

1                   A bill to be entitled  
2           An act relating to condominiums; creating s. 627.714,  
3           F.S.; requiring that coverage under a unit owner's policy  
4           for certain assessments include at least a minimum amount  
5           of loss assessment coverage; requiring that every property  
6           insurance policy to an individual unit owner contain a  
7           specified provision; amending s. 633.0215, F.S.; providing  
8           an exemption for certain condominiums from installing a  
9           manual fire alarm system as required in the Life Safety  
10          Code if certain conditions are met; amending s. 718.103,  
11          F.S.; revising the definition of the term "developer" to  
12          exclude a bulk assignee or bulk buyer; amending s.  
13          718.111, F.S.; requiring that adequate property insurance  
14          be based upon the replacement cost of the property to be  
15          insured as determined by an independent appraisal or  
16          update of a prior appraisal; requiring that such  
17          replacement cost be determined at least once within a  
18          specified period; providing means by which an association  
19          may provide adequate property insurance; prohibiting such  
20          coverage or program from existing beyond a specified date;  
21          authorizing an association to consider deductibles when  
22          determining an adequate amount of property insurance;  
23          providing that failure to maintain adequate property  
24          insurance constitutes a breach of fiduciary duty by the  
25          members of the board of directors of an association;  
26          revising the procedures for the board to establish the  
27          amount of deductibles; requiring that an association  
28          controlled by unit owners operating as a residential

29 | condominium use its best efforts to obtain and maintain  
30 | adequate property insurance to protect the association and  
31 | certain property; requiring that every property insurance  
32 | policy issued or renewed on or after a specified date  
33 | provide certain coverage; excluding certain items from  
34 | such requirement; providing that excluded items and any  
35 | insurance thereupon are the responsibility of the unit  
36 | owner; requiring that condominium unit owners' policies  
37 | conform to certain provisions of state law; deleting  
38 | provisions relating to certain hazard and casualty  
39 | insurance policies; conforming provisions to changes made  
40 | by the act; amending s. 718.112, F.S.; conforming cross-  
41 | references; revising requirements for the reappointment of  
42 | certain board members; revising board eligibility  
43 | requirements; revising notice requirements for board  
44 | candidates; establishing requirements for newly elected  
45 | board members; deleting a provision prohibiting an  
46 | association from foregoing the retrofitting with a fire  
47 | sprinkler system of common areas in a high-rise building;  
48 | prohibiting local authorities having jurisdiction from  
49 | requiring retrofitting with a sprinkler system or other  
50 | engineered lifesafety system before a specified date;  
51 | providing requirements for a special meeting of unit  
52 | owners that may be called every 3 years in order to vote  
53 | to forgo retrofitting of the sprinkler system or other  
54 | engineered lifesafety system; providing meeting notice  
55 | requirements; providing that certain directors and  
56 | officers delinquent in the payment of any fee, fine, or

57 regular or special assessments shall be deemed to have  
58 abandoned their office; amending s. 718.115, F.S.;  
59 requiring that certain services obtained pursuant to a  
60 bulk contract as provided in the declaration be deemed a  
61 common expense; amending s. 718.301, F.S.; revising  
62 conditions under which unit owners other than the  
63 developer may elect not less than a majority of the  
64 members of the board of administration of an association;  
65 creating part VII of ch. 718, F.S., relating to distressed  
66 condominium relief; providing a short title; providing  
67 legislative findings and intent; defining the terms "bulk  
68 assignee" and "bulk buyer"; providing for the assignment  
69 of developer rights to and the assumption of developer  
70 rights by a bulk assignee; specifying liabilities of bulk  
71 assignees and bulk buyers; providing exceptions; providing  
72 additional responsibilities of bulk assignees and bulk  
73 buyers; authorizing certain entities to assign developer  
74 rights to a bulk assignee; limiting the number of bulk  
75 assignees at any given time; providing for the transfer of  
76 control of a board of administration; providing effects of  
77 such transfer on parcels acquired by a bulk assignee;  
78 providing obligations of a bulk assignee upon the transfer  
79 of control of a board of administration; requiring that a  
80 bulk assignee certify certain information in writing;  
81 providing for the resolution of a conflict between  
82 specified provisions of state law; providing that the  
83 failure of a bulk assignee or bulk buyer to comply with  
84 specified provisions of state law results in the loss of

85 | certain protections and exemptions; requiring that a bulk  
86 | assignee or bulk buyer file certain information with the  
87 | Division of Florida Condominiums, Timeshares, and Mobile  
88 | Homes of the Department of Business and Professional  
89 | Regulation before offering any units for sale or lease in  
90 | excess of a specified term; requiring that a copy of such  
91 | information be provided to a prospective purchaser;  
92 | requiring that certain contracts and disclosure statements  
93 | contain specified statements; requiring that a bulk  
94 | assignee or bulk buyer comply with certain disclosure  
95 | requirements; prohibiting a bulk assignee from taking  
96 | certain actions on behalf of an association while the bulk  
97 | assignee is in control of the board of administration of  
98 | the association and requiring that such bulk assignee  
99 | comply with certain requirements; requiring that a bulk  
100 | assignee or bulk buyer comply with certain requirements  
101 | regarding certain contracts; providing unit owners with  
102 | specified protections regarding certain contracts;  
103 | requiring that a bulk buyer comply with certain  
104 | requirements regarding the transfer of a unit; prohibiting  
105 | a person from being classified as a bulk assignee or bulk  
106 | buyer unless condominium parcels were acquired before a  
107 | specified date; providing for the determination of the  
108 | date of acquisition of a parcel; providing that the  
109 | assignment of developer rights to a bulk assignee or bulk  
110 | buyer does not release a developer from certain  
111 | liabilities; preserving certain liabilities for certain  
112 | parties; repealing s. 553.509(2), F.S., relating to the

HB 561

2010

113 requirement that certain residential family dwellings have  
114 at least one public elevator that is capable of operating  
115 on an alternate power source for emergency purposes;  
116 providing an effective date.

