

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

29 | association's financial statements are based; amending s.
30 | 718.112, F.S.; revising requirements for the reappointment
31 | of certain board members; revising board eligibility
32 | requirements; revising notice requirements for board
33 | candidates; establishing requirements for newly elected
34 | board members; providing that a director or officer
35 | delinquent in the payment of a fee, fine, regular
36 | assessment, or special assessment by more than a specified
37 | number of days is deemed to have abandoned the office;
38 | requiring that a director charged by information or
39 | indictment of certain offenses involving an association's
40 | funds or property be removed from office; amending s.
41 | 718.115, F.S.; requiring that certain services obtained
42 | pursuant to a bulk contract as provided in the declaration
43 | be deemed a common expense; requiring that such contracts
44 | contain certain provisions; authorizing the cancellation
45 | of certain contracts; amending s. 718.116, F.S.; limiting
46 | the amount of certain costs to the unit owner; providing
47 | an exception; authorizing an association to demand future
48 | regular assessments related to the condominium unit under
49 | specified conditions; providing that the demand is
50 | continuing in nature; requiring that a tenant continue to
51 | pay assessments until the occurrence of specified events;
52 | requiring the delivery of notice of such demand; limiting
53 | the liability of a tenant; amending s. 718.303, F.S.;
54 | authorizing an association to suspend for a reasonable
55 | time the right of a unit owner or the unit's occupant,
56 | licensee, or invitee to use certain common elements under

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

85 | upon the transfer of control of a board of administration;
86 | requiring that a bulk assignee certify certain information
87 | in writing; providing for the resolution of a conflict
88 | between specified provisions of state law; providing that
89 | the failure of a bulk assignee or bulk buyer to comply
90 | with specified provisions of state law results in the loss
91 | of certain protections and exemptions; requiring that a
92 | bulk assignee or bulk buyer file certain information with
93 | the Division of Florida Condominiums, Timeshares, and
94 | Mobile Homes of the Department of Business and
95 | Professional Regulation before offering any units for sale
96 | or lease in excess of a specified term; requiring that a
97 | copy of such information be provided to a prospective
98 | purchaser; requiring that certain contracts and disclosure
99 | statements contain specified statements; requiring that a
100 | bulk assignee or bulk buyer comply with certain disclosure
101 | requirements; prohibiting a bulk assignee from taking
102 | certain actions on behalf of an association while the bulk
103 | assignee is in control of the board of administration of
104 | the association and requiring that such bulk assignee
105 | comply with certain requirements; requiring that a bulk
106 | assignee or bulk buyer comply with certain requirements
107 | regarding certain contracts; providing unit owners with
108 | specified protections regarding certain contracts;
109 | requiring that a bulk buyer comply with certain
110 | requirements regarding the transfer of a unit; prohibiting
111 | a person from being classified as a bulk assignee or bulk
112 | buyer unless condominium parcels were acquired before a

113 specified date; providing for the determination of the
114 date of acquisition of a parcel; providing that the
115 assignment of developer rights to a bulk assignee does not
116 release a developer from certain liabilities; preserving
117 certain liabilities for certain parties; amending s.
118 719.108, F.S.; authorizing an association to recover
119 charges incurred in connection with collecting a
120 delinquent assessment up to a specified maximum amount;
121 providing a prioritized list for disbursement of payments
122 received by an association; providing for a lien by an
123 association on a condominium unit for certain fees and
124 costs; providing procedures and notice requirements for
125 the filing of a lien by an association; authorizing an
126 association to demand future regular assessments related
127 to a unit under specified conditions; amending s. 720.304,
128 F.S.; providing that a flagpole and any flagpole display
129 are subject to certain codes and regulations; amending s.
130 720.305, F.S.; authorizing the association to suspend
131 certain rights under certain circumstances; providing that
132 certain provisions regarding the suspension-of-use rights
133 of an association do not apply to certain portions of
134 common areas; providing procedures and notice requirements
135 for levying a fine or imposing a suspension; amending s.
136 720.3085, F.S.; authorizing an association to demand
137 future regular assessments related to a parcel under
138 specified conditions; amending s. 720.31, F.S.;
139 authorizing an association to enter into certain
140 agreements; requiring that certain items be stated and

HB 1317

2010

141 fully described in the declaration; limiting an
142 association's power to enter into such agreements after a
143 specified period following the recording of a declaration;
144 requiring that certain agreements be approved by a
145 specified percentage of voting interests of an association
146 when the declaration is silent as to the authority of an
147 association to enter into such agreement; authorizing an
148 association to join with other associations or a master
149 association under certain circumstances and for specified
150 purposes; repealing s. 553.509(2), F.S., relating to
151 public elevators and emergency operation plans in certain
152 condominiums and multifamily dwellings; amending s.
153 720.303, F.S.; revising provisions relating to homeowners'
154 association board meetings, inspection and copying of
155 records, and reserve accounts of budgets; prohibiting
156 certain association personnel from receiving a salary or
157 compensation; providing exceptions; amending s. 720.306,
158 F.S.; providing requirements for secret ballots; creating
159 s. 720.315, F.S.; prohibiting the board of directors of a
160 homeowners' association from levying a special assessment
161 before turnover of the association by the developer unless
162 certain conditions are met; providing an effective date.

163
164 Be It Enacted by the Legislature of the State of Florida:

165
166 Section 1. Section 627.714, Florida Statutes, is created
167 to read:

168 627.714 Residential condominium unit owner coverage; loss

169 assessment coverage required; excess coverage provision
 170 required.—For policies issued or renewed on or after July 1,
 171 2010, coverage under a unit owner's residential property policy
 172 shall include property loss assessment coverage of at least
 173 \$2,000 for all assessments made as a result of the same direct
 174 loss to the property, regardless of the number of assessments,
 175 owned by all members of the association collectively when such
 176 loss is of the type of loss covered by the unit owner's
 177 residential property insurance policy, to which a deductible
 178 shall apply of no more than \$250 per direct property loss. If a
 179 deductible was or will be applied to other property loss
 180 sustained by the unit owner resulting from the same direct loss
 181 to the property, no deductible shall apply to the loss
 182 assessment coverage. Every individual unit owner's residential
 183 property policy must contain a provision stating that the
 184 coverage afforded by such policy is excess coverage over the
 185 amount recoverable under any other policy covering the same
 186 property.

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

189 633.0215 Florida Fire Prevention Code.—

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

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

HB 1317

2010

197 718.110 Amendment of declaration; correction of error or
198 omission in declaration by circuit court.—

199 (13) Any amendment prohibiting ~~restricting~~ unit owners
200 from renting their units or altering the duration of the rental
201 term or the number of times unit owners are entitled to rent
202 their units during a specified period ~~owners' rights relating to~~
203 ~~the rental of units~~ applies only to unit owners who consent to
204 the amendment and unit owners who acquire title to ~~purchase~~
205 their units after the effective date of that amendment.

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

208 718.111 The association.—

209 (12) OFFICIAL RECORDS.—

210 (a) From the inception of the association, the association
211 shall maintain each of the following items, when applicable,
212 which shall constitute the official records of the association:

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

215 2. A photocopy of the recorded declaration of condominium
216 of each condominium operated by the association and of each
217 amendment to each declaration.

218 3. A photocopy of the recorded bylaws of the association
219 and of each amendment to the bylaws.

220 4. A certified copy of the articles of incorporation of
221 the association, or other documents creating the association,
222 and of each amendment thereto.

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

224 6. A book or books which contain the minutes of all

HB 1317

2010

225 meetings of the association, of the board of administration, and
226 of unit owners, which minutes shall be retained for a period of
227 not less than 7 years.

228 7. A current roster of all unit owners and their mailing
229 addresses, unit identifications, voting certifications, and, if
230 known, telephone numbers. The association shall also maintain
231 the electronic mailing addresses and the numbers designated by
232 unit owners for receiving notice sent by electronic transmission
233 of those unit owners consenting to receive notice by electronic
234 transmission. The electronic mailing addresses and numbers
235 provided by unit owners to receive notice by electronic
236 transmission shall be removed from association records when
237 consent to receive notice by electronic transmission is revoked.
238 However, the association is not liable for an erroneous
239 disclosure of the electronic mail address or the number for
240 receiving electronic transmission of notices.

241 8. All current insurance policies of the association and
242 condominiums operated by the association.

243 9. A current copy of any management agreement, lease, or
244 other contract to which the association is a party or under
245 which the association or the unit owners have an obligation or
246 responsibility.

247 10. Bills of sale or transfer for all property owned by
248 the association.

249 11. Accounting records for the association and separate
250 accounting records for each condominium which the association
251 operates. All accounting records shall be maintained for a
252 period of not less than 7 years. Any person who knowingly or

253 | intentionally defaces or destroys accounting records required to
 254 | be created and maintained by this chapter during the period for
 255 | which such records are required to be maintained pursuant to
 256 | this chapter, or who knowingly or intentionally fails to create
 257 | or maintain accounting records required to be maintained by this
 258 | chapter, with the intent of causing harm to the association or
 259 | one or more of its members, is personally subject to a civil
 260 | penalty pursuant to s. 718.501(1)(d). The accounting records
 261 | shall include, but are not limited to:

- 262 | a. Accurate, itemized, and detailed records of all
 263 | receipts and expenditures.
- 264 | b. A current account and a monthly, bimonthly, or
 265 | quarterly statement of the account for each unit designating the
 266 | name of the unit owner, the due date and amount of each
 267 | assessment, the amount paid upon the account, and the balance
 268 | due.
- 269 | c. All audits, reviews, accounting statements, and
 270 | financial reports of the association or condominium.
- 271 | d. All contracts for work to be performed. Bids for work
 272 | to be performed shall also be considered official records and
 273 | shall be maintained by the association.

274 | 12. Ballots, sign-in sheets, voting proxies, and all other
 275 | papers relating to voting by unit owners, which shall be
 276 | maintained for a period of 1 year from the date of the election,
 277 | vote, or meeting to which the document relates, notwithstanding
 278 | paragraph (b).

279 | 13. All rental records, when the association is acting as
 280 | agent for the rental of condominium units.

HB 1317

2010

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

283 15. All other records of the association not specifically
 284 included in the foregoing which are related to the operation of
 285 the association.

286 16. A copy of the inspection report as provided for in s.
 287 718.301(4)(p).

288 (b) The official records of the association shall be
 289 maintained within the state for at least 7 years. The records of
 290 the association shall be made available to a unit owner within
 291 45 miles of the condominium property or within the county in
 292 which the condominium property is located within 5 working days
 293 after receipt of written request by the board or its designee.
 294 However, such distance requirement does not apply to an
 295 association governing a timeshare condominium. This paragraph
 296 may be complied with by having a copy of the official records of
 297 the association available for inspection or copying on the
 298 condominium property or association property, or the association
 299 may offer the option of making the records of the association
 300 available to a unit owner either electronically via the Internet
 301 or by allowing the records to be viewed in electronic format on
 302 a computer screen and printed upon request. The association is
 303 not responsible for the use or misuse of the information
 304 provided to an association member or his or her authorized
 305 representative pursuant to the compliance requirements of this
 306 chapter unless the association has an affirmative duty not to
 307 disclose such information pursuant to this chapter.

