

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 amending s. 718.501, F.S.; revising the jurisdiction of
6 the Division of Florida Condominiums, Timeshares, and
7 Mobile Homes to include bulk assignees and bulk buyers;
8 creating part VII of ch. 718, F.S., relating to distressed
9 condominium relief; providing a short title; providing
10 legislative findings and intent; defining the terms "bulk
11 assignee" and "bulk buyer"; providing for the assignment
12 of developer rights to and the assumption of developer
13 rights by a bulk assignee; specifying liabilities of bulk
14 assignees and bulk buyers; providing exceptions; providing
15 additional responsibilities of bulk assignees and bulk
16 buyers; authorizing certain entities to assign developer
17 rights to a bulk assignee; limiting the number of bulk
18 assignees at any given time; providing for the transfer of
19 control of a board of administration; providing effects of
20 such transfer on units acquired by a bulk assignee;
21 providing obligations of a bulk assignee upon the transfer
22 of control of a board of administration; requiring that a
23 bulk assignee certify certain information in writing;
24 providing for the resolution of a conflict between
25 specified provisions of state law; providing that the
26 failure of a bulk assignee or bulk buyer to comply with
27 specified provisions of state law results in the loss of
28 certain protections and exemptions; requiring that a bulk

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

56

57 Be It Enacted by the Legislature of the State of Florida:

58

59 Section 1. Subsection (16) of section 718.103, Florida
60 Statutes, is amended to read:

61 718.103 Definitions.—As used in this chapter, the term:

62 (16) "Developer" means a person who creates a condominium
63 or offers condominium units ~~parcels~~ for sale or lease in the
64 ordinary course of business, but does not include:

65 (a) An owner or lessee of a condominium or cooperative
66 unit who has acquired the unit for his or her own occupancy;r
67 ~~nor does it include~~

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

75 (c) A bulk assignee or bulk buyer as defined in s.
76 718.703; or

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

81 Section 2. Subsection (1) of section 718.501, Florida
82 Statutes, is amended to read:

83 718.501 Authority, responsibility, and duties of Division
84 of Florida Condominiums, Timeshares, and Mobile Homes.—

85 (1) The Division of Florida Condominiums, Timeshares, and
86 Mobile Homes of the Department of Business and Professional
87 Regulation, referred to as the "division" in this part, has the
88 power to enforce and ensure compliance with the provisions of
89 this chapter and rules relating to the development,
90 construction, sale, lease, ownership, operation, and management
91 of residential condominium units. In performing its duties, the
92 division has complete jurisdiction to investigate complaints and
93 enforce compliance with the provisions of this chapter with
94 respect to associations that are still under developer control
95 or the control of a bulk assignee or bulk buyer pursuant to part
96 VII of this chapter and complaints against developers, bulk
97 assignees, or bulk buyers involving improper turnover or failure
98 to turnover, pursuant to s. 718.301. However, after turnover has
99 occurred, the division shall only have jurisdiction to
100 investigate complaints related to financial issues, elections,
101 and unit owner access to association records pursuant to s.
102 718.111(12).

103 (a)1. The division may make necessary public or private
104 investigations within or outside this state to determine whether
105 any person has violated this chapter or any rule or order
106 hereunder, to aid in the enforcement of this chapter, or to aid
107 in the adoption of rules or forms hereunder.

108 2. The division may submit any official written report,
109 worksheet, or other related paper, or a duly certified copy
110 thereof, compiled, prepared, drafted, or otherwise made by and
111 duly authenticated by a financial examiner or analyst to be
112 admitted as competent evidence in any hearing in which the

113 financial examiner or analyst is available for cross-examination
114 and attests under oath that such documents were prepared as a
115 result of an examination or inspection conducted pursuant to
116 this chapter.

117 (b) The division may require or permit any person to file
118 a statement in writing, under oath or otherwise, as the division
119 determines, as to the facts and circumstances concerning a
120 matter to be investigated.

