirer
1152 was made before the effective date of this part with the intent
1153 to hinder, delay, or defraud any purchaser, unit owner, or the
1154 association, or if the acquirer is a person who would constitute
1155 an insider under s. 726.102(7).

1156 (5) An assignment of developer rights to a bulk assignee
1157 may be made by the developer, a previous bulk assignee, or a
1158 court of competent jurisdiction acting on behalf of the
1159 developer or the previous bulk assignee. At any particular time,
1160 there may be no more than one bulk assignee within a

11-00506B-10

20101196

1161 condominium, but there may be more than one bulk buyer. If more
1162 than one acquirer of condominium parcels in the same condominium
1163 receives an assignment of developer rights from the same person,
1164 the bulk assignee is the acquirer whose instrument of assignment
1165 is recorded first in applicable public records.

1166 718.705 Board of administration; transfer of control.—

1167 (1) For purposes of determining the timing for transfer of
1168 control of the board of administration of the association to
1169 unit owners other than the developer under s. 718.301(1)(a) and
1170 (b), if a bulk assignee is entitled to elect a majority of the
1171 members of the board, a condominium parcel acquired by the bulk
1172 assignee shall not be deemed to be conveyed to a purchaser, or
1173 to be owned by an owner other than the developer, until such
1174 condominium parcel is conveyed to an owner who is not a bulk
1175 assignee.

1176 (2) Unless control of the board of administration of the
1177 association has already been relinquished pursuant to s.
1178 718.301(1), the bulk assignee is obligated to relinquish control
1179 of the association in accordance with s. 718.301 and this part,
1180 as if the bulk assignee were the developer.

1181 (3) When a bulk assignee relinquishes control of the board
1182 of administration as set forth in s. 718.301, the bulk assignee
1183 shall deliver all of those items required by s. 718.301(4).
1184 However, the bulk assignee is not required to deliver items and
1185 documents not in the possession of the bulk assignee during the
1186 period during which the bulk assignee was entitled to elect not
1187 less than a majority of the members of the board of
1188 administration. In conjunction with acquisition of condominium
1189 parcels, a bulk assignee shall undertake a good faith effort to

11-00506B-10

20101196

1190 obtain the documents and materials required to be provided to
1191 the association pursuant to s. 718.301(4). To the extent the
1192 bulk assignee is not able to obtain all of such documents and
1193 materials, the bulk assignee shall certify in writing to the
1194 association the names or descriptions of the documents and
1195 materials that were not obtainable by the bulk assignee.
1196 Delivery of the certificate relieves the bulk assignee of
1197 responsibility for the delivery of the documents and materials
1198 referenced in the certificate as otherwise required under ss.
1199 718.112 and 718.301 and this part. The responsibility of the
1200 bulk assignee for the audit required by s. 718.301(4) shall
1201 commence as of the date on which the bulk assignee elected a
1202 majority of the members of the board of administration.

1203 (4) If a conflict arises between the provisions or
1204 application of this section and s. 718.301, this section shall
1205 prevail.

1206 (5) Failure of a bulk assignee or bulk buyer to
1207 substantially comply with all the requirements contained in this
1208 part shall result in the loss of any and all protections or
1209 exemptions provided under this part.

1210 718.706 Specific provisions pertaining to offering of units
1211 by a bulk assignee or bulk buyer.—

1212 (1) Before offering any units for sale or for lease for a
1213 term exceeding 5 years, a bulk assignee or a bulk buyer shall
1214 file the following documents with the division and provide such
1215 documents to a prospective purchaser or tenant:

1216 (a) An updated prospectus or offering circular, or a
1217 supplement to the prospectus or offering circular, filed by the
1218 creating developer prepared in accordance with s. 718.504, which

11-00506B-10

20101196__

1219 shall include the form of contract for purchase and sale in
1220 compliance with s. 718.503(2);

1221 (b) An updated Frequently Asked Questions and Answers
1222 sheet;

1223 (c) The executed escrow agreement if required under s.
1224 718.202; and

1225 (d) The financial information required by s. 718.111(13).
1226 However, if a financial information report does not exist for
1227 the fiscal year before acquisition of title by the bulk assignee
1228 or bulk buyer, or accounting records cannot be obtained in good
1229 faith by the bulk assignee or the bulk buyer which would permit
1230 preparation of the required financial information report, the
1231 bulk assignee or bulk buyer is excused from the requirement of
1232 this paragraph. However, the bulk assignee or bulk buyer must
1233 include in the purchase contract the following statement in
1234 conspicuous type:

1235 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
1236 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR
1237 OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE
1238 CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT
1239 ACCOUNTING RECORDS OF THE ASSOCIATION.

