

By Senator Clary

4-195-04

1 A bill to be entitled
 2 An act relating to condominiums; creating s.
 3 718.3027, F.S.; requiring prelitigation
 4 disclosure to and approval by owners; requiring
 5 a disclosure; providing that a prelitigation
 6 disclosure is not admissible in evidence;
 7 amending s. 718.301, F.S.; providing for the
 8 effect of actions taken by members of the board
 9 of administration of an association; amending
 10 s. 718.503, F.S.; providing requirements for
 11 developer disclosure in certain contracts for
 12 the sale or lease of a residential unit;
 13 amending s. 718.506, F.S.; abrogating the right
 14 to a cause of action against a developer for an
 15 oral representation or information that is not
 16 in certain required developer's promotional
 17 materials; providing an effective date.

18

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

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21 Section 1. Section 718.3027, Florida Statutes, is
 22 created to read:

23 718.3027 Prelitigation disclosure to and approval by
 24 owners.--

25 (1) Before commencing litigation against any party in
 26 the name of the association involving amounts in controversy
 27 in excess of \$100,000 and not involving a dispute that relates
 28 to title to a unit or common element or the levy or collection
 29 of a fee or assessment or that is governed by s. 718.1255, the
 30 association must furnish to each owner, other than the
 31 developer, a separate document entitled "Litigation Disclosure

1 Notice." The division shall, by rule, establish a standard
2 format for the Litigation Disclosure Notice.

3 (2) A Litigation Disclosure Notice must inform each
4 owner other than the developer of the basis for the
5 association's contemplated litigation or adversarial
6 proceeding; the professional qualifications of the person
7 making the allegations supporting the association's claim; the
8 response of the adverse party to the allegations and whether
9 the adverse party has refused or offered to perform remedial
10 work; the efforts made to mediate or resolve the claim; the
11 projected attorney's fees, expert fees, and other costs to the
12 association of the proposed litigation; the association's
13 probability of success in the litigation; the association's
14 probability of collecting a judgment resulting from the
15 litigation; and the probability of association liability for
16 attorney's fees and costs associated with the litigation.

17 (3) Litigation based upon the matter described in the
18 Litigation Disclosure Notice may not be commenced unless
19 approved in advance by a majority of the owners other than the
20 developer, or by the greater number of the owners other than
21 the developer which is required by the declaration of the
22 condominium operated by the association. At any meeting of
23 unit owners regarding the proposed litigation, the adverse
24 party may be excluded from the meeting and the adverse party's
25 units do not count against the quorum requirement. At any
26 meeting of the board of administration, a director nominated
27 or appointed by the developer, if the developer is an adverse
28 party, may be excluded from the meeting and the seat does not
29 count against the quorum requirement.

30 (4) The Litigation Disclosure Notice must carry the
31 following legend, in conspicuous type on the top of the first

1 page: THIS DOCUMENT HAS BEEN PREPARED BY THE ASSOCIATION AND
2 ITS ATTORNEYS IN ANTICIPATION OF LITIGATION, AND IS A
3 PROTECTED LAWYER-CLIENT COMMUNICATION.

4 (5) A Litigation Disclosure Notice is confidential,
5 exempt from discovery by a developer, and inadmissible in any
6 trial or hearing. A unit owner may not waive the
7 confidentiality of a Litigation Disclosure Notice. The
8 confidentiality of a Litigation Disclosure Notice may be
9 waived only by the board of administration of the association.

10 Section 2. Present subsection (6) of section 718.301,
11 Florida Statutes, is redesignated as subsection (7), and a new
12 subsection (6) is added to that section, to read:

13 718.301 Transfer of association control.--

14 (6) Actions taken by members of the board of
15 administration designated by the developer are considered
16 actions taken by the developer, and the developer is
17 responsible to the association and its members for all such
18 actions.

19 Section 3. 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 CONTRACT
22 OR IN THE PROSPECTUS. A PURCHASER MAY MAKE A CLAIM OR
23 INSTITUTE A CAUSE OF ACTION AGAINST THE DEVELOPER ONLY FOR THE
24 PURCHASER'S RELIANCE ON THE TERMS OF THIS CONTRACT OR ON
25 MATTERS SET FORTH IN THE PROSPECTUS.

26 3. If the unit has been occupied by someone other than
27 the buyer, contain a statement that the unit has been
28 occupied.

29 4. If the contract is for the sale or transfer of a
30 unit subject to a lease, include as an exhibit a copy of the
31 executed lease and shall contain within the text in

1 conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR
2 SUBLEASE).

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

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

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

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

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1 Section 4. Subsection (3) is added to section 718.506,
2 Florida Statutes, to read:

3 718.506 Publication of false and misleading
4 information.--

5 (3) A person has no cause of action against a
6 developer for any oral representation or information that is
7 not contained in the developer's advertising and promotional
8 materials, including, but not limited to, a prospectus, the
9 items required as exhibits to a prospectus, brochures, or
10 newspaper advertising.

11 Section 5. This act shall take effect July 1, 2004.

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14 SENATE SUMMARY

15 Requires prelitigation disclosure to and approval by
16 condominium owners. Requires a disclosure. Provides that
17 a prelitigation disclosure is not admissible in evidence.
18 Provides for the effect of actions taken by members of
19 the board of administration of an association. Provides
20 requirements for developer disclosure in certain
21 contracts for the sale or lease of a residential unit.
22 Abrogates the right to a cause of action against a
23 developer for an oral representation or information that
24 is not in certain required developer's promotional
25 materials.
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