121 (c) For the purpose of any investigation under this
122 chapter, the division director or any officer or employee
123 designated by the division director may administer oaths or
124 affirmations, subpoena witnesses and compel their attendance,
125 take evidence, and require the production of any matter which is
126 relevant to the investigation, including the existence,
127 description, nature, custody, condition, and location of any
128 books, documents, or other tangible things and the identity and
129 location of persons having knowledge of relevant facts or any
130 other matter reasonably calculated to lead to the discovery of
131 material evidence. Upon the failure by a person to obey a
132 subpoena or to answer questions propounded by the investigating
133 officer and upon reasonable notice to all persons affected
134 thereby, the division may apply to the circuit court for an
135 order compelling compliance.

136 (d) Notwithstanding any remedies available to unit owners
137 and associations, if the division has reasonable cause to
138 believe that a violation of any provision of this chapter or
139 related rule has occurred, the division may institute
140 enforcement proceedings in its own name against any developer,

141 bulk assignee, bulk buyer, association, officer, or member of
142 the board of administration, or its assignees or agents, as
143 follows:

144 1. The division may permit a person whose conduct or
145 actions may be under investigation to waive formal proceedings
146 and enter into a consent proceeding whereby orders, rules, or
147 letters of censure or warning, whether formal or informal, may
148 be entered against the person.

149 2. The division may issue an order requiring the
150 developer, bulk assignee, bulk buyer, association, developer-
151 designated officer, or developer-designated member of the board
152 of administration, developer-designated assignees or agents,
153 bulk assignee-designated assignees or agents, bulk buyer-
154 designated assignees or agents, community association manager,
155 or community association management firm to cease and desist
156 from the unlawful practice and take such affirmative action as
157 in the judgment of the division will carry out the purposes of
158 this chapter. If the division finds that a developer, bulk
159 assignee, bulk buyer, association, officer, or member of the
160 board of administration, or its assignees or agents, is
161 violating or is about to violate any provision of this chapter,
162 any rule adopted or order issued by the division, or any written
163 agreement entered into with the division, and presents an
164 immediate danger to the public requiring an immediate final
165 order, it may issue an emergency cease and desist order reciting
166 with particularity the facts underlying such findings. The
167 emergency cease and desist order is effective for 90 days. If
168 the division begins nonemergency cease and desist proceedings,

169 the emergency cease and desist order remains effective until the
170 conclusion of the proceedings under ss. 120.569 and 120.57.

171 3. If a developer, bulk assignee, or bulk buyer fails to
172 pay any restitution determined by the division to be owed, plus
173 any accrued interest at the highest rate permitted by law,
174 within 30 days after expiration of any appellate time period of
175 a final order requiring payment of restitution or the conclusion
176 of any appeal thereof, whichever is later, the division shall
177 bring an action in circuit or county court on behalf of any
178 association, class of unit owners, lessees, or purchasers for
179 restitution, declaratory relief, injunctive relief, or any other
180 available remedy. The division may also temporarily revoke its
181 acceptance of the filing for the developer to which the
182 restitution relates until payment of restitution is made.

183 4. The division may petition the court for the appointment
184 of a receiver or conservator. If appointed, the receiver or
185 conservator may take action to implement the court order to
186 ensure the performance of the order and to remedy any breach
187 thereof. In addition to all other means provided by law for the
188 enforcement of an injunction or temporary restraining order, the
189 circuit court may impound or sequester the property of a party
190 defendant, including books, papers, documents, and related
191 records, and allow the examination and use of the property by
192 the division and a court-appointed receiver or conservator.

193 5. The division may apply to the circuit court for an
194 order of restitution whereby the defendant in an action brought
195 pursuant to subparagraph 4. shall be ordered to make restitution
196 of those sums shown by the division to have been obtained by the

197 defendant in violation of this chapter. Such restitution shall,
198 at the option of the court, be payable to the conservator or
199 receiver appointed pursuant to subparagraph 4. or directly to
200 the persons whose funds or assets were obtained in violation of
201 this chapter.