117

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

119

120 Section 1. Section 627.714, Florida Statutes, is created  
121 to read:

122 627.714 Residential condominium unit owner coverage; loss  
123 assessment coverage required; excess coverage provision  
124 required.—For policies issued or renewed on or after July 1,  
125 2010, coverage under a unit owner's residential property policy  
126 shall include property loss assessment coverage of at least  
127 \$2,000 for all assessments made as a result of the same direct  
128 loss to the property, regardless of the number of assessments,  
129 owned by all members of the association collectively when such  
130 loss is of the type of loss covered by the unit owner's  
131 residential property insurance policy, to which a deductible  
132 shall apply of no more than \$250 per direct property loss. If a  
133 deductible was or will be applied to other property loss  
134 sustained by the unit owner resulting from the same direct loss  
135 to the property, no deductible shall apply to the loss  
136 assessment coverage. Every individual unit owner's residential  
137 property policy must contain a provision stating that the  
138 coverage afforded by such policy is excess coverage over the  
139 amount recoverable under any other policy covering the same  
140 property.

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

143 633.0215 Florida Fire Prevention Code.—

144 (13) A condominium that is one or two stories in height  
 145 and has an exterior means of egress corridor is exempt from  
 146 installing a manual fire alarm system as required in s. 9.6 of  
 147 the most recent edition of the Life Safety Code adopted in the  
 148 Florida Fire Prevention Code.

149 Section 3. Subsection (16) of section 718.103, Florida  
 150 Statutes, is amended to read:

151 718.103 Definitions.—As used in this chapter, the term:

152 (16) "Developer" means a person who creates a condominium  
 153 or offers condominium parcels for sale or lease in the ordinary  
 154 course of business, but does not include:

155 (a) An owner or lessee of a condominium or cooperative  
 156 unit who has acquired the unit for his or her own occupancy;~~;~~  
 157 ~~nor does it include~~

158 (b) A cooperative association which creates a condominium  
 159 by conversion of an existing residential cooperative after  
 160 control of the association has been transferred to the unit  
 161 owners if, following the conversion, the unit owners will be the  
 162 same persons who were unit owners of the cooperative and no  
 163 units are offered for sale or lease to the public as part of the  
 164 plan of conversion;~~;~~

165 (c) A bulk assignee or bulk buyer as defined in s.  
 166 718.703; or

167 (d) A state, county, or municipal entity ~~is not a~~  
 168 ~~developer for any purposes under this act when it is acting as a~~

169 lessor and not otherwise named as a developer in the declaration  
 170 of condominium association.

171 Section 4. Paragraphs (a), (b), (c), (d), (f), (g), (j),  
 172 and (n) of subsection (11) of section 718.111, Florida Statutes,  
 173 are amended to read:

174 718.111 The association.—

175 (11) INSURANCE.—In order to protect the safety, health,  
 176 and welfare of the people of the State of Florida and to ensure  
 177 consistency in the provision of insurance coverage to  
 178 condominiums and their unit owners, this subsection applies to  
 179 every residential condominium in the state, regardless of the  
 180 date of its declaration of condominium. It is the intent of the  
 181 Legislature to encourage lower or stable insurance premiums for  
 182 associations described in this subsection.

183 (a) Adequate property hazard insurance, regardless of any  
 184 requirement in the declaration of condominium for coverage by  
 185 the association for full insurable value, replacement cost, or  
 186 similar coverage, shall be based upon the replacement cost of  
 187 the property to be insured as determined by an independent  
 188 insurance appraisal or update of a prior appraisal. The  
 189 replacement cost ~~full insurable value~~ shall be determined at  
 190 least once every 36 months.

191 1. An association or group of associations may provide  
 192 adequate property hazard insurance through a self-insurance fund  
 193 that complies with the requirements of ss. 624.460-624.488.

194 2. The association may also provide adequate property  
 195 ~~hazard~~ insurance coverage for a group of no fewer than three  
 196 communities created and operating under this chapter, chapter

197 719, chapter 720, or chapter 721 by obtaining and maintaining  
 198 for such communities insurance coverage sufficient to cover an  
 199 amount equal to the probable maximum loss for the communities  
 200 for a 250-year windstorm event. Such probable maximum loss must  
 201 be determined through the use of a competent model that has been  
 202 accepted by the Florida Commission on Hurricane Loss Projection  
 203 Methodology. No policy or program providing such coverage shall  
 204 be issued or renewed after July 1, 2008, unless it has been  
 205 reviewed and approved by the Office of Insurance Regulation. The  
 206 review and approval shall include approval of the policy and  
 207 related forms pursuant to ss. 627.410 and 627.411, approval of  
 208 the rates pursuant to s. 627.062, a determination that the loss  
 209 model approved by the commission was accurately and  
 210 appropriately applied to the insured structures to determine the  
 211 250-year probable maximum loss, and a determination that  
 212 complete and accurate disclosure of all material provisions is  
 213 provided to condominium unit owners prior to execution of the  
 214 agreement by a condominium association.

