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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2010	.	
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The Committee on Community Affairs (Deutch) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

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

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



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13 ~~does it include~~

14 (b) A cooperative association that ~~which~~ creates a
15 condominium by conversion of an existing residential cooperative
16 after control of the association has been transferred to the
17 unit owners if, following the conversion, the unit owners will
18 be the same persons who were unit owners of the cooperative and
19 no units are offered for sale or lease to the public as part of
20 the plan of conversion;~~-~~

21 (c) A bulk assignee or bulk buyer as defined in s. 718.703;
22 or

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

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

29 718.501 Authority, responsibility, and duties of Division
30 of Florida Condominiums, Timeshares, and Mobile Homes.—

31 (1) The Division of Florida Condominiums, Timeshares, and
32 Mobile Homes of the Department of Business and Professional
33 Regulation, referred to as the "division" in this part, has the
34 power to enforce and ensure compliance with the provisions of
35 this chapter and rules relating to the development,
36 construction, sale, lease, ownership, operation, and management
37 of residential condominium units. In performing its duties, the
38 division has complete jurisdiction to investigate complaints and
39 enforce compliance with the provisions of this chapter with
40 respect to associations that are still under developer control
41 or the control of a bulk assignee or bulk buyer pursuant to part



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42 VII of this chapter and complaints against developers, bulk
43 assignees, or bulk buyers involving improper turnover or failure
44 to turnover, pursuant to s. 718.301. However, after turnover has
45 occurred, the division has ~~shall only have~~ jurisdiction to
46 investigate complaints related only to financial issues,
47 elections, and unit owner access to association records pursuant
48 to s. 718.111(12).

49 (a)1. The division may make necessary public or private
50 investigations within or outside this state to determine whether
51 any person has violated this chapter or any rule or order
52 hereunder, to aid in the enforcement of this chapter, or to aid
53 in the adoption of rules or forms hereunder.

54 2. The division may submit any official written report,
55 worksheet, or other related paper, or a duly certified copy
56 thereof, compiled, prepared, drafted, or otherwise made by and
57 duly authenticated by a financial examiner or analyst to be
58 admitted as competent evidence in any hearing in which the
59 financial examiner or analyst is available for cross-examination
60 and attests under oath that such documents were prepared as a
61 result of an examination or inspection conducted pursuant to
62 this chapter.

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

67 (c) For the purpose of any investigation under this
68 chapter, the division director or any officer or employee
69 designated by the division director may administer oaths or
70 affirmations, subpoena witnesses and compel their attendance,



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71 take evidence, and require the production of any matter which is
72 relevant to the investigation, including the existence,
73 description, nature, custody, condition, and location of any
74 books, documents, or other tangible things and the identity and
75 location of persons having knowledge of relevant facts or any
76 other matter reasonably calculated to lead to the discovery of
77 material evidence. Upon the failure by a person to obey a
78 subpoena or to answer questions propounded by the investigating
79 officer and upon reasonable notice to all persons affected
80 thereby, the division may apply to the circuit court for an
81 order compelling compliance.

82 (d) Notwithstanding any remedies available to unit owners
83 and associations, if the division has reasonable cause to
84 believe that a violation of any provision of this chapter or
85 related rule has occurred, the division may institute
86 enforcement proceedings in its own name against any developer,
87 bulk assignee, bulk buyer, association, officer, or member of
88 the board of administration, or its assignees or agents, as
89 follows:

90 1. The division may permit a person whose conduct or
91 actions may be under investigation to waive formal proceedings
92 and enter into a consent proceeding whereby orders, rules, or
93 letters of censure or warning, whether formal or informal, may
94 be entered against the person.