1240 (2) Before offering any units for sale or for lease for a
1241 term exceeding 5 years, a bulk assignee shall file with the
1242 division and provide to a prospective purchaser a disclosure
1243 statement that must include, but is not limited to:

1244 (a) A description of any rights of the developer which have
1245 been assigned to the bulk assignee;

1246 (b) The following statement in conspicuous type:

1247 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE

11-00506B-10

20101196__

1248 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS
 1249 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,
 1250 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF
 1251 OF SELLER; and

1252 (c) If the condominium is a conversion subject to part VI,
 1253 the following statement in conspicuous type:

1254 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER
 1255 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S.
 1256 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY
 1257 EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN
 1258 THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
 1259 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO
 1260 ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK
 1261 PERFORMED BY OR ON BEHALF OF THE SELLER.

1262 (3) In addition to the requirements set forth in subsection
 1263 (1), a bulk assignee or bulk buyer must comply with the
 1264 nondeveloper disclosure requirements set forth in s. 718.503(2)
 1265 before offering any units for sale or for lease for a term
 1266 exceeding 5 years.

1267 (4) A bulk assignee, while it is in control of the board of
 1268 administration of the association, may not authorize, on behalf
 1269 of the association:

1270 (a) The waiver of reserves or the reduction of funding of
 1271 the reserves in accordance with s. 718.112(2)(f)2., unless
 1272 approved by a majority of the voting interests not controlled by
 1273 the developer, bulk assignee, and bulk buyer; or

1274 (b) The use of reserve expenditures for other purposes in
 1275 accordance with s. 718.112(2)(f)3., unless approved by a
 1276 majority of the voting interests not controlled by the

11-00506B-10

20101196

1277 developer, bulk assignee, and bulk buyer.

1278 (5) A bulk assignee or a bulk buyer shall comply with all
1279 the requirements of s. 718.302 regarding any contracts entered
1280 into by the association during the period the bulk assignee or
1281 bulk buyer maintains control of the board of administration.
1282 Unit owners shall be afforded all the protections contained in
1283 s. 718.302 regarding agreements entered into by the association
1284 before unit owners other than the developer, bulk assignee, or
1285 bulk buyer elected a majority of the board of administration.

1286 (6) A bulk buyer shall comply with the requirements
1287 contained in the declaration regarding any transfer of a unit,
1288 including sales, leases, and subleases. A bulk buyer is not
1289 entitled to any exemptions afforded a developer or successor
1290 developer under this chapter regarding any transfer of a unit,
1291 including sales, leases, or subleases.

1292 718.707 Time limitation for classification as bulk assignee
1293 or bulk buyer.—A person acquiring condominium parcels may not be
1294 classified as a bulk assignee or bulk buyer unless the
1295 condominium parcels were acquired before July 1, 2012. The date
1296 of such acquisition shall be determined by the date of recording
1297 of a deed or other instrument of conveyance for such parcels in
1298 the public records of the county in which the condominium is
1299 located, or by the date of issuance of a certificate of title in
1300 a foreclosure proceeding with respect to such condominium
1301 parcels.

1302 718.708 Liability of developers and others.—An assignment
1303 of developer rights to a bulk assignee or bulk buyer does not
1304 release the creating developer from any liabilities under the
1305 declaration or this chapter. This part does not limit the

11-00506B-10

20101196

1306 liability of the creating developer for claims brought by unit
1307 owners, bulk assignees, or bulk buyers for violations of this
1308 chapter by the creating developer, unless specifically excluded
1309 in this part. Nothing contained within this part waives,
1310 releases, compromises, or limits the liability of contractors,
1311 subcontractors, materialmen, manufacturers, architects,
1312 engineers, or any participant in the design or construction of a
1313 condominium for any claim brought by an association, unit
1314 owners, bulk assignees, or bulk buyers arising from the design
1315 of the condominium, construction defects, misrepresentations
1316 associated with condominium property, or violations of this
1317 chapter, unless specifically excluded in this part.

