

By the Committees on Judiciary; Community Affairs; and Regulated Industries; and Senators Sobel, Gelber, and Aronberg

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1 A bill to be entitled
2 An act relating to community associations; amending s.
3 718.103, F.S.; redefining the term "developer";
4 amending s. 718.501, F.S.; specifying that the
5 Division of Florida Condominiums, Timeshares, and
6 Mobile Homes of the Department of Business and
7 Professional Regulation has jurisdiction with respect
8 to bulk assignees and bulk buyers; creating part VII
9 of ch. 718, F.S.; creating the "Distressed Condominium
10 Relief Act"; providing legislative findings and
11 intent; defining the terms "bulk assignee" and "bulk
12 buyer"; providing for the assignment of developer
13 rights by a bulk assignee; specifying liabilities of
14 bulk assignees and bulk buyers; providing exceptions;
15 providing additional responsibilities of bulk
16 assignees and bulk buyers; authorizing certain
17 entities to assign developer rights to a bulk
18 assignee; limiting the number of bulk assignees at any
19 given time; providing for the transfer of control of a
20 board of administration to unit owners; providing
21 effects of such transfer on parcels acquired by a bulk
22 assignee; providing obligations of a bulk assignee
23 upon the transfer of control of a board of
24 administration; requiring that a bulk assignee certify
25 certain information in writing; providing for the
26 resolution of a conflict between specified provisions
27 of state law; providing that the failure of a bulk
28 assignee or bulk buyer to comply with specified
29 provisions of state law results in the loss of certain

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

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

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59

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

62 718.103 Definitions.—As used in this chapter, the term:

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

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

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

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

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

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

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

86 (1) The Division of Florida Condominiums, Timeshares, and
87 Mobile Homes of the Department of Business and Professional

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

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

109 2. The division may submit any official written report,
110 worksheet, or other related paper, or a duly certified copy
111 thereof, compiled, prepared, drafted, or otherwise made by and
112 duly authenticated by a financial examiner or analyst to be
113 admitted as competent evidence in any hearing in which the
114 financial examiner or analyst is available for cross-examination
115 and attests under oath that such documents were prepared as a
116 result of an examination or inspection conducted pursuant to

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117 this chapter.

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

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

137 (d) Notwithstanding any remedies available to unit owners
138 and associations, if the division has reasonable cause to
139 believe that a violation of any provision of this chapter or
140 related rule has occurred, the division may institute
141 enforcement proceedings in its own name against any developer,
142 bulk assignee, bulk buyer, association, officer, or member of
143 the board of administration, or its assignees or agents, as
144 follows:

145 1. The division may permit a person whose conduct or

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146 actions may be under investigation to waive formal proceedings
147 and enter into a consent proceeding whereby orders, rules, or
148 letters of censure or warning, whether formal or informal, may
149 be entered against the person.

150 2. The division may issue an order requiring the developer,
151 bulk assignee, bulk buyer, association, developer-designated
152 officer, or developer-designated member of the board of
153 administration, developer-designated assignees or agents, bulk
154 assignee-designated assignees or agents, bulk buyer-designated
155 assignees or agents, community association manager, or community
156 association management firm to cease and desist from the
157 unlawful practice and take such affirmative action as in the
158 judgment of the division will carry out the purposes of this
159 chapter. If the division finds that a developer, bulk assignee,
160 bulk buyer, association, officer, or member of the board of
161 administration, or its assignees or agents, is violating or is
162 about to violate any provision of this chapter, any rule adopted
163 or order issued by the division, or any written agreement
164 entered into with the division, and presents an immediate danger
165 to the public requiring an immediate final order, it may issue
166 an emergency cease and desist order reciting with particularity
167 the facts underlying such findings. The emergency cease and
168 desist order is effective for 90 days. If the division begins
169 nonemergency cease and desist proceedings, the emergency cease
170 and desist order remains effective until the conclusion of the
171 proceedings under ss. 120.569 and 120.57.

172 3. If a developer, bulk assignee, or bulk buyer, fails to
173 pay any restitution determined by the division to be owed, plus
174 any accrued interest at the highest rate permitted by law,

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175 within 30 days after expiration of any appellate time period of
176 a final order requiring payment of restitution or the conclusion
177 of any appeal thereof, whichever is later, the division must
178 ~~shall~~ bring an action in circuit or county court on behalf of
179 any association, class of unit owners, lessees, or purchasers
180 for restitution, declaratory relief, injunctive relief, or any
181 other available remedy. The division may also temporarily revoke
182 its acceptance of the filing for the developer to which the
183 restitution relates until payment of restitution is made.

