

By Senator Clary

7-897-01

1                                   A bill to be entitled  
2           An act relating to condominiums; amending s.  
3           718.111, F.S.; providing that each individual  
4           owner, not the association, must bring any  
5           action for fraud or misrepresentation against a  
6           developer, sales agent, or broker; amending s.  
7           718.116, F.S.; limiting the portion of an  
8           assessment that has been made but not collected  
9           which may be used as collateral for financing  
10          litigation or efforts to remedy construction  
11          defects; amending s. 718.203, F.S.; relieving  
12          the developer of liability for certain defects  
13          if the developer has met prescribed conditions;  
14          creating s. 718.3027, F.S.; requiring  
15          prelitigation disclosure to and approval by  
16          owners; amending s. 718.303, F.S.; placing  
17          limitations on certain legal actions that may  
18          be brought by the association or by a unit  
19          owner; amending s. 718.503, F.S.; providing  
20          requirements for developer disclosure in  
21          certain contracts for the sale or lease of a  
22          residential unit; amending s. 718.506, F.S.;  
23          abrogating the right to a cause of action  
24          against a developer for an oral representation  
25          or information that is not in the developer's  
26          promotional materials; providing an effective  
27          date.  
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29   Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Subsection (3) of section 718.111, Florida  
2 Statutes, is amended to read:

3           718.111 The association.--

4           (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO  
5 CONTRACT, SUE, AND BE SUED.--The association may contract,  
6 sue, or be sued with respect to the exercise or nonexercise of  
7 its powers. For these purposes, the powers of the association  
8 include, but are not limited to, the maintenance, management,  
9 and operation of the condominium property. After control of  
10 the association is obtained by unit owners other than the  
11 developer, the association may institute, maintain, settle, or  
12 appeal actions or hearings in its name on behalf of all unit  
13 owners concerning matters of common interest to most or all  
14 unit owners, including, but not limited to, the common  
15 elements; the roof and structural components of a building or  
16 other improvements; mechanical, electrical, and plumbing  
17 elements serving an improvement or a building; representations  
18 of the developer pertaining to any existing or proposed  
19 commonly used facilities; and protesting ad valorem taxes on  
20 commonly used facilities and on units; and may defend actions  
21 in eminent domain or bring inverse condemnation actions.

22 However, the association may not bring an action of fraud or  
23 misrepresentation against a developer, sales agent, or broker  
24 on behalf of individual owners. Each owner must bring his or  
25 her own action for fraud or misrepresentation against a  
26 developer, sales agent, or broker.If the association has the  
27 authority to maintain a class action, the association may be  
28 joined in an action as representative of that class with  
29 reference to litigation and disputes involving the matters for  
30 which the association could bring a class action. Nothing  
31 herein limits any statutory or common-law right of any

1 individual unit owner or class of unit owners to bring any  
2 action without participation by the association which may  
3 otherwise be available.

4 Section 2. Subsection (11) is added to section  
5 718.116, Florida Statutes, to read:

6 718.116 Assessments; liability; lien and priority;  
7 interest; collection.--

8 (11) No more than 50 percent of any assessment made  
9 but not yet collected by the association may be used as  
10 collateral by the association to secure financing of the  
11 association's efforts to pursue litigation or remedy  
12 construction defects.

13 Section 3. Subsections (8), (9), and (10) are added to  
14 section 718.203, Florida Statutes, to read:

15 718.203 Warranties.--

16 (8) The developer has no liability, under the  
17 Condominium Act or otherwise at law or in equity, to the  
18 association or to the purchaser of each unit for any  
19 construction defects or deficiencies that are within the scope  
20 of the developer's contract with the contractor and all  
21 subcontractors and suppliers, if the developer has obtained  
22 from the contractor a construction payment and performance  
23 bond in the amount of the contract with the contractor which  
24 was issued by a surety licensed to do business in this state  
25 and has assigned or otherwise made available the bond or the  
26 proceeds thereof to the association.

27 (9) The developer has no liability, under the  
28 Condominium Act or otherwise at law or in equity, to the  
29 association or to the purchaser of each unit for any defects  
30 in architectural design or architectural services that are  
31 within the scope of the developer's contract with the

1 architect, if the developer has required the architect to  
2 maintain a professional-malpractice policy that has minimum  
3 limits of \$1 million and was issued by an insurer licensed to  
4 do business in this state and has assigned or otherwise made  
5 available the policy or the proceeds thereof to the  
6 association.

7 (10) The developer has no liability to the association  
8 or to the purchaser of each unit, under the Condominium Act or  
9 otherwise at law or in equity, for any defects in engineering  
10 design or engineering services that are within the scope of  
11 the developer's contract with the engineer if the developer  
12 has required the engineer to maintain a  
13 professional-malpractice policy that has minimum limits of \$1  
14 million and was issued by an insurer licensed to do business  
15 in this state and has assigned or otherwise made available the  
16 policy or the proceeds thereof to the association.