308 (c) The official records of the association are open to

HB 1317

2010

309 inspection by any association member or the authorized
310 representative of such member at all reasonable times. The right
311 to inspect the records includes the right to make or obtain
312 copies, at the reasonable expense, if any, of the association
313 member. The association may adopt reasonable rules regarding the
314 frequency, time, location, notice, and manner of record
315 inspections and copying. The failure of an association to
316 provide the records within 10 working days after receipt of a
317 written request shall create a rebuttable presumption that the
318 association willfully failed to comply with this paragraph. A
319 unit owner who is denied access to official records is entitled
320 to the actual damages or minimum damages for the association's
321 willful failure to comply with this paragraph. The minimum
322 damages shall be \$50 per calendar day up to 10 days, the
323 calculation to begin on the 11th working day after receipt of
324 the written request. The failure to permit inspection of the
325 association records as provided herein entitles any person
326 prevailing in an enforcement action to recover reasonable
327 attorney's fees from the person in control of the records who,
328 directly or indirectly, knowingly denied access to the records
329 for inspection. Any person who knowingly or intentionally
330 defaces or destroys accounting records that are required by this
331 chapter to be maintained during the period for which such
332 records are required to be maintained pursuant to this chapter,
333 or who knowingly or intentionally fails to create or maintain
334 accounting records that are required to be created or maintained
335 by this chapter, with the intent of causing harm to the
336 association or one or more of its members, is personally subject

HB 1317

2010

337 to a civil penalty pursuant to s. 718.501(1)(d). The association
338 shall maintain an adequate number of copies of the declaration,
339 articles of incorporation, bylaws, and rules, and all amendments
340 to each of the foregoing, as well as the question and answer
341 sheet provided for in s. 718.504 and year-end financial
342 information required in this section, on the condominium
343 property to ensure their availability to unit owners and
344 prospective purchasers, and may charge its actual costs for
345 preparing and furnishing these documents to those requesting the
346 documents ~~same~~. Notwithstanding the provisions of this
347 paragraph, the following records shall not be accessible to unit
348 owners:

349 1. Any record protected by the lawyer-client privilege as
350 described in s. 90.502; and any record protected by the work-
351 product privilege, including any record prepared by an
352 association attorney or prepared at the attorney's express
353 direction; which reflects a mental impression, conclusion,
354 litigation strategy, or legal theory of the attorney or the
355 association, and which was prepared exclusively for civil or
356 criminal litigation or for adversarial administrative
357 proceedings, or which was prepared in anticipation of imminent
358 civil or criminal litigation or imminent adversarial
359 administrative proceedings until the conclusion of the
360 litigation or adversarial administrative proceedings.

361 2. Information obtained by an association in connection
362 with the approval of the lease, sale, or other transfer of a
363 unit.

364 3. Personnel records of association employees, including,

HB 1317

2010

365 but not limited to, disciplinary, payroll, health, and insurance
366 records.

367 ~~4.3.~~ Medical records of unit owners.

368 ~~5.4.~~ Social security numbers, driver's license numbers,
369 credit card numbers, e-mail addresses, telephone numbers,
370 emergency contact information, any addresses of a unit owner
371 other than as provided to fulfill the association's notice
372 requirements, and other personal identifying information of any
373 person, excluding the person's name, unit designation, mailing
374 address, and property address.

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

377 7. The software and operating system used by the
378 association which allows manipulation of data, even if the owner
379 owns a copy of the same software used by the association. The
380 data is part of the official records of the association.

381 (13) FINANCIAL REPORTING.—Within 90 days after the end of
382 the fiscal year, or annually on a date provided in the bylaws,
383 the association shall prepare and complete, or contract for the
384 preparation and completion of, a financial report for the
385 preceding fiscal year. Within 21 days after the final financial
386 report is completed by the association or received from the
387 third party, but not later than 180 ~~120~~ days after the end of
388 the fiscal year or other date as provided in the bylaws, the
389 association shall mail to each unit owner at the address last
390 furnished to the association by the unit owner, or hand deliver
391 to each unit owner, a copy of the financial report or a notice
392 that a copy of the financial report will be mailed or hand

HB 1317

2010

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

417 (a) An association that meets the criteria of this
418 paragraph shall prepare or cause to be prepared a complete set
419 of financial statements in accordance with generally accepted
420 accounting principles. The financial statements shall be based

421 upon the association's total annual revenues, as follows:

422 1. An association with total annual revenues of \$400,000
 423 ~~\$100,000~~ or more, but less than \$600,000 ~~\$200,000~~, shall prepare
 424 compiled financial statements.

425 2. An association with total annual revenues of at least
 426 \$600,000 ~~\$200,000~~, but less than \$800,000 ~~\$400,000~~, shall
 427 prepare reviewed financial statements.

428 3. An association with total annual revenues of \$800,000
 429 ~~\$400,000~~ or more shall prepare audited financial statements.

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

433 2. An association that ~~which~~ operates fewer ~~less~~ than 75
 434 ~~50~~ units, regardless of the association's annual revenues, shall
 435 prepare a report of cash receipts and expenditures in lieu of
 436 financial statements required by paragraph (a).

437 3. A report of cash receipts and disbursements must
 438 disclose the amount of receipts by accounts and receipt
 439 classifications and the amount of expenses by accounts and
 440 expense classifications, including, but not limited to, the
 441 following, as applicable: costs for security, professional and
 442 management fees and expenses, taxes, costs for recreation
 443 facilities, expenses for refuse collection and utility services,
 444 expenses for lawn care, costs for building maintenance and
 445 repair, insurance costs, administration and salary expenses, and
 446 reserves accumulated and expended for capital expenditures,
 447 deferred maintenance, and any other category for which the
 448 association maintains reserves.

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

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

454 2. Reviewed or audited financial statements, if the
 455 association is required to prepare compiled financial
 456 statements; or

457 3. Audited financial statements if the association is
 458 required to prepare reviewed financial statements.

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

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

464 2. A report of cash receipts and expenditures or a
 465 compiled financial statement in lieu of a reviewed or audited
 466 financial statement; or

467 3. A report of cash receipts and expenditures, a compiled
 468 financial statement, or a reviewed financial statement in lieu
 469 of an audited financial statement.

470
 471 Such meeting and approval must occur before ~~prior to~~ the end of
 472 the fiscal year and is effective only for the fiscal year in
 473 which the vote is taken, except that the approval also may be
 474 effective for the following fiscal year. With respect to an
 475 association to which the developer has not turned over control
 476 of the association, all unit owners, including the developer,

HB 1317

2010

477 may vote on issues related to the preparation of financial
478 reports for the first 2 fiscal years of the association's
479 operation, beginning with the fiscal year in which the
480 declaration is recorded. Thereafter, all unit owners except the
481 developer may vote on such issues until control is turned over
482 to the association by the developer. Any audit or review
483 prepared under this section shall be paid for by the developer
484 if done prior to turnover of control of the association. An
485 association may not waive the financial reporting requirements
486 of this section for more than 3 consecutive years.

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

489 718.112 Bylaws.—

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

493 (d) Unit owner meetings.—

494 1. There shall be an annual meeting of the unit owners
495 held at the location provided in the association bylaws and, if
496 the bylaws are silent as to the location, the meeting shall be
497 held within 45 miles of the condominium property. However, such
498 distance requirement does not apply to an association governing
499 a timeshare condominium. Unless the bylaws provide otherwise, a
500 vacancy on the board caused by the expiration of a director's
501 term shall be filled by electing a new board member, and the
502 election shall be by secret ballot; however, if the number of
503 vacancies equals or exceeds the number of candidates, no
504 election is required. The terms of all members of the board

HB 1317

2010

505 shall expire at the annual meeting and such board members may
506 stand for reelection unless otherwise permitted by the bylaws.
507 In the event that the bylaws permit staggered terms of no more
508 than 2 years and upon approval of a majority of the total voting
509 interests, the association board members may serve 2-year
510 staggered terms. If the number ~~no person is interested in or~~
511 ~~demonstrates an intention to run for the position of a board~~
512 ~~members member~~ whose terms have ~~term has~~ expired according to
513 the provisions of this subparagraph exceeds the number of
514 eligible members showing interest in or demonstrating an
515 intention to run for the vacant positions, each ~~such~~ board
516 member whose term has expired shall become eligible for
517 reappointment ~~be automatically reappointed~~ to the board of
518 administration and need not stand for reelection. In a
519 condominium association of more than 10 units, coowners of a
520 unit may not serve as members of the board of directors at the
521 same time unless they own more than one unit and are not co-
522 occupants of a unit or unless there are not enough owners to
523 fill the vacancies on the board. Any unit owner desiring to be a
524 candidate for board membership shall comply with sub-
525 subparagraph ~~subparagraph~~ 3.a. A person who has been suspended
526 or removed by the division under this chapter, or who is
527 delinquent in the payment of any fee, fine, or special or
528 regular assessment as provided in paragraph (n), is not eligible
529 for board membership. A person who has been convicted of any
530 felony in this state or in a United States District or
531 Territorial Court, or who has been convicted of any offense in
532 another jurisdiction that would be considered a felony if

533 committed in this state, is not eligible for board membership
534 unless such felon's civil rights have been restored for a period
535 of no less than 5 years as of the date on which such person
536 seeks election to the board. The validity of an action by the
537 board is not affected if it is later determined that a member of
538 the board is ineligible for board membership due to having been
539 convicted of a felony.