202 6. The division may impose a civil penalty against a
203 developer, bulk assignee, bulk buyer, or association, or its
204 assignee or agent, for any violation of this chapter or a rule
205 adopted under this chapter. The division may impose a civil
206 penalty individually against any officer or board member who
207 willfully and knowingly violates a provision of this chapter,
208 adopted rule, or a final order of the division; may order the
209 removal of such individual as an officer or from the board of
210 administration or as an officer of the association; and may
211 prohibit such individual from serving as an officer or on the
212 board of a community association for a period of time. The term
213 "willfully and knowingly" means that the division informed the
214 officer or board member that his or her action or intended
215 action violates this chapter, a rule adopted under this chapter,
216 or a final order of the division and that the officer or board
217 member refused to comply with the requirements of this chapter,
218 a rule adopted under this chapter, or a final order of the
219 division. The division, prior to initiating formal agency action
220 under chapter 120, shall afford the officer or board member an
221 opportunity to voluntarily comply with this chapter, a rule
222 adopted under this chapter, or a final order of the division. An
223 officer or board member who complies within 10 days is not
224 subject to a civil penalty. A penalty may be imposed on the

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225 basis of each day of continuing violation, but in no event shall
226 the penalty for any offense exceed \$5,000. By January 1, 1998,
227 the division shall adopt, by rule, penalty guidelines applicable
228 to possible violations or to categories of violations of this
229 chapter or rules adopted by the division. The guidelines must
230 specify a meaningful range of civil penalties for each such
231 violation of the statute and rules and must be based upon the
232 harm caused by the violation, the repetition of the violation,
233 and upon such other factors deemed relevant by the division. For
234 example, the division may consider whether the violations were
235 committed by a developer, bulk assignee, bulk buyer, or owner-
236 controlled association, the size of the association, and other
237 factors. The guidelines must designate the possible mitigating
238 or aggravating circumstances that justify a departure from the
239 range of penalties provided by the rules. It is the legislative
240 intent that minor violations be distinguished from those which
241 endanger the health, safety, or welfare of the condominium
242 residents or other persons and that such guidelines provide
243 reasonable and meaningful notice to the public of likely
244 penalties that may be imposed for proscribed conduct. This
245 subsection does not limit the ability of the division to
246 informally dispose of administrative actions or complaints by
247 stipulation, agreed settlement, or consent order. All amounts
248 collected shall be deposited with the Chief Financial Officer to
249 the credit of the Division of Florida Condominiums, Timeshares,
250 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
251 bulk buyer fails to pay the civil penalty and the amount deemed
252 to be owed to the association, the division shall issue an order

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253 directing that such developer, bulk assignee, or bulk buyer
254 cease and desist from further operation until such time as the
255 civil penalty is paid or may pursue enforcement of the penalty
256 in a court of competent jurisdiction. If an association fails to
257 pay the civil penalty, the division shall pursue enforcement in
258 a court of competent jurisdiction, and the order imposing the
259 civil penalty or the cease and desist order will not become
260 effective until 20 days after the date of such order. Any action
261 commenced by the division shall be brought in the county in
262 which the division has its executive offices or in the county
263 where the violation occurred.

264 7. If a unit owner presents the division with proof that
265 the unit owner has requested access to official records in
266 writing by certified mail, and that after 10 days the unit owner
267 again made the same request for access to official records in
268 writing by certified mail, and that more than 10 days has
269 elapsed since the second request and the association has still
270 failed or refused to provide access to official records as
271 required by this chapter, the division shall issue a subpoena
272 requiring production of the requested records where the records
273 are kept pursuant to s. 718.112.

274 8. In addition to subparagraph 6., the division may seek
275 the imposition of a civil penalty through the circuit court for
276 any violation for which the division may issue a notice to show
277 cause under paragraph (r). The civil penalty shall be at least
278 \$500 but no more than \$5,000 for each violation. The court may
279 also award to the prevailing party court costs and reasonable
280 attorney's fees and, if the division prevails, may also award

281 reasonable costs of investigation.

