

1 A bill to be entitled
2 An act relating to residential properties; creating s.
3 627.714, F.S.; requiring that coverage under a unit
4 owner's policy for certain assessments include at least a
5 minimum amount of loss assessment coverage; requiring that
6 every property insurance policy to an individual unit
7 owner contain a specified provision; amending s. 633.0215,
8 F.S.; providing an exemption, if certain conditions are
9 met, from the requirement that certain condominiums,
10 cooperatives, and multifamily residential buildings
11 install a manual fire alarm system as required in the Life
12 Safety Code; amending s. 718.111, F.S.; deleting a
13 requirement for the board of a condominium to hold a
14 meeting open to unit owners to establish the amount of an
15 insurance deductible; revising the property to which a
16 property insurance policy for a condominium association
17 applies; revising the requirements for a condominium unit
18 owner's property insurance policy; amending s. 718.112,
19 F.S.; prohibiting an authority having jurisdiction from
20 requiring the completion of retrofitting of common areas
21 with a sprinkler system before a specified date; providing
22 that certain condominiums need not retrofit the inside of
23 units with fire alarm systems; amending s. 718.116, F.S.;
24 requiring a tenant in a unit owned by a person who is
25 delinquent in the payment of a monetary obligation to the
26 condominium association to pay rent to the association
27 under certain circumstances; requiring a specified written
28 notice; authorizing the condominium association to sue

29 such tenant who fails to pay rent for eviction under
 30 certain circumstances; providing that the tenant is immune
 31 from claims from the unit owner as the result of paying
 32 rent to the association under certain circumstances;
 33 creating s. 718.1165, F.S.; defining the term "common area
 34 facilities" for specified purposes; authorizing a
 35 condominium association, multicondominium association, or
 36 master condominium association to disallow the use of
 37 common area facilities by unit owners who are delinquent
 38 in the payment of association fees by more than a
 39 specified number of days; creating s. 720.314, F.S.;
 40 defining the term "common area facilities" for specified
 41 purposes; authorizing a homeowners' association to
 42 disallow the use of common area facilities by parcel
 43 owners who are delinquent in the payment of association
 44 fees by more than a specified number of days; repealing s.
 45 553.509(2), F.S., relating to a requirement that public
 46 elevators capable of operating from an alternate power
 47 source be installed in certain multifamily dwellings or
 48 condominiums; providing an effective date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Section 627.714, Florida Statutes, is created
 53 to read:

54 627.714 Residential condominium unit owner coverage; loss
 55 assessment coverage required; excess coverage provision
 56 required.—For policies issued or renewed on or after July 1,

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57 2010, coverage under a unit owner's residential property policy
58 must include property loss assessment coverage of at least
59 \$2,000 for all assessments made as a result of the same direct
60 loss to the property, regardless of the number of assessments,
61 owned by all members of the association collectively when such
62 loss is of the type of loss covered by the unit owner's
63 residential property insurance policy, to which a deductible of
64 no more than \$250 per direct property loss shall apply. If a
65 deductible was or will be applied to other property loss
66 sustained by the unit owner resulting from the same direct loss
67 to the property, no deductible shall apply to the loss
68 assessment coverage. Every individual unit owner's residential
69 property policy must contain a provision stating that the
70 coverage afforded by such policy is excess coverage over the
71 amount recoverable under any other policy covering the same
72 property.

73 Section 2. Subsection (13) is added to section 633.0215,
74 Florida Statutes, to read:

75 633.0215 Florida Fire Prevention Code.—

76 (13) A condominium, cooperative, or multifamily
77 residential building that is less than four stories in height
78 and that has a corridor providing an exterior means of egress is
79 exempt from the requirement to install a manual fire alarm
80 system under s. 9.6 of the Life Safety Code adopted in the
81 Florida Fire Prevention Code.