1318 Section 12. Subsections (3) and (4) of section 719.108,
1319 Florida Statutes, are amended, and subsection (10) is added to
1320 that section, to read:

1321 719.108 Rents and assessments; liability; lien and
1322 priority; interest; collection; cooperative ownership.—

1323 (3) Rents and assessments, and installments on them, not
1324 paid when due bear interest at the rate provided in the
1325 cooperative documents from the date due until paid. This rate
1326 may not exceed the rate allowed by law, and, if no rate is
1327 provided in the cooperative documents, then interest shall
1328 accrue at 18 percent per annum. Also, if the cooperative
1329 documents or bylaws so provide, the association may charge an
1330 administrative late fee in addition to such interest, in an
1331 amount not to exceed the greater of \$25 or 5 percent of each
1332 installment of the assessment for each delinquent installment
1333 that the payment is late. Costs to the unit owner secured by the
1334 association's claim of lien with regard to collection letters or

11-00506B-10

20101196__

1335 any other collection efforts by management companies or licensed
1336 managers as to any delinquent installment of an assessment may
1337 not exceed \$75 unless the management company prepares any letter
1338 or estoppel certificate required by this chapter and charges a
1339 reasonable fee related to the preparation of such letter or
1340 estoppel certificate. Any payment received by an association
1341 shall be applied first to any interest accrued by the
1342 association, then to any administrative late fee, then to any
1343 costs and reasonable attorney's fees incurred in collection,
1344 then to any reasonable costs for collection services for which
1345 the association has contracted, and then to the delinquent
1346 assessment. The foregoing shall be applicable notwithstanding
1347 any restrictive endorsement, designation, or instruction placed
1348 on or accompanying a payment. A late fee is not subject to
1349 chapter 687 or s. 719.303(3).

1350 (4) The association shall have a lien on each cooperative
1351 parcel for any unpaid rents and assessments, plus interest, any
1352 authorized administrative late fees, and any reasonable costs
1353 for collection services for which the association has contracted
1354 against the unit owner of the cooperative parcel. If authorized
1355 by the cooperative documents, said lien shall also secure
1356 reasonable attorney's fees incurred by the association incident
1357 to the collection of the rents and assessments or enforcement of
1358 such lien. The lien is effective from and after the recording of
1359 a claim of lien in the public records in the county in which the
1360 cooperative parcel is located which states the description of
1361 the cooperative parcel, the name of the unit owner, the amount
1362 due, and the due dates. The lien shall expire if a claim of lien
1363 is not filed within 1 year after the date the assessment was

11-00506B-10

20101196

1364 due, and no such lien shall continue for a longer period than 1
1365 year after the claim of lien has been recorded unless, within
1366 that time, an action to enforce the lien is commenced in a court
1367 of competent jurisdiction. Except as otherwise provided in this
1368 chapter, a lien may not be filed by the association against a
1369 cooperative parcel until 30 days after the date on which a
1370 notice of intent to file a lien has been delivered to the owner
1371 by registered or certified mail, return receipt requested, and
1372 by first-class United States mail to the owner at his or her
1373 last address in the records of the association, if the address
1374 is within the United States, and delivered to the owner at the
1375 address of the unit if the owner's address as reflected in the
1376 records of the association is not the unit address. If the
1377 address in the records is outside the United States, notice
1378 shall be sent to that address and to the unit address by first-
1379 class United States mail. Delivery of the notice shall be deemed
1380 given upon mailing as required by this subsection. No lien may
1381 be filed by the association against a cooperative parcel until
1382 30 days after the date on which a notice of intent to file a
1383 lien has been served on the unit owner of the cooperative parcel
1384 by certified mail or by personal service in the manner
1385 authorized by chapter 48 and the Florida Rules of Civil
1386 Procedure.

1387 (10) If the share is occupied by a tenant and the share
1388 owner is delinquent in the payment of regular assessments, the
1389 association may demand that the tenant pay to the association
1390 the future regular assessments related to the condominium share.
1391 The demand is continuing in nature, and upon demand, the tenant
1392 shall continue to pay the regular assessments to the association

11-00506B-10

20101196

1393 until the association releases the tenant or the tenant
1394 discontinues tenancy in the share. The association shall mail
1395 written notice to the share owner of the association's demand
1396 that the tenant pay regular assessments to the association. The
1397 tenant is not liable for increases in the amount of the regular
1398 assessment due unless the tenant was reasonably notified of the
1399 increase before the day on which the rent is due. The liability
1400 of the tenant may not exceed the amount due from the tenant to
1401 the tenants' landlord. The tenant's landlord shall provide the
1402 tenant a credit against rents due to the unit owner in the
1403 amount of assessments paid to the association under this
1404 section. The association shall, upon request, provide the tenant
1405 with written receipts for payments made. The association may
1406 issue notices under s. 83.56 and may sue for eviction under ss.
1407 83.59-83.625 as if the association were a landlord under part II
1408 of chapter 83 if the tenant fails to pay an assessment. However,
1409 the association is not otherwise considered a landlord under
1410 chapter 83 and specifically has no duties under s. 83.51. The
1411 tenant does not, by virtue of payment of assessments, have any
1412 of the rights of a share owner to vote in any election or to
1413 examine the books and records of the association. A court may
1414 supersede the effect of this subsection by appointing a
1415 receiver.