282 (e) The division may prepare and disseminate a prospectus
283 and other information to assist prospective owners, purchasers,
284 lessees, and developers of residential condominiums in assessing
285 the rights, privileges, and duties pertaining thereto.

286 (f) The division has authority to adopt rules pursuant to
287 ss. 120.536(1) and 120.54 to implement and enforce the
288 provisions of this chapter.

289 (g) The division shall establish procedures for providing
290 notice to an association and the developer during the period
291 where the developer controls the association when the division
292 is considering the issuance of a declaratory statement with
293 respect to the declaration of condominium or any related
294 document governing in such condominium community.

295 (h) The division shall furnish each association which pays
296 the fees required by paragraph (2) (a) a copy of this act,
297 subsequent changes to this act on an annual basis, an amended
298 version of this act as it becomes available from the Secretary
299 of State's office on a biennial basis, and the rules adopted
300 thereto on an annual basis.

301 (i) The division shall annually provide each association
302 with a summary of declaratory statements and formal legal
303 opinions relating to the operations of condominiums which were
304 rendered by the division during the previous year.

305 (j) The division shall provide training and educational
306 programs for condominium association board members and unit
307 owners. The training may, in the division's discretion, include
308 web-based electronic media, and live training and seminars in

309 various locations throughout the state. The division shall have
310 the authority to review and approve education and training
311 programs for board members and unit owners offered by providers
312 and shall maintain a current list of approved programs and
313 providers and shall make such list available to board members
314 and unit owners in a reasonable and cost-effective manner.

315 (k) The division shall maintain a toll-free telephone
316 number accessible to condominium unit owners.

317 (l) The division shall develop a program to certify both
318 volunteer and paid mediators to provide mediation of condominium
319 disputes. The division shall provide, upon request, a list of
320 such mediators to any association, unit owner, or other
321 participant in arbitration proceedings under s. 718.1255
322 requesting a copy of the list. The division shall include on the
323 list of volunteer mediators only the names of persons who have
324 received at least 20 hours of training in mediation techniques
325 or who have mediated at least 20 disputes. In order to become
326 initially certified by the division, paid mediators must be
327 certified by the Supreme Court to mediate court cases in county
328 or circuit courts. However, the division may adopt, by rule,
329 additional factors for the certification of paid mediators,
330 which factors must be related to experience, education, or
331 background. Any person initially certified as a paid mediator by
332 the division must, in order to continue to be certified, comply
333 with the factors or requirements imposed by rules adopted by the
334 division.

335 (m) When a complaint is made, the division shall conduct
336 its inquiry with due regard to the interests of the affected

337 parties. Within 30 days after receipt of a complaint, the
338 division shall acknowledge the complaint in writing and notify
339 the complainant whether the complaint is within the jurisdiction
340 of the division and whether additional information is needed by
341 the division from the complainant. The division shall conduct
342 its investigation and shall, within 90 days after receipt of the
343 original complaint or of timely requested additional
344 information, take action upon the complaint. However, the
345 failure to complete the investigation within 90 days does not
346 prevent the division from continuing the investigation,
347 accepting or considering evidence obtained or received after 90
348 days, or taking administrative action if reasonable cause exists
349 to believe that a violation of this chapter or a rule of the
350 division has occurred. If an investigation is not completed
351 within the time limits established in this paragraph, the
352 division shall, on a monthly basis, notify the complainant in
353 writing of the status of the investigation. When reporting its
354 action to the complainant, the division shall inform the
355 complainant of any right to a hearing pursuant to ss. 120.569
356 and 120.57.

357 (n) Condominium association directors, officers, and
358 employees; condominium developers; condominium bulk assignees
359 and bulk buyers; community association managers; and community
360 association management firms have an ongoing duty to reasonably
361 cooperate with the division in any investigation pursuant to
362 this section. The division shall refer to local law enforcement
363 authorities any person whom the division believes has altered,
364 destroyed, concealed, or removed any record, document, or thing

365 required to be kept or maintained by this chapter with the
 366 purpose to impair its verity or availability in the department's
 367 investigation.