95 2. The division may issue an order requiring the developer,
96 bulk assignee, bulk buyer, association, developer-designated
97 officer, or developer-designated member of the board of
98 administration, developer-designated assignees or agents, bulk
99 assignee-designated assignees or agents, bulk buyer-designated



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100 assignees or agents, community association manager, or community
101 association management firm to cease and desist from the
102 unlawful practice and take such affirmative action as in the
103 judgment of the division will carry out the purposes of this
104 chapter. If the division finds that a developer, bulk assignee,
105 bulk buyer, association, officer, or member of the board of
106 administration, or its assignees or agents, is violating or is
107 about to violate any provision of this chapter, any rule adopted
108 or order issued by the division, or any written agreement
109 entered into with the division, and presents an immediate danger
110 to the public requiring an immediate final order, it may issue
111 an emergency cease and desist order reciting with particularity
112 the facts underlying such findings. The emergency cease and
113 desist order is effective for 90 days. If the division begins
114 nonemergency cease and desist proceedings, the emergency cease
115 and desist order remains effective until the conclusion of the
116 proceedings under ss. 120.569 and 120.57.

117 3. If a developer, bulk assignee, or bulk buyer, fails to
118 pay any restitution determined by the division to be owed, plus
119 any accrued interest at the highest rate permitted by law,
120 within 30 days after expiration of any appellate time period of
121 a final order requiring payment of restitution or the conclusion
122 of any appeal thereof, whichever is later, the division must
123 ~~shall~~ bring an action in circuit or county court on behalf of
124 any association, class of unit owners, lessees, or purchasers
125 for restitution, declaratory relief, injunctive relief, or any
126 other available remedy. The division may also temporarily revoke
127 its acceptance of the filing for the developer to which the
128 restitution relates until payment of restitution is made.



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129 4. The division may petition the court for the appointment
130 of a receiver or conservator. If appointed, the receiver or
131 conservator may take action to implement the court order to
132 ensure the performance of the order and to remedy any breach
133 thereof. In addition to all other means provided by law for the
134 enforcement of an injunction or temporary restraining order, the
135 circuit court may impound or sequester the property of a party
136 defendant, including books, papers, documents, and related
137 records, and allow the examination and use of the property by
138 the division and a court-appointed receiver or conservator.

139 5. The division may apply to the circuit court for an order
140 of restitution whereby the defendant in an action brought
141 pursuant to subparagraph 4. shall be ordered to make restitution
142 of those sums shown by the division to have been obtained by the
143 defendant in violation of this chapter. Such restitution shall,
144 at the option of the court, be payable to the conservator or
145 receiver appointed pursuant to subparagraph 4. or directly to
146 the persons whose funds or assets were obtained in violation of
147 this chapter.

148 6. The division may impose a civil penalty against a
149 developer, bulk assignee, or bulk buyer, or association, or its
150 assignee or agent, for any violation of this chapter or a rule
151 adopted under this chapter. The division may impose a civil
152 penalty individually against any officer or board member who
153 willfully and knowingly violates a provision of this chapter,
154 adopted rule, or a final order of the division; may order the
155 removal of such individual as an officer or from the board of
156 administration or as an officer of the association; and may
157 prohibit such individual from serving as an officer or on the



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158 board of a community association for a period of time. The term
159 "willfully and knowingly" means that the division informed the
160 officer or board member that his or her action or intended
161 action violates this chapter, a rule adopted under this chapter,
162 or a final order of the division and that the officer or board
163 member refused to comply with the requirements of this chapter,
164 a rule adopted under this chapter, or a final order of the
165 division. The division, before ~~prior to~~ initiating formal agency
166 action under chapter 120, must ~~shall~~ afford the officer or board
167 member an opportunity to voluntarily comply with this chapter, a
168 rule adopted under this chapter, or a final order of the
169 division. An officer or board member who complies within 10 days
170 is not subject to a civil penalty. A penalty may be imposed on
171 the basis of each day of continuing violation, but ~~in no event~~
172 ~~shall~~ the penalty for any offense may not exceed \$5,000. By
173 January 1, 1998, the division shall adopt, by rule, penalty
174 guidelines applicable to possible violations or to categories of
175 violations of this chapter or rules adopted by the division. The
176 guidelines must specify a meaningful range of civil penalties
177 for each such violation of the statute and rules and must be
178 based upon the harm caused by the violation, the repetition of
179 the violation, and upon such other factors deemed relevant by
180 the division. For example, the division may consider whether the
181 violations were committed by a developer, bulk assignee, or bulk
182 buyer, or owner-controlled association, the size of the
183 association, and other factors. The guidelines must designate
184 the possible mitigating or aggravating circumstances that
185 justify a departure from the range of penalties provided by the
186 rules. It is the legislative intent that minor violations be