540 2. The bylaws shall provide the method of calling meetings
541 of unit owners, including annual meetings. Written notice, which
542 notice must include an agenda, shall be mailed, hand delivered,
543 or electronically transmitted to each unit owner at least 14
544 days prior to the annual meeting and shall be posted in a
545 conspicuous place on the condominium property at least 14
546 continuous days preceding the annual meeting. Upon notice to the
547 unit owners, the board shall by duly adopted rule designate a
548 specific location on the condominium property or association
549 property upon which all notices of unit owner meetings shall be
550 posted; however, if there is no condominium property or
551 association property upon which notices can be posted, this
552 requirement does not apply. In lieu of or in addition to the
553 physical posting of notice of any meeting of the unit owners on
554 the condominium property, the association may, by reasonable
555 rule, adopt a procedure for conspicuously posting and repeatedly
556 broadcasting the notice and the agenda on a closed-circuit cable
557 television system serving the condominium association. However,
558 if broadcast notice is used in lieu of a notice posted
559 physically on the condominium property, the notice and agenda
560 must be broadcast at least four times every broadcast hour of

HB 1317

2010

561 each day that a posted notice is otherwise required under this
562 section. When broadcast notice is provided, the notice and
563 agenda must be broadcast in a manner and for a sufficient
564 continuous length of time so as to allow an average reader to
565 observe the notice and read and comprehend the entire content of
566 the notice and the agenda. Unless a unit owner waives in writing
567 the right to receive notice of the annual meeting, such notice
568 shall be hand delivered, mailed, or electronically transmitted
569 to each unit owner. Notice for meetings and notice for all other
570 purposes shall be mailed to each unit owner at the address last
571 furnished to the association by the unit owner, or hand
572 delivered to each unit owner. However, if a unit is owned by
573 more than one person, the association shall provide notice, for
574 meetings and all other purposes, to that one address which the
575 developer initially identifies for that purpose and thereafter
576 as one or more of the owners of the unit shall so advise the
577 association in writing, or if no address is given or the owners
578 of the unit do not agree, to the address provided on the deed of
579 record. An officer of the association, or the manager or other
580 person providing notice of the association meeting, shall
581 provide an affidavit or United States Postal Service certificate
582 of mailing, to be included in the official records of the
583 association affirming that the notice was mailed or hand
584 delivered, in accordance with this provision.

585 3.a. The members of the board shall be elected by written
586 ballot or voting machine. Proxies shall in no event be used in
587 electing the board, either in general elections or elections to
588 fill vacancies caused by recall, resignation, or otherwise,

HB 1317

2010

589 unless otherwise provided in this chapter. Not less than 60 days
590 before a scheduled election, the association shall mail,
591 deliver, or electronically transmit, whether by separate
592 association mailing or included in another association mailing,
593 delivery, or transmission, including regularly published
594 newsletters, to each unit owner entitled to a vote, a first
595 notice of the date of the election ~~along with a certification~~
596 ~~form provided by the division attesting that he or she has read~~
597 ~~and understands, to the best of his or her ability, the~~
598 ~~governing documents of the association and the provisions of~~
599 ~~this chapter and any applicable rules.~~ Any unit owner or other
600 eligible person desiring to be a candidate for the board must
601 give written notice of his or her intent to be a candidate to
602 the association not less than 40 days before a scheduled
603 election. Together with the written notice and agenda as set
604 forth in subparagraph 2., the association shall mail, deliver,
605 or electronically transmit a second notice of the election to
606 all unit owners entitled to vote therein, together with a ballot
607 which shall list all candidates. Upon request of a candidate,
608 ~~the association shall include~~ an information sheet, no larger
609 than 8 1/2 inches by 11 inches, which must be furnished by the
610 candidate not less than 35 days before the election, shall ~~along~~
611 ~~with the signed certification form provided for in this~~
612 ~~subparagraph,~~ to be included with the mailing, delivery, or
613 transmission of the ballot, with the costs of mailing, delivery,
614 or electronic transmission and copying to be borne by the
615 association. The association is not liable for the contents of
616 the information sheets prepared by the candidates. In order to

617 | reduce costs, the association may print or duplicate the
 618 | information sheets on both sides of the paper. The division
 619 | shall by rule establish voting procedures consistent with the
 620 | provisions contained herein, including rules establishing
 621 | procedures for giving notice by electronic transmission and
 622 | rules providing for the secrecy of ballots. Elections shall be
 623 | decided by a plurality of those ballots cast. There shall be no
 624 | quorum requirement; however, at least 20 percent of the eligible
 625 | voters must cast a ballot in order to have a valid election of
 626 | members of the board. No unit owner shall permit any other
 627 | person to vote his or her ballot, and any such ballots
 628 | improperly cast shall be deemed invalid, provided any unit owner
 629 | who violates this provision may be fined by the association in
 630 | accordance with s. 718.303. A unit owner who needs assistance in
 631 | casting the ballot for the reasons stated in s. 101.051 may
 632 | obtain assistance in casting the ballot. The regular election
 633 | shall occur on the date of the annual meeting. The provisions of
 634 | this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare
 635 | condominium associations. Notwithstanding the provisions of this
 636 | sub-subparagraph ~~subparagraph~~, an election is not required
 637 | unless more candidates file notices of intent to run or are
 638 | nominated than board vacancies exist.

639 | b. Within 90 days after being elected or appointed to the
 640 | board, each newly elected or appointed director shall certify in
 641 | writing to the secretary of the association that he or she has
 642 | read the association's declaration of condominium, articles of
 643 | incorporation, bylaws, and current written policies; that he or
 644 | she will work to uphold such documents and policies to the best

HB 1317

2010

645 of his or her ability; and that he or she will faithfully
646 discharge his or her fiduciary responsibility to the
647 association's members. In lieu of this written certification,
648 the newly elected or appointed director may submit a certificate
649 of satisfactory completion of the educational curriculum
650 administered by a division-approved condominium education
651 provider. A director who fails to timely file the written
652 certification or educational certificate is suspended from
653 service on the board until he or she complies with the
654 provisions of this subparagraph. The board may temporarily fill
655 the vacancy during the period of suspension. The secretary shall
656 cause the association to retain a director's written
657 certification or educational certificate for inspection by the
658 members for 5 years after a director's election. Failure to have
659 such written certification or educational certificate on file
660 does not affect the validity of any action.

661 4. Any approval by unit owners called for by this chapter
662 or the applicable declaration or bylaws, including, but not
663 limited to, the approval requirement in s. 718.111(8), shall be
664 made at a duly noticed meeting of unit owners and shall be
665 subject to all requirements of this chapter or the applicable
666 condominium documents relating to unit owner decisionmaking,
667 except that unit owners may take action by written agreement,
668 without meetings, on matters for which action by written
669 agreement without meetings is expressly allowed by the
670 applicable bylaws or declaration or any statute that provides
671 for such action.

672 5. Unit owners may waive notice of specific meetings if

HB 1317

2010

673 allowed by the applicable bylaws or declaration or any statute.
674 If authorized by the bylaws, notice of meetings of the board of
675 administration, unit owner meetings, except unit owner meetings
676 called to recall board members under paragraph (j), and
677 committee meetings may be given by electronic transmission to
678 unit owners who consent to receive notice by electronic
679 transmission.

680 6. Unit owners shall have the right to participate in
681 meetings of unit owners with reference to all designated agenda
682 items. However, the association may adopt reasonable rules
683 governing the frequency, duration, and manner of unit owner
684 participation.

685 7. Any unit owner may tape record or videotape a meeting
686 of the unit owners subject to reasonable rules adopted by the
687 division.

688 8. Unless otherwise provided in the bylaws, any vacancy
689 occurring on the board before the expiration of a term may be
690 filled by the affirmative vote of the majority of the remaining
691 directors, even if the remaining directors constitute less than
692 a quorum, or by the sole remaining director. In the alternative,
693 a board may hold an election to fill the vacancy, in which case
694 the election procedures must conform to the requirements of sub-
695 subparagraph ~~subparagraph~~ 3.a. unless the association governs 10
696 units or fewer ~~less~~ and has opted out of the statutory election
697 process, in which case the bylaws of the association control.
698 Unless otherwise provided in the bylaws, a board member
699 appointed or elected under this section shall fill the vacancy
700 for the unexpired term of the seat being filled. Filling

701 vacancies created by recall is governed by paragraph (j) and
 702 rules adopted by the division.

703
 704 Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-
 705 subparagraph (d)3.a., an association of 10 or fewer units may,
 706 by the affirmative vote of a majority of the total voting
 707 interests, provide for different voting and election procedures
 708 in its bylaws, which vote may be by a proxy specifically
 709 delineating the different voting and election procedures. The
 710 different voting and election procedures may provide for
 711 elections to be conducted by limited or general proxy.

712 (n) Director or officer delinquencies.—A director or
 713 officer more than 90 days delinquent in the payment of any
 714 monetary obligation due the association ~~regular assessments~~
 715 shall be deemed to have abandoned the office, creating a vacancy
 716 in the office to be filled according to law.

717 (o) Director or officer offenses.—A director or officer
 718 charged by information or indictment with a felony theft or
 719 embezzlement offense involving the association's funds or
 720 property shall be removed from office, creating a vacancy in the
 721 office to be filled according to law until the end of the period
 722 of the suspension or the end of the director's term of office,
 723 whichever occurs first. While such director or officer has such
 724 criminal charge pending, he or she may not be appointed or
 725 elected to a position as a director or officer. However, should
 726 the charges be resolved without a finding of guilt, the director
 727 or officer shall be reinstated for the remainder of his or her
 728 term of office, if any.

729 Section 6. Paragraph (d) of subsection (1) of section
 730 718.115, Florida Statutes, is amended to read:

731 718.115 Common expenses and common surplus.—

732 (1)

733 (d) If so provided in the declaration, the cost of
 734 communications services as defined in chapter 202, information
 735 services, or Internet services ~~a master antenna television~~
 736 ~~system or duly franchised cable television service~~ obtained
 737 pursuant to a bulk contract shall be deemed a common expense. If
 738 the declaration does not provide for the cost of communications
 739 services as defined in chapter 202, information services, or
 740 Internet services ~~a master antenna television system or duly~~
 741 ~~franchised cable television service~~ obtained under a bulk
 742 contract as a common expense, the board may enter into such a
 743 contract, and the cost of the service will be a common expense
 744 but allocated on a per-unit basis rather than a percentage basis
 745 if the declaration provides for other than an equal sharing of
 746 common expenses, and any contract entered into before July 1,
 747 1998, in which the cost of the service is not equally divided
 748 among all unit owners, may be changed by vote of a majority of
 749 the voting interests present at a regular or special meeting of
 750 the association, to allocate the cost equally among all units.
 751 The contract shall be for a term of not less than 2 years.

752 1. Any contract made by the board after the effective date
 753 hereof for communications services as defined in chapter 202,
 754 information services, or Internet services ~~a community antenna~~
 755 ~~system or duly franchised cable television service~~ may be
 756 canceled by a majority of the voting interests present at the

HB 1317

2010

757 next regular or special meeting of the association. Any member
758 may make a motion to cancel the ~~said~~ contract, but if no motion
759 is made or if such motion fails to obtain the required majority
760 at the next regular or special meeting, whichever occurs ~~is~~
761 sooner, following the making of the contract, ~~then~~ such contract
762 shall be deemed ratified for the term therein expressed.