368 (o) The division may:

- 369 1. Contract with agencies in this state or other
- 370 jurisdictions to perform investigative functions; or
- 371 2. Accept grants-in-aid from any source.

372 (p) The division shall cooperate with similar agencies in
 373 other jurisdictions to establish uniform filing procedures and
 374 forms, public offering statements, advertising standards, and
 375 rules and common administrative practices.

376 (q) The division shall consider notice to a developer,
 377 bulk assignee, and bulk buyer to be complete when it is
 378 delivered to the ~~developer's~~ address of the developer, bulk
 379 assignee, or bulk buyer currently on file with the division.

380 (r) In addition to its enforcement authority, the division
 381 may issue a notice to show cause, which shall provide for a
 382 hearing, upon written request, in accordance with chapter 120.

383 (s) The division shall submit to the Governor, the
 384 President of the Senate, the Speaker of the House of
 385 Representatives, and the chairs of the legislative
 386 appropriations committees an annual report that includes, but
 387 need not be limited to, the number of training programs provided
 388 for condominium association board members and unit owners, the
 389 number of complaints received by type, the number and percent of
 390 complaints acknowledged in writing within 30 days and the number
 391 and percent of investigations acted upon within 90 days in
 392 accordance with paragraph (m), and the number of investigations

393 | exceeding the 90-day requirement. The annual report shall also
 394 | include an evaluation of the division's core business processes
 395 | and make recommendations for improvements, including statutory
 396 | changes. The report shall be submitted by September 30 following
 397 | the end of the fiscal year.

398 | Section 3. Part VII of chapter 718, Florida Statutes,
 399 | consisting of sections 718.701, 718.702, 718.703, 718.704,
 400 | 718.705, 718.706, 718.707, and 718.708, is created to read:

401 | PART VII

402 | DISTRESSED CONDOMINIUM RELIEF

403 | 718.701 Short title.—This part may be cited as the
 404 | "Distressed Condominium Relief Act."

405 | 718.702 Legislative intent.—

406 | (1) The Legislature acknowledges the massive downturn in
 407 | the condominium market which has transpired throughout the state
 408 | and the impact of such downturn on developers, lenders, unit
 409 | owners, and condominium associations. Numerous condominium
 410 | projects have either failed or are in the process of failing,
 411 | whereby the condominium has a small percentage of third-party
 412 | unit owners as compared to the unsold inventory of units. As a
 413 | result of the inability to find purchasers for this inventory of
 414 | units, which results in part from the devaluing of real estate
 415 | in this state, developers are unable to satisfy the requirements
 416 | of their lenders, leading to defaults on mortgages.
 417 | Consequently, lenders are faced with the task of finding a
 418 | solution to the problem in order to be paid for their
 419 | investments.

420 | (2) The Legislature recognizes that all of the factors

421 listed in this section lead to condominiums becoming distressed,
422 resulting in detriment to the unit owners and the condominium
423 association on account of the resulting shortage of assessment
424 moneys available to support the financial requirements for
425 proper maintenance of the condominium. Such shortage and the
426 resulting lack of proper maintenance further erode property
427 values. The Legislature finds that individuals and entities
428 within Florida and in other states have expressed interest in
429 purchasing unsold inventory in one or more condominium projects,
430 but are reticent to do so because of the potential of
431 accompanying liabilities inherited from the original developer,
432 which are potentially by definition imputed to the successor
433 purchaser, including a foreclosing mortgagee. This results in
434 the potential purchaser having unknown and unquantifiable risks,
435 and potential successor purchasers are unwilling to accept such
436 risks. The result is that condominium projects stagnate, leaving
437 all parties involved at an impasse without the ability to find a
438 solution.