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187 distinguished from those which endanger the health, safety, or
188 welfare of the condominium residents or other persons and that
189 such guidelines provide reasonable and meaningful notice to the
190 public of likely penalties that may be imposed for proscribed
191 conduct. This subsection does not limit the ability of the
192 division to informally dispose of administrative actions or
193 complaints by stipulation, agreed settlement, or consent order.
194 All amounts collected shall be deposited with the Chief
195 Financial Officer to the credit of the Division of Florida
196 Condominiums, Timeshares, and Mobile Homes Trust Fund. If a
197 developer, bulk assignee, or bulk buyer fails to pay the civil
198 penalty and the amount deemed to be owed to the association, the
199 division shall issue an order directing that such developer,
200 bulk assignee, or bulk buyer cease and desist from further
201 operation until such time as the civil penalty is paid or may
202 pursue enforcement of the penalty in a court of competent
203 jurisdiction. If an association fails to pay the civil penalty,
204 the division shall pursue enforcement in a court of competent
205 jurisdiction, and the order imposing the civil penalty or the
206 cease and desist order will not become effective until 20 days
207 after the date of such order. Any action commenced by the
208 division shall be brought in the county in which the division
209 has its executive offices or in the county where the violation
210 occurred.

211 7. If a unit owner presents the division with proof that
212 the unit owner has requested access to official records in
213 writing by certified mail, and that after 10 days the unit owner
214 again made the same request for access to official records in
215 writing by certified mail, and that more than 10 days has



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216 elapsed since the second request and the association has still
217 failed or refused to provide access to official records as
218 required by this chapter, the division shall issue a subpoena
219 requiring production of the requested records where the records
220 are kept pursuant to s. 718.112.

221 8. In addition to subparagraph 6., the division may seek
222 the imposition of a civil penalty through the circuit court for
223 any violation for which the division may issue a notice to show
224 cause under paragraph (r). The civil penalty shall be at least
225 \$500 but no more than \$5,000 for each violation. The court may
226 also award to the prevailing party court costs and reasonable
227 attorney's fees and, if the division prevails, may also award
228 reasonable costs of investigation.

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

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

236 (g) The division shall establish procedures for providing
237 notice to an association and the developer, bulk assignee, or
238 bulk buyer during the period in which ~~where~~ the developer, bulk
239 assignee, or bulk buyer controls the association if ~~when~~ the
240 division is considering the issuance of a declaratory statement
241 with respect to the declaration of condominium or any related
242 document governing in such condominium community.

243 (h) The division shall furnish each association which pays
244 the fees required by paragraph (2)(a) a copy of this act,



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245 subsequent changes to this act on an annual basis, an amended
246 version of this act as it becomes available from the Secretary
247 of State's office on a biennial basis, and the rules adopted
248 thereto on an annual basis.

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

253 (j) The division shall provide training and educational
254 programs for condominium association board members and unit
255 owners. The training may, in the division's discretion, include
256 web-based electronic media, and live training and seminars in
257 various locations throughout the state. The division may ~~shall~~
258 ~~have the authority to~~ review and approve education and training
259 programs for board members and unit owners offered by providers
260 and shall maintain a current list of approved programs and
261 providers and shall make such list available to board members
262 and unit owners in a reasonable and cost-effective manner.