1416 Section 13. Paragraph (b) of subsection (2) of section
1417 720.304, Florida Statutes, is amended to read:

1418 720.304 Right of owners to peaceably assemble; display of
1419 flag; SLAPP suits prohibited.—

1420 (2)

1421 (b) Any homeowner may erect a freestanding flagpole no more

11-00506B-10

20101196__

1422 than 20 feet high on any portion of the homeowner's real
1423 property, regardless of any covenants, restrictions, bylaws,
1424 rules, or requirements of the association, if the flagpole does
1425 not obstruct sightlines at intersections and is not erected
1426 within or upon an easement. The homeowner may further display in
1427 a respectful manner from that flagpole, regardless of any
1428 covenants, restrictions, bylaws, rules, or requirements of the
1429 association, one official United States flag, not larger than 4
1430 1/2 feet by 6 feet, and may additionally display one official
1431 flag of the State of Florida or the United States Army, Navy,
1432 Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such
1433 additional flag must be equal in size to or smaller than the
1434 United States flag. The flagpole and display are subject to all
1435 building codes, zoning setbacks, and other applicable
1436 governmental regulations, including, but not limited to, noise
1437 and lighting ordinances in the county or municipality in which
1438 the flagpole is erected and all setback and locational criteria
1439 contained in the governing documents.

1440 Section 14. Subsection (2) of section 720.305, Florida
1441 Statutes, is amended to read:

1442 720.305 Obligations of members; remedies at law or in
1443 equity; levy of fines and suspension of use rights.-

1444 (2) If a member is delinquent for more than 90 days in the
1445 payment of a monetary obligation due the association the
1446 governing documents so provide, an association may suspend,
1447 until such monetary obligation is paid for a reasonable period
1448 of time, the rights of a member or a member's tenants, guests,
1449 or invitees, or both, to use common areas and facilities and may
1450 levy reasonable fines of up to, not to exceed \$100 per

11-00506B-10

20101196

1451 violation, against any member or any tenant, guest, or invitee.
1452 A fine may be levied on the basis of each day of a continuing
1453 violation, with a single notice and opportunity for hearing,
1454 except that a no-such fine may not shall exceed \$1,000 in the
1455 aggregate unless otherwise provided in the governing documents.
1456 A fine of less than \$1,000 may shall not become a lien against a
1457 parcel. In any action to recover a fine, the prevailing party is
1458 entitled to collect its reasonable attorney's fees and costs
1459 from the nonprevailing party as determined by the court. The
1460 provisions regarding the suspension-of-use rights do not apply
1461 to the portion of common areas that must be used to provide
1462 access to the parcel or utility services provided to the parcel.

1463 (a) A fine or suspension may not be imposed without notice
1464 of at least 14 days to the person sought to be fined or
1465 suspended and an opportunity for a hearing before a committee of
1466 at least three members appointed by the board who are not
1467 officers, directors, or employees of the association, or the
1468 spouse, parent, child, brother, or sister of an officer,
1469 director, or employee. If the committee, by majority vote, does
1470 not approve a proposed fine or suspension, it may not be
1471 imposed. If the association imposes a fine or suspension, the
1472 association must provide written notice of such fine or
1473 suspension by mail or hand delivery to the parcel owner and, if
1474 applicable, to any tenant, licensee, or invitee of the parcel
1475 owner.

1476 ~~(b) The requirements of this subsection do not apply to the~~
1477 ~~imposition of suspensions or fines upon any member because of~~
1478 ~~the failure of the member to pay assessments or other charges~~
1479 ~~when due if such action is authorized by the governing~~

11-00506B-10

20101196

1480 ~~documents.~~

1481 ~~(b)-(c)~~ Suspension of common-area-use rights shall not
1482 impair the right of an owner or tenant of a parcel to have
1483 vehicular and pedestrian ingress to and egress from the parcel,
1484 including, but not limited to, the right to park.