439 (3) The Legislature finds and declares that it is the
440 public policy of this state to protect the interests of
441 developers, lenders, unit owners, and condominium associations
442 with regard to distressed condominiums, and that there is a need
443 for relief from certain provisions of the Florida Condominium
444 Act geared toward enabling economic opportunities within these
445 condominiums for successor purchasers, including foreclosing
446 mortgagees, while at the same time clarifying the ambiguity in
447 the law. Such relief would benefit existing unit owners and
448 condominium associations. The Legislature further finds and

449 declares that this situation cannot be open-ended without
450 potentially prejudicing the rights of unit owners and
451 condominium associations, and thereby declares that the
452 provisions of this part shall be used by purchasers of
453 condominium inventory for a specific and defined period.

454 718.703 Definitions.—As used in this part, the term:

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

456 (a) Acquires more than seven condominium units in a single
457 condominium as set forth in s. 718.707; and

458 (b) Receives an assignment of all or substantially all of
459 the rights of the developer as are set forth in the declaration
460 of condominium or in this chapter by a written instrument
461 recorded as an exhibit to the deed or as a separate instrument
462 in the public records of the county in which the condominium is
463 located.

464 (2) "Bulk buyer" means a person who acquires more than
465 seven condominium units in a single condominium as set forth in
466 s. 718.707 but who does not receive an assignment of any
467 developer rights other than, at the bulk buyer's option, the
468 right to conduct sales, leasing, and marketing activities within
469 the condominium; the right to be exempt from the payment of
470 working capital contributions to the condominium association
471 arising out of or in connection with the bulk buyer's
472 acquisition of a bulk number of units; and the right to be
473 exempt from any rights of first refusal which may be held by the
474 condominium association and would otherwise be applicable to
475 subsequent transfers of title from the bulk buyer to any third-
476 party purchaser concerning one or more units.

477 718.704 Assignment of developer rights to and assumption
478 of developer rights by bulk assignee; bulk buyer.—

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

482 (a) Warranties of a developer under s. 718.203(1) or s.
483 718.618, except for design, construction, development, or repair
484 work performed by or on behalf of such bulk assignee.

485 (b) The obligation to:

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

488 2. Provide converter warranties on any portion of the
489 condominium property except as may be expressly provided by the
490 bulk assignee in the contract for purchase and sale executed
491 with a purchaser and pertaining to any design, construction,
492 development, or repair work performed by or on behalf of the
493 bulk assignee.

494 (c) The requirement to provide the association with a
495 cumulative audit of the association's finances from the date of
496 formation of the condominium association as required by s.
497 718.301. However, the bulk assignee shall provide an audit for
498 the period for which the bulk assignee elects a majority of the
499 members of the board of administration.

500 (d) Any liability arising out of or in connection with
501 actions taken by the board of administration or the developer-
502 appointed directors before the bulk assignee elects a majority
503 of the members of the board of administration.

504 (e) Any liability for or arising out of the developer's

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505 failure to fund previous assessments or to resolve budgetary
506 deficits in relation to a developer's right to guarantee
507 assessments, except as otherwise provided in subsection (2).

508
509 Further, the bulk assignee is responsible for delivering
510 documents and materials in accordance with s. 718.705(3). A bulk
511 assignee may expressly assume some or all of the obligations of
512 the developer described in paragraphs (a)-(e).

513 (2) A bulk assignee receiving the assignment of the rights
514 of the developer to guarantee the level of assessments and fund
515 budgetary deficits pursuant to s. 718.116 shall be deemed to
516 have assumed and is liable for all obligations of the developer
517 with respect to such guarantee, including any applicable funding
518 of reserves to the extent required by law, for as long as the
519 guarantee remains in effect. A bulk assignee not receiving an
520 assignment of the right of the developer to guarantee the level
521 of assessments and fund budgetary deficits pursuant to s.
522 718.116 or a bulk buyer is not deemed to have assumed and is not
523 liable for the obligations of the developer with respect to such
524 guarantee, but is responsible for payment of assessments in the
525 same manner as all other owners of condominium units.