215 3. When determining the adequate amount of property hazard ~~hazard~~  
 216 insurance coverage, the association may consider deductibles as  
 217 determined by this subsection.

218 (b) If an association is a developer-controlled  
 219 association, the association shall exercise its best efforts to  
 220 obtain and maintain insurance as described in paragraph (a).  
 221 Failure to obtain and maintain adequate property hazard ~~hazard~~  
 222 insurance during any period of developer control constitutes a  
 223 breach of fiduciary responsibility by the developer-appointed  
 224 members of the board of directors of the association, unless the



225 members can show that despite such failure, they have made their  
 226 best efforts to maintain the required coverage.

227 (c) Policies may include deductibles as determined by the  
 228 board.

229 1. The deductibles shall be consistent with industry  
 230 standards and prevailing practice for communities of similar  
 231 size and age, and having similar construction and facilities in  
 232 the locale where the condominium property is situated.

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

236 3. The board shall establish the amount of deductibles  
 237 based upon the level of available funds and predetermined  
 238 assessment authority at a meeting of the board. ~~Such meeting~~  
 239 ~~shall be open to all unit owners~~ in the manner set forth in s.  
 240 718.112 (2) (e). ~~The notice of such meeting must state the~~  
 241 ~~proposed deductible and the available funds and the assessment~~  
 242 ~~authority relied upon by the board and estimate any potential~~  
 243 ~~assessment amount against each unit, if any. The meeting~~  
 244 ~~described in this paragraph may be held in conjunction with a~~  
 245 ~~meeting to consider the proposed budget or an amendment thereto.~~

246 (d) An association controlled by unit owners operating as  
 247 a residential condominium shall use its best efforts to obtain  
 248 and maintain adequate property insurance to protect the  
 249 association, the association property, the common elements, and  
 250 the condominium property that is required to be insured by the  
 251 association pursuant to this subsection.

252 (f) Every property ~~hazard~~ insurance policy issued or

HB 561

2010

253 renewed on or after January 1, 2009, for the purpose of  
254 protecting the condominium shall provide primary coverage for:

255 1. All portions of the condominium property as originally  
256 installed or replacement of like kind and quality, in accordance  
257 with the original plans and specifications.

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

260 3. The coverage shall exclude all personal property within  
261 the unit or limited common elements, and floor, wall, and  
262 ceiling coverings, electrical fixtures, appliances, water  
263 heaters, water filters, built-in cabinets and countertops, and  
264 window treatments, including curtains, drapes, blinds, hardware,  
265 and similar window treatment components, or replacements of any  
266 of the foregoing which are located within the boundaries of the  
267 unit and serve only such unit. Such property and any insurance  
268 thereupon shall be the responsibility of the unit owner.

269 (g) A condominium unit owner's policy shall conform to the  
270 requirements of s. 627.714. ~~Every hazard insurance policy issued~~  
271 ~~or renewed on or after January 1, 2009, to an individual unit~~  
272 ~~owner must contain a provision stating that the coverage~~  
273 ~~afforded by such policy is excess coverage over the amount~~  
274 ~~recoverable under any other policy covering the same property.~~  
275 ~~Such policies must include special assessment coverage of no~~  
276 ~~less than \$2,000 per occurrence. An insurance policy issued to~~  
277 ~~an individual unit owner providing such coverage does not~~  
278 ~~provide rights of subrogation against the condominium~~  
279 ~~association operating the condominium in which such individual's~~  
280 ~~unit is located.~~

281 ~~1. All improvements or additions to the condominium~~  
 282 ~~property that benefit fewer than all unit owners shall be~~  
 283 ~~insured by the unit owner or owners having the use thereof, or~~  
 284 ~~may be insured by the association at the cost and expense of the~~  
 285 ~~unit owners having the use thereof.~~

286 ~~2. The association shall require each owner to provide~~  
 287 ~~evidence of a currently effective policy of hazard and liability~~  
 288 ~~insurance upon request, but not more than once per year. Upon~~  
 289 ~~the failure of an owner to provide a certificate of insurance~~  
 290 ~~issued by an insurer approved to write such insurance in this~~  
 291 ~~state within 30 days after the date on which a written request~~  
 292 ~~is delivered, the association may purchase a policy of insurance~~  
 293 ~~on behalf of an owner. The cost of such a policy, together with~~  
 294 ~~reconstruction costs undertaken by the association but which are~~  
 295 ~~the responsibility of the unit owner, may be collected in the~~  
 296 ~~manner provided for the collection of assessments in s. 718.116.~~

297 ~~1.3.~~ All reconstruction work after a property casualty  
 298 loss shall be undertaken by the association except as otherwise  
 299 authorized in this section. A unit owner may undertake  
 300 reconstruction work on portions of the unit with the prior  
 301 written consent of the board of administration. However, such  
 302 work may be conditioned upon the approval of the repair methods,  
 303 the qualifications of the proposed contractor, or the contract  
 304 that is used for that purpose. A unit owner shall obtain all  
 305 required governmental permits and approvals prior to commencing  
 306 reconstruction.