82 Section 3. Paragraphs (a), (b), (c), (d), (f), (g), (j),
83 and (n) of subsection (11) of section 718.111, Florida Statutes,
84 are amended to read:

85 718.111 The association.—

86 (11) INSURANCE.—In order to protect the safety, health,
 87 and welfare of the people of the State of Florida and to ensure
 88 consistency in the provision of insurance coverage to
 89 condominiums and their unit owners, this subsection applies to
 90 every residential condominium in the state, regardless of the
 91 date of its declaration of condominium. It is the intent of the
 92 Legislature to encourage lower or stable insurance premiums for
 93 associations described in this subsection.

94 (a) Adequate property ~~hazard~~ insurance, regardless of any
 95 requirement in the declaration of condominium for coverage by
 96 the association for full insurable value, replacement cost, or
 97 similar coverage, must ~~shall~~ be based on ~~upon~~ the replacement
 98 cost of the property to be insured as determined by an
 99 independent insurance appraisal or update of a prior appraisal.
 100 The replacement cost must ~~full insurable value shall~~ be
 101 determined at least once every 36 months.

102 1. An association or group of associations may provide
 103 adequate property ~~hazard~~ insurance through a self-insurance fund
 104 that complies with the requirements of ss. 624.460-624.488.

105 2. The association may also provide adequate property
 106 ~~hazard~~ insurance coverage for a group of at least ~~no fewer than~~
 107 three communities created and operating under this chapter,
 108 chapter 719, chapter 720, or chapter 721 by obtaining and
 109 maintaining for such communities insurance coverage sufficient
 110 to cover an amount equal to the probable maximum loss for the
 111 communities for a 250-year windstorm event. Such probable
 112 maximum loss must be determined through the use of a competent

113 model that has been accepted by the Florida Commission on
114 Hurricane Loss Projection Methodology. A ~~No~~ policy or program
115 providing such coverage may not ~~shall~~ be issued or renewed after
116 July 1, 2008, unless it has been reviewed and approved by the
117 Office of Insurance Regulation. The review and approval must
118 ~~shall~~ include approval of the policy and related forms pursuant
119 to ss. 627.410 and 627.411, approval of the rates pursuant to s.
120 627.062, a determination that the loss model approved by the
121 commission was accurately and appropriately applied to the
122 insured structures to determine the 250-year probable maximum
123 loss, and a determination that complete and accurate disclosure
124 of all material provisions is provided to condominium unit
125 owners before ~~prior to~~ execution of the agreement by a
126 condominium association.

127 3. When determining the adequate amount of property hazard
128 insurance coverage, the association may consider deductibles as
129 determined by this subsection.

130 (b) If an association is a developer-controlled
131 association, the association shall exercise its best efforts to
132 obtain and maintain insurance as described in paragraph (a).
133 Failure to obtain and maintain adequate property hazard
134 insurance during any period of developer control constitutes a
135 breach of fiduciary responsibility by the developer-appointed
136 members of the board of directors of the association, unless the
137 members can show that despite such failure, they have made their
138 best efforts to maintain the required coverage.

139 (c) Policies may include deductibles as determined by the
140 board.

141 1. The deductibles must ~~shall~~ be consistent with industry
 142 standards and prevailing practice for communities of similar
 143 size and age, and having similar construction and facilities in
 144 the locale where the condominium property is situated.

145 2. The deductibles may be based upon available funds,
 146 including reserve accounts, or predetermined assessment
 147 authority at the time the insurance is obtained.

148 3. The board shall establish the amount of deductibles
 149 based upon the level of available funds and predetermined
 150 assessment authority at a meeting of the board. ~~Such meeting
 151 shall be open to all unit owners in the manner set forth in s.
 152 718.112(2)(e). The notice of such meeting must state the
 153 proposed deductible and the available funds and the assessment
 154 authority relied upon by the board and estimate any potential
 155 assessment amount against each unit, if any. The meeting
 156 described in this paragraph may be held in conjunction with a
 157 meeting to consider the proposed budget or an amendment thereto.~~

158 (d) An association controlled by unit owners operating as
 159 a residential condominium shall use its best efforts to obtain
 160 and maintain adequate property insurance to protect the
 161 association, the association property, the common elements, and
 162 the condominium property that must ~~is required to~~ be insured by
 163 the association pursuant to this subsection.