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

265 (l) The division shall develop a program to certify both
266 volunteer and paid mediators to provide mediation of condominium
267 disputes. The division shall provide, upon request, a list of
268 such mediators to any association, unit owner, or other
269 participant in arbitration proceedings under s. 718.1255
270 requesting a copy of the list. The division shall include on the
271 list of volunteer mediators only the names of persons who have
272 received at least 20 hours of training in mediation techniques
273 or who have mediated at least 20 disputes. In order to become



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274 initially certified by the division, paid mediators must be
275 certified by the Supreme Court to mediate court cases in county
276 or circuit courts. However, the division may adopt, by rule,
277 additional factors for the certification of paid mediators,
278 which factors must be related to experience, education, or
279 background. Any person initially certified as a paid mediator by
280 the division must, in order to continue to be certified, comply
281 with the factors or requirements imposed by rules adopted by the
282 division.

283 (m) When a complaint is made, the division must ~~shall~~
284 conduct its inquiry with due regard to the interests of the
285 affected parties. Within 30 days after receipt of a complaint,
286 the division shall acknowledge the complaint in writing and
287 notify the complainant whether the complaint is within the
288 jurisdiction of the division and whether additional information
289 is needed by the division from the complainant. The division
290 shall conduct its investigation and shall, within 90 days after
291 receipt of the original complaint or of timely requested
292 additional information, take action upon the complaint. However,
293 the failure to complete the investigation within 90 days does
294 not prevent the division from continuing the investigation,
295 accepting or considering evidence obtained or received after 90
296 days, or taking administrative action if reasonable cause exists
297 to believe that a violation of this chapter or a rule of the
298 division has occurred. If an investigation is not completed
299 within the time limits established in this paragraph, the
300 division shall, on a monthly basis, notify the complainant in
301 writing of the status of the investigation. When reporting its
302 action to the complainant, the division shall inform the



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303 complainant of any right to a hearing pursuant to ss. 120.569
304 and 120.57.

305 (n) Condominium association directors, officers, and
306 employees; condominium developers; condominium bulk assignees
307 and bulk buyers, community association managers; and community
308 association management firms have an ongoing duty to reasonably
309 cooperate with the division in any investigation pursuant to
310 this section. The division shall refer to local law enforcement
311 authorities any person whom the division believes has altered,
312 destroyed, concealed, or removed any record, document, or thing
313 required to be kept or maintained by this chapter with the
314 purpose to impair its verity or availability in the department's
315 investigation.

316 (o) The division may:

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

320 (p) The division shall cooperate with similar agencies in
321 other jurisdictions to establish uniform filing procedures and
322 forms, public offering statements, advertising standards, and
323 rules and common administrative practices.

324 (q) The division shall consider notice to a developer, bulk
325 assignee, or bulk buyer to be complete when it is delivered to
326 the ~~developer's~~ address of the developer, bulk assignee, or bulk
327 buyer currently on file with the division.

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

331 (s) The division shall submit to the Governor, the



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332 President of the Senate, the Speaker of the House of
333 Representatives, and the chairs of the legislative
334 appropriations committees an annual report that includes, but
335 need not be limited to, the number of training programs provided
336 for condominium association board members and unit owners, the
337 number of complaints received by type, the number and percent of
338 complaints acknowledged in writing within 30 days and the number
339 and percent of investigations acted upon within 90 days in
340 accordance with paragraph (m), and the number of investigations
341 exceeding the 90-day requirement. The annual report shall also
342 include an evaluation of the division's core business processes
343 and make recommendations for improvements, including statutory
344 changes. The report shall be submitted by September 30 following
345 the end of the fiscal year.

346 Section 3. Part VII of chapter 718, Florida Statutes,
347 consisting of sections 718.701, 718.702, 718.703, 718.704,
348 718.705, 718.706, 718.707, and 718.708, is created to read:

349 718.701 Short title.—This part may be cited as the
350 "Distressed Condominium Relief Act."

