

By Senator Deutch

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1 A bill to be entitled

2 An act relating to condominium associations; amending s.
3 718.111, F.S.; specifying that requirements relating to
4 acquisition and maintenance of adequate insurance apply to
5 all residential condominiums; revising provisions relating
6 to condominium and condominium owner insurance coverage;
7 authorizing an association or group of associations to
8 provide adequate hazard insurance through a self-insurance
9 fund; requiring associations to exercise best efforts to
10 obtain and maintain certain kinds of insurance; requiring
11 insurance coverage or bonding of certain persons with
12 respect to association funds; providing coverage
13 requirements for policies entered into after a specified
14 date; requiring owners to provide evidence of a currently
15 effective policy of hazard and liability insurance upon
16 request by the association; providing applicability to
17 condominiums operated as a single condominium by a
18 multicondominium association; specifying responsibility
19 for reconstruction work under specified circumstances;
20 specifying common expense responsibilities of the
21 association and owners; amending s. 718.113, F.S.;
22 revising application of provision relating to the material
23 alteration or substantial additions to the common elements
24 or to real property which is association property to apply
25 to certain associations; creating s. 718.1265, F.S.;
26 authorizing a condominium association board to exercise
27 specified emergency powers during an emergency created by
28 declared disaster; providing a limitation; providing an
29 effective date.

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

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33 Section 1. Subsection (11) of section 718.111, Florida
34 Statutes, is amended to read:

35 (Substantial rewording of subsection. See
36 s. 718.111(11), F.S., for present text.)

37 718.111 The association.--

38 (11) INSURANCE.--In order to protect the safety, health,
39 and welfare of the people of this state and to ensure consistency
40 in the provision of insurance coverage to condominiums and their
41 unit owners and in the allocation of casualty repair or
42 reconstruction expenses, this subsection shall be deemed to apply
43 to every residential condominium in the state, regardless of the
44 date of its declaration of condominium. It is the intent of the
45 Legislature to encourage lower or stable insurance premiums for
46 associations described in this subsection.

47 (a) Adequate insurance.--

48 1. A unit-owner controlled association operating a
49 residential condominium shall use its best efforts to obtain and
50 maintain adequate insurance to protect the association, the
51 association property, the common elements, and the condominium
52 property required to be insured by the association pursuant to
53 this subsection.

54 2. If the association is developer controlled, the
55 association shall exercise best efforts to obtain and maintain
56 such insurance. Failure to obtain and maintain adequate insurance
57 during any period of developer control shall constitute a breach
58 of fiduciary responsibility by the developer-appointed members of

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59 the board of directors of the association, unless those members
60 can show that despite such failure, they have made their best
61 efforts.

62 3. Regardless of any requirement in the declaration of
63 condominium for coverage by the association for "full insurable
64 value," "replacement cost," or the like, adequate insurance shall
65 be based upon the replacement cost of the property to be insured
66 as determined by an independent insurance appraisal or update of
67 a prior appraisal. The full insurable value shall be determined
68 not less frequently than every 36 months.

69 4. An association or group of associations may provide
70 adequate hazard insurance through a self-insurance fund that
71 complies with the applicable provisions of ss. 624.460-624.488.

72 5. The association may provide adequate hazard insurance
73 coverage individually or for a group of no fewer than three
74 communities created and operating under this chapter, chapter
75 719, chapter 720, or chapter 721, by obtaining and maintaining
76 for the communities insurance coverage sufficient to cover an
77 amount equal to the probable maximum loss for the communities for
78 a 250-year windstorm event; however, such probable maximum loss
79 must be determined through the use of a competent model that has
80 been accepted by the Florida Commission on Hurricane Loss
81 Projection Methodology.

82 6. In determining the association's adequate hazard
83 insurance coverage, the association may consider deductibles as
84 determined by this subsection. Policies may include deductibles
85 as determined by the board. The deductibles shall be consistent
86 with industry standards and prevailing practice for communities
87 of like size and age and having similar construction and

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88 facilities in the locale where the condominium property is
89 situated. The deductibles may be based upon available funds,
90 including reserve accounts, or predetermined assessment authority
91 at the time that the insurance is obtained. The board shall
92 establish the level of deductibles based upon the level of
93 available funds and predetermined assessment authority at a
94 properly noticed meeting of the board. The notice of such meeting
95 shall state the proposed deductible and the available funds and
96 the assessment authority relied upon by the board and shall
97 estimate any potential assessment amount against each unit, if
98 any. The meeting described in this subparagraph may be held in
99 conjunction with a meeting to consider the proposed budget or an
100 amendment to the budget.