307 ~~2.4.~~ Unit owners are responsible for the cost of  
 308 reconstruction of any portions of the condominium property for

HB 561

2010

309 which the unit owner is required to carry property ~~casualty~~  
310 insurance, and any such reconstruction work undertaken by the  
311 association shall be chargeable to the unit owner and  
312 enforceable as an assessment pursuant to s. 718.116. ~~The~~  
313 ~~association must be an additional named insured and loss payee~~  
314 ~~on all casualty insurance policies issued to unit owners in the~~  
315 ~~condominium operated by the association.~~

316 ~~3.5.~~ A multicondominium association may elect, by a  
317 majority vote of the collective members of the condominiums  
318 operated by the association, to operate such condominiums as a  
319 single condominium for purposes of insurance matters, including,  
320 but not limited to, the purchase of the property hazard  
321 insurance required by this section and the apportionment of  
322 deductibles and damages in excess of coverage. The election to  
323 aggregate the treatment of insurance premiums, deductibles, and  
324 excess damages constitutes an amendment to the declaration of  
325 all condominiums operated by the association, and the costs of  
326 insurance shall be stated in the association budget. The  
327 amendments shall be recorded as required by s. 718.110.

328 (j) Any portion of the condominium property required to be  
329 insured by the association against property ~~casualty~~ loss  
330 pursuant to paragraph (f) which is damaged ~~by casualty~~ shall be  
331 reconstructed, repaired, or replaced as necessary by the  
332 association as a common expense. All property hazard ~~insurance~~  
333 deductibles, uninsured losses, and other damages in excess of  
334 property hazard ~~insurance~~ coverage under the property hazard  
335 insurance policies maintained by the association are a common  
336 expense of the condominium, except that:

337 1. A unit owner is responsible for the costs of repair or  
 338 replacement of any portion of the condominium property not paid  
 339 by insurance proceeds, if such damage is caused by intentional  
 340 conduct, negligence, or failure to comply with the terms of the  
 341 declaration or the rules of the association by a unit owner, the  
 342 members of his or her family, unit occupants, tenants, guests,  
 343 or invitees, without compromise of the subrogation rights of any  
 344 insurer ~~as set forth in paragraph (g)~~.

345 2. The provisions of subparagraph 1. regarding the  
 346 financial responsibility of a unit owner for the costs of  
 347 repairing or replacing other portions of the condominium  
 348 property also apply to the costs of repair or replacement of  
 349 personal property of other unit owners or the association, as  
 350 well as other property, whether real or personal, which the unit  
 351 owners are required to insure ~~under paragraph (g)~~.

352 3. To the extent the cost of repair or reconstruction for  
 353 which the unit owner is responsible under this paragraph is  
 354 reimbursed to the association by insurance proceeds, and, to the  
 355 extent the association has collected the cost of such repair or  
 356 reconstruction from the unit owner, the association shall  
 357 reimburse the unit owner without the waiver of any rights of  
 358 subrogation.

359 4. The association is not obligated to pay for  
 360 reconstruction or repairs of property ~~casualty~~ losses as a  
 361 common expense if the property ~~casualty~~ losses were known or  
 362 should have been known to a unit owner and were not reported to  
 363 the association until after the insurance claim of the  
 364 association for that property ~~casualty~~ was settled or resolved

365 with finality, or denied on the basis that it was untimely  
 366 filed.

367 (n) The association is not obligated to pay for any  
 368 reconstruction or repair expenses due to property ~~casualty~~ loss  
 369 to any improvements installed by a current or former owner of  
 370 the unit or by the developer if the improvement benefits only  
 371 the unit for which it was installed and is not part of the  
 372 standard improvements installed by the developer on all units as  
 373 part of original construction, whether or not such improvement  
 374 is located within the unit. This paragraph does not relieve any  
 375 party of its obligations regarding recovery due under any  
 376 insurance implemented specifically for any such improvements.

377 Section 5. Paragraphs (b), (d), (l), and (n) of subsection  
 378 (2) of section 718.112, Florida Statutes, are amended to read:

379 718.112 Bylaws.—

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

383 (b) Quorum; voting requirements; proxies.—

384 1. Unless a lower number is provided in the bylaws, the  
 385 percentage of voting interests required to constitute a quorum  
 386 at a meeting of the members shall be a majority of the voting  
 387 interests. Unless otherwise provided in this chapter or in the  
 388 declaration, articles of incorporation, or bylaws, and except as  
 389 provided in sub-subparagraph ~~subparagraph~~ (d)3.a., decisions  
 390 shall be made by owners of a majority of the voting interests  
 391 represented at a meeting at which a quorum is present.

392 2. Except as specifically otherwise provided herein, after

HB 561

2010

393 January 1, 1992, unit owners may not vote by general proxy, but  
394 may vote by limited proxies substantially conforming to a  
395 limited proxy form adopted by the division. No voting interest  
396 or consent right allocated to a unit owned by the association  
397 shall be exercised or considered for any purpose, whether for a  
398 quorum, an election, or otherwise. Limited proxies and general  
399 proxies may be used to establish a quorum. Limited proxies shall  
400 be used for votes taken to waive or reduce reserves in  
401 accordance with subparagraph (f)2.; for votes taken to waive the  
402 financial reporting requirements of s. 718.111(13); for votes  
403 taken to amend the declaration pursuant to s. 718.110; for votes  
404 taken to amend the articles of incorporation or bylaws pursuant  
405 to this section; and for any other matter for which this chapter  
406 requires or permits a vote of the unit owners. Except as  
407 provided in paragraph (d), after January 1, 1992, no proxy,  
408 limited or general, shall be used in the election of board  
409 members. General proxies may be used for other matters for which  
410 limited proxies are not required, and may also be used in voting  
411 for nonsubstantive changes to items for which a limited proxy is  
412 required and given. Notwithstanding the provisions of this  
413 subparagraph, unit owners may vote in person at unit owner  
414 meetings. Nothing contained herein shall limit the use of  
415 general proxies or require the use of limited proxies for any  
416 agenda item or election at any meeting of a timeshare  
417 condominium association.

