

By Senator Sobel

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

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

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

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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;~~; nor does it include~~

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

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

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

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

PART VII

DISTRESSED CONDOMINIUM RELIEF

718.701 Short title.—This part may be cited as the

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88 "Distressed Condominium Relief Act."

89 718.702 Legislative intent.-

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

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

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

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

138 718.703 Definitions.—As used in this part, the term:

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

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

142 (b) Receives an assignment of all or substantially all of
143 the rights of the developer as are set forth in the declaration
144 of condominium or in this chapter by a written instrument
145 recorded as an exhibit to the deed or as a separate instrument

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146 in the public records of the county in which the condominium is
147 located.

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

161 718.704 Assignment of developer rights to and assumption of
162 developer rights by bulk assignee; bulk buyer.-

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

166 (a) Warranties of a developer under s. 718.203(1) or s.
167 718.618, except for design, construction, development, or repair
168 work performed by or on behalf of such bulk assignee.

169 (b) The obligation to:

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

172 2. Provide converter warranties on any portion of the
173 condominium property except as may be expressly provided by the
174 bulk assignee in the contract for purchase and sale executed

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175 with a purchaser and pertaining to any design, construction,
176 development, or repair work performed by or on behalf of the
177 bulk assignee.

178 (c) The requirement to provide the association with a
179 cumulative audit of the association's finances from the date of
180 formation of the condominium association as required by s.
181 718.301. However, the bulk assignee shall provide an audit for
182 the period for which the bulk assignee elects a majority of the
183 members of the board of administration.

184 (d) Any liability arising out of or in connection with
185 actions taken by the board of administration or the developer-
186 appointed directors before the bulk assignee elects a majority
187 of the members of the board of administration.

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

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

197 (2) A bulk assignee receiving the assignment of the rights
198 of the developer to guarantee the level of assessments and fund
199 budgetary deficits pursuant to s. 718.116 shall be deemed to
200 have assumed and is liable for all obligations of the developer
201 with respect to such guarantee, including any applicable funding
202 of reserves to the extent required by law, for as long as the
203 guarantee remains in effect. A bulk assignee not receiving an

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204 assignment of the right of the developer to guarantee the level
205 of assessments and fund budgetary deficits pursuant to s.
206 718.116 or a bulk buyer is not deemed to have assumed and is not
207 liable for the obligations of the developer with respect to such
208 guarantee, but is responsible for payment of assessments in the
209 same manner as all other owners of condominium parcels.

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

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

222 (5) An assignment of developer rights to a bulk assignee
223 may be made by the developer, a previous bulk assignee, or a
224 court of competent jurisdiction acting on behalf of the
225 developer or the previous bulk assignee. At any particular time,
226 there may be no more than one bulk assignee within a
227 condominium, but there may be more than one bulk buyer. If more
228 than one acquirer of condominium parcels in the same condominium
229 receives an assignment of developer rights from the same person,
230 the bulk assignee is the acquirer whose instrument of assignment
231 is recorded first in applicable public records.

232 718.705 Board of administration; transfer of control.-

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

242 (2) Unless control of the board of administration of the
243 association has already been relinquished pursuant to s.
244 718.301(1), the bulk assignee is obligated to relinquish control
245 of the association in accordance with s. 718.301(1) or (2) and
246 this part as if the bulk assignee were the developer.

247 (3) When a bulk assignee relinquishes control of the board
248 of administration, the bulk assignee shall deliver all of those
249 items required by s. 718.301(4). However, the bulk assignee is
250 not required to deliver items and documents not in the
251 possession of the bulk assignee during the period during which
252 the bulk assignee was entitled to elect not less than a majority
253 of the members of the board of administration. In conjunction
254 with the acquisition of condominium parcels, a bulk assignee
255 shall undertake a good faith effort to obtain the documents and
256 materials required to be provided to the association pursuant to
257 s. 718.301(4). To the extent the bulk assignee is not able to
258 obtain all of such documents and materials, the bulk assignee
259 shall certify in writing to the association the names or
260 descriptions of the documents and materials that were not
261 obtainable by the bulk assignee. Delivery of the certificate

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262 relieves the bulk assignee of responsibility for the delivery of
263 the documents and materials referenced in the certificate as
264 otherwise required under ss. 718.112 and 718.301 and this part.
265 The responsibility of the bulk assignee for the audit required
266 by s. 718.301(4) shall commence as of the date on which the bulk
267 assignee elected a majority of the members of the board of
268 administration.

269 (4) If a conflict arises between the provisions or
270 application of this section and s. 718.301, this section shall
271 prevail.

272 (5) Failure of a bulk assignee or bulk buyer to
273 substantially comply with all the requirements contained in this
274 part shall result in the loss of all protections or exemptions
275 provided under this part.

276 718.706 Specific provisions pertaining to offering of units
277 by a bulk assignee or bulk buyer.—

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

282 (a) An updated prospectus or offering circular, or a
283 supplement to the prospectus or offering circular, filed by the
284 creating developer prepared in accordance with s. 718.504, which
285 shall include the form of contract for purchase and sale in
286 compliance with s. 718.503(1) (a);

287 (b) An updated Frequently Asked Questions and Answers
288 sheet;

289 (c) The executed escrow agreement if required under s.
290 718.202; and

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

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

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

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

314 (b) The following statement in conspicuous type:

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

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

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

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

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 the

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349 requirements of s. 718.302 regarding any contracts entered into
350 by the association during the period the bulk assignee or bulk
351 buyer maintains control of the board of administration. Unit
352 owners shall be afforded all the protections contained in s.
353 718.302 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 assignee
363 or bulk buyer.—A person acquiring condominium parcels may not be
364 classified as a bulk assignee or bulk buyer unless the
365 condominium parcels were acquired before July 1, 2012. The date
366 of such acquisition shall be determined by the date of recording
367 of a deed or other instrument of conveyance for such parcels in
368 the public records of the county in which the condominium is
369 located or by the date of issuance of a certificate of title in
370 a foreclosure proceeding with respect to such condominium
371 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

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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.