101 7. The association shall obtain and maintain adequate
102 insurance or fidelity bonding of all persons who control or
103 disburse funds of the association. The insurance policy or
104 fidelity bond must cover the maximum funds that will be in the
105 custody of the association or its management agent at any one
106 time. As used in this paragraph, the term "persons who control or
107 disburse funds of the association" includes, but is not limited
108 to, those individuals authorized to sign checks and the
109 president, secretary, and treasurer of the association. The
110 association shall bear the cost of bonding.

111 (b) Scope of casualty coverage.--

112 1. Every hazard insurance policy issued or renewed on or
113 after January 1, 2009, to the association to protect the
114 condominium shall provide primary coverage for:

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115 a. All portions of the condominium property as originally
116 installed or property replacement of like kind and quality, in
117 accordance with the original plans and specifications.

118 b. All alterations or additions made to the condominium
119 property or association property by the association pursuant to
120 s. 718.113(2).

121
122 The coverage shall exclude all personal property of the unit
123 owners wherever situated on the condominium property, including:
124 floor, wall, and ceiling coverings; electrical fixtures;
125 appliances; water heaters; water filters; built-in cabinets and
126 countertops; window treatments, including curtains, drapes,
127 blinds, hardware, and similar window treatment components.
128 Coverage shall also exclude replacements of any of the foregoing
129 items located within the units.

130 2. Every hazard insurance policy issued or renewed on or
131 after January 1, 2009, to an individual unit owner shall provide
132 coverage for all portions of the condominium property excluded
133 from the association's coverage under this paragraph and all unit
134 owner personal property, provided the coverage afforded by such
135 policy is in excess of the amount recoverable under any other
136 policy covering the same property and shall include special
137 assessment coverage of not less than \$2,000 per occurrence. Each
138 insurance policy issued to an individual unit owner providing
139 such coverage shall be without rights of subrogation against the
140 condominium association that operates the condominium in which
141 such unit owner's unit is located. Notwithstanding any provision
142 in this subsection to the contrary, the association shall not be
143 obligated to insure any improvements installed by a current or

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144 former owner of the unit or by the developer where the
145 improvement benefits only the unit for which it was installed and
146 is not part of the standard improvements installed by the
147 developer on all units as part of original construction, whether
148 or not such improvement is located within the unit, except to the
149 extent of any insurance recovery specifically for any such
150 improvements. Further, to the extent provided in the declaration
151 as originally recorded or as amended under the amendatory
152 provisions thereof, all other improvements or additions to the
153 condominium property that benefit less than all unit owners shall
154 be insured by the unit owner or owners having the use thereof or
155 may be insured by the association at the cost and expense of the
156 unit owners having the use thereof.

157 3. The association may require each owner to provide
158 evidence of a currently effective policy of hazard and liability
159 insurance upon request, but not more frequently than annually.
160 Upon the failure of an owner to obtain the required insurance or
161 to provide a certificate of insurance issued by an insurer
162 approved to write such insurance in the state within 30 days of a
163 written request, the association shall be entitled, but shall not
164 be obligated to, purchase a policy of insurance on behalf of an
165 owner, and the cost thereof, together with reconstruction costs
166 undertaken by the association but which are the responsibility of
167 the unit owner may be collected in the manner provided for
168 collection of assessments in s. 718.116.

169 4. The provisions of subparagraphs 1.-3. are intended to
170 establish the property or casualty insuring responsibilities of
171 the association and those of the individual unit owner and do not

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172 serve to broaden or extend the perils of coverage afforded by any
173 insurance contract provided to the individual unit owner.

174 5. The declaration of condominium as originally recorded,
175 or amended pursuant to procedures provided therein, may require
176 that any condominium property consisting of freestanding
177 buildings where there is no more than one building in or on such
178 unit need not be insured by the association if the declaration
179 requires the unit owner to obtain adequate insurance for the
180 condominium property. An association may also obtain and maintain
181 liability insurance for directors and officers, insurance for the
182 benefit of association employees, and flood insurance for common
183 elements, association property, and units.

184 6. A multicondominium association may elect, by a majority
185 vote of the collective members of the condominiums operated by
186 the association, to operate such condominiums as a single
187 condominium for purposes of insurance matters, including, but not
188 limited to, the purchase of the hazard insurance required by this
189 section, and the apportionment of deductibles and damages in
190 excess of coverage. The election to aggregate the treatment of
191 insurance premiums, deductibles, and excess damages shall be
192 treated as an amendment to the declaration of all condominiums
193 operated by the association and the costs of insurance shall be
194 stated in the association budget. The amendments shall be
195 recorded as required by s. 718.110.

196 7. The association has the authority to amend the
197 declaration of condominium, without regard to any requirement for
198 mortgagee approval of amendments affecting insurance
199 requirements, to the coverage requirements of this subsection.