164 (f) Every property ~~hazard~~ insurance policy issued or
 165 renewed on or after January 1, 2009, for the purpose of
 166 protecting the condominium must ~~shall~~ provide primary coverage
 167 for:

168 1. All portions of the condominium property as originally

169 installed or replacement of like kind and quality, in accordance
170 with the original plans and specifications.

171 2. All alterations or additions made to the condominium
172 property or association property pursuant to s. 718.113(2).

173 3. The coverage must ~~shall~~ exclude all personal property
174 within the unit or limited common elements, and floor, wall, and
175 ceiling coverings, electrical fixtures, appliances, water
176 heaters, water filters, built-in cabinets and countertops, and
177 window treatments, including curtains, drapes, blinds, hardware,
178 and similar window treatment components, or replacements of any
179 of the foregoing which are located within the boundaries of the
180 unit and serve only such unit. Such property and any insurance
181 thereupon is the responsibility of the unit owner.

182 (g) A condominium unit owner's policy must conform to the
183 requirements of s. 627.714. Every hazard insurance policy issued
184 or renewed on or after January 1, 2009, to an individual unit
185 owner must contain a provision stating that the coverage
186 afforded by such policy is excess coverage over the amount
187 recoverable under any other policy covering the same property.
188 Such policies must include special assessment coverage of no
189 less than \$2,000 per occurrence. An insurance policy issued to
190 an individual unit owner providing such coverage does not
191 provide rights of subrogation against the condominium
192 association operating the condominium in which such individual's
193 unit is located.

194 ~~1. All improvements or additions to the condominium~~
195 ~~property that benefit fewer than all unit owners shall be~~
196 ~~insured by the unit owner or owners having the use thereof, or~~

197 ~~may be insured by the association at the cost and expense of the~~
198 ~~unit owners having the use thereof.~~

199 ~~2. The association shall require each owner to provide~~
200 ~~evidence of a currently effective policy of hazard and liability~~
201 ~~insurance upon request, but not more than once per year. Upon~~
202 ~~the failure of an owner to provide a certificate of insurance~~
203 ~~issued by an insurer approved to write such insurance in this~~
204 ~~state within 30 days after the date on which a written request~~
205 ~~is delivered, the association may purchase a policy of insurance~~
206 ~~on behalf of an owner. The cost of such a policy, together with~~
207 ~~reconstruction costs undertaken by the association but which are~~
208 ~~the responsibility of the unit owner, may be collected in the~~
209 ~~manner provided for the collection of assessments in s. 718.116.~~

210 ~~1.3.~~ All reconstruction work after a property casualty
211 loss ~~shall~~ be undertaken by the association except as
212 otherwise authorized in this section. A unit owner may undertake
213 reconstruction work on portions of the unit with the prior
214 written consent of the board of administration. However, such
215 work may be conditioned upon the approval of the repair methods,
216 the qualifications of the proposed contractor, or the contract
217 that is used for that purpose. A unit owner must ~~shall~~ obtain
218 all required governmental permits and approvals before ~~prior to~~
219 commencing reconstruction.

220 ~~2.4.~~ Unit owners are responsible for the cost of
221 reconstruction of any portions of the condominium property for
222 which the unit owner is required to carry property casualty
223 insurance, and any such reconstruction work undertaken by the
224 association is ~~shall be~~ chargeable to the unit owner and

225 enforceable as an assessment pursuant to s. 718.116. ~~The~~
 226 ~~association must be an additional named insured and loss payee~~
 227 ~~on all casualty insurance policies issued to unit owners in the~~
 228 ~~condominium operated by the association.~~

229 3.5. A multicondominium association may elect, by a
 230 majority vote of the collective members of the condominiums
 231 operated by the association, to operate the ~~such~~ condominiums as
 232 a single condominium for purposes of insurance matters,
 233 including, but not limited to, the purchase of the property
 234 ~~hazard~~ insurance required by this section and the apportionment
 235 of deductibles and damages in excess of coverage. The election
 236 to aggregate the treatment of insurance premiums, deductibles,
 237 and excess damages constitutes an amendment to the declaration
 238 of all condominiums operated by the association, and the costs
 239 of insurance must ~~shall~~ be stated in the association budget. The
 240 amendments must ~~shall~~ be recorded as required by s. 718.110.