526 (3) A bulk buyer is liable for the duties and
527 responsibilities of the developer under the declaration and this
528 chapter only to the extent provided in this part, together with
529 any other duties or responsibilities of the developer expressly
530 assumed in writing by the bulk buyer.

531 (4) An acquirer of condominium units is not considered a
532 bulk assignee or a bulk buyer if the transfer to such acquirer

533 was made prior to the effective date of this Distressed
534 Condominium Relief Act or was made with the intent to hinder,
535 delay, or defraud any purchaser, unit owner, or the association,
536 or if the acquirer is a person who would constitute an insider
537 under s. 726.102(7).

538 (5) An assignment of developer rights to a bulk assignee
539 may be made by the developer, a previous bulk assignee, or a
540 court of competent jurisdiction acting on behalf of the
541 developer or the previous bulk assignee. At any particular time,
542 there may be no more than one bulk assignee within a
543 condominium, but there may be more than one bulk buyer. If more
544 than one acquirer of condominium units in the same condominium
545 receives an assignment of developer rights from the same person,
546 the bulk assignee is the acquirer whose instrument of assignment
547 is recorded first in applicable public records.

548 718.705 Board of administration; transfer of control.—

549 (1) For purposes of determining the timing for transfer of
550 control of the board of administration of the association to
551 unit owners other than the developer under s. 718.301(1)(a) and
552 (b), if a bulk assignee is entitled to elect a majority of the
553 members of the board, any condominium unit acquired by the bulk
554 assignee shall not be deemed to be conveyed to a purchaser, or
555 to be owned by an owner other than the developer, until such
556 condominium unit is conveyed to an owner who is not a bulk
557 assignee.

558 (2) Unless control of the board of administration of the
559 association has already been relinquished pursuant to s.
560 718.301(1), the bulk assignee is obligated to relinquish control

561 of the association in accordance with s. 718.301(1) or (2) and
562 this part as if the bulk assignee were the developer.

563 (3) When a bulk assignee relinquishes control of the board
564 of administration, the bulk assignee shall deliver all of those
565 items required by s. 718.301(4). However, the bulk assignee is
566 not required to deliver items and documents not in the
567 possession of the bulk assignee during the period during which
568 the bulk assignee was entitled to elect not less than a majority
569 of the members of the board of administration. In conjunction
570 with the acquisition of condominium units, a bulk assignee shall
571 undertake a good faith effort to obtain the documents and
572 materials required to be provided to the association pursuant to
573 s. 718.301(4). To the extent the bulk assignee is not able to
574 obtain all of such documents and materials, the bulk assignee
575 shall certify in writing to the association the names or
576 descriptions of the documents and materials that were not
577 obtainable by the bulk assignee. Delivery of the certificate
578 relieves the bulk assignee of responsibility for the delivery of
579 the documents and materials referenced in the certificate as
580 otherwise required under ss. 718.112 and 718.301 and this part.
581 The responsibility of the bulk assignee for the audit required
582 by s. 718.301(4) shall commence as of the date on which the bulk
583 assignee elected a majority of the members of the board of
584 administration.

585 (4) If a conflict arises between the provisions or
586 application of this section and s. 718.301, this section shall
587 prevail.

588 (5) Failure of a bulk assignee or bulk buyer to

589 substantially comply with all the requirements contained in this
 590 part shall result in the loss of all protections or exemptions
 591 provided under this part.

592 718.706 Specific provisions pertaining to offering of
 593 units by a bulk assignee or bulk buyer.—

594 (1) Before offering any units for sale or for lease for a
 595 term exceeding 5 years, a bulk assignee or a bulk buyer shall
 596 file the following documents with the division and provide such
 597 documents to a prospective purchaser or lessee:

598 (a) An updated prospectus or offering circular, or a
 599 supplement to the prospectus or offering circular, filed by the
 600 creating developer prepared in accordance with s. 718.504, which
 601 shall include the form of contract for sale and for lease in
 602 compliance with s. 718.503(1) (a);

603 (b) An updated Frequently Asked Questions and Answers
 604 sheet;