200 (c) Reconstruction after casualty.--

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201 1. All reconstruction work following a casualty loss shall
202 be undertaken by the association except as otherwise permitted in
203 this paragraph. A unit owner may undertake reconstruction work on
204 portions of the unit which the association is required to insure
205 under paragraph (b) only with the prior written consent of the
206 board of administration, which may be conditioned upon the
207 approval of the repair methods, the qualifications of the
208 proposed contractor, and the contract that is used for that
209 purpose. A unit owner shall obtain all required governmental
210 permits and approvals prior to commencing any reconstruction.

211 2. Except as otherwise provided in this paragraph, any
212 portion of the condominium property which the association is
213 required to insure against casualty loss pursuant to paragraph
214 (b) that is damaged by casualty shall be reconstructed, repaired,
215 or replaced, as necessary, by the association as a common
216 expense. All hazard insurance deductibles, uninsured losses, and
217 other damages in excess of hazard insurance coverage under the
218 hazard insurance policies maintained by the association shall be
219 a common expense of the condominium, provided, however, that:

220 a. An association may, upon the approval of a majority of
221 the total voting interests in the association, opt out of the
222 provisions of this paragraph requiring that hazard insurance
223 deductibles, uninsured losses, and other losses in excess of
224 hazard insurance coverage under the hazard insurance policy
225 maintained by the association be treated as common expenses and
226 allocate such repair or reconstruction expenses in the manner
227 provided in the declaration as originally recorded or as amended
228 pursuant to the amendatory provisions thereof. Such vote may be

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229 approved by the voting interests of the association without
230 regard to any mortgagee consent requirements.

231 (I) In a multicondominium association that has not
232 consolidated its financial operations under subsection (6), any
233 condominium operated by the association may opt out of the
234 provisions of this paragraph with the approval of a majority of
235 the total voting interests in that condominium. Such vote may be
236 approved by the voting interests without regard to any mortgagee
237 consent requirements.

238 (II) Any association or condominium voting to opt out of
239 the guidelines for repair or reconstruction expenses in this
240 paragraph must record a notice verifying that the association has
241 obtained the vote required under this paragraph to opt out,
242 setting forth the date of the opt out vote and the official
243 records book and page at which the declaration is recorded. The
244 opt out shall be effective upon the date of recording of the
245 notice in the public records by the association.

246 (III) An association that has voted to opt out of the
247 provisions of this paragraph may reverse that decision by the
248 same vote required under sub-sub-subparagraph (I) and notice
249 shall be recorded in the official records, shall comply with all
250 of the requirements of the notice of the opt out vote, and shall
251 reference the official records book and page at which the notice
252 of the opt out vote was recorded. The required notices shall be
253 executed with the formality of a deed and, regardless of the
254 provisions of subsection (12), the record of the opt out vote
255 shall be kept for as long as the opt out remains in effect.

256 b. A unit owner shall be responsible for the costs of
257 reconstruction, repair, or replacement of any portion of the

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258 condominium property not paid for by insurance proceeds when such
259 damage is caused by intentional conduct, negligence, or failure
260 to comply with the terms of the declaration or the rules of the
261 association by a unit owner, the members of his or her family,
262 unit occupants, tenants, guests, or invitees and without
263 compromise of the subrogation rights of any insurer as set forth
264 in paragraph (b).

265 c. The association shall not be obligated to pay for
266 casualty losses as a common expense where the casualty losses
267 were known or should have been known to a unit owner and were not
268 reported to the association until after the insurance claim of
269 the association for that casualty has been settled and resolved
270 with finality or is considered untimely filed by the insurer and
271 denied on that basis.

272 d. Any portion of the condominium property that the unit
273 owner is required to insure against casualty loss pursuant to
274 paragraph (b) that is damaged by casualty shall be reconstructed,
275 repaired, or replaced, as necessary, by the unit owner at the
276 unit owner's expense, and any such reconstruction work undertaken
277 by the association shall be chargeable to the unit and
278 enforceable as an assessment pursuant to s. 718.116. The
279 association is hereby designated as an additional named insured
280 and loss payee on all casualty insurance policies issued to unit
281 owners in the condominium operated by the association.

282 3. To the extent the cost of repair or reconstruction for
283 which the unit owner is responsible under subparagraph 2. is
284 reimbursed to the association by insurance proceeds and to the
285 extent the association has collected the cost of such repair or
286 reconstruction from the unit owner, the association shall

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287 reimburse the unit owner without the waiver of any rights of
288 subrogation.

289 4. The provisions of subparagraph 2. regarding the
290 financial responsibility of a unit owner for the costs of
291 repairing or replacing other portions of the condominium property
292 shall also be applicable to the costs of repair or replacement of
293 personal property of other unit owners or the association, as
294 well as other property, whether real or personal, that the unit
295 owners are required to insure under paragraph (b).