241 (j) Any portion of the condominium property that must
 242 ~~required to~~ be insured by the association against property
 243 ~~casualty~~ loss pursuant to paragraph (f) which is damaged ~~by~~
 244 ~~casualty~~ shall be reconstructed, repaired, or replaced as
 245 necessary by the association as a common expense. All property
 246 ~~hazard~~ insurance deductibles, uninsured losses, and other
 247 damages in excess of property ~~hazard~~ insurance coverage under
 248 the property ~~hazard~~ insurance policies maintained by the
 249 association are a common expense of the condominium, except
 250 that:

251 1. A unit owner is responsible for the costs of repair or
 252 replacement of any portion of the condominium property not paid

253 | by insurance proceeds, if such damage is caused by intentional
 254 | conduct, negligence, or failure to comply with the terms of the
 255 | declaration or the rules of the association by a unit owner, the
 256 | members of his or her family, unit occupants, tenants, guests,
 257 | or invitees, without compromise of the subrogation rights of the
 258 | ~~any insurer as set forth in paragraph (g).~~

259 | 2. The provisions of subparagraph 1. regarding the
 260 | financial responsibility of a unit owner for the costs of
 261 | repairing or replacing other portions of the condominium
 262 | property also apply to the costs of repair or replacement of
 263 | personal property of other unit owners or the association, as
 264 | well as other property, whether real or personal, which the unit
 265 | owners are required to insure ~~under paragraph (g).~~

266 | 3. To the extent the cost of repair or reconstruction for
 267 | which the unit owner is responsible under this paragraph is
 268 | reimbursed to the association by insurance proceeds, and, ~~to the~~
 269 | ~~extent~~ the association has collected the cost of such repair or
 270 | reconstruction from the unit owner, the association shall
 271 | reimburse the unit owner without the waiver of any rights of
 272 | subrogation.

273 | 4. The association is not obligated to pay for
 274 | reconstruction or repairs of property casualty losses as a
 275 | common expense if the property casualty losses were known or
 276 | should have been known to a unit owner and were not reported to
 277 | the association until after the insurance claim of the
 278 | association for that property casualty was settled or resolved
 279 | with finality, or denied because ~~on the basis that~~ it was
 280 | untimely filed.

281 (n) The association is not obligated to pay for any
 282 reconstruction or repair expenses due to property ~~casualty~~ loss
 283 to any improvements installed by a current or former owner of
 284 the unit or by the developer if the improvement benefits only
 285 the unit for which it was installed and is not part of the
 286 standard improvements installed by the developer on all units as
 287 part of original construction, whether or not such improvement
 288 is located within the unit. This paragraph does not relieve any
 289 party of its obligations regarding recovery due under any
 290 insurance implemented specifically for ~~any~~ such improvements.

291 Section 4. Paragraph (1) of subsection (2) of section
 292 718.112, Florida Statutes, is amended to read:

293 718.112 Bylaws.—

294 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
 295 following and, if they do not do so, shall be deemed to include
 296 the following:

297 (1) Certificate of compliance.—There shall be a provision
 298 that a certificate of compliance from a licensed electrical
 299 contractor or electrician may be accepted by the association's
 300 board as evidence of compliance of the condominium units with
 301 the applicable fire and life safety code. Notwithstanding the
 302 provisions of chapter 633 or of any other code, statute,
 303 ordinance, administrative rule, or regulation, or any
 304 interpretation of the foregoing, an association, condominium, or
 305 unit owner is not obligated to retrofit the common elements or
 306 units of a residential condominium with a fire sprinkler system
 307 or other engineered lifesafety system in a building that has
 308 been certified for occupancy by the applicable governmental

