

Bill No. SB 396

Barcode 551798

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Geller) recommended the following amendment:

Senate Amendment (with title amendment)

On page 10, between lines 3 and 4,

insert:

Section 3. subsection (3) of section 719.104, Florida Statutes, is created to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.--

(3) INSURANCE.--The association shall use its best efforts to obtain and maintain adequate insurance to protect the association property. The association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(a) Windstorm insurance coverage for a group of no fewer than three communities created and operating under

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1 chapter 718, this chapter, chapter 720, or chapter 721 may be
 2 obtained and maintained for the communities if the insurance
 3 coverage is sufficient to cover an amount equal to the
 4 probable maximum loss for the communities for a 250-year
 5 windstorm event. Such probable maximum loss must be determined
 6 through the use of a competent model that has been accepted by
 7 the Florida Commission on Hurricane Loss Project Methodology.
 8 Such insurance coverage is deemed adequate windstorm insurance
 9 for the purposes of this section.

10 (b) An association or group of associations may
 11 self-insure against claims against the association, the
 12 association property, and the cooperative property required to
 13 be insured by an association, upon compliance with the
 14 applicable provisions of ss. 624.460-624.488, which shall be
 15 considered adequate insurance for purposes of this section.

16 Section 4. Paragraph (e) is added to subsection (1) of
 17 section 719.107, Florida Statutes, to read:

18 719.107 Common expenses; assessment.--

19 (1)

20 (e) Common expenses will include the costs of
 21 windstorm insurance acquired by the association under the
 22 authority of s. 718.111(11), including costs and contingent
 23 expenses required to participate in a self-insurance fund
 24 authorized and approved pursuant to s. 624.462.

25 Section 5. Subsection (9) of section 719.108, Florida
 26 Statutes, is amended to read:

27 719.108 Rents and assessments; liability; lien and
 28 priority; interest; collection; cooperative ownership.--

29 (9) The specific purposes of any special assessment,
 30 including any contingent special assessment levied in
 31 conjunction with the purchase of a windstorm insurance policy

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1 authorized by s. 719.104(3) approved in accordance with the
2 cooperative documents shall be set forth in a written notice
3 of such assessment sent or delivered to each unit owner. The
4 funds collected pursuant to a special assessment shall be used
5 only for the specific purpose or purposes set forth in such
6 notice or returned to the unit owners. However, upon
7 completion of such specific purposes, any excess funds shall
8 be considered common surplus and may, at the discretion of the
9 board, either be returned to the unit owners or applied as a
10 credit toward future assessments.

11 Section 6. Paragraph (a) of subsection (1) of section
12 719.503, Florida Statutes, is amended, and paragraph (c) is
13 added to that subsection, to read:

14 719.503 Disclosure prior to sale.--

15 (1) DEVELOPER DISCLOSURE.--

16 (a) Contents of contracts.--Any contracts for the sale
17 of a unit or a lease thereof for an unexpired term of more
18 than 5 years shall contain:

19 1. The following legend in conspicuous type: THIS
20 AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF
21 THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE
22 OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY
23 BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR
24 HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES.
25 THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN
26 NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER
27 THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH
28 MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS
29 ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE
30 VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE
31 TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER

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1 THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S
 2 RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.
 3 FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER
 4 PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT ARE ESTIMATES
 5 ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED
 6 ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE
 7 PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF
 8 SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN
 9 COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE
 10 OFFERING.

11 2. The following caveat in conspicuous type shall be
 12 placed upon the first page of the contract: ORAL
 13 REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE
 14 REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT
 15 REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND
 16 THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES,
 17 TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

18 3. If the unit has been occupied by someone other than
 19 the buyer, a statement that the unit has been occupied.

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

25 5. If the contract is for the lease of a unit for a
 26 term of 5 years or more, the contract shall include as an
 27 exhibit a copy of the proposed lease.

28 6. If the contract is for the sale or lease of a unit
 29 that is subject to a lien for rent payable under a lease of a
 30 recreational facility or other common areas, the contract
 31 shall contain within the text the following statement in

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1 conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT
2 THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF
3 COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF
4 THE LIEN.