763 2. Any such contract shall provide, and shall be deemed to
764 provide if not expressly set forth, that any hearing-impaired or
765 legally blind unit owner who does not occupy the unit with a
766 non-hearing-impaired or sighted person, or any unit owner
767 receiving supplemental security income under Title XVI of the
768 Social Security Act or food stamps as administered by the
769 Department of Children and Family Services pursuant to s.
770 414.31, may discontinue the cable or video service without
771 incurring disconnect fees, penalties, or subsequent service
772 charges, and, as to such units, the owners shall not be required
773 to pay any common expenses charge related to such service. If
774 fewer ~~less~~ than all members of an association share the expenses
775 of cable or video service ~~television~~, the expense shall be
776 shared equally by all participating unit owners. The association
777 may use the provisions of s. 718.116 to enforce payment of the
778 shares of such costs by the unit owners receiving cable or video
779 service ~~television~~.

780 Section 7. Paragraph (b) of subsection (5) of section
781 718.116, Florida Statutes, is amended, and subsection (11) is
782 added to that section, to read:

783 718.116 Assessments; liability; lien and priority;
784 interest; collection.—

785 (5)

786 (b) To be valid, a claim of lien must state the

787 description of the condominium parcel, the name of the record

788 owner, the name and address of the association, the amount due,

789 and the due dates. It must be executed and acknowledged by an

790 officer or authorized agent of the association. No such lien

791 shall be effective longer than 1 year after the claim of lien

792 was recorded unless, within that time, an action to enforce the

793 lien is commenced. The 1-year period shall automatically be

794 extended for any length of time during which the association is

795 prevented from filing a foreclosure action by an automatic stay

796 resulting from a bankruptcy petition filed by the parcel owner

797 or any other person claiming an interest in the parcel. The

798 claim of lien shall secure all unpaid assessments which are due

799 and which may accrue subsequent to the recording of the claim of

800 lien and before ~~prior to~~ the entry of a certificate of title, as

801 well as interest and all reasonable costs and attorney's fees

802 incurred by the association incident to the collection process.

803 Costs to the unit owner secured by the association's claim of

804 lien with regard to collection letters or any other collection

805 efforts by management companies or licensed managers as to any

806 delinquent installment of an assessment may not exceed \$75

807 unless the management company prepares any letter or estoppel

808 certificate required by this chapter and charges a reasonable

809 fee related to the preparation of such letter or estoppel

810 certificate. Upon payment in full, the person making the payment

811 is entitled to a satisfaction of the lien.

812

HB 1317

2010

813 After notice of contest of lien has been recorded, the clerk of
814 the circuit court shall mail a copy of the recorded notice to
815 the association by certified mail, return receipt requested, at
816 the address shown in the claim of lien or most recent amendment
817 to it and shall certify to the service on the face of the
818 notice. Service is complete upon mailing. After service, the
819 association has 90 days in which to file an action to enforce
820 the lien; and, if the action is not filed within the 90-day
821 period, the lien is void. However, the 90-day period shall be
822 extended for any length of time that the association is
823 prevented from filing its action because of an automatic stay
824 resulting from the filing of a bankruptcy petition by the unit
825 owner or by any other person claiming an interest in the parcel.

826 (11) If the unit is occupied by a tenant and the unit
827 owner is delinquent in the payment of any monetary obligation
828 due to the association, the association may demand that the
829 tenant pay to the association the future monetary obligations
830 related to the condominium unit. The demand is continuing in
831 nature, and upon demand, the tenant shall continue to pay the
832 monetary obligations to the association until the association
833 releases the tenant or the tenant discontinues tenancy in the
834 unit. The association shall mail written notice to the unit
835 owner of the association's demand that the tenant make payments
836 to the association. The tenant is not liable for increases in
837 the amount of the monetary obligations due unless the tenant was
838 reasonably notified of the increase before the day on which the
839 rent is due. The liability of the tenant may not exceed the
840 amount due from the tenant to the tenant's landlord. The

841 tenant's landlord shall provide the tenant a credit against
 842 rents due to the unit owner in the amount of monies paid to the
 843 association under this section. The association shall, upon
 844 request, provide the tenant with written receipts for payments
 845 made. The association may issue notices under s. 83.56 and may
 846 sue for eviction under ss. 83.59-83.625 as if the association
 847 were a landlord under part II of chapter 83 if the tenant fails
 848 to pay a required assessment to the association. However, the
 849 association is not otherwise considered a landlord under chapter
 850 83 and specifically has no duties under s. 83.51. The tenant
 851 does not, by virtue of payment of monetary obligations to the
 852 association, have any of the rights of a unit owner to vote in
 853 any election or to examine the books and records of the
 854 association. A court may supersede the effect of this subsection
 855 by appointing a receiver.

856 Section 8. Section 718.303, Florida Statutes, is amended
 857 to read:

858 718.303 Obligations of owners and occupants; waiver; levy
 859 of fines, suspension of use or voting rights, and other
 860 nonexclusive remedies in law or equity ~~fine against unit~~ by an
 861 association.-

862 (1) Each unit owner, each tenant and other invitee, and
 863 each association shall be governed by, and shall comply with the
 864 provisions of, this chapter, the declaration, the documents
 865 creating the association, and the association bylaws and the
 866 provisions thereof shall be deemed expressly incorporated into
 867 any lease of a unit. Actions for damages or for injunctive
 868 relief, or both, for failure to comply with these provisions may

HB 1317

2010

869 be brought by the association or by a unit owner against:

870 (a) The association.

871 (b) A unit owner.

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

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

877 (e) Any tenant leasing a unit, and any other invitee
878 occupying a unit.

879

880 The prevailing party in any such action or in any action in
881 which the purchaser claims a right of voidability based upon
882 contractual provisions as required in s. 718.503(1)(a) is
883 entitled to recover reasonable attorney's fees. A unit owner
884 prevailing in an action between the association and the unit
885 owner under this section, in addition to recovering his or her
886 reasonable attorney's fees, may recover additional amounts as
887 determined by the court to be necessary to reimburse the unit
888 owner for his or her share of assessments levied by the
889 association to fund its expenses of the litigation. This relief
890 does not exclude other remedies provided by law. Actions arising
891 under this subsection shall not be deemed to be actions for
892 specific performance.

893 (2) A provision of this chapter may not be waived if the
894 waiver would adversely affect the rights of a unit owner or the
895 purpose of the provision, except that unit owners or members of
896 a board of administration may waive notice of specific meetings

897 | in writing if provided by the bylaws. Any instruction given in
 898 | writing by a unit owner or purchaser to an escrow agent may be
 899 | relied upon by an escrow agent, whether or not such instruction
 900 | and the payment of funds thereunder might constitute a waiver of
 901 | any provision of this chapter.

902 | (3) If a unit owner is delinquent for more than 90 days in
 903 | the payment of a monetary obligation due to the association or
 904 | if the declaration or bylaws so provide, the association may
 905 | suspend, for a reasonable time, the right of a unit owner or a
 906 | unit's occupant, licensee, or invitee to use common elements,
 907 | common facilities, or any other association property. This
 908 | subsection does not apply to limited common elements intended to
 909 | be used only by that unit, common elements that must be used to
 910 | access the unit, utility services provided to the unit, parking
 911 | spaces, or elevators. The association may also levy reasonable
 912 | fin~~es against a unit~~e for the failure of the owner of the unit,
 913 | or its occupant, licensee, or invitee, to comply with any
 914 | provision of the declaration, the association bylaws, or
 915 | reasonable rules of the association. No fine will become a lien
 916 | against a unit. A ~~Ne~~ fine may not exceed \$100 per violation.
 917 | However, a fine may be levied on the basis of each day of a
 918 | continuing violation, with a single notice and opportunity for
 919 | hearing, provided that no such fine shall in the aggregate
 920 | exceed \$1,000. A ~~Ne~~ fine may not be levied and a suspension may
 921 | not be imposed unless the association first gives ~~except after~~
 922 | ~~giving~~ reasonable notice and opportunity for a hearing to the
 923 | unit owner and, if applicable, its occupant, licensee, or
 924 | invitee. The hearing must be held before a committee of other

HB 1317

2010

925 unit owners who are neither board members nor persons residing
 926 in a board member's household. If the committee does not agree
 927 with the fine or suspension, the fine or suspension may not be
 928 levied or imposed. ~~The provisions of this subsection do not~~
 929 ~~apply to unoccupied units.~~

930 (4) The notice and hearing requirements of subsection (3)
 931 do not apply to the imposition of suspensions or fines against a
 932 unit owner or a unit's occupant, licensee, or invitee because of
 933 the failure to pay any amounts due the association. If such a
 934 fine or suspension is imposed, the association must levy the
 935 fine or impose a reasonable suspension at a properly noticed
 936 board meeting, and after the imposition of such fine or
 937 suspension, the association must notify the unit owner and, if
 938 applicable, the unit's occupant, licensee, or invitee by mail or
 939 hand delivery.

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

943 Section 9. Subsection (16) of section 718.103, Florida
 944 Statutes, is amended to read:

945 718.103 Definitions.—As used in this chapter, the term:

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

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

952 (b) A cooperative association that ~~which~~ creates a

HB 1317

2010

953 condominium by conversion of an existing residential cooperative
 954 after control of the association has been transferred to the
 955 unit owners if, following the conversion, the unit owners will
 956 be the same persons who were unit owners of the cooperative and
 957 no units are offered for sale or lease to the public as part of
 958 the plan of conversion;~~—~~

959 (c) A bulk assignee or bulk buyer as defined in s.
 960 718.703; or

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

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

967 718.301 Transfer of association control; claims of defect
 968 by association.—

969 (1) When unit owners other than the developer own 15
 970 percent or more of the units in a condominium that will be
 971 operated ultimately by an association, the unit owners other
 972 than the developer shall be entitled to elect no less than one-
 973 third of the members of the board of administration of the
 974 association. Unit owners other than the developer are entitled
 975 to elect not less than a majority of the members of the board of
 976 administration of an association:

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

980 (b) Three months after 90 percent of the units that will

981 | be operated ultimately by the association have been conveyed to
 982 | purchasers;

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

987 | (d) When some of the units have been conveyed to
 988 | purchasers and none of the others are being constructed or
 989 | offered for sale by the developer in the ordinary course of
 990 | business;

991 | (e) When the developer files a petition seeking protection
 992 | in bankruptcy;

993 | (f) When a receiver for the developer is appointed by a
 994 | circuit court and is not discharged within 30 days after such
 995 | appointment, unless the court determines within 30 days after
 996 | appointment of the receiver that transfer of control would be
 997 | detrimental to the association or its members; or

998 | (g) Seven years after recordation of the declaration of
 999 | condominium; or, in the case of an association which may
 1000 | ultimately operate more than one condominium, 7 years after
 1001 | recordation of the declaration for the first condominium it
 1002 | operates; or, in the case of an association operating a phase
 1003 | condominium created pursuant to s. 718.403, 7 years after
 1004 | recordation of the declaration creating the initial phase,
 1005 | whichever occurs first. The developer is entitled to elect at
 1006 | least one member of the board of administration of an
 1007 | association as long as the developer holds for sale in the
 1008 | ordinary course of business at least 5 percent, in condominiums

HB 1317

2010

1009 with fewer than 500 units, and 2 percent, in condominiums with
1010 more than 500 units, of the units in a condominium operated by
1011 the association. Following the time the developer relinquishes
1012 control of the association, the developer may exercise the right
1013 to vote any developer-owned units in the same manner as any
1014 other unit owner except for purposes of reacquiring control of
1015 the association or selecting the majority members of the board
1016 of administration.