309 entity, if the unit owners have voted to forego such
310 retrofitting and engineered lifesafety system by the affirmative
311 vote of two-thirds of all voting interests in the affected
312 condominium. However, a condominium association may not vote to
313 forego the retrofitting with a fire sprinkler system of common
314 areas in a high-rise building. For purposes of this subsection,
315 the term "high-rise building" means a building that is greater
316 than 75 feet in height where the building height is measured
317 from the lowest level of fire department access to the floor of
318 the highest occupiable story. For purposes of this subsection,
319 the term "common areas" means any enclosed hallway, corridor,
320 lobby, stairwell, or entryway. In no event shall the local
321 authority having jurisdiction require completion of retrofitting
322 of common areas with a sprinkler system before the end of 2019
323 2014. A condominium that has 1 1/2 hour or higher fire-rated
324 interior walls separating condominium units and that is not a
325 high-rise building need not retrofit the inside of units with
326 fire alarm systems.

327 1. A vote to forego retrofitting may be obtained by
328 limited proxy or by a ballot personally cast at a duly called
329 membership meeting, or by execution of a written consent by the
330 member, and shall be effective upon the recording of a
331 certificate attesting to such vote in the public records of the
332 county where the condominium is located. The association shall
333 mail, hand deliver, or electronically transmit to each unit
334 owner written notice at least 14 days prior to such membership
335 meeting in which the vote to forego retrofitting of the required
336 fire sprinkler system is to take place. Within 30 days after the

337 association's opt-out vote, notice of the results of the opt-out
 338 vote shall be mailed, hand delivered, or electronically
 339 transmitted to all unit owners. Evidence of compliance with this
 340 30-day notice shall be made by an affidavit executed by the
 341 person providing the notice and filed among the official records
 342 of the association. After such notice is provided to each owner,
 343 a copy of such notice shall be provided by the current owner to
 344 a new owner before ~~prior to~~ closing and shall be provided by a
 345 unit owner to a renter before ~~prior to~~ signing a lease.

346 2. As part of the information collected annually from
 347 condominiums, the division shall require condominium
 348 associations to report the membership vote and recording of a
 349 certificate under this subsection and, if retrofitting has been
 350 undertaken, the per-unit cost of such work. The division shall
 351 annually report to the Division of State Fire Marshal of the
 352 Department of Financial Services the number of condominiums that
 353 have elected to forego retrofitting.

354 Section 5. Subsection (11) is added to section 718.116,
 355 Florida Statutes, to read:

356 718.116 Assessments; liability; lien and priority;
 357 interest; collection.-

358 (11) If the unit is occupied by a tenant and the unit
 359 owner is delinquent in paying any monetary obligation due to the
 360 association, the association may make a written demand that the
 361 tenant pay the future monetary obligations related to the
 362 condominium unit to the association, and the tenant must make
 363 such payment. The demand is continuing in nature and, upon
 364 demand, the tenant must pay the monetary obligations to the

365 association until the association releases the tenant or the
 366 tenant discontinues tenancy in the unit.

367 (a) The association must mail written notice to the unit
 368 owner of the association's demand that the tenant make payments
 369 to the association. Both the demand to tenant, and the notice to
 370 the unit owner, must contain the following statement in no less
 371 than 12-point type:

372
 373 IF A CONDOMINIUM OWNER IS DELINQUENT IN PAYMENTS OWED TO
 374 THE CONDOMINIUM ASSOCIATION, FLORIDA LAW ALLOWS THE
 375 CONDOMINIUM ASSOCIATION TO REQUIRE TENANTS TO PAY
 376 ASSESSMENTS TO THE ASSOCIATION AND DEDUCT THE AMOUNT OF THE
 377 ASSESSMENTS FROM THE RENT OWED TO THE CONDOMINIUM OWNER.
 378 ASSESSMENTS PAID BY THE TENANT WILL BE CREDITED TO THE UNIT
 379 OWNER'S ACCOUNT WITH THE ASSOCIATION. THE APPLICABLE LAW IS
 380 SECTION 718.116(11), FLORIDA STATUTES. THE CONDOMINIUM
 381 OWNER MAY NOT EVICT OR ATTEMPT TO EVICT A TENANT BECAUSE
 382 THE TENANT COMPLIES WITH THIS LAW. THE TENANT IS ENTITLED
 383 TO ATTORNEY'S FEES FROM THE CONDOMINIUM OWNER IF THE
 384 CONDOMINIUM OWNER ATTEMPTS TO EVICT OR OTHERWISE SUE A
 385 TENANT BECAUSE THE TENANT HAS COMPLIED WITH THIS LEGAL
 386 REQUIREMENT. A CONDOMINIUM UNIT OWNER WHO DISAGREES WITH
 387 THIS DEMAND UPON THE TENANT SHOULD CONTACT THE ASSOCIATION.