17 Section 4. Section 718.3027, Florida Statutes, is  
18 created to read:

19 718.3027 Prelitigation disclosure to and approval by  
20 owners.--Before commencing any litigation or other adversarial  
21 proceeding involving amounts in controversy in excess of  
22 \$100,000, the association must furnish to each owner a  
23 separate document entitled "Litigation Disclosure," which must  
24 be in a format approved by the division. This document must,  
25 in readable language, inform each owner of the basis for the  
26 association's contemplated litigation or adversarial  
27 proceeding; the professional qualifications of the person  
28 making the allegations supporting the association's claim; the  
29 response of the adverse party to the allegations; whether or  
30 not the adverse party has refused or offered to perform  
31 remedial work; the efforts made to mediate or resolve the

1 claim; the projected attorney's fees, expert fees, and other  
2 costs of the proposed litigation or adversarial proceeding;  
3 the probability of success of the litigation or adversarial  
4 proceeding; the probability of collecting a judgment resulting  
5 from the litigation or adversarial proceeding; and the  
6 probability of association liability for attorney's fees and  
7 costs associated with the litigation or adversarial  
8 proceeding. Such litigation or such an adversarial proceeding  
9 may not be commenced unless approved in advance by a majority  
10 of the owners or by such greater number of the owners as is  
11 required by the declaration of the condominium operated by the  
12 association.

13 Section 5. Subsection (1) of section 718.303, Florida  
14 Statutes, is amended to read:

15 718.303 Obligations of owners; waiver; levy of fine  
16 against unit by association.--

17 (1) Each unit owner, each tenant and other invitee,  
18 and each association shall be governed by, and shall comply  
19 with the provisions of, this chapter, the declaration, the  
20 documents creating the association, and the association bylaws  
21 and the provisions thereof shall be deemed expressly  
22 incorporated into any lease of a unit. Actions for damages or  
23 for injunctive relief, or both, for failure to comply with  
24 these provisions may be brought by the association or by a  
25 unit owner against:

26 (a) The association.

27 (b) A unit owner.

28 (c) Directors designated by the developer, for actions  
29 taken by them prior to the time control of the association is  
30 assumed by unit owners other than the developer for actions  
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1 that result in the misuse or misappropriation of association  
2 funds or assets.

3 (d) Any director who willfully and knowingly fails to  
4 comply with these provisions.

5 (e) Any tenant leasing a unit, and any other invitee  
6 occupying a unit.

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8 The prevailing party in any such action or in any action in  
9 which the purchaser claims a right of voidability based upon  
10 contractual provisions as required in s. 718.503(1)(a) is  
11 entitled to recover reasonable attorney's fees. A unit owner  
12 prevailing in an action between the association and the unit  
13 owner under this section, in addition to recovering his or her  
14 reasonable attorney's fees, may recover additional amounts as  
15 determined by the court to be necessary to reimburse the unit  
16 owner for his or her share of assessments levied by the  
17 association to fund its expenses of the litigation. This  
18 relief does not exclude other remedies provided by law.

19 Section 6. Paragraph (a) of subsection (1) of section  
20 718.503, Florida Statutes, is amended to read:

21 718.503 Developer disclosure prior to sale;  
22 nondeveloper unit owner disclosure prior to sale;  
23 voidability.--

24 (1) DEVELOPER DISCLOSURE.--

25 (a) Contents of contracts.--Any contract for the sale  
26 of a residential unit or a lease thereof for an unexpired term  
27 of more than 5 years shall:

28 1. Contain the following legend in conspicuous type:  
29 THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN  
30 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER  
31 THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND

1 RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED  
2 TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA  
3 STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY  
4 DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL  
5 WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF  
6 ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING  
7 IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED  
8 WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT.  
9 BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE  
10 THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS  
11 REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL  
12 TERMINATE AT CLOSING.

13         2. Contain the following caveat in conspicuous type on  
14 the first page of the contract: ORAL REPRESENTATIONS CANNOT  
15 BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE  
16 DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE  
17 MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION  
18 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A  
19 BUYER OR LESSEE. A PURCHASER HAS NO CLAIM OR CAUSE OF ACTION  
20 AGAINST THE DEVELOPER FOR THE PURCHASER'S RELIANCE ON ORAL  
21 REPRESENTATIONS OR INFORMATION NOT CONTAINED IN THIS  
22 AGREEMENT.

23         3. If the unit has been occupied by someone other than  
24 the buyer, contain a statement that the unit has been  
25 occupied.

26         4. If the contract is for the sale or transfer of a  
27 unit subject to a lease, include as an exhibit a copy of the  
28 executed lease and shall contain within the text in  
29 conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR  
30 SUBLEASE).

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1           5. If the contract is for the lease of a unit for a  
2 term of 5 years or more, include as an exhibit a copy of the  
3 proposed lease.

4           6. If the contract is for the sale or lease of a unit  
5 that is subject to a lien for rent payable under a lease of a  
6 recreational facility or other commonly used facility, contain  
7 within the text the following statement in conspicuous type:  
8 THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO  
9 A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED  
10 FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF  
11 THE LIEN.

12           7. State the name and address of the escrow agent  
13 required by s. 718.202 and state that the purchaser may obtain  
14 a receipt for his or her deposit from the escrow agent upon  
15 request.

16           8. If the contract is for the sale or transfer of a  
17 unit in a condominium in which timeshare estates have been or  
18 may be created, contain within the text in conspicuous type:  
19 UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.  
20 The contract for the sale of a fee interest in a timeshare  
21 estate shall also contain, in conspicuous type, the following:  
22 FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS  
23 LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A  
24 TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED  
25 THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO  
26 CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR  
27 TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194,  
28 FLORIDA STATUTES.

29           Section 7. Subsection (3) is added to section 718.506,  
30 Florida Statutes, to read:

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