5 7. The contract shall state the name and address of
6 the escrow agent required by s. 719.202 and shall state that
7 the purchaser may obtain a receipt for his or her deposit from
8 the escrow agent, upon request.

9 8. If the contract is for the sale or transfer of a
10 unit in a cooperative in which timeshare estates have been or
11 may be created, the following text in conspicuous type: UNITS
12 IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES. The
13 contract for the sale of a timeshare estate must also contain,
14 in conspicuous type, the following: FOR THE PURPOSE OF AD
15 VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING
16 AUTHORITIES AGAINST A TIMESHARE ESTATE, THE MANAGING ENTITY IS
17 GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE
18 THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY
19 RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS
20 OF CHAPTER 194, FLORIDA STATUTES.

21 (c) Subsequent estimates; when provided.--If the
22 closing on a contract occurs more than 12 months after the
23 filing of the offering circular with the division, the
24 developer shall provide a copy of the current estimated
25 operating budget of the association to the buyer at closing,
26 which shall not be considered an amendment that modifies the
27 offering provided any changes to the association's budget from
28 the budget given to the buyer at the time of contract signing
29 were the result of matters beyond the developer's control.
30 Changes in budgets of any master association, recreation
31 association, or club and similar budgets for entities other

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1 than the association shall likewise not be considered
2 amendments that modify the offering. It is the intent of this
3 paragraph to clarify existing law.

4 Section 7. Present paragraph (d) of subsection (20) of
5 section 719.504, Florida Statutes, is redesignated as
6 paragraph (f) and new paragraphs (d) and (e) are added to that
7 subsection to read:

8 719.504 Prospectus or offering circular.--Every
9 developer of a residential cooperative which contains more
10 than 20 residential units, or which is part of a group of
11 residential cooperatives which will be served by property to
12 be used in common by unit owners of more than 20 residential
13 units, shall prepare a prospectus or offering circular and
14 file it with the Division of Florida Land Sales, Condominiums,
15 and Mobile Homes prior to entering into an enforceable
16 contract of purchase and sale of any unit or lease of a unit
17 for more than 5 years and shall furnish a copy of the
18 prospectus or offering circular to each buyer. In addition to
19 the prospectus or offering circular, each buyer shall be
20 furnished a separate page entitled "Frequently Asked Questions
21 and Answers," which must be in accordance with a format
22 approved by the division. This page must, in readable
23 language: inform prospective purchasers regarding their
24 voting rights and unit use restrictions, including
25 restrictions on the leasing of a unit; indicate whether and in
26 what amount the unit owners or the association is obligated to
27 pay rent or land use fees for recreational or other commonly
28 used facilities; contain a statement identifying that amount
29 of assessment which, pursuant to the budget, would be levied
30 upon each unit type, exclusive of any special assessments, and
31 which identifies the basis upon which assessments are levied,

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1 whether monthly, quarterly, or otherwise; state and identify
 2 any court cases in which the association is currently a party
 3 of record in which the association may face liability in
 4 excess of \$100,000; and state whether membership in a
 5 recreational facilities association is mandatory and, if so,
 6 identify the fees currently charged per unit type. The
 7 division shall by rule require such other disclosure as in its
 8 judgment will assist prospective purchasers. The prospectus or
 9 offering circular may include more than one cooperative,
 10 although not all such units are being offered for sale as of
 11 the date of the prospectus or offering circular. The
 12 prospectus or offering circular must contain the following
 13 information:

14 (20) An estimated operating budget for the cooperative
 15 and the association, and a schedule of the unit owner's
 16 expenses shall be attached as an exhibit and shall contain the
 17 following information:

18 (d) The following statement in conspicuous type: THE
 19 BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED
 20 IN ACCORDANCE WITH THE COOPERATIVE ACT AND IS A GOOD FAITH
 21 ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE
 22 EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME
 23 OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE
 24 ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE
 25 MATERIAL ADVERSE CHANGES IN THE OFFERING.