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

194 5. The division may apply to the circuit court for an order
195 of restitution whereby the defendant in an action brought
196 pursuant to subparagraph 4. shall be ordered to make restitution
197 of those sums shown by the division to have been obtained by the
198 defendant in violation of this chapter. Such restitution shall,
199 at the option of the court, be payable to the conservator or
200 receiver appointed pursuant to subparagraph 4. or directly to
201 the persons whose funds or assets were obtained in violation of
202 this chapter.

203 6. The division may impose a civil penalty against a

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204 developer, bulk assignee, or bulk buyer, or association, or its
205 assignee or agent, for any violation of this chapter or a rule
206 adopted under this chapter. The division may impose a civil
207 penalty individually against any officer or board member who
208 willfully and knowingly violates a provision of this chapter,
209 adopted rule, or a final order of the division; may order the
210 removal of such individual as an officer or from the board of
211 administration or as an officer of the association; and may
212 prohibit such individual from serving as an officer or on the
213 board of a community association for a period of time. The term
214 "willfully and knowingly" means that the division informed the
215 officer or board member that his or her action or intended
216 action violates this chapter, a rule adopted under this chapter,
217 or a final order of the division and that the officer or board
218 member refused to comply with the requirements of this chapter,
219 a rule adopted under this chapter, or a final order of the
220 division. The division, before ~~prior to~~ initiating formal agency
221 action under chapter 120, must ~~shall~~ afford the officer or board
222 member an opportunity to voluntarily comply with this chapter, a
223 rule adopted under this chapter, or a final order of the
224 division. An officer or board member who complies within 10 days
225 is not subject to a civil penalty. A penalty may be imposed on
226 the basis of each day of continuing violation, but ~~in no event~~
227 ~~shall~~ the penalty for any offense may not exceed \$5,000. By
228 January 1, 1998, the division shall adopt, by rule, penalty
229 guidelines applicable to possible violations or to categories of
230 violations of this chapter or rules adopted by the division. The
231 guidelines must specify a meaningful range of civil penalties
232 for each such violation of the statute and rules and must be

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233 based upon the harm caused by the violation, the repetition of
234 the violation, and upon such other factors deemed relevant by
235 the division. For example, the division may consider whether the
236 violations were committed by a developer, bulk assignee, or bulk
237 buyer, or owner-controlled association, the size of the
238 association, and other factors. The guidelines must designate
239 the possible mitigating or aggravating circumstances that
240 justify a departure from the range of penalties provided by the
241 rules. It is the legislative intent that minor violations be
242 distinguished from those which endanger the health, safety, or
243 welfare of the condominium residents or other persons and that
244 such guidelines provide reasonable and meaningful notice to the
245 public of likely penalties that may be imposed for proscribed
246 conduct. This subsection does not limit the ability of the
247 division to informally dispose of administrative actions or
248 complaints by stipulation, agreed settlement, or consent order.
249 All amounts collected shall be deposited with the Chief
250 Financial Officer to the credit of the Division of Florida
251 Condominiums, Timeshares, and Mobile Homes Trust Fund. If a
252 developer, bulk assignee, or bulk buyer fails to pay the civil
253 penalty and the amount deemed to be owed to the association, the
254 division shall issue an order directing that such developer,
255 bulk assignee, or bulk buyer cease and desist from further
256 operation until such time as the civil penalty is paid or may
257 pursue enforcement of the penalty in a court of competent
258 jurisdiction. If an association fails to pay the civil penalty,
259 the division shall pursue enforcement in a court of competent
260 jurisdiction, and the order imposing the civil penalty or the
261 cease and desist order will not become effective until 20 days

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262 after the date of such order. Any action commenced by the
263 division shall be brought in the county in which the division
264 has its executive offices or in the county where the violation
265 occurred.

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

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

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

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

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291 (g) The division shall establish procedures for providing
292 notice to an association and the developer, bulk assignee, or
293 bulk buyer during the period in which ~~where~~ the developer, bulk
294 assignee, or bulk buyer controls the association if ~~when~~ the
295 division is considering the issuance of a declaratory statement
296 with respect to the declaration of condominium or any related
297 document governing in such condominium community.

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

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

308 (j) The division shall provide training and educational
309 programs for condominium association board members and unit
310 owners. The training may, in the division's discretion, include
311 web-based electronic media, and live training and seminars in
312 various locations throughout the state. The division may ~~shall~~
313 ~~have the authority to~~ review and approve education and training
314 programs for board members and unit owners offered by providers
315 and shall maintain a current list of approved programs and
316 providers and shall make such list available to board members
317 and unit owners in a reasonable and cost-effective manner.

