

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

HB 327

2010

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

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

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

57 Statutes, is amended to read:

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

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

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

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

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

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

79 Section 2. Part VII of chapter 718, Florida Statutes,
80 consisting of sections 718.701, 718.702, 718.703, 718.704,
81 718.705, 718.706, 718.707, and 718.708, is created to read:

82 PART VII

83 DISTRESSED CONDOMINIUM RELIEF

84 718.701 Short title.--This part may be cited as the
"Distressed Condominium Relief Act."

HB 327

2010

85 718.702 Legislative intent.--

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

100 (2) The Legislature recognizes that all of the factors
101 listed in this section lead to condominiums becoming distressed,
102 resulting in detriment to the unit owners and the condominium
103 association on account of the resulting shortage of assessment
104 moneys available to support the financial requirements for
105 proper maintenance of the condominium. Such shortage and the
106 resulting lack of proper maintenance further erode property
107 values. The Legislature finds that individuals and entities
108 within Florida and in other states have expressed interest in
109 purchasing unsold inventory in one or more condominium projects,
110 but are reticent to do so because of the potential of
111 accompanying liabilities inherited from the original developer,
112 which are potentially by definition imputed to the successor

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

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

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

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

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

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

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

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

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

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

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

165 (b) The obligation to:

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

168 2. Provide converter warranties on any portion of the

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

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

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

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

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

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

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

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

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

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

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

228 718.705 Board of administration; transfer of control.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

311 (b) The following statement in conspicuous type:

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

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

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

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

HB 327

2010

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

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

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

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

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

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

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

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

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