1017 Section 11. Part VII of chapter 718, Florida Statutes,
1018 consisting of sections 718.701, 718.702, 718.703, 718.704,
1019 718.705, 718.706, 718.707, and 718.708, is created to read:

1020 718.701 Short title.—This part may be cited as the
1021 "Distressed Condominium Relief Act."

1022 718.702 Legislative intent.—

1023 (1) The Legislature acknowledges the massive downturn in
1024 the condominium market which has transpired throughout the state
1025 and the impact of such downturn on developers, lenders, unit
1026 owners, and condominium associations. Numerous condominium
1027 projects have either failed or are in the process of failing,
1028 whereby the condominium has a small percentage of third-party
1029 unit owners as compared to the unsold inventory of units. As a
1030 result of the inability to find purchasers for this inventory of
1031 units, which results in part from the devaluing of real estate
1032 in this state, developers are unable to satisfy the requirements
1033 of their lenders, leading to defaults on mortgages.
1034 Consequently, lenders are faced with the task of finding a
1035 solution to the problem in order to be paid for their
1036 investments.

HB 1317

2010

1037 (2) The Legislature recognizes that all of the factors
1038 listed in this section lead to condominiums becoming distressed,
1039 resulting in detriment to the unit owners and the condominium
1040 association on account of the resulting shortage of assessment
1041 moneys available to support the financial requirements for
1042 proper maintenance of the condominium. Such shortage and the
1043 resulting lack of proper maintenance further erodes property
1044 values. The Legislature finds that individuals and entities
1045 within Florida and in other states have expressed interest in
1046 purchasing unsold inventory in one or more condominium projects,
1047 but are reticent to do so because of accompanying liabilities
1048 inherited from the original developer, which are by definition
1049 imputed to the successor purchaser, including a foreclosing
1050 mortgagee. This results in the potential purchaser having
1051 unknown and unquantifiable risks, and potential successor
1052 purchasers are unwilling to accept such risks. The result is
1053 that condominium projects stagnate, leaving all parties involved
1054 at an impasse without the ability to find a solution.

1055 (3) The Legislature finds and declares that it is the
1056 public policy of this state to protect the interests of
1057 developers, lenders, unit owners, and condominium associations
1058 with regard to distressed condominiums, and that there is a need
1059 for relief from certain provisions of the Florida Condominium
1060 Act geared toward enabling economic opportunities within these
1061 condominiums for successor purchasers, including foreclosing
1062 mortgagees. Such relief would benefit existing unit owners and
1063 condominium associations. The Legislature further finds and
1064 declares that this situation cannot be open-ended without

HB 1317

2010

1065 potentially prejudicing the rights of unit owners and
 1066 condominium associations, and thereby declares that the
 1067 provisions of this part shall be used by purchasers of
 1068 condominium inventory for a specific and defined period.

1069 718.703 Definitions.—As used in this part, the term:

1070 (1) "Bulk assignee" means a person who:

1071 (a) Acquires more than seven condominium parcels as set
 1072 forth in s. 718.707; and

1073 (b) Receives an assignment of some or all of the rights of
 1074 the developer as are set forth in the declaration of condominium
 1075 or in this chapter by a written instrument recorded as an
 1076 exhibit to the deed or as a separate instrument in the public
 1077 records of the county in which the condominium is located.

1078 (2) "Bulk buyer" means a person who acquires more than
 1079 seven condominium parcels as set forth in s. 718.707 but who
 1080 does not receive an assignment of any developer rights other
 1081 than the right to conduct sales, leasing, and marketing
 1082 activities within the condominium.

1083 718.704 Assignment and assumption of developer rights by
 1084 bulk assignee; bulk buyer.—

1085 (1) A bulk assignee shall be deemed to have assumed and is
 1086 liable for all duties and responsibilities of the developer
 1087 under the declaration and this chapter, except:

1088 (a) Warranties of the developer under s. 718.203(1) or s.
 1089 718.618, except for design, construction, development, or repair
 1090 work performed by or on behalf of such bulk assignee;

1091 (b) The obligation to:

1092 1. Fund converter reserves under s. 718.618 for a unit

HB 1317

2010

1093 that was not acquired by the bulk assignee; or

1094 2. Provide converter warranties on any portion of the
 1095 condominium property except as may be expressly provided by the
 1096 bulk assignee in the contract for purchase and sale executed
 1097 with a purchaser and pertaining to any design, construction,
 1098 development, or repair work performed by or on behalf of the
 1099 bulk assignee;

1100 (c) The requirement to provide the association with a
 1101 cumulative audit of the association's finances from the date of
 1102 formation of the condominium association as required by s.
 1103 718.301. However, the bulk assignee shall provide an audit for
 1104 the period for which the bulk assignee elects a majority of the
 1105 members of the board of administration;

1106 (d) Any liability arising out of or in connection with
 1107 actions taken by the board of administration or the developer-
 1108 appointed directors before the bulk assignee elects a majority
 1109 of the members of the board of administration; and

1110 (e) Any liability for or arising out of the developer's
 1111 failure to fund previous assessments or to resolve budgetary
 1112 deficits in relation to a developer's right to guarantee
 1113 assessments, except as otherwise provided in subsection (2).

1114
 1115 Further, the bulk assignee is responsible for delivering
 1116 documents and materials in accordance with s. 718.705(3). A bulk
 1117 assignee may expressly assume some or all of the obligations of
 1118 the developer described in paragraphs (a)-(e).

1119 (2) A bulk assignee receiving the assignment of the rights
 1120 of the developer to guarantee the level of assessments and fund

1121 budgetary deficits pursuant to s. 718.116 shall be deemed to
 1122 have assumed and is liable for all obligations of the developer
 1123 with respect to such guarantee, including any applicable funding
 1124 of reserves to the extent required by law, for as long as the
 1125 guarantee remains in effect. A bulk assignee not receiving an
 1126 assignment of the right of the developer to guarantee the level
 1127 of assessments and fund budgetary deficits pursuant to s.
 1128 718.116 or a bulk buyer is not deemed to have assumed and is not
 1129 liable for the obligations of the developer with respect to such
 1130 guarantee, but is responsible for payment of assessments in the
 1131 same manner as all other owners of condominium parcels.

1132 (3) A bulk buyer is liable for the duties and
 1133 responsibilities of the developer under the declaration and this
 1134 chapter only to the extent provided in this part, together with
 1135 any other duties or responsibilities of the developer expressly
 1136 assumed in writing by the bulk buyer.

1137 (4) An acquirer of condominium parcels is not considered a
 1138 bulk assignee or a bulk buyer if the transfer to such acquirer
 1139 was made before the effective date of this part with the intent
 1140 to hinder, delay, or defraud any purchaser, unit owner, or the
 1141 association, or if the acquirer is a person who would constitute
 1142 an insider under s. 726.102(7).

1143 (5) An assignment of developer rights to a bulk assignee
 1144 may be made by the developer, a previous bulk assignee, or a
 1145 court of competent jurisdiction acting on behalf of the
 1146 developer or the previous bulk assignee. At any particular time,
 1147 there may be no more than one bulk assignee within a
 1148 condominium, but there may be more than one bulk buyer. If more

HB 1317

2010

1149 than one acquirer of condominium parcels in the same condominium
 1150 receives an assignment of developer rights from the same person,
 1151 the bulk assignee is the acquirer whose instrument of assignment
 1152 is recorded first in applicable public records.

1153 718.705 Board of administration; transfer of control.-

1154 (1) For purposes of determining the timing for transfer of
 1155 control of the board of administration of the association to
 1156 unit owners other than the developer under s. 718.301(1)(a) and
 1157 (b), if a bulk assignee is entitled to elect a majority of the
 1158 members of the board, a condominium parcel acquired by the bulk
 1159 assignee shall not be deemed to be conveyed to a purchaser, or
 1160 to be owned by an owner other than the developer, until such
 1161 condominium parcel is conveyed to an owner who is not a bulk
 1162 assignee.

1163 (2) Unless control of the board of administration of the
 1164 association has already been relinquished pursuant to s.
 1165 718.301(1), the bulk assignee is obligated to relinquish control
 1166 of the association in accordance with s. 718.301 and this part,
 1167 as if the bulk assignee were the developer.

1168 (3) When a bulk assignee relinquishes control of the board
 1169 of administration as set forth in s. 718.301, the bulk assignee
 1170 shall deliver all of those items required by s. 718.301(4).
 1171 However, the bulk assignee is not required to deliver items and
 1172 documents not in the possession of the bulk assignee during the
 1173 period during which the bulk assignee was entitled to elect not
 1174 less than a majority of the members of the board of
 1175 administration. In conjunction with acquisition of condominium
 1176 parcels, a bulk assignee shall undertake a good faith effort to

1177 obtain the documents and materials required to be provided to
 1178 the association pursuant to s. 718.301(4). To the extent the
 1179 bulk assignee is not able to obtain all of such documents and
 1180 materials, the bulk assignee shall certify in writing to the
 1181 association the names or descriptions of the documents and
 1182 materials that were not obtainable by the bulk assignee.
 1183 Delivery of the certificate relieves the bulk assignee of
 1184 responsibility for the delivery of the documents and materials
 1185 referenced in the certificate as otherwise required under ss.
 1186 718.112 and 718.301 and this part. The responsibility of the
 1187 bulk assignee for the audit required by s. 718.301(4) shall
 1188 commence as of the date on which the bulk assignee elected a
 1189 majority of the members of the board of administration.

1190 (4) If a conflict arises between the provisions or
 1191 application of this section and s. 718.301, this section shall
 1192 prevail.

1193 (5) Failure of a bulk assignee or bulk buyer to
 1194 substantially comply with all the requirements contained in this
 1195 part shall result in the loss of any and all protections or
 1196 exemptions provided under this part.