351 718.702 Legislative intent.—

352 (1) The Legislature acknowledges the massive downturn in
353 the condominium market which has transpired throughout the state
354 and the impact of such downturn on developers, lenders, unit
355 owners, and condominium associations. Numerous condominium
356 projects have either failed or are in the process of failing,
357 whereby the condominium has a small percentage of third-party
358 unit owners as compared to the unsold inventory of units. As a
359 result of the inability to find purchasers for this inventory of
360 units, which results in part from the devaluing of real estate



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361 in this state, developers are unable to satisfy the requirements
362 of their lenders, leading to defaults on mortgages.
363 Consequently, lenders are faced with the task of finding a
364 solution to the problem in order to be paid for their
365 investments.

366 (2) The Legislature recognizes that all of the factors
367 listed in this section lead to condominiums becoming distressed,
368 resulting in detriment to the unit owners and the condominium
369 association on account of the resulting shortage of assessment
370 moneys available to support the financial requirements for
371 proper maintenance of the condominium. Such shortage and the
372 resulting lack of proper maintenance further erodes property
373 values. The Legislature finds that individuals and entities
374 within this state and in other states have expressed interest in
375 purchasing unsold inventory in one or more condominium projects,
376 but are reticent to do so because of accompanying liabilities
377 inherited from the original developer, which are by definition
378 imputed to the successor purchaser, including a foreclosing
379 mortgagee. This results in the potential purchaser having
380 unknown and unquantifiable risks, and potential successor
381 purchasers are unwilling to accept such risks. The result is
382 that condominium projects stagnate, leaving all parties involved
383 at an impasse without the ability to find a solution.

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



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390 condominiums for successor purchasers, including foreclosing
391 mortgagees. Such relief would benefit existing unit owners and
392 condominium associations. The Legislature further finds and
393 declares that this situation cannot be open-ended without
394 potentially prejudicing the rights of unit owners and
395 condominium associations, and thereby declares that the
396 provisions of this part shall be used by purchasers of
397 condominium inventory for a specific and defined period.

398 718.703 Definitions.—As used in this part, the term:

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

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

402 (b) Receives an assignment of some or all of the rights of
403 the developer as are set forth in the declaration of condominium
404 or in this chapter by a written instrument recorded as an
405 exhibit to the deed or as a separate instrument in the public
406 records of the county in which the condominium is located.

407 (2) "Bulk buyer" means a person who acquires more than
408 seven condominium parcels as set forth in s. 718.707 but who
409 does not receive an assignment of any developer rights other
410 than the right to conduct sales, leasing, and marketing
411 activities within the condominium; the right to be exempt from
412 the payment of working capital contributions to the condominium
413 association arising out of, or in connection with, the bulk
414 buyer's acquisition of a bulk number of units; and the right to
415 be exempt from any rights of first refusal which may be held by
416 the condominium association and would otherwise be applicable to
417 subsequent transfers of title from the bulk buyer to any third
418 party purchaser concerning one or more units.



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419 718.704 Assignment and assumption of developer rights by
420 bulk assignee; bulk buyer.—

421 (1) A bulk assignee is deemed to have assumed and is liable
422 for all duties and responsibilities of the developer under the
423 declaration and this chapter, except:

424 (a) Warranties of the developer under s. 718.203(1) or s.
425 718.618, except for design, construction, development, or repair
426 work performed by or on behalf of such bulk assignee;

427 (b) The obligation to:

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

430 2. Provide converter warranties on any portion of the
431 condominium property except as may be expressly provided by the
432 bulk assignee in the contract for purchase and sale executed
433 with a purchaser and pertaining to any design, construction,
434 development, or repair work performed by or on behalf of the
435 bulk assignee;

436 (c) The requirement to provide the association with a
437 cumulative audit of the association's finances from the date of
438 formation of the condominium association as required by s.
439 718.301(4)(c). However, the bulk assignee shall provide an audit
440 for the period for which the bulk assignee elects a majority of
441 the members of the board of administration;

442 (d) Any liability arising out of or in connection with
443 actions taken by the board of administration or the developer-
444 appointed directors before the bulk assignee elects a majority
445 of the members of the board of administration; and

446 (e) Any liability for or arising out of the developer's
447 failure to fund previous assessments or to resolve budgetary



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448 deficits in relation to a developer's right to guarantee
449 assessments, except as otherwise provided in subsection (2).