418 3. Any proxy given shall be effective only for the  
419 specific meeting for which originally given and any lawfully  
420 adjourned meetings thereof. In no event shall any proxy be valid

421 for a period longer than 90 days after the date of the first  
 422 meeting for which it was given. Every proxy is revocable at any  
 423 time at the pleasure of the unit owner executing it.

424 4. A member of the board of administration or a committee  
 425 may submit in writing his or her agreement or disagreement with  
 426 any action taken at a meeting that the member did not attend.  
 427 This agreement or disagreement may not be used as a vote for or  
 428 against the action taken and may not be used for the purposes of  
 429 creating a quorum.

430 5. When any of the board or committee members meet by  
 431 telephone conference, those board or committee members attending  
 432 by telephone conference may be counted toward obtaining a quorum  
 433 and may vote by telephone. A telephone speaker must be used so  
 434 that the conversation of those board or committee members  
 435 attending by telephone may be heard by the board or committee  
 436 members attending in person as well as by any unit owners  
 437 present at a meeting.

438 (d) Unit owner meetings.—

439 1. There shall be an annual meeting of the unit owners  
 440 held at the location provided in the association bylaws and, if  
 441 the bylaws are silent as to the location, the meeting shall be  
 442 held within 45 miles of the condominium property. However, such  
 443 distance requirement does not apply to an association governing  
 444 a timeshare condominium. Unless the bylaws provide otherwise, a  
 445 vacancy on the board caused by the expiration of a director's  
 446 term shall be filled by electing a new board member, and the  
 447 election shall be by secret ballot; however, if the number of  
 448 vacancies equals ~~or exceeds~~ the number of candidates, no



HB 561

2010

449 election is required. Except in a timeshare condominium, the  
450 terms of all members of the board shall expire at the annual  
451 meeting and such board members may stand for reelection unless  
452 otherwise permitted by the bylaws. In the event that the bylaws  
453 permit staggered terms of no more than 2 years and upon approval  
454 of a majority of the total voting interests, the association  
455 board members may serve 2-year staggered terms. If the number ~~no~~  
456 ~~person is interested in or demonstrates an intention to run for~~  
457 ~~the position of a board~~ members ~~member~~ whose terms have ~~term has~~  
458 expired according to the provisions of this subparagraph exceeds  
459 the number of eligible members showing interest in or  
460 demonstrating an intention to run for the vacant positions, each  
461 ~~such~~ board member whose term has expired shall become eligible  
462 for reappointment ~~be automatically reappointed~~ to the board of  
463 administration and need not stand for reelection. In a  
464 condominium association of more than 10 units or in a  
465 condominium association that does not include timeshare units,  
466 coowners of a unit may not serve as members of the board of  
467 directors at the same time unless they own more than one unit  
468 and are not co-occupants of a unit. Any unit owner desiring to  
469 be a candidate for board membership must ~~shall~~ comply with sub-  
470 subparagraph ~~subparagraph~~ 3.a. A person who has been suspended  
471 or removed by the division under this chapter, or who is  
472 delinquent in the payment of any fee, fine, or special or  
473 regular assessment as provided in paragraph (n), is not eligible  
474 for board membership. A person who has been convicted of any  
475 felony in this state or in a United States District or  
476 Territorial Court, or who has been convicted of any offense in

HB 561

2010

477 another jurisdiction that would be considered a felony if  
478 committed in this state, is not eligible for board membership  
479 unless such felon's civil rights have been restored for a period  
480 of no less than 5 years as of the date on which such person  
481 seeks election to the board. The validity of an action by the  
482 board is not affected if it is later determined that a member of  
483 the board is ineligible for board membership due to having been  
484 convicted of a felony.

485 2. The bylaws shall provide the method of calling meetings  
486 of unit owners, including annual meetings. Written notice, which  
487 notice must include an agenda, shall be mailed, hand delivered,  
488 or electronically transmitted to each unit owner at least 14  
489 days prior to the annual meeting and shall be posted in a  
490 conspicuous place on the condominium property at least 14  
491 continuous days preceding the annual meeting. Upon notice to the  
492 unit owners, the board shall by duly adopted rule designate a  
493 specific location on the condominium property or association  
494 property upon which all notices of unit owner meetings shall be  
495 posted; however, if there is no condominium property or  
496 association property upon which notices can be posted, this  
497 requirement does not apply. In lieu of or in addition to the  
498 physical posting of notice of any meeting of the unit owners on  
499 the condominium property, the association may, by reasonable  
500 rule, adopt a procedure for conspicuously posting and repeatedly  
501 broadcasting the notice and the agenda on a closed-circuit cable  
502 television system serving the condominium association. However,  
503 if broadcast notice is used in lieu of a notice posted  
504 physically on the condominium property, the notice and agenda

505 must be broadcast at least four times every broadcast hour of  
506 each day that a posted notice is otherwise required under this  
507 section. When broadcast notice is provided, the notice and  
508 agenda must be broadcast in a manner and for a sufficient  
509 continuous length of time so as to allow an average reader to  
510 observe the notice and read and comprehend the entire content of  
511 the notice and the agenda. Unless a unit owner waives in writing  
512 the right to receive notice of the annual meeting, such notice  
513 shall be hand delivered, mailed, or electronically transmitted  
514 to each unit owner. Notice for meetings and notice for all other  
515 purposes shall be mailed to each unit owner at the address last  
516 furnished to the association by the unit owner, or hand  
517 delivered to each unit owner. However, if a unit is owned by  
518 more than one person, the association shall provide notice, for  
519 meetings and all other purposes, to that one address which the  
520 developer initially identifies for that purpose and thereafter  
521 as one or more of the owners of the unit shall so advise the  
522 association in writing, or if no address is given or the owners  
523 of the unit do not agree, to the address provided on the deed of  
524 record. An officer of the association, or the manager or other  
525 person providing notice of the association meeting, shall  
526 provide an affidavit or United States Postal Service certificate  
527 of mailing, to be included in the official records of the  
528 association affirming that the notice was mailed or hand  
529 delivered, in accordance with this provision.