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

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

338 (m) When a complaint is made, the division must ~~shall~~
339 conduct its inquiry with due regard to the interests of the
340 affected parties. Within 30 days after receipt of a complaint,
341 the division shall acknowledge the complaint in writing and
342 notify the complainant whether the complaint is within the
343 jurisdiction of the division and whether additional information
344 is needed by the division from the complainant. The division
345 shall conduct its investigation and shall, within 90 days after
346 receipt of the original complaint or of timely requested
347 additional information, take action upon the complaint. However,
348 the failure to complete the investigation within 90 days does

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349 not prevent the division from continuing the investigation,
350 accepting or considering evidence obtained or received after 90
351 days, or taking administrative action if reasonable cause exists
352 to believe that a violation of this chapter or a rule of the
353 division has occurred. If an investigation is not completed
354 within the time limits established in this paragraph, the
355 division shall, on a monthly basis, notify the complainant in
356 writing of the status of the investigation. When reporting its
357 action to the complainant, the division shall inform the
358 complainant of any right to a hearing pursuant to ss. 120.569
359 and 120.57.

360 (n) Condominium association directors, officers, and
361 employees; condominium developers; condominium bulk assignees
362 and bulk buyers, community association managers; and community
363 association management firms have an ongoing duty to reasonably
364 cooperate with the division in any investigation pursuant to
365 this section. The division shall refer to local law enforcement
366 authorities any person whom the division believes has altered,
367 destroyed, concealed, or removed any record, document, or thing
368 required to be kept or maintained by this chapter with the
369 purpose to impair its verity or availability in the department's
370 investigation.

371 (o) The division may:

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

375 (p) The division shall cooperate with similar agencies in
376 other jurisdictions to establish uniform filing procedures and
377 forms, public offering statements, advertising standards, and

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378 rules and common administrative practices.

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

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

386 (s) The division shall submit to the Governor, the
387 President of the Senate, the Speaker of the House of
388 Representatives, and the chairs of the legislative
389 appropriations committees an annual report that includes, but
390 need not be limited to, the number of training programs provided
391 for condominium association board members and unit owners, the
392 number of complaints received by type, the number and percent of
393 complaints acknowledged in writing within 30 days and the number
394 and percent of investigations acted upon within 90 days in
395 accordance with paragraph (m), and the number of investigations
396 exceeding the 90-day requirement. The annual report shall also
397 include an evaluation of the division's core business processes
398 and make recommendations for improvements, including statutory
399 changes. The report shall be submitted by September 30 following
400 the end of the fiscal year.

401 Section 3. Part VII of chapter 718, Florida Statutes,
402 consisting of sections 718.701, 718.702, 718.703, 718.704,
403 718.705, 718.706, 718.707, and 718.708, is created to read:

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

406 718.702 Legislative intent.—

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

421 (2) The Legislature recognizes that all of the factors
422 listed in this section lead to condominiums becoming distressed,
423 resulting in detriment to the unit owners and the condominium
424 association on account of the resulting shortage of assessment
425 moneys available to support the financial requirements for
426 proper maintenance of the condominium. Such shortage and the
427 resulting lack of proper maintenance further erodes property
428 values. The Legislature finds that individuals and entities
429 within this state and in other states have expressed interest in
430 purchasing unsold inventory in one or more condominium projects,
431 but are reticent to do so because of accompanying liabilities
432 inherited from the original developer, which are by definition
433 imputed to the successor purchaser, including a foreclosing
434 mortgagee. This results in the potential purchaser having
435 unknown and unquantifiable risks, and potential successor

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436 purchasers are unwilling to accept such risks. The result is
437 that condominium projects stagnate, leaving all parties involved
438 at an impasse without the ability to find a 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. Such relief would benefit existing unit owners and
447 condominium associations. The Legislature further finds and
448 declares that this situation cannot be open-ended without
449 potentially prejudicing the rights of unit owners and
450 condominium associations, and thereby declares that the
451 provisions of this part shall be used by purchasers of
452 condominium inventory for a specific and defined period.

453 718.703 Definitions.—As used in this part, the term:

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

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

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

462 (2) "Bulk buyer" means a person who acquires more than
463 seven condominium parcels as set forth in s. 718.707 but who
464 does not receive an assignment of any developer rights other

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465 than the right to conduct sales, leasing, and marketing
466 activities within the condominium; the right to be exempt from
467 the payment of working capital contributions to the condominium
468 association arising out of, or in connection with, the bulk
469 buyer's acquisition of a bulk number of units; and the right to
470 be exempt from any rights of first refusal which may be held by
471 the condominium association and would otherwise be applicable to
472 subsequent transfers of title from the bulk buyer to any third
473 party purchaser concerning one or more units.

474 718.704 Assignment and assumption of developer rights by
475 bulk assignee; bulk buyer.-

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

479 (a) Warranties of the developer under s. 718.203(1) or s.
480 718.618, except for design, construction, development, or repair
481 work performed by or on behalf of such bulk assignee;

482 (b) The obligation to:

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

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

491 (c) The requirement to provide the association with a
492 cumulative audit of the association's finances from the date of
493 formation of the condominium association as required by s.