450
451 Further, the bulk assignee is responsible for delivering
452 documents and materials in accordance with s. 718.705(3). A bulk
453 assignee may expressly assume some or all of the obligations of
454 the developer described in paragraphs (a)-(e).

455 (2) A bulk assignee receiving the assignment of the rights
456 of the developer to guarantee the level of assessments and fund
457 budgetary deficits pursuant to s. 718.116 is deemed to have
458 assumed and is liable for all obligations of the developer with
459 respect to such guarantee, including any applicable funding of
460 reserves to the extent required by law, for as long as the
461 guarantee remains in effect. A bulk assignee not receiving an
462 assignment of the right of the developer to guarantee the level
463 of assessments and fund budgetary deficits pursuant to s.
464 718.116 or a bulk buyer is not deemed to have assumed and is not
465 liable for the obligations of the developer with respect to such
466 guarantee, but is responsible for payment of assessments in the
467 same manner as all other owners of condominium parcels.

468 (3) A bulk buyer is liable for the duties and
469 responsibilities of the developer under the declaration and this
470 chapter only to the extent provided in this part, together with
471 any other duties or responsibilities of the developer expressly
472 assumed in writing by the bulk buyer.

473 (4) An acquirer of condominium parcels is not considered a
474 bulk assignee or a bulk buyer if the transfer to such acquirer
475 was made before the effective date of this part with the intent
476 to hinder, delay, or defraud any purchaser, unit owner, or the



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477 association, or if the acquirer is a person who would constitute
478 an insider under s. 726.102(7).

479 (5) An assignment of developer rights to a bulk assignee
480 may be made by the developer, a previous bulk assignee, or a
481 court of competent jurisdiction acting on behalf of the
482 developer or the previous bulk assignee. At any particular time,
483 there may be no more than one bulk assignee within a
484 condominium, but there may be more than one bulk buyer. If more
485 than one acquirer of condominium parcels in the same condominium
486 receives an assignment of developer rights from the same person,
487 the bulk assignee is the acquirer whose instrument of assignment
488 is recorded first in applicable public records.

489 718.705 Board of administration; transfer of control.-

490 (1) For purposes of determining the timing for transfer of
491 control of the board of administration of the association to
492 unit owners other than the developer under s. 718.301(1)(a) and
493 (b), if a bulk assignee is entitled to elect a majority of the
494 members of the board, a condominium parcel acquired by the bulk
495 assignee is not deemed to be conveyed to a purchaser, or to be
496 owned by an owner other than the developer, until such
497 condominium parcel is conveyed to an owner who is not a bulk
498 assignee.

499 (2) Unless control of the board of administration of the
500 association has already been relinquished pursuant to s.
501 718.301(1), the bulk assignee must relinquish control of the
502 association pursuant to s. 718.301 and this part, as if the bulk
503 assignee were the developer.

504 (3) When a bulk assignee relinquishes control of the board
505 of administration as set forth in s. 718.301, the bulk assignee



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506 must deliver all of those items required by s. 718.301(4).
507 However, the bulk assignee is not required to deliver items and
508 documents not in the possession of the bulk assignee during the
509 period during which the bulk assignee was entitled to elect at
510 least a majority of the members of the board of administration.
511 In conjunction with acquisition of condominium parcels, a bulk
512 assignee shall undertake a good faith effort to obtain the
513 documents and materials required to be provided to the
514 association pursuant to s. 718.301(4). To the extent the bulk
515 assignee is not able to obtain all of such documents and
516 materials, the bulk assignee shall certify in writing to the
517 association the names or descriptions of the documents and
518 materials that were not obtainable by the bulk assignee.
519 Delivery of the certificate relieves the bulk assignee of
520 responsibility for the delivery of the documents and materials
521 referenced in the certificate as otherwise required under ss.
522 718.112 and 718.301 and this part. The responsibility of the
523 bulk assignee for the audit required by s. 718.301(4) commences
524 as of the date on which the bulk assignee elected a majority of
525 the members of the board of administration.