26 (e) Each budget for an association prepared by a
 27 developer consistent with this subsection shall be prepared in
 28 good faith and shall reflect accurate estimated amounts for
 29 the required items in paragraph (c) at the time of the filing
 30 of the offering circular with the division, and subsequent
 31 increased amounts of any item included in the association's

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1 estimated budget which are beyond the control of the developer
 2 shall not be considered an amendment that would give rise to
 3 recission rights set forth in s. 718.504(1)(a) or (b), nor
 4 shall such increases modify, void, or otherwise affect any
 5 guarantee of the developer contained in the offering circular
 6 or any purchase contract. It is the intent of this paragraph
 7 to clarify existing law.

8 Section 8. Subsection (11) is added to section
 9 720.303, Florida Statutes, to read:

10 720.303 Association powers and duties; meetings of
 11 board; official records; budgets; financial reporting;
 12 association funds; recalls.--

13 (11) WINDSTORM INSURANCE.--Windstorm insurance
 14 coverage for a group of no fewer than three communities
 15 created and operating under chapter 718, chapter 719, this
 16 chapter, or chapter 721 may be obtained and maintained for the
 17 communities if the insurance coverage is sufficient to cover
 18 an amount equal to the probable maximum loss for the
 19 communities for a 250-year windstorm event. Such probable
 20 maximum loss must be determined through the use of a competent
 21 model that has been accepted by the Florida Commission on
 22 Hurricane Loss Project Methodology. Such insurance coverage is
 23 deemed adequate windstorm coverage for purposes of this
 24 chapter.

25 Section 9. Section 720.308, Florida Statutes, is
 26 amended to read:

27 720.308 Assessments and charges.--For any community
 28 created after October 1, 1995, the governing documents must
 29 describe the manner in which expenses are shared and specify
 30 the member's proportional share thereof.

31 (1) Assessments levied pursuant to the annual budget

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1 or special assessment must be in the member's proportional
 2 share of expenses as described in the governing document,
 3 which share may be different among classes of parcels based
 4 upon the state of development thereof, levels of services
 5 received by the applicable members, or other relevant factors.

6 (2) While the developer is in control of the
 7 homeowners' association, it may be excused from payment of its
 8 share of the operating expenses and assessments related to its
 9 parcels for any period of time for which the developer has, in
 10 the declaration, obligated itself to pay any operating
 11 expenses incurred that exceed the assessments receivable from
 12 other members and other income of the association.

13 (3) Assessments or contingent assessments may be
 14 levied by the board of directors of the association to secure
 15 the obligation of the homeowners' association for insurance
 16 acquired from a self-insurance fund authorized and operating
 17 pursuant to s. 624.462.

18 (4) This section does not apply to an association, no
 19 matter when created, if the association is created in a
 20 community that is included in an effective
 21 development-of-regional-impact development order as of October
 22 1, 1995 ~~the effective date of this act~~, together with any
 23 approved modifications thereto.

24
 25 (Redesignate subsequent sections.)

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 27
 28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 On page 1, line 17, following the semicolon

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1 insert:

2 amending s. 719.104, F.S.; providing for
3 cooperative associations and similar
4 organizations to acquire and maintain windstorm
5 insurance; amending s. 719.107, F.S.; providing
6 that common expenses will include costs of
7 windstorm insurance; amending s. 719.108, F.S.;
8 providing for notice of special assessments
9 levied in conjunction with windstorm insurance;
10 amending s. 719.503, F.S.; requiring additional
11 disclosures in contracts for sale or lease of
12 residential units; requiring copies of budgets
13 to be furnished to buyers when a closing occurs
14 more than 12 months after an offering circular
15 is filed with the state; amending s. 719.504,
16 F.S.; requiring certain information relating to
17 the budget to be included in the offering
18 circular; requiring that an association budget
19 be prepared in good faith; amending s. 720.303,
20 F.S.; providing for homeowners' associations to
21 acquire and maintain windstorm insurance;
22 amending s. 720.308, F.S.; providing for
23 homeowners' associations to levy assessments
24 for insurance;

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