1197 718.706 Specific provisions pertaining to offering of
 1198 units by a bulk assignee or bulk buyer.—

1199 (1) Before offering any units for sale or for lease for a
 1200 term exceeding 5 years, a bulk assignee or a bulk buyer shall
 1201 file the following documents with the division and provide such
 1202 documents to a prospective purchaser or tenant:

1203 (a) An updated prospectus or offering circular, or a
 1204 supplement to the prospectus or offering circular, filed by the

1205 creating developer prepared in accordance with s. 718.504, which
 1206 shall include the form of contract for purchase and sale in
 1207 compliance with s. 718.503(2);

1208 (b) An updated Frequently Asked Questions and Answers
 1209 sheet;

1210 (c) The executed escrow agreement if required under s.
 1211 718.202; and

1212 (d) The financial information required by s. 718.111(13).
 1213 However, if a financial information report does not exist for
 1214 the fiscal year before acquisition of title by the bulk assignee
 1215 or bulk buyer, or accounting records cannot be obtained in good
 1216 faith by the bulk assignee or the bulk buyer which would permit
 1217 preparation of the required financial information report, the
 1218 bulk assignee or bulk buyer is excused from the requirement of
 1219 this paragraph. However, the bulk assignee or bulk buyer must
 1220 include in the purchase contract the following statement in
 1221 conspicuous type:

1222 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
 1223 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR
 1224 OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE
 1225 CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT
 1226 ACCOUNTING RECORDS OF THE ASSOCIATION.

1227 (2) Before offering any units for sale or for lease for a
 1228 term exceeding 5 years, a bulk assignee shall file with the
 1229 division and provide to a prospective purchaser a disclosure
 1230 statement that must include, but is not limited to:

1231 (a) A description of any rights of the developer which
 1232 have been assigned to the bulk assignee;

1233 (b) The following statement in conspicuous type:
 1234 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE
 1235 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS
 1236 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,
 1237 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF
 1238 OF SELLER; and

1239 (c) If the condominium is a conversion subject to part VI,
 1240 the following statement in conspicuous type:

1241 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER
 1242 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S.
 1243 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY
 1244 EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN
 1245 THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
 1246 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO
 1247 ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK
 1248 PERFORMED BY OR ON BEHALF OF THE SELLER.

1249 (3) In addition to the requirements set forth in
 1250 subsection (1), a bulk assignee or bulk buyer must comply with
 1251 the nondeveloper disclosure requirements set forth in s.
 1252 718.503(2) before offering any units for sale or for lease for a
 1253 term exceeding 5 years.

1254 (4) A bulk assignee, while it is in control of the board
 1255 of administration of the association, may not authorize, on
 1256 behalf of the association:

1257 (a) The waiver of reserves or the reduction of funding of
 1258 the reserves in accordance with s. 718.112(2)(f)2., unless
 1259 approved by a majority of the voting interests not controlled by
 1260 the developer, bulk assignee, and bulk buyer; or

1261 (b) The use of reserve expenditures for other purposes in
 1262 accordance with s. 718.112(2)(f)3., unless approved by a
 1263 majority of the voting interests not controlled by the
 1264 developer, bulk assignee, and bulk buyer.

1265 (5) A bulk assignee or a bulk buyer shall comply with all
 1266 the requirements of s. 718.302 regarding any contracts entered
 1267 into by the association during the period the bulk assignee or
 1268 bulk buyer maintains control of the board of administration.
 1269 Unit owners shall be afforded all the protections contained in
 1270 s. 718.302 regarding agreements entered into by the association
 1271 before unit owners other than the developer, bulk assignee, or
 1272 bulk buyer elected a majority of the board of administration.

1273 (6) A bulk buyer shall comply with the requirements
 1274 contained in the declaration regarding any transfer of a unit,
 1275 including sales, leases, and subleases. A bulk buyer is not
 1276 entitled to any exemptions afforded a developer or successor
 1277 developer under this chapter regarding any transfer of a unit,
 1278 including sales, leases, or subleases.

1279 718.707 Time limitation for classification as bulk
 1280 assignee or bulk buyer.—A person acquiring condominium parcels
 1281 may not be classified as a bulk assignee or bulk buyer unless
 1282 the condominium parcels were acquired before July 1, 2012. The
 1283 date of such acquisition shall be determined by the date of
 1284 recording of a deed or other instrument of conveyance for such
 1285 parcels in the public records of the county in which the
 1286 condominium is located, or by the date of issuance of a
 1287 certificate of title in a foreclosure proceeding with respect to
 1288 such condominium parcels.

1289 718.708 Liability of developers and others.—An assignment
 1290 of developer rights to a bulk assignee or bulk buyer does not
 1291 release the creating developer from any liabilities under the
 1292 declaration or this chapter. This part does not limit the
 1293 liability of the creating developer for claims brought by unit
 1294 owners, bulk assignees, or bulk buyers for violations of this
 1295 chapter by the creating developer, unless specifically excluded
 1296 in this part. Nothing contained within this part waives,
 1297 releases, compromises, or limits the liability of contractors,
 1298 subcontractors, materialmen, manufacturers, architects,
 1299 engineers, or any participant in the design or construction of a
 1300 condominium for any claim brought by an association, unit
 1301 owners, bulk assignees, or bulk buyers arising from the design
 1302 of the condominium, construction defects, misrepresentations
 1303 associated with condominium property, or violations of this
 1304 chapter, unless specifically excluded in this part.

1305 Section 12. Subsections (3) and (4) of section 719.108,
 1306 Florida Statutes, are amended, and subsection (10) is added to
 1307 that section, to read:

1308 719.108 Rents and assessments; liability; lien and
 1309 priority; interest; collection; cooperative ownership.—

1310 (3) Rents and assessments, and installments on them, not
 1311 paid when due bear interest at the rate provided in the
 1312 cooperative documents from the date due until paid. This rate
 1313 may not exceed the rate allowed by law, and, if no rate is
 1314 provided in the cooperative documents, then interest shall
 1315 accrue at 18 percent per annum. Also, if the cooperative
 1316 documents or bylaws so provide, the association may charge an

HB 1317

2010

1317 administrative late fee in addition to such interest, in an
1318 amount not to exceed the greater of \$25 or 5 percent of each
1319 installment of the assessment for each delinquent installment
1320 that the payment is late. Costs to the unit owner secured by the
1321 association's claim of lien with regard to collection letters or
1322 any other collection efforts by management companies or licensed
1323 managers as to any delinquent installment of an assessment may
1324 not exceed \$75 unless the management company prepares any letter
1325 or estoppel certificate required by this chapter and charges a
1326 reasonable fee related to the preparation of such letter or
1327 estoppel certificate. Any payment received by an association
1328 shall be applied first to any interest accrued by the
1329 association, then to any administrative late fee, then to any
1330 costs and reasonable attorney's fees incurred in collection,
1331 then to any reasonable costs for collection services for which
1332 the association has contracted, and then to the delinquent
1333 assessment. The foregoing shall be applicable notwithstanding
1334 any restrictive endorsement, designation, or instruction placed
1335 on or accompanying a payment. A late fee is not subject to
1336 chapter 687 or s. 719.303(3).

1337 (4) The association shall have a lien on each cooperative
1338 parcel for any unpaid rents and assessments, plus interest, any
1339 authorized administrative late fees, and any reasonable costs
1340 for collection services for which the association has contracted
1341 against the unit owner of the cooperative parcel. If authorized
1342 by the cooperative documents, said lien shall also secure
1343 reasonable attorney's fees incurred by the association incident
1344 to the collection of the rents and assessments or enforcement of

HB 1317

2010

1345 such lien. The lien is effective from and after the recording of
 1346 a claim of lien in the public records in the county in which the
 1347 cooperative parcel is located which states the description of
 1348 the cooperative parcel, the name of the unit owner, the amount
 1349 due, and the due dates. The lien shall expire if a claim of lien
 1350 is not filed within 1 year after the date the assessment was
 1351 due, and no such lien shall continue for a longer period than 1
 1352 year after the claim of lien has been recorded unless, within
 1353 that time, an action to enforce the lien is commenced in a court
 1354 of competent jurisdiction. Except as otherwise provided in this
 1355 chapter, a lien may not be filed by the association against a
 1356 cooperative parcel until 30 days after the date on which a
 1357 notice of intent to file a lien has been delivered to the owner
 1358 by registered or certified mail, return receipt requested, and
 1359 by first-class United States mail to the owner at his or her
 1360 last address in the records of the association, if the address
 1361 is within the United States, and delivered to the owner at the
 1362 address of the unit if the owner's address as reflected in the
 1363 records of the association is not the unit address. If the
 1364 address in the records is outside the United States, notice
 1365 shall be sent to that address and to the unit address by first-
 1366 class United States mail. Delivery of the notice shall be deemed
 1367 given upon mailing as required by this subsection. ~~No lien may~~
 1368 ~~be filed by the association against a cooperative parcel until~~
 1369 ~~30 days after the date on which a notice of intent to file a~~
 1370 ~~lien has been served on the unit owner of the cooperative parcel~~
 1371 ~~by certified mail or by personal service in the manner~~
 1372 ~~authorized by chapter 48 and the Florida Rules of Civil~~

HB 1317

2010

1373 ~~Procedure.~~
 1374 (10) If the share is occupied by a tenant and the share
 1375 owner is delinquent in the payment of regular assessments, the
 1376 association may demand that the tenant pay to the association
 1377 the future regular assessments related to the condominium share.
 1378 The demand is continuing in nature, and upon demand, the tenant
 1379 shall continue to pay the regular assessments to the association
 1380 until the association releases the tenant or the tenant
 1381 discontinues tenancy in the share. The association shall mail
 1382 written notice to the share owner of the association's demand
 1383 that the tenant pay regular assessments to the association. The
 1384 tenant is not liable for increases in the amount of the regular
 1385 assessment due unless the tenant was reasonably notified of the
 1386 increase before the day on which the rent is due. The liability
 1387 of the tenant may not exceed the amount due from the tenant to
 1388 the tenants' landlord. The tenant's landlord shall provide the
 1389 tenant a credit against rents due to the unit owner in the
 1390 amount of assessments paid to the association under this
 1391 section. The association shall, upon request, provide the tenant
 1392 with written receipts for payments made. The association may
 1393 issue notices under s. 83.56 and may sue for eviction under ss.
 1394 83.59-83.625 as if the association were a landlord under part II
 1395 of chapter 83 if the tenant fails to pay an assessment. However,
 1396 the association is not otherwise considered a landlord under
 1397 chapter 83 and specifically has no duties under s. 83.51. The
 1398 tenant does not, by virtue of payment of assessments, have any
 1399 of the rights of a share owner to vote in any election or to
 1400 examine the books and records of the association. A court may

HB 1317

2010

1401 supersede the effect of this subsection by appointing a
 1402 receiver.