526 (4) If a conflict arises between the provisions or
527 application of this section and s. 718.301, this section
528 prevails.

529 (5) Failure of a bulk assignee or bulk buyer to
530 substantially comply with all the requirements contained in this
531 part shall result in the loss of any and all protections or
532 exemptions provided under this part.

533 718.706 Specific provisions pertaining to offering of units
534 by a bulk assignee or bulk buyer.-



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

539 (a) An updated prospectus or offering circular, or a
540 supplement to the prospectus or offering circular, filed by the
541 creating developer prepared in accordance with s. 718.504, which
542 must include the form of contract for sale and for lease in
543 compliance with s. 718.503(2);

544 (b) An updated Frequently Asked Questions and Answers
545 sheet;

546 (c) The executed escrow agreement if required under s.
547 718.202; and

548 (d) The financial information required by s. 718.111(13).
549 However, if a financial information report does not exist for
550 the fiscal year before acquisition of title by the bulk assignee
551 or bulk buyer, or accounting records cannot be obtained in good
552 faith by the bulk assignee or the bulk buyer which would permit
553 preparation of the required financial information report, the
554 bulk assignee or bulk buyer is excused from the requirement of
555 this paragraph. However, the bulk assignee or bulk buyer must
556 include in the purchase contract the following statement in
557 conspicuous type:

558
559 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER
560 S. 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL
561 YEAR OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE
562 CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT
563 ACCOUNTING RECORDS OF THE ASSOCIATION.



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

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

570 (b) The following statement in conspicuous type:

571
572 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE
573 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS
574 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,
575 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF
576 OF SELLER; and

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

579
580 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER
581 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S.
582 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY
583 EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN
584 THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
585 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO
586 ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK
587 PERFORMED BY OR ON BEHALF OF THE SELLER.

588 (3) A bulk assignee, while it is in control of the board of
589 administration of the association, may not authorize, on behalf
590 of the association:

591 (a) The waiver of reserves or the reduction of funding of
592 the reserves pursuant to s. 718.112(2)(f)2., unless approved by



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593 a majority of the voting interests not controlled by the
594 developer, bulk assignee, and bulk buyer; or

595 (b) The use of reserve expenditures for other purposes
596 pursuant to s. 718.112(2)(f)3., unless approved by a majority of
597 the voting interests not controlled by the developer, bulk
598 assignee, and bulk buyer.

599 (4) A bulk assignee or a bulk buyer shall comply with all
600 the requirements of s. 718.302 regarding any contracts entered
601 into by the association during the period the bulk assignee or
602 bulk buyer maintains control of the board of administration.
603 Unit owners shall be afforded all the protections contained in
604 s. 718.302 regarding agreements entered into by the association
605 before unit owners other than the developer, bulk assignee, or
606 bulk buyer elected a majority of the board of administration.

607 (5) A bulk buyer shall comply with the requirements
608 contained in the declaration regarding any transfer of a unit,
609 including sales, leases, and subleases. A bulk buyer is not
610 entitled to any exemptions afforded a developer or successor
611 developer under this chapter regarding any transfer of a unit,
612 including sales, leases, or subleases.