1485 Section 15. Subsection (8) is added to section 720.3085,
1486 Florida Statutes, to read:

1487 720.3085 Payment for assessments; lien claims.—

1488 (8) If the parcel is occupied by a tenant and the parcel
1489 owner is delinquent in the payment of regular assessments, the
1490 association may demand that the tenant pay to the association
1491 the future regular assessments related to the parcel. The demand
1492 is continuing in nature, and upon demand, the tenant shall
1493 continue to pay the regular assessments to the association until
1494 the association releases the tenant or the tenant discontinues
1495 tenancy in the parcel. The association shall mail written notice
1496 to the parcel owner of the association's demand that the tenant
1497 pay regular assessments to the association. The tenant is not
1498 liable for increases in the amount of the regular assessment due
1499 unless the tenant was reasonably notified of the increase before
1500 the day on which the rent is due. The tenant shall be given a
1501 credit against rents due to the parcel owner in the amount of
1502 assessments paid to the association. The association shall, upon
1503 request, provide the tenant with written receipts for payments
1504 made. The association may issue notices under s. 83.56 and may
1505 sue for eviction under ss. 83.59-83.625 as if the association
1506 were a landlord under part II of chapter 83 if the tenant fails
1507 to pay an assessment. However, the association is not otherwise
1508 considered a landlord under chapter 83 and specifically has no

11-00506B-10

20101196__

1509 duties under s. 83.51. The tenant does not, by virtue of payment
1510 of assessments, have any of the rights of a parcel owner to vote
1511 in any election or to examine the books and records of the
1512 association. A court may supersede the effect of this subsection
1513 by appointing a receiver.

1514 Section 16. Subsection (6) is added to section 720.31,
1515 Florida Statutes, to read:

1516 720.31 Recreational leaseholds; right to acquire;
1517 escalation clauses.—

1518 (6) An association may enter into agreements to acquire
1519 leaseholds, memberships, and other possessory or use interests
1520 in lands or facilities including, but not limited to, country
1521 clubs, golf courses, marinas, submerged land, parking areas,
1522 conservation areas, and other recreational facilities. An
1523 association may enter into such agreements regardless of whether
1524 the lands or facilities are contiguous to the lands of the
1525 community or whether such lands or facilities are intended to
1526 provide enjoyment, recreation, or other use or benefit to the
1527 owners. All leaseholds, memberships, and other possessory or use
1528 interests existing or created at the time of recording the
1529 declaration must be stated and fully described in the
1530 declaration. Subsequent to the recording of the declaration,
1531 agreements acquiring leaseholds, memberships, or other
1532 possessory or use interests not entered into within 12 months
1533 following the recording of the declaration may be entered into
1534 only if authorized by the declaration for material alterations
1535 or substantial additions to the common areas or association
1536 property. If the declaration is silent, any such transaction
1537 requires the approval of 75 percent of the total voting

11-00506B-10

20101196

1538 interests of the association. The declaration may provide that
1539 the rental, membership fees, operations, replacements, or other
1540 expenses are common expenses; impose covenants and restrictions
1541 concerning their use; and contain other provisions not
1542 inconsistent with this subsection. An association exercising its
1543 rights under this subsection may join with other associations
1544 that are part of the same development or with a master
1545 association responsible for the enforcement of shared covenants,
1546 conditions, and restrictions in carrying out the intent of this
1547 subsection.

1548 Section 17. Subsection (2) of section 553.509, Florida
1549 Statutes, is repealed.

1550 Section 18. Paragraph (b) of subsection (2), paragraphs (a)
1551 and (c) of subsection (5), and paragraphs (b), (c), (d), (f),
1552 and (g) of subsection (6) of section 720.303, Florida Statutes,
1553 are amended, and subsection (12) is added to that section, to
1554 read:

1555 720.303 Association powers and duties; meetings of board;
1556 official records; budgets; financial reporting; association
1557 funds; recalls.—

1558 (2) BOARD MEETINGS.—

1559 (b) Members have the right to attend all meetings of the
1560 board and to speak on any matter placed on the agenda by
1561 petition of the voting interests for at least 3 minutes. The
1562 association may adopt written reasonable rules expanding the
1563 right of members to speak and governing the frequency, duration,
1564 and other manner of member statements, which rules must be
1565 consistent with this paragraph and may include a sign-up sheet
1566 for members wishing to speak. Notwithstanding any other law, ~~the~~

11-00506B-10

20101196

1567 ~~requirement that board meetings and committee meetings be open~~
1568 ~~to the members is inapplicable to~~ meetings between the board or
1569 a committee and the association's attorney to discuss proposed
1570 or pending litigation, or with respect to meetings of the board
1571 held for the purpose of discussing personnel matters are not
1572 required to be open to the members other than directors.