296 Section 2. Paragraph (a) of subsection (2) of section
297 718.113, Florida Statutes, is amended to read:

298 718.113 Maintenance; limitation upon improvement; display
299 of flag; hurricane shutters.--

300 (2) (a) Except as otherwise provided in this section, there
301 shall be no material alteration or substantial additions to the
302 common elements or to real property which is association
303 property, except in a manner provided in the declaration as
304 originally recorded or as amended under the procedures provided
305 therein. If the declaration as originally recorded or as amended
306 under the procedures provided therein does not specify the
307 procedure for approval of material alterations or substantial
308 additions, 75 percent of the total voting interests of the
309 association must approve the alterations or additions. This
310 paragraph is intended to clarify existing law and applies to
311 associations existing on the effective date of this act.

312 Section 3. Section 718.1265, Florida Statutes, is created
313 to read:

314 718.1265 Association emergency powers.--

315 (1) To the extent allowed by law and unless specifically

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316 prohibited by the declaration of condominium, the articles, or
317 the bylaws of an association, and consistent with the provisions
318 of s. 617.0830, the board of administration, in response to
319 damage caused by an event for which a state of emergency is
320 declared pursuant to s. 252.36 in the locale in which the
321 condominium is located, may, but is not required to, exercise the
322 following powers:

323 (a) Conduct board meetings and membership meetings with
324 notice given as is practicable. Such notice may be given in any
325 practicable manner, including publication, radio, United States
326 mail, the Internet, public service announcements, and conspicuous
327 posting on the condominium property or any other means the board
328 deems reasonable under the circumstances. Notice of board
329 decisions may be communicated as provided in this paragraph.

330 (b) Cancel and reschedule any association meeting.

331 (c) Name as assistant officers persons who are not
332 directors, which assistant officers shall have the same authority
333 as the executive officers to whom they are assistants during the
334 state of emergency to accommodate the incapacity or
335 unavailability of any officer of the association.

336 (d) Relocate the association's principal office or
337 designate alternative principal offices.

338 (e) Enter into agreements with local counties and
339 municipalities to assist counties and municipalities with debris
340 removal.

341 (f) Implement a disaster plan before or immediately
342 following the event for which a state of emergency is declared
343 that may include, but is not limited to, shutting down or off
344 elevators; electricity; water, sewer, or security systems; or air

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345 conditioners.

346 (g) Declare any portion of the condominium property
347 unavailable for entry or occupancy by unit owners, family
348 members, tenants, guests, agents, or invitees to protect the
349 health, safety, or welfare of such persons.

350 (h) Require the evacuation of the condominium property in
351 the event of a mandatory evacuation order in the locale in which
352 the condominium is located. Should any unit owner or other
353 occupant of a condominium fail or refuse to evacuate the
354 condominium property where the board has required evacuation, the
355 association shall be immune from liability or injury to persons
356 or property arising from such failure or refusal.

357 (i) Determine whether the condominium property can be
358 safely inhabited or occupied. However, such determination is not
359 conclusive as to any determination of habitability pursuant to
360 the declaration.

361 (j) Mitigate further damage, including taking action to
362 contract for the removal of debris; and prevent or mitigate the
363 spread of fungus, including, but not limited to, mold or mildew,
364 by removing and disposing of wet drywall, insulation, carpet,
365 cabinetry, or other fixtures, on or within the condominium
366 property, even if the unit owner is obligated by the declaration
367 or law to insure or replace those fixtures and to remove personal
368 property from a unit.

369 (k) Contract, on behalf of any unit owner or owners, for
370 items or services for which the owners are otherwise individually
371 responsible for, but which are necessary to prevent further
372 damage to the condominium property. In such event, the unit owner
373 or owners on whose behalf the board has contracted are

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374 responsible for reimbursing the association for the actual costs
375 of the items or services, and the association may use its lien
376 authority provided by s. 718.116 to enforce collection of the
377 charges. Without limitation, such items or services may include
378 the drying of units, the boarding of broken windows or doors, and
379 the replacement of damaged air conditioners or air handlers to
380 provide climate control in the units or other portions of the
381 property.

382 (l) Regardless of any provision to the contrary and even if
383 such authority does not specifically appear in the declaration of
384 condominium, articles, or bylaws of the association, levy special
385 assessments without a vote of the owners.

386 (m) Without unit owner approval, borrow money and pledge
387 association assets as collateral to fund emergency repairs and
388 carry out the duties of the association when operating funds are
389 insufficient. This paragraph does not limit the general authority
390 of the association to borrow money, subject to such restrictions
391 as are contained in the declaration of condominium, articles, or
392 bylaws of the association.

393 (2) The special powers authorized under subsection (1)
394 shall be limited to that time reasonably necessary to protect the
395 health, safety, and welfare of the association, the unit owners,
396 their family members, tenants, guests, agents, or invitees and
397 shall be reasonably necessary to mitigate further damage and make
398 emergency repairs.

399 Section 4. This act shall take effect July 1, 2008.