388
 389 (b) The association shall, upon request, provide the
 390 tenant with written receipts for payments made. A tenant who
 391 acts in good faith in response to a written demand from an
 392 association is immune from any claim from the unit owner. A unit

393 owner has no cause of action against a tenant who makes a
394 payment to a condominium association in substantial compliance
395 with this subsection and who has paid the remaining rent to the
396 unit owner after deducting the payment to the condominium
397 association. The court shall award a tenant costs and attorney's
398 fees payable by a unit owner who wrongfully attempts to evict or
399 sue such a tenant.

400 (c) If the tenant prepaid rent to the unit owner before
401 receiving the demand from the association and provides written
402 evidence of paying the rent to the association within 14 days
403 after receiving the demand, the tenant must make any subsequent
404 rental payments to the association to be credited against the
405 monetary obligations of the unit owner to the association.

406 (d) The tenant is not liable for increases in the amount
407 of the monetary obligations due unless the tenant was notified
408 in writing of the increase at least 10 days before the date the
409 rent is due. The liability of the tenant may not exceed the
410 amount due from the tenant to the tenant's landlord. The
411 tenant's landlord shall provide the tenant a credit against
412 rents due to the unit owner in the amount of moneys paid to the
413 association under this subsection.

414 (e) The association may issue notices under s. 83.56 and
415 may sue for eviction under ss. 83.59-83.625 as if the
416 association were a landlord under part II of chapter 83 if the
417 tenant fails to pay a required payment to the association.
418 However, the association is not otherwise considered a landlord
419 under chapter 83 and specifically has no duties under s. 83.51.

420 (f) The tenant does not, by virtue of payment of monetary

421 obligations to the association, have any of the rights of a unit
 422 owner to vote in any election or to examine the books and
 423 records of the association.

424 (g) A court may supersede the effect of this subsection by
 425 appointing a receiver.

426 Section 6. Section 718.1165, Florida Statutes, is created
 427 to read:

428 718.1165 Common area facilities; restriction of use.-

429 (1) As used in this section, the term "common area
 430 facilities" includes, but is not limited to, any clubhouse,
 431 entertainment facility, exercise facility, swimming pool, tennis
 432 court, or other recreation area owned or maintained by a
 433 condominium association, multicondominium association, or master
 434 condominium association and provided for use by members of a
 435 condominium association.

436 (2) A condominium association, multicondominium
 437 association, or master condominium association may disallow the
 438 use of common area facilities by a condominium unit owner who is
 439 delinquent in the payment of condominium association fees by
 440 more than 90 days.

441 Section 7. Section 720.314, Florida Statutes, is created
 442 to read:

443 720.314 Common area facilities; restriction of use.-

444 (1) As used in this section, the term "common area
 445 facilities" includes, but is not limited to, any clubhouse,
 446 entertainment facility, exercise facility, swimming pool, tennis
 447 court, or other recreation area owned or maintained by a
 448 homeowners' association and provided for use by members of such

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449 association.

450 (2) A homeowners' association may disallow the use of
451 common area facilities by parcel owners who are delinquent in
452 the payment of association fees by more than 90 days.

453 Section 8. Subsection (2) of section 553.509, Florida
454 Statutes, is repealed.

455 Section 9. This act shall take effect July 1, 2010.