1573 (5) INSPECTION AND COPYING OF RECORDS.—The official records
1574 shall be maintained within the state and must be open to
1575 inspection and available for photocopying by members or their
1576 authorized agents at reasonable times and places within 10
1577 business days after receipt of a written request for access.
1578 This subsection may be complied with by having a copy of the
1579 official records available for inspection or copying in the
1580 community. If the association has a photocopy machine available
1581 where the records are maintained, it must provide parcel owners
1582 with copies on request during the inspection if the entire
1583 request is limited to no more than 25 pages.

1584 (a) The failure of an association to provide access to the
1585 records within 10 business days after receipt of a written
1586 request submitted by certified mail, return receipt requested,
1587 creates a rebuttable presumption that the association willfully
1588 failed to comply with this subsection.

1589 (c) The association may adopt reasonable written rules
1590 governing the frequency, time, location, notice, records to be
1591 inspected, and manner of inspections, but may not require ~~impose~~
1592 ~~a requirement that~~ a parcel owner to demonstrate any proper
1593 purpose for the inspection, state any reason for the inspection,
1594 or limit a parcel owner's right to inspect records to less than
1595 one 8-hour business day per month. The association may impose

11-00506B-10

20101196

1596 fees to cover the costs of providing copies of the official
1597 records, including, without limitation, the costs of copying.
1598 The association may charge up to 50 cents per page for copies
1599 made on the association's photocopier. If the association does
1600 not have a photocopy machine available where the records are
1601 kept, or if the records requested to be copied exceed 25 pages
1602 in length, the association may have copies made by an outside
1603 vendor or association management company personnel and may
1604 charge the actual cost of copying, including any reasonable
1605 costs involving personnel fees and charges at an hourly rate for
1606 vendor or employee time to cover administrative costs to the
1607 vendor or association. The association shall maintain an
1608 adequate number of copies of the recorded governing documents,
1609 to ensure their availability to members and prospective members.
1610 Notwithstanding the provisions of this paragraph, the following
1611 records are ~~shall~~ not be accessible to members or parcel owners:
1612 1. Any record protected by the lawyer-client privilege as
1613 described in s. 90.502 and any record protected by the work-
1614 product privilege, including, but not limited to, any record
1615 prepared by an association attorney or prepared at the
1616 attorney's express direction which reflects a mental impression,
1617 conclusion, litigation strategy, or legal theory of the attorney
1618 or the association and which was prepared exclusively for civil
1619 or criminal litigation or for adversarial administrative
1620 proceedings or which was prepared in anticipation of imminent
1621 civil or criminal litigation or imminent adversarial
1622 administrative proceedings until the conclusion of the
1623 litigation or ~~adversarial~~ administrative proceedings.
1624 2. Information obtained by an association in connection

11-00506B-10

20101196__

1625 with the approval of the lease, sale, or other transfer of a
1626 parcel.

1627 3. Disciplinary, health, insurance, and personnel records,
1628 including payroll records, of the association's employees.

1629 4. Medical records of parcel owners or community residents.

1630 (6) BUDGETS.—

1631 (b) In addition to annual operating expenses, the budget
1632 may include reserve accounts for capital expenditures and
1633 deferred maintenance for which the association is responsible.
1634 If reserve accounts are not established pursuant to paragraph
1635 (d), funding of such reserves shall be limited to the extent
1636 that the governing documents do not limit increases in
1637 assessments, including reserves. If the budget of the
1638 association includes reserve accounts established pursuant to
1639 paragraph (d), such reserves shall be determined, maintained,
1640 and waived in the manner provided in this subsection. Once an
1641 association provides for reserve accounts pursuant to paragraph
1642 (d) in the budget, the association shall thereafter determine,
1643 maintain, and waive reserves in compliance with this subsection.
1644 The provisions of this section do not preclude the termination
1645 of a reserve account established pursuant to this paragraph upon
1646 approval of a majority of the voting interests of the
1647 association. Upon such approval, the terminating reserve account
1648 shall be removed from the budget.