530       3.a. The members of the board shall be elected by written  
531 ballot or voting machine. Proxies shall in no event be used in  
532 electing the board, either in general elections or elections to

HB 561

2010

533 fill vacancies caused by recall, resignation, or otherwise,  
534 unless otherwise provided in this chapter. Not less than 60 days  
535 before a scheduled election, the association shall mail,  
536 deliver, or electronically transmit, whether by separate  
537 association mailing or included in another association mailing,  
538 delivery, or transmission, including regularly published  
539 newsletters, to each unit owner entitled to a vote, a first  
540 notice of the date of the election ~~along with a certification~~  
541 ~~form provided by the division attesting that he or she has read~~  
542 ~~and understands, to the best of his or her ability, the~~  
543 ~~governing documents of the association and the provisions of~~  
544 ~~this chapter and any applicable rules.~~ Any unit owner or other  
545 eligible person desiring to be a candidate for the board must  
546 give written notice of intent to be a candidate to the  
547 association not less than 40 days before a scheduled election.  
548 Together with the written notice and agenda as set forth in  
549 subparagraph 2., the association shall mail, deliver, or  
550 electronically transmit a second notice of the election to all  
551 unit owners entitled to vote therein, together with a ballot  
552 which shall list all candidates. Upon request of a candidate,  
553 ~~the association shall include~~ an information sheet, no larger  
554 than 8 1/2 inches by 11 inches, which must be furnished by the  
555 candidate not less than 35 days before the election, shall ~~along~~  
556 ~~with the signed certification form provided for in this~~  
557 ~~subparagraph,~~ to be included with the mailing, delivery, or  
558 transmission of the ballot, with the costs of mailing, delivery,  
559 or electronic transmission and copying to be borne by the  
560 association. The association is not liable for the contents of

HB 561

2010

561 the information sheets prepared by the candidates. In order to  
562 reduce costs, the association may print or duplicate the  
563 information sheets on both sides of the paper. The division  
564 shall by rule establish voting procedures consistent with the  
565 provisions contained herein, including rules establishing  
566 procedures for giving notice by electronic transmission and  
567 rules providing for the secrecy of ballots. Elections shall be  
568 decided by a plurality of those ballots cast. There shall be no  
569 quorum requirement; however, at least 20 percent of the eligible  
570 voters must cast a ballot in order to have a valid election of  
571 members of the board. No unit owner shall permit any other  
572 person to vote his or her ballot, and any such ballots  
573 improperly cast shall be deemed invalid, provided any unit owner  
574 who violates this provision may be fined by the association in  
575 accordance with s. 718.303. A unit owner who needs assistance in  
576 casting the ballot for the reasons stated in s. 101.051 may  
577 obtain assistance in casting the ballot. The regular election  
578 shall occur on the date of the annual meeting. The provisions of  
579 this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare  
580 condominium associations. Notwithstanding the provisions of this  
581 sub-subparagraph ~~subparagraph~~, an election is not required  
582 unless more candidates file notices of intent to run or are  
583 nominated than board vacancies exist.

584 b. Within 90 days after being elected to the board, each  
585 newly elected director shall certify in writing to the secretary  
586 of the association that he or she has read the association's  
587 declarations of covenants and restrictions, articles of  
588 incorporation, bylaws, and current written policies; that he or

589 she will work to uphold such documents and policies to the best  
590 of his or her ability; and that he or she will faithfully  
591 discharge his or her fiduciary responsibility to the  
592 association's members. In lieu of this written certification,  
593 the newly elected director may submit a certificate of  
594 satisfactory completion of the educational curriculum  
595 administered by a division-approved condominium education  
596 provider. Failure to timely file the written certification or  
597 educational certificate automatically disqualifies the director  
598 from service on the board. The secretary shall cause the  
599 association to retain a director's written certification or  
600 educational certificate for inspection by the members for 5  
601 years after a director's election. Failure to have such written  
602 certification or educational certificate on file does not affect  
603 the validity of any appropriate action.

604 4. Any approval by unit owners called for by this chapter  
605 or the applicable declaration or bylaws, including, but not  
606 limited to, the approval requirement in s. 718.111(8), shall be  
607 made at a duly noticed meeting of unit owners and shall be  
608 subject to all requirements of this chapter or the applicable  
609 condominium documents relating to unit owner decisionmaking,  
610 except that unit owners may take action by written agreement,  
611 without meetings, on matters for which action by written  
612 agreement without meetings is expressly allowed by the  
613 applicable bylaws or declaration or any statute that provides  
614 for such action.

615 5. Unit owners may waive notice of specific meetings if  
616 allowed by the applicable bylaws or declaration or any statute.

HB 561

2010

617 If authorized by the bylaws, notice of meetings of the board of  
618 administration, unit owner meetings, except unit owner meetings  
619 called to recall board members under paragraph (j), and  
620 committee meetings may be given by electronic transmission to  
621 unit owners who consent to receive notice by electronic  
622 transmission.