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494 718.301(4)(c). However, the bulk assignee shall provide an audit
495 for the period for which the bulk assignee elects a majority of
496 the members of the board of administration;

497 (d) Any liability arising out of or in connection with
498 actions taken by the board of administration or the developer-
499 appointed directors before the bulk assignee elects a majority
500 of the members of the board of administration; and

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

505
506 Further, the bulk assignee is responsible for delivering
507 documents and materials in accordance with s. 718.705(3). A bulk
508 assignee may expressly assume some or all of the obligations of
509 the developer described in paragraphs (a)-(e).

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

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

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

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

544 718.705 Board of administration; transfer of control.-

545 (1) For purposes of determining the timing for transfer of
546 control of the board of administration of the association to
547 unit owners other than the developer under s. 718.301(1)(a) and
548 (b), if a bulk assignee is entitled to elect a majority of the
549 members of the board, a condominium parcel acquired by the bulk
550 assignee is not deemed to be conveyed to a purchaser, or to be
551 owned by an owner other than the developer, until such

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552 condominium parcel is conveyed to an owner who is not a bulk
553 assignee.

554 (2) Unless control of the board of administration of the
555 association has already been relinquished pursuant to s.
556 718.301(1), the bulk assignee must relinquish control of the
557 association pursuant to s. 718.301 and this part, as if the bulk
558 assignee were the developer.

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

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581 (4) If a conflict arises between the provisions or
582 application of this section and s. 718.301, this section
583 prevails.

584 (5) Failure of a bulk assignee or bulk buyer to
585 substantially comply with all the requirements contained in this
586 part shall result in the loss of any and all protections or
587 exemptions provided under this part.

588 718.706 Specific provisions pertaining to offering of units
589 by a bulk assignee or bulk buyer.—

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

594 (a) An updated prospectus or offering circular, or a
595 supplement to the prospectus or offering circular, filed by the
596 creating developer prepared in accordance with s. 718.504, which
597 must include the form of contract for sale and for lease in
598 compliance with s. 718.503(2);

599 (b) An updated Frequently Asked Questions and Answers
600 sheet;

601 (c) The executed escrow agreement if required under s.
602 718.202; and

603 (d) The financial information required by s. 718.111(13).
604 However, if a financial information report does not exist for
605 the fiscal year before acquisition of title by the bulk assignee
606 or bulk buyer, or accounting records cannot be obtained in good
607 faith by the bulk assignee or the bulk buyer which would permit
608 preparation of the required financial information report, the
609 bulk assignee or bulk buyer is excused from the requirement of

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610 this paragraph. However, the bulk assignee or bulk buyer must
611 include in the purchase contract the following statement in
612 conspicuous type:

613
614 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
615 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR
616 OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE
617 CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT
618 ACCOUNTING RECORDS OF THE ASSOCIATION.

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

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

625 (b) The following statement in conspicuous type:

626
627 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE
628 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS
629 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,
630 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF
631 OF SELLER; and

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

634
635 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER
636 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S.
637 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY
638 EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN

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639 THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
640 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO
641 ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK
642 PERFORMED BY OR ON BEHALF OF THE SELLER.

643 (3) A bulk assignee, while it is in control of the board of
644 administration of the association, may not authorize, on behalf
645 of the association:

646 (a) The waiver of reserves or the reduction of funding of
647 the reserves pursuant to s. 718.112(2)(f)2., unless approved by
648 a majority of the voting interests not controlled by the
649 developer, bulk assignee, and bulk buyer; or

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

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

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

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668 718.707 Time limitation for classification as bulk assignee
669 or bulk buyer.—A person acquiring condominium parcels may not be
670 classified as a bulk assignee or bulk buyer unless the
671 condominium parcels were acquired before July 1, 2012. The date
672 of such acquisition shall be determined by the date of recording
673 of a deed or other instrument of conveyance for such parcels in
674 the public records of the county in which the condominium is
675 located, or by the date of issuance of a certificate of title in
676 a foreclosure proceeding with respect to such condominium
677 parcels.

678 718.708 Liability of developers and others.—An assignment
679 of developer rights to a bulk assignee or bulk buyer does not
680 release the creating developer from any liabilities under the
681 declaration or this chapter. This part does not limit the
682 liability of the creating developer for claims brought by unit
683 owners, bulk assignees, or bulk buyers for violations of this
684 chapter by the creating developer, unless specifically excluded
685 in this part. Nothing contained within this part waives,
686 releases, compromises, or limits the liability, if any, of
687 contractors, subcontractors, materialmen, manufacturers,
688 architects, engineers, or any participant in the design or
689 construction of a condominium for any claim brought by an
690 association, unit owners, bulk assignees, or bulk buyers arising
691 from the design of the condominium, construction defects,
692 misrepresentations associated with condominium property, or
693 violations of this chapter, unless specifically excluded in this
694 part.

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