1649 (c) 1. If the budget of the association does not provide for
1650 reserve accounts pursuant to paragraph (d) governed by this
1651 subsection and the association is responsible for the repair and
1652 maintenance of capital improvements that may result in a special
1653 assessment if reserves are not provided, each financial report

11-00506B-10

20101196

1654 for the preceding fiscal year required by subsection (7) shall
1655 contain the following statement in conspicuous type: THE BUDGET
1656 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR
1657 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
1658 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
1659 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
1660 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN~~ A
1661 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY
1662 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

1663 2. If the budget of the association does provide for
1664 funding accounts for deferred expenditures, including, but not
1665 limited to, funds for capital expenditures and deferred
1666 maintenance, but such accounts are not created or established
1667 pursuant to paragraph (d), each financial report for the
1668 preceding fiscal year required under subsection (7) must also
1669 contain the following statement in conspicuous type: THE BUDGET
1670 OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED
1671 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
1672 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
1673 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
1674 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),
1675 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
1676 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
1677 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

1678 (d) An association shall be deemed to have provided for
1679 reserve accounts if ~~when~~ reserve accounts have been initially
1680 established by the developer or if ~~when~~ the membership of the
1681 association affirmatively elects to provide for reserves. If
1682 reserve accounts are not initially provided for by the

11-00506B-10

20101196__

1683 developer, the membership of the association may elect to do so
1684 upon the affirmative approval of ~~not less than~~ a majority of the
1685 total voting interests of the association. Such approval may be
1686 obtained ~~attained~~ by vote of the members at a duly called
1687 meeting of the membership or by the ~~upon a~~ written consent of
1688 ~~executed by not less than~~ a majority of the total voting
1689 interests of the association ~~in the community~~. The approval
1690 action of the membership shall state that reserve accounts shall
1691 be provided for in the budget and shall designate the components
1692 for which the reserve accounts are to be established. Upon
1693 approval by the membership, the board of directors shall include
1694 ~~provide for~~ the required reserve accounts ~~for inclusion~~ in the
1695 budget in the next fiscal year following the approval and ~~in~~
1696 each year thereafter. Once established as provided in this
1697 subsection, the reserve accounts shall be funded or maintained
1698 or shall have their funding waived in the manner provided in
1699 paragraph (f).

1700 (f) After one or more ~~Once a reserve account or~~ reserve
1701 accounts are established, the membership of the association,
1702 upon a majority vote at a meeting at which a quorum is present,
1703 may provide for no reserves or less reserves than required by
1704 this section. If a meeting of the unit owners has been called to
1705 determine whether to waive or reduce the funding of reserves and
1706 no such result is achieved or a quorum is not present, the
1707 reserves as included in the budget shall go into effect. After
1708 the turnover, the developer may vote its voting interest to
1709 waive or reduce the funding of reserves. Any vote taken pursuant
1710 to this subsection to waive or reduce reserves is ~~shall be~~
1711 applicable only to one budget year.

11-00506B-10

20101196

1712 (g) Funding formulas for reserves authorized by this
1713 section shall be based on either a separate analysis of each of
1714 the required assets or a pooled analysis of two or more of the
1715 required assets.

1716 1. If the association maintains separate reserve accounts
1717 for each of the required assets, the amount of the contribution
1718 to each reserve account is ~~shall be~~ the sum of the following two
1719 calculations:

1720 a. The total amount necessary, if any, to bring a negative
1721 component balance to zero.

1722 b. The total estimated deferred maintenance expense or
1723 estimated replacement cost of the reserve component less the
1724 estimated balance of the reserve component as of the beginning
1725 of the period ~~for which~~ the budget will be in effect. The
1726 remainder, if greater than zero, shall be divided by the
1727 estimated remaining useful life of the component.

1728
1729 The formula may be adjusted each year for changes in estimates
1730 and deferred maintenance performed during the year and may
1731 include factors such as inflation and earnings on invested
1732 funds.

1733 2. If the association maintains a pooled account of two or
1734 more of the required reserve assets, the amount of the
1735 contribution to the pooled reserve account as disclosed on the
1736 proposed budget may ~~shall~~ not be less than that required to
1737 ensure that the balance on hand at the beginning of the period
1738 ~~for which~~ the budget will go into effect plus the projected
1739 annual cash inflows over the remaining estimated useful life of
1740 all of the assets that make up the reserve pool are equal to or

11-00506B-10

20101196__

1741 greater than the projected annual cash outflows over the
1742 remaining estimated useful lives of all ~~of~~ the assets that make
1743 up the reserve pool, based on the current reserve analysis. The
1744 projected annual cash inflows may include estimated earnings
1745 from investment of principal and accounts receivable minus the
1746 allowance for doubtful accounts. The reserve funding formula may
1747 ~~shall~~ not include any type of balloon payments.