1403 Section 13. Paragraph (b) of subsection (2) of section
 1404 720.304, Florida Statutes, is amended to read:

1405 720.304 Right of owners to peaceably assemble; display of
 1406 flag; SLAPP suits prohibited.-

1407 (2)

1408 (b) Any homeowner may erect a freestanding flagpole no
 1409 more than 20 feet high on any portion of the homeowner's real
 1410 property, regardless of any covenants, restrictions, bylaws,
 1411 rules, or requirements of the association, if the flagpole does
 1412 not obstruct sightlines at intersections and is not erected
 1413 within or upon an easement. The homeowner may further display in
 1414 a respectful manner from that flagpole, regardless of any
 1415 covenants, restrictions, bylaws, rules, or requirements of the
 1416 association, one official United States flag, not larger than 4
 1417 1/2 feet by 6 feet, and may additionally display one official
 1418 flag of the State of Florida or the United States Army, Navy,
 1419 Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such
 1420 additional flag must be equal in size to or smaller than the
 1421 United States flag. The flagpole and display are subject to all
 1422 building codes, zoning setbacks, and other applicable
 1423 governmental regulations, including, but not limited to, noise
 1424 and lighting ordinances in the county or municipality in which
 1425 the flagpole is erected and all setback and locational criteria
 1426 contained in the governing documents.

1427 Section 14. Subsection (2) of section 720.305, Florida
 1428 Statutes, is amended to read:

HB 1317

2010

1429 720.305 Obligations of members; remedies at law or in
 1430 equity; levy of fines and suspension of use rights.—
 1431 (2) If a member is delinquent for more than 90 days in the
 1432 payment of a monetary obligation due the association the
 1433 ~~governing documents so provide~~, an association may suspend,
 1434 until such monetary obligation is paid for a reasonable period
 1435 ~~of time~~, the rights of a member or a member's tenants, guests,
 1436 or invitees, or both, to use common areas and facilities and may
 1437 levy reasonable fines of up to, ~~not to exceed~~ \$100 per
 1438 violation, against any member or any tenant, guest, or invitee.
 1439 A fine may be levied on the basis of each day of a continuing
 1440 violation, with a single notice and opportunity for hearing,
 1441 except that a no such fine may not shall exceed \$1,000 in the
 1442 aggregate unless otherwise provided in the governing documents.
 1443 A fine of less than \$1,000 may shall not become a lien against a
 1444 parcel. In any action to recover a fine, the prevailing party is
 1445 entitled to collect its reasonable attorney's fees and costs
 1446 from the nonprevailing party as determined by the court. The
 1447 provisions regarding the suspension-of-use rights do not apply
 1448 to the portion of common areas that must be used to provide
 1449 access to the parcel or utility services provided to the parcel.
 1450 (a) A fine or suspension may not be imposed without notice
 1451 of at least 14 days to the person sought to be fined or
 1452 suspended and an opportunity for a hearing before a committee of
 1453 at least three members appointed by the board who are not
 1454 officers, directors, or employees of the association, or the
 1455 spouse, parent, child, brother, or sister of an officer,
 1456 director, or employee. If the committee, by majority vote, does

HB 1317

2010

1457 not approve a proposed fine or suspension, it may not be
 1458 imposed. If the association imposes a fine or suspension, the
 1459 association must provide written notice of such fine or
 1460 suspension by mail or hand delivery to the parcel owner and, if
 1461 applicable, to any tenant, licensee, or invitee of the parcel
 1462 owner.

1463 ~~(b) The requirements of this subsection do not apply to~~
 1464 ~~the imposition of suspensions or fines upon any member because~~
 1465 ~~of the failure of the member to pay assessments or other charges~~
 1466 ~~when due if such action is authorized by the governing~~
 1467 ~~documents.~~

1468 (b)(e) Suspension of common-area-use rights shall not
 1469 impair the right of an owner or tenant of a parcel to have
 1470 vehicular and pedestrian ingress to and egress from the parcel,
 1471 including, but not limited to, the right to park.

1472 Section 15. Subsection (8) is added to section 720.3085,
 1473 Florida Statutes, to read:

1474 720.3085 Payment for assessments; lien claims.-

1475 (8) If the parcel is occupied by a tenant and the parcel
 1476 owner is delinquent in the payment of regular assessments, the
 1477 association may demand that the tenant pay to the association
 1478 the future regular assessments related to the parcel. The demand
 1479 is continuing in nature, and upon demand, the tenant shall
 1480 continue to pay the regular assessments to the association until
 1481 the association releases the tenant or the tenant discontinues
 1482 tenancy in the parcel. The association shall mail written notice
 1483 to the parcel owner of the association's demand that the tenant
 1484 pay regular assessments to the association. The tenant is not

HB 1317

2010

1485 liable for increases in the amount of the regular assessment due
 1486 unless the tenant was reasonably notified of the increase before
 1487 the day on which the rent is due. The tenant shall be given a
 1488 credit against rents due to the parcel owner in the amount of
 1489 assessments paid to the association. The association shall, upon
 1490 request, provide the tenant with written receipts for payments
 1491 made. The association may issue notices under s. 83.56 and may
 1492 sue for eviction under ss. 83.59-83.625 as if the association
 1493 were a landlord under part II of chapter 83 if the tenant fails
 1494 to pay an assessment. However, the association is not otherwise
 1495 considered a landlord under chapter 83 and specifically has no
 1496 duties under s. 83.51. The tenant does not, by virtue of payment
 1497 of assessments, have any of the rights of a parcel owner to vote
 1498 in any election or to examine the books and records of the
 1499 association. A court may supersede the effect of this subsection
 1500 by appointing a receiver.

1501 Section 16. Subsection (6) is added to section 720.31,
 1502 Florida Statutes, to read:

1503 720.31 Recreational leaseholds; right to acquire;
 1504 escalation clauses.—

1505 (6) An association may enter into agreements to acquire
 1506 leaseholds, memberships, and other possessory or use interests
 1507 in lands or facilities including, but not limited to, country
 1508 clubs, golf courses, marinas, submerged land, parking areas,
 1509 conservation areas, and other recreational facilities. An
 1510 association may enter into such agreements regardless of whether
 1511 the lands or facilities are contiguous to the lands of the
 1512 community or whether such lands or facilities are intended to

HB 1317

2010

1513 provide enjoyment, recreation, or other use or benefit to the
1514 owners. All leaseholds, memberships, and other possessory or use
1515 interests existing or created at the time of recording the
1516 declaration must be stated and fully described in the
1517 declaration. Subsequent to the recording of the declaration,
1518 agreements acquiring leaseholds, memberships, or other
1519 possessory or use interests not entered into within 12 months
1520 following the recording of the declaration may be entered into
1521 only if authorized by the declaration for material alterations
1522 or substantial additions to the common areas or association
1523 property. If the declaration is silent, any such transaction
1524 requires the approval of 75 percent of the total voting
1525 interests of the association. The declaration may provide that
1526 the rental, membership fees, operations, replacements, or other
1527 expenses are common expenses; impose covenants and restrictions
1528 concerning their use; and contain other provisions not
1529 inconsistent with this subsection. An association exercising its
1530 rights under this subsection may join with other associations
1531 that are part of the same development or with a master
1532 association responsible for the enforcement of shared covenants,
1533 conditions, and restrictions in carrying out the intent of this
1534 subsection.

1535 Section 17. Subsection (2) of section 553.509, Florida
1536 Statutes, is repealed.

1537 Section 18. Paragraph (b) of subsection (2), paragraphs
1538 (a) and (c) of subsection (5), and paragraphs (b), (c), (d),
1539 (f), and (g) of subsection (6) of section 720.303, Florida
1540 Statutes, are amended, and subsection (12) is added to that

HB 1317

2010

1541 section, to read:

1542 720.303 Association powers and duties; meetings of board;
 1543 official records; budgets; financial reporting; association
 1544 funds; recalls.—

1545 (2) BOARD MEETINGS.—

1546 (b) Members have the right to attend all meetings of the
 1547 board and to speak on any matter placed on the agenda by
 1548 petition of the voting interests for at least 3 minutes. The
 1549 association may adopt written reasonable rules expanding the
 1550 right of members to speak and governing the frequency, duration,
 1551 and other manner of member statements, which rules must be
 1552 consistent with this paragraph and may include a sign-up sheet
 1553 for members wishing to speak. Notwithstanding any other law, ~~the~~
 1554 ~~requirement that board meetings and committee meetings be open~~
 1555 ~~to the members is inapplicable to meetings between the board or~~
 1556 ~~a committee and the association's attorney~~ to discuss proposed
 1557 or pending litigation, or with respect to meetings of the board
 1558 held for the purpose of discussing personnel matters are not
 1559 required to be open to the members other than directors.

1560 (5) INSPECTION AND COPYING OF RECORDS.—The official
 1561 records shall be maintained within the state and must be open to
 1562 inspection and available for photocopying by members or their
 1563 authorized agents at reasonable times and places within 10
 1564 business days after receipt of a written request for access.
 1565 This subsection may be complied with by having a copy of the
 1566 official records available for inspection or copying in the
 1567 community. If the association has a photocopy machine available
 1568 where the records are maintained, it must provide parcel owners

HB 1317

2010

1569 with copies on request during the inspection if the entire
1570 request is limited to no more than 25 pages.

1571 (a) The failure of an association to provide access to the
1572 records within 10 business days after receipt of a written
1573 request submitted by certified mail, return receipt requested,
1574 creates a rebuttable presumption that the association willfully
1575 failed to comply with this subsection.

1576 (c) The association may adopt reasonable written rules
1577 governing the frequency, time, location, notice, records to be
1578 inspected, and manner of inspections, but may not require ~~impose~~
1579 ~~a requirement that~~ a parcel owner to demonstrate any proper
1580 purpose for the inspection, state any reason for the inspection,
1581 or limit a parcel owner's right to inspect records to less than
1582 one 8-hour business day per month. The association may impose
1583 fees to cover the costs of providing copies of the official
1584 records, including, without limitation, the costs of copying.
1585 The association may charge up to 50 cents per page for copies
1586 made on the association's photocopier. If the association does
1587 not have a photocopy machine available where the records are
1588 kept, or if the records requested to be copied exceed 25 pages
1589 in length, the association may have copies made by an outside
1590 vendor or association management company personnel and may
1591 charge the actual cost of copying, including any reasonable
1592 costs involving personnel fees and charges at an hourly rate for
1593 vendor or employee time to cover administrative costs to the
1594 vendor or association. The association shall maintain an
1595 adequate number of copies of the recorded governing documents,
1596 to ensure their availability to members and prospective members.

Page 57 of 66

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1317-00

1597 Notwithstanding the provisions of this paragraph, the following
 1598 records are ~~shall~~ not ~~be~~ accessible to members or parcel owners:

1599 1. Any record protected by the lawyer-client privilege as
 1600 described in s. 90.502 and any record protected by the work-
 1601 product privilege, including, but not limited to, any record
 1602 prepared by an association attorney or prepared at the
 1603 attorney's express direction which reflects a mental impression,
 1604 conclusion, litigation strategy, or legal theory of the attorney
 1605 or the association and which was prepared exclusively for civil
 1606 or criminal litigation or for adversarial administrative
 1607 proceedings or which was prepared in anticipation of imminent
 1608 civil or criminal litigation or imminent adversarial
 1609 administrative proceedings until the conclusion of the
 1610 litigation or ~~adversarial~~ administrative proceedings.