605 (c) The executed escrow agreement if required under s.
 606 718.202; and

607 (d) The financial information required by s. 718.111(13).
 608 However, if a financial information report does not exist for
 609 the fiscal year before acquisition of title by the bulk assignee
 610 or bulk buyer, or accounting records cannot be obtained in good
 611 faith by the bulk assignee or the bulk buyer which would permit
 612 preparation of the required financial information report, the
 613 bulk assignee or bulk buyer is excused from the requirement of
 614 this paragraph. However, the bulk assignee or bulk buyer must
 615 include in the purchase contract the following statement in
 616 conspicuous type:

617
 618 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER SECTION
 619 718.111(13), FLORIDA STATUTES, FOR THE IMMEDIATELY PRECEDING
 620 FISCAL YEAR OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE
 621 CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT ACCOUNTING
 622 RECORDS OF THE ASSOCIATION.

623
 624 (2) Before offering any units for sale or for lease for a
 625 term exceeding 5 years, a bulk assignee shall file with the
 626 division and provide to a prospective purchaser a disclosure
 627 statement that must include, but is not limited to:

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

630 (b) The following statement in conspicuous type:

631
 632 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER
 633 UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES,
 634 AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR
 635 REPAIR WORK PERFORMED BY OR ON BEHALF OF SELLER.

636
 637 (c) If the condominium is a conversion subject to part VI,
 638 the following statement in conspicuous type:

639
 640 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO
 641 PROVIDE CONVERTER WARRANTIES UNDER SECTION 718.618, FLORIDA
 642 STATUTES, ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS
 643 MAY BE EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR
 644 PURCHASE AND SALE EXECUTED BY THE SELLER AND THE DEVELOPER AND

645 PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR
646 WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

647
648 (3) While in control of the board of administration of the
649 association, a bulk assignee may not authorize, on behalf of the
650 association:

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

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

659 (4) A bulk assignee or bulk buyer shall comply with all
660 the requirements of s. 718.302 regarding any contracts entered
661 into by the association during the period the bulk assignee or
662 bulk buyer maintains control of the board of administration.
663 Unit owners shall be afforded all the protections contained in
664 s. 718.302 regarding agreements entered into by the association
665 before unit owners other than the developer, bulk assignee, or
666 bulk buyer elected a majority of the board of administration.

667 (5) A bulk buyer shall comply with the requirements
668 contained in the declaration regarding any transfer of a unit,
669 including sales, leases, and subleases. A bulk buyer is not
670 entitled to any exemptions afforded a developer or successor
671 developer under this chapter regarding any transfer of a unit,
672 including sales, leases, or subleases.

673 718.707 Time limitation for classification as bulk
674 assignee or bulk buyer.—A person acquiring condominium units may
675 not be classified as a bulk assignee or bulk buyer unless the
676 condominium units were acquired before July 1, 2012. The date of
677 such acquisition shall be determined by the date of recording of
678 a deed or other instrument of conveyance for such units in the
679 public records of the county in which the condominium is located
680 or by the date of issuance of a certificate of title in a
681 foreclosure proceeding with respect to such condominium units.

682 718.708 Liability of developers and others.—An assignment
683 of developer rights to a bulk assignee or bulk buyer does not
684 release the creating developer from any liabilities under the
685 declaration or this chapter. This part does not limit the
686 liability of the creating developer for claims brought by unit
687 owners, bulk assignees, or bulk buyers for violations of this
688 chapter by the creating developer, unless specifically excluded
689 in this part. Nothing contained within this part waives,
690 releases, compromises, or limits the liability, if any, of
691 contractors, subcontractors, materialmen, manufacturers,
692 architects, engineers, or any participant in the design or
693 construction of a condominium for any claim brought by an
694 association, unit owners, bulk assignees, or bulk buyers arising
695 from the design of the condominium, construction defects,
696 misrepresentations associated with condominium property, or
697 violations of this chapter, unless specifically excluded in this
698 part.

699 Section 4. This act shall take effect upon becoming a law.