613 718.707 Time limitation for classification as bulk assignee
614 or bulk buyer.—A person acquiring condominium parcels may not be
615 classified as a bulk assignee or bulk buyer unless the
616 condominium parcels were acquired before July 1, 2012. The date
617 of such acquisition shall be determined by the date of recording
618 of a deed or other instrument of conveyance for such parcels in
619 the public records of the county in which the condominium is
620 located, or by the date of issuance of a certificate of title in
621 a foreclosure proceeding with respect to such condominium



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622 parcels.

623 718.708 Liability of developers and others.—An assignment
624 of developer rights to a bulk assignee or bulk buyer does not
625 release the creating developer from any liabilities under the
626 declaration or this chapter. This part does not limit the
627 liability of the creating developer for claims brought by unit
628 owners, bulk assignees, or bulk buyers for violations of this
629 chapter by the creating developer, unless specifically excluded
630 in this part. Nothing contained within this part waives,
631 releases, compromises, or limits the liability of contractors,
632 subcontractors, materialmen, manufacturers, architects,
633 engineers, or any participant in the design or construction of a
634 condominium for any claim brought by an association, unit
635 owners, bulk assignees, or bulk buyers arising from the design
636 of the condominium, construction defects, misrepresentations
637 associated with condominium property, or violations of this
638 chapter, unless specifically excluded in this part.

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

640
641 ===== T I T L E A M E N D M E N T =====

642 And the title is amended as follows:

643 Delete everything before the enacting clause
644 and insert:

645 A bill to be entitled
646 An act relating to community associations; amending s.
647 718.103, F.S.; redefining the term "developer";
648 amending s. 718.501, F.S.; specifying the jurisdiction
649 of the Florida Division of Condominiums, Timeshares,
650 and Mobile Homes has jurisdiction with respect to



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651 include bulk assignees and bulk buyers; creating part
652 VII of ch. 718, F.S.; creating the distressed
653 condominium relief act; providing legislative findings
654 and intent; defining the terms "bulk assignee" and
655 "bulk buyer"; providing for the assignment of
656 developer rights by a bulk assignee; specifying
657 liabilities of bulk assignees and bulk buyers;
658 providing exceptions; providing additional
659 responsibilities of bulk assignees and bulk buyers;
660 authorizing certain entities to assign developer
661 rights to a bulk assignee; limiting the number of bulk
662 assignees at any given time; providing for the
663 transfer of control of a board of administration to
664 unit owners; providing effects of such transfer on
665 parcels acquired by a bulk assignee; providing
666 obligations of a bulk assignee upon the transfer of
667 control of a board of administration; requiring that a
668 bulk assignee certify certain information in writing;
669 providing for the resolution of a conflict between
670 specified provisions of state law; providing that the
671 failure of a bulk assignee or bulk buyer to comply
672 with specified provisions of state law results in the
673 loss of certain protections and exemptions; requiring
674 that a bulk assignee or bulk buyer file certain
675 information with the Division of Florida Condominiums,
676 Timeshares, and Mobile Homes of the Department of
677 Business and Professional Regulation before offering
678 any units for sale or lease in excess of a specified
679 term; requiring that a copy of such information be



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680 provided to a prospective purchaser or tenant;
681 requiring that certain contracts and disclosure
682 statements contain specified statements; requiring
683 that a bulk assignee or bulk buyer comply with certain
684 disclosure requirements; prohibiting a bulk assignee
685 from authorizing certain actions on behalf of an
686 association while the bulk assignee is in control of
687 the board of administration of the association;
688 requiring that a bulk assignee or bulk buyer comply
689 with certain laws with respect to contracts entered
690 into by the association while the bulk assignee or
691 bulk buyer was in control of the board of
692 administration; providing parcel owners with specified
693 protections regarding certain contracts; requiring
694 that a bulk buyer comply with certain requirements
695 regarding the transfer of a parcel; prohibiting a
696 person from being classified as a bulk assignee or
697 bulk buyer unless condominium parcels were acquired
698 before a specified date; providing that the assignment
699 of developer rights to a bulk assignee does not
700 release a developer from certain liabilities;
701 providing an effective date.