1611 2. Information obtained by an association in connection
 1612 with the approval of the lease, sale, or other transfer of a
 1613 parcel.

1614 3. Disciplinary, health, insurance, and personnel records,
 1615 including payroll records, of the association's employees.

1616 4. Medical records of parcel owners or community
 1617 residents.

1618 (6) BUDGETS.—

1619 (b) In addition to annual operating expenses, the budget
 1620 may include reserve accounts for capital expenditures and
 1621 deferred maintenance for which the association is responsible.
 1622 If reserve accounts are not established pursuant to paragraph
 1623 (d), funding of such reserves shall be limited to the extent
 1624 that the governing documents ~~do not~~ limit increases in

1625 assessments, including reserves. If the budget of the
 1626 association includes reserve accounts established pursuant to
 1627 paragraph (d), such reserves shall be determined, maintained,
 1628 and waived in the manner provided in this subsection. Once an
 1629 association provides for reserve accounts pursuant to paragraph
 1630 (d) in the budget, the association shall thereafter determine,
 1631 maintain, and waive reserves in compliance with this subsection.
 1632 The provisions of this section do not preclude the termination
 1633 of a reserve account established pursuant to this paragraph upon
 1634 approval of a majority of the voting interests of the
 1635 association. Upon such approval, the terminating reserve account
 1636 shall be removed from the budget.

1637 (c)1. If the budget of the association does not provide
 1638 for reserve accounts pursuant to paragraph (d) ~~governed by this~~
 1639 ~~subsection~~ and the association is responsible for the repair and
 1640 maintenance of capital improvements that may result in a special
 1641 assessment if reserves are not provided, each financial report
 1642 for the preceding fiscal year required by subsection (7) shall
 1643 contain the following statement in conspicuous type: THE BUDGET
 1644 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR
 1645 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
 1646 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
 1647 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
 1648 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN A~~
 1649 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY
 1650 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

1651 2. If the budget of the association does provide for
 1652 funding accounts for deferred expenditures, including, but not

1653 limited to, funds for capital expenditures and deferred
 1654 maintenance, but such accounts are not created or established
 1655 pursuant to paragraph (d), each financial report for the
 1656 preceding fiscal year required under subsection (7) must also
 1657 contain the following statement in conspicuous type: THE BUDGET
 1658 OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY DEFERRED
 1659 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
 1660 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
 1661 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
 1662 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),
 1663 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
 1664 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
 1665 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

1666 (d) An association shall be deemed to have provided for
 1667 reserve accounts if ~~when~~ reserve accounts have been initially
 1668 established by the developer or if ~~when~~ the membership of the
 1669 association affirmatively elects to provide for reserves. If
 1670 reserve accounts are not initially provided for by the
 1671 developer, the membership of the association may elect to do so
 1672 upon the affirmative approval of ~~not less than~~ a majority of the
 1673 total voting interests of the association. Such approval may be
 1674 obtained ~~attained~~ by vote of the members at a duly called
 1675 meeting of the membership or by the ~~upon~~ a written consent of
 1676 ~~executed by not less than~~ a majority of the total voting
 1677 interests of the association ~~in the community~~. The approval
 1678 action of the membership shall state that reserve accounts shall
 1679 be provided for in the budget and shall designate the components
 1680 for which the reserve accounts are to be established. Upon

HB 1317

2010

1681 approval by the membership, the board of directors shall include
1682 ~~provide for~~ the required reserve accounts ~~for inclusion~~ in the
1683 budget in the next fiscal year following the approval and ~~in~~
1684 each year thereafter. Once established as provided in this
1685 subsection, the reserve accounts shall be funded or maintained
1686 or shall have their funding waived in the manner provided in
1687 paragraph (f).

1688 (f) After one or more ~~Once a reserve account or~~ reserve
1689 accounts are established, the membership of the association,
1690 upon a majority vote at a meeting at which a quorum is present,
1691 may provide for no reserves or less reserves than required by
1692 this section. If a meeting of the unit owners has been called to
1693 determine whether to waive or reduce the funding of reserves and
1694 no such result is achieved or a quorum is not present, the
1695 reserves as included in the budget shall go into effect. After
1696 the turnover, the developer may vote its voting interest to
1697 waive or reduce the funding of reserves. Any vote taken pursuant
1698 to this subsection to waive or reduce reserves is ~~shall be~~
1699 applicable only to one budget year.

1700 (g) Funding formulas for reserves authorized by this
1701 section shall be based on either a separate analysis of each of
1702 the required assets or a pooled analysis of two or more of the
1703 required assets.

1704 1. If the association maintains separate reserve accounts
1705 for each of the required assets, the amount of the contribution
1706 to each reserve account is ~~shall be~~ the sum of the following two
1707 calculations:

1708 a. The total amount necessary, if any, to bring a negative

HB 1317

2010

1709 component balance to zero.

1710 b. The total estimated deferred maintenance expense or
 1711 estimated replacement cost of the reserve component less the
 1712 estimated balance of the reserve component as of the beginning
 1713 of the period ~~for which~~ the budget will be in effect. The
 1714 remainder, if greater than zero, shall be divided by the
 1715 estimated remaining useful life of the component.

1716
 1717 The formula may be adjusted each year for changes in estimates
 1718 and deferred maintenance performed during the year and may
 1719 include factors such as inflation and earnings on invested
 1720 funds.

1721 2. If the association maintains a pooled account of two or
 1722 more of the required reserve assets, the amount of the
 1723 contribution to the pooled reserve account as disclosed on the
 1724 proposed budget may ~~shall~~ not be less than that required to
 1725 ensure that the balance on hand at the beginning of the period
 1726 ~~for which~~ the budget will go into effect plus the projected
 1727 annual cash inflows over the remaining estimated useful life of
 1728 all of the assets that make up the reserve pool are equal to or
 1729 greater than the projected annual cash outflows over the
 1730 remaining estimated useful lives of all ~~of~~ the assets that make
 1731 up the reserve pool, based on the current reserve analysis. The
 1732 projected annual cash inflows may include estimated earnings
 1733 from investment of principal and accounts receivable minus the
 1734 allowance for doubtful accounts. The reserve funding formula may
 1735 ~~shall~~ not include any type of balloon payments.

1736 (12) COMPENSATION PROHIBITED.—A director, officer, or

HB 1317

2010

1737 committee member of the association may not directly receive any
1738 salary or compensation from the association for the performance
1739 of duties as a director, officer, or committee member and may
1740 not in any other way benefit financially from service to the
1741 association. This subsection does not preclude:

1742 (a) Participation by such person in a financial benefit
1743 accruing to all or a significant number of members as a result
1744 of actions lawfully taken by the board or a committee of which
1745 he or she is a member, including, but not limited to, routine
1746 maintenance, repair, or replacement of community assets.

1747 (b) Reimbursement for out-of-pocket expenses incurred by
1748 such person on behalf of the association, subject to approval in
1749 accordance with procedures established by the association's
1750 governing documents or, in the absence of such procedures, in
1751 accordance with an approval process established by the board.

1752 (c) Any recovery of insurance proceeds derived from a
1753 policy of insurance maintained by the association for the
1754 benefit of its members.

1755 (d) Any fee or compensation authorized in the governing
1756 documents.

1757 (e) Any fee or compensation authorized in advance by a
1758 vote of a majority of the voting interests voting in person or
1759 by proxy at a meeting of the members.

1760 (f) A developer or its representative from serving as a
1761 director, officer, or committee member of the association and
1762 benefitting financially from service to the association.

1763 Section 19. Subsections (8) and (9) of section 720.306,
1764 Florida Statutes, are amended to read:

HB 1317

2010

1765 720.306 Meetings of members; voting and election
 1766 procedures; amendments.—

1767 (8) PROXY VOTING.—The members have the right, unless
 1768 otherwise provided in this subsection or in the governing
 1769 documents, to vote in person or by proxy.

1770 (a) To be valid, a proxy must be dated, must state the
 1771 date, time, and place of the meeting for which it was given, and
 1772 must be signed by the authorized person who executed the proxy.
 1773 A proxy is effective only for the specific meeting for which it
 1774 was originally given, as the meeting may lawfully be adjourned
 1775 and reconvened from time to time, and automatically expires 90
 1776 days after the date of the meeting for which it was originally
 1777 given. A proxy is revocable at any time at the pleasure of the
 1778 person who executes it. If the proxy form expressly so provides,
 1779 any proxy holder may appoint, in writing, a substitute to act in
 1780 his or her place.

1781 (b) If the governing documents permit voting by secret
 1782 ballot by members who are not in attendance at a meeting of the
 1783 members for the election of directors, such ballots shall be
 1784 placed in an inner envelope with no identifying markings and
 1785 mailed or delivered to the association in an outer envelope
 1786 bearing identifying information reflecting the name of the
 1787 member, the lot or parcel for which the vote is being cast, and
 1788 the signature of the lot or parcel owner casting that ballot. If
 1789 the eligibility of the member to vote is confirmed and no other
 1790 ballot has been submitted for that lot or parcel, the inner
 1791 envelope shall be removed from the outer envelope bearing the
 1792 identification information, placed with the ballots which were

HB 1317

2010

1793 personally cast, and opened when the ballots are counted. If
 1794 more than one ballot is submitted for a lot or parcel, the
 1795 ballots for that lot or parcel shall be disqualified. Any vote
 1796 by ballot received after the closing of the balloting may not be
 1797 considered.

1798 (9) ELECTIONS.—Elections of directors must be conducted in
 1799 accordance with the procedures set forth in the governing
 1800 documents of the association. All members of the association are
 1801 ~~shall be~~ eligible to serve on the board of directors, and a
 1802 member may nominate himself or herself as a candidate for the
 1803 board at a meeting where the election is to be held or, if the
 1804 election process allows voting by absentee ballot, in advance of
 1805 the balloting. Except as otherwise provided in the governing
 1806 documents, boards of directors must be elected by a plurality of
 1807 the votes cast by eligible voters. Any election dispute between
 1808 a member and an association must be submitted to mandatory
 1809 binding arbitration with the division. Such proceedings shall be
 1810 conducted in the manner provided by s. 718.1255 and the
 1811 procedural rules adopted by the division.

1812 Section 20. Section 720.315, Florida Statutes, is created
 1813 to read:

1814 720.315 Passage of special assessments before turnover by
 1815 developer.—Before turnover, the board of directors controlled by
 1816 the developer may not levy a special assessment unless a
 1817 majority of the parcel owners other than the developer have
 1818 approved the special assessment by a majority vote at a duly
 1819 called special meeting of the membership at which a quorum is
 1820 present.

HB 1317

2010

1821

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