623 6. Unit owners shall have the right to participate in  
624 meetings of unit owners with reference to all designated agenda  
625 items. However, the association may adopt reasonable rules  
626 governing the frequency, duration, and manner of unit owner  
627 participation.

628 7. Any unit owner may tape record or videotape a meeting  
629 of the unit owners subject to reasonable rules adopted by the  
630 division.

631 8. Unless otherwise provided in the bylaws, any vacancy  
632 occurring on the board before the expiration of a term may be  
633 filled by the affirmative vote of the majority of the remaining  
634 directors, even if the remaining directors constitute less than  
635 a quorum, or by the sole remaining director. In the alternative,  
636 a board may hold an election to fill the vacancy, in which case  
637 the election procedures must conform to the requirements of sub-  
638 subparagraph ~~subparagraph~~ 3.a. unless the association governs 10  
639 units or fewer ~~less~~ and has opted out of the statutory election  
640 process, in which case the bylaws of the association control.  
641 Unless otherwise provided in the bylaws, a board member  
642 appointed or elected under this section shall fill the vacancy  
643 for the unexpired term of the seat being filled. Filling  
644 vacancies created by recall is governed by paragraph (j) and

645 rules adopted by the division.

646

647 Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-  
648 subparagraph (d)3.a., an association of 10 or fewer units may,  
649 by the affirmative vote of a majority of the total voting  
650 interests, provide for different voting and election procedures  
651 in its bylaws, which vote may be by a proxy specifically  
652 delineating the different voting and election procedures. The  
653 different voting and election procedures may provide for  
654 elections to be conducted by limited or general proxy.

655 (1) Certificate of compliance.—There shall be a provision  
656 that a certificate of compliance from a licensed electrical  
657 contractor or electrician may be accepted by the association's  
658 board as evidence of compliance of the condominium units with  
659 the applicable fire and life safety code. Notwithstanding the  
660 provisions of chapter 633 or of any other code, statute,  
661 ordinance, administrative rule, or regulation, or any  
662 interpretation of the foregoing, an association, condominium, or  
663 unit owner is not obligated to retrofit the common elements or  
664 units of a residential condominium with a fire sprinkler system  
665 or other engineered lifesafety system in a building that has  
666 been certified for occupancy by the applicable governmental  
667 entity, if the unit owners have voted to forego such  
668 retrofitting and engineered lifesafety system by the affirmative  
669 vote of two-thirds of all voting interests in the affected  
670 condominium. ~~However, a condominium association may not vote to~~  
671 ~~forego the retrofitting with a fire sprinkler system of common~~  
672 ~~areas in a high-rise building. For purposes of this subsection,~~



HB 561

2010

673 ~~the term "high-rise building" means a building that is greater~~  
674 ~~than 75 feet in height where the building height is measured~~  
675 ~~from the lowest level of fire department access to the floor of~~  
676 ~~the highest occupiable story. For purposes of this subsection,~~  
677 ~~the term "common areas" means any enclosed hallway, corridor,~~  
678 ~~lobby, stairwell, or entryway. In no event shall the local~~  
679 ~~authority having jurisdiction require completion of retrofitting~~  
680 ~~of common areas with a sprinkler system or other engineered~~  
681 ~~lifesafety system before the end of 2019 2014.~~

682         1. A vote to forego retrofitting may be obtained by  
683 limited proxy or by a ballot personally cast at a duly called  
684 membership meeting, or by execution of a written consent by the  
685 member, and shall be effective upon the recording of a  
686 certificate attesting to such vote in the public records of the  
687 county where the condominium is located. The association shall  
688 mail, hand deliver, or electronically transmit to each unit  
689 owner written notice at least 14 days prior to such membership  
690 meeting in which the vote to forego retrofitting of the required  
691 fire sprinkler system is to take place. Within 30 days after the  
692 association's opt-out vote, notice of the results of the opt-out  
693 vote shall be mailed, hand delivered, or electronically  
694 transmitted to all unit owners. Evidence of compliance with this  
695 30-day notice shall be made by an affidavit executed by the  
696 person providing the notice and filed among the official records  
697 of the association. After such notice is provided to each owner,  
698 a copy of such notice shall be provided by the current owner to  
699 a new owner prior to closing and shall be provided by a unit  
700 owner to a renter prior to signing a lease.

701           2. A vote to forego retrofitting may be obtained at a  
 702 special meeting of the unit owners called by a petition of least  
 703 25 percent of the voting interests, once every 3 years. Notice  
 704 shall be provided as required for any regularly called meeting  
 705 of the unit owners, and the notice shall state the purpose of  
 706 the meeting. Electronic transmission may not be used as a method  
 707 of giving notice of a meeting called in whole or in part for  
 708 this purpose.

709           ~~3.2.~~ As part of the information collected annually from  
 710 condominiums, the division shall require condominium  
 711 associations to report the membership vote and recording of a  
 712 certificate under this subsection and, if retrofitting has been  
 713 undertaken, the per-unit cost of such work. The division shall  
 714 annually report to the Division of State Fire Marshal of the  
 715 Department of Financial Services the number of condominiums that  
 716 have elected to forego retrofitting.

717           (n) Director or officer delinquencies.—A director or  
 718 officer more than 90 days delinquent in the payment of any fee,  
 719 fine, or regular or special assessments shall be deemed to have  
 720 abandoned the office, creating a vacancy in the office to be  
 721 filled according to law.