1748 (12) COMPENSATION PROHIBITED.—A director, officer, or
1749 committee member of the association may not directly receive any
1750 salary or compensation from the association for the performance
1751 of duties as a director, officer, or committee member and may
1752 not in any other way benefit financially from service to the
1753 association. This subsection does not preclude:

1754 (a) Participation by such person in a financial benefit
1755 accruing to all or a significant number of members as a result
1756 of actions lawfully taken by the board or a committee of which
1757 he or she is a member, including, but not limited to, routine
1758 maintenance, repair, or replacement of community assets.

1759 (b) Reimbursement for out-of-pocket expenses incurred by
1760 such person on behalf of the association, subject to approval in
1761 accordance with procedures established by the association's
1762 governing documents or, in the absence of such procedures, in
1763 accordance with an approval process established by the board.

1764 (c) Any recovery of insurance proceeds derived from a
1765 policy of insurance maintained by the association for the
1766 benefit of its members.

1767 (d) Any fee or compensation authorized in the governing
1768 documents.

1769 (e) Any fee or compensation authorized in advance by a vote

11-00506B-10

20101196

1770 of a majority of the voting interests voting in person or by
1771 proxy at a meeting of the members.

1772 (f) A developer or its representative from serving as a
1773 director, officer, or committee member of the association and
1774 benefitting financially from service to the association.

1775 Section 19. Subsections (8) and (9) of section 720.306,
1776 Florida Statutes, are amended to read:

1777 720.306 Meetings of members; voting and election
1778 procedures; amendments.—

1779 (8) PROXY VOTING.—The members have the right, unless
1780 otherwise provided in this subsection or in the governing
1781 documents, to vote in person or by proxy.

1782 (a) To be valid, a proxy must be dated, must state the
1783 date, time, and place of the meeting for which it was given, and
1784 must be signed by the authorized person who executed the proxy.
1785 A proxy is effective only for the specific meeting for which it
1786 was originally given, as the meeting may lawfully be adjourned
1787 and reconvened from time to time, and automatically expires 90
1788 days after the date of the meeting for which it was originally
1789 given. A proxy is revocable at any time at the pleasure of the
1790 person who executes it. If the proxy form expressly so provides,
1791 any proxy holder may appoint, in writing, a substitute to act in
1792 his or her place.

1793 (b) If the governing documents permit voting by secret
1794 ballot by members who are not in attendance at a meeting of the
1795 members for the election of directors, such ballots shall be
1796 placed in an inner envelope with no identifying markings and
1797 mailed or delivered to the association in an outer envelope
1798 bearing identifying information reflecting the name of the

11-00506B-10

20101196

1799 member, the lot or parcel for which the vote is being cast, and
1800 the signature of the lot or parcel owner casting that ballot. If
1801 the eligibility of the member to vote is confirmed and no other
1802 ballot has been submitted for that lot or parcel, the inner
1803 envelope shall be removed from the outer envelope bearing the
1804 identification information, placed with the ballots which were
1805 personally cast, and opened when the ballots are counted. If
1806 more than one ballot is submitted for a lot or parcel, the
1807 ballots for that lot or parcel shall be disqualified. Any vote
1808 by ballot received after the closing of the balloting may not be
1809 considered.

1810 (9) ELECTIONS.—Elections of directors must be conducted in
1811 accordance with the procedures set forth in the governing
1812 documents of the association. All members of the association are
1813 ~~shall be~~ eligible to serve on the board of directors, and a
1814 member may nominate himself or herself as a candidate for the
1815 board at a meeting where the election is to be held or, if the
1816 election process allows voting by absentee ballot, in advance of
1817 the balloting. Except as otherwise provided in the governing
1818 documents, boards of directors must be elected by a plurality of
1819 the votes cast by eligible voters. Any election dispute between
1820 a member and an association must be submitted to mandatory
1821 binding arbitration with the division. Such proceedings shall be
1822 conducted in the manner provided by s. 718.1255 and the
1823 procedural rules adopted by the division.

1824 Section 20. Section 720.315, Florida Statutes, is created
1825 to read:

1826 720.315 Passage of special assessments before turnover by
1827 developer.—Before turnover, the board of directors controlled by

11-00506B-10

20101196__

1828 the developer may not levy a special assessment unless a
1829 majority of the parcel owners other than the developer have
1830 approved the special assessment by a majority vote at a duly
1831 called special meeting of the membership at which a quorum is
1832 present.

1833 Section 21. This act shall take effect July 1, 2010.