722           Section 6. Paragraph (d) of subsection (1) of section  
 723 718.115, Florida Statutes, is amended to read:

724           718.115 Common expenses and common surplus.—

725           (1)

726           (d) If the association is authorized pursuant to ~~se~~  
 727 provided in the declaration to enter into a bulk contract for  
 728 communications services as defined in chapter 202, information

729 services, or Internet services, the costs charged for such  
 730 services, ~~the cost of a master antenna television system or duly~~  
 731 ~~franchised cable television service obtained pursuant to a bulk~~  
 732 ~~contract~~ shall be deemed a common expense. If the declaration  
 733 does not authorize the association to enter into a bulk contract  
 734 for ~~provide for~~ the cost of communications services as defined  
 735 in chapter 202, information services, or Internet services a  
 736 ~~master antenna television system or duly franchised cable~~  
 737 ~~television service obtained under a bulk contract as a common~~  
 738 ~~expense,~~ the board may enter into such a contract for such  
 739 services. ~~and~~ The cost of the services under a bulk contract  
 740 ~~service~~ will be a common expense but allocated on a per-unit  
 741 basis rather than a percentage basis if the declaration provides  
 742 for other than an equal sharing of common expenses, and any  
 743 contract entered into before July 1, 1998, in which the cost of  
 744 the service is not equally divided among all unit owners, may be  
 745 changed by vote of a majority of the voting interests present at  
 746 a regular or special meeting of the association, to allocate the  
 747 cost equally among all units. The contract shall be for a term  
 748 of not less than 2 years.

749 1. Any contract made by the board after the effective date  
 750 hereof for communications services as defined in chapter 202,  
 751 information services, or Internet services ~~a community antenna~~  
 752 ~~system or duly franchised cable television service~~ may be  
 753 canceled by a majority of the voting interests present at the  
 754 next regular or special meeting of the association. Any member  
 755 may make a motion to cancel the ~~said~~ contract, but if no motion  
 756 is made or if such motion fails to obtain the required majority

HB 561

2010

757 at the next regular or special meeting, whichever occurs ~~is~~  
 758 sooner, following the making of the contract, ~~then~~ such contract  
 759 shall be deemed ratified for the term therein expressed. Any  
 760 contract made by the association prior to assumption of control  
 761 of the association by unit owners other than the developer may  
 762 be canceled within 120 days after unit owners other than the  
 763 developer elect a majority of the board of directors consistent  
 764 with the provisions of s. 718.302(1).

765 2. Any such contract shall provide, and shall be deemed to  
 766 provide if not expressly set forth, that any hearing-impaired or  
 767 legally blind unit owner who does not occupy the unit with a  
 768 non-hearing-impaired or sighted person, or any unit owner  
 769 receiving supplemental security income under Title XVI of the  
 770 Social Security Act or food stamps as administered by the  
 771 Department of Children and Family Services pursuant to s.  
 772 414.31, may discontinue the cable or video service without  
 773 incurring disconnect fees, penalties, or subsequent service  
 774 charges, and, as to such units, the owners shall not be required  
 775 to pay any common expenses charge related to such service. If  
 776 less than all members of an association share the expenses of  
 777 cable or video service ~~television~~, the expense shall be shared  
 778 equally by all participating unit owners. The association may  
 779 use the provisions of s. 718.116 to enforce payment of the  
 780 shares of such costs by the unit owners receiving cable or video  
 781 service ~~television~~.

782 Section 7. Subsection (1) of section 718.301, Florida  
 783 Statutes, is amended to read:

784 718.301 Transfer of association control; claims of defect

HB 561

2010

785 by association.—

786 (1) When unit owners other than the developer own 15  
787 percent or more of the units in a condominium that will be  
788 operated ultimately by an association, the unit owners other  
789 than the developer shall be entitled to elect no less than one-  
790 third of the members of the board of administration of the  
791 association. Unit owners other than the developer are entitled  
792 to elect not less than a majority of the members of the board of  
793 administration of an association:

794 (a) Three years after 50 percent of the units that will be  
795 operated ultimately by the association have been conveyed to  
796 purchasers;

797 (b) Three months after 90 percent of the units that will  
798 be operated ultimately by the association have been conveyed to  
799 purchasers;

800 (c) When all the units that will be operated ultimately by  
801 the association have been completed, some of them have been  
802 conveyed to purchasers, and none of the others are being offered  
803 for sale by the developer in the ordinary course of business;

804 (d) When some of the units have been conveyed to  
805 purchasers and none of the others are being constructed or  
806 offered for sale by the developer in the ordinary course of  
807 business;

808 (e) When the developer files a petition seeking protection  
809 in bankruptcy;

810 (f) When a receiver for the developer is appointed by a  
811 circuit court and is not discharged within 30 days after such  
812 appointment, unless the court determines within 30 days after

813 appointment of the receiver that transfer of control would be  
 814 detrimental to the association or its members; or

815 (g) Seven years after recordation of the declaration of  
 816 condominium; or, in the case of an association which may  
 817 ultimately operate more than one condominium, 7 years after  
 818 recordation of the declaration for the first condominium it  
 819 operates; or, in the case of an association operating a phase  
 820 condominium created pursuant to s. 718.403, 7 years after  
 821 recordation of the declaration creating the initial phase,

822  
 823 whichever occurs first. The developer is entitled to elect at  
 824 least one member of the board of administration of an  
 825 association as long as the developer holds for sale in the  
 826 ordinary course of business at least 5 percent, in condominiums  
 827 with fewer than 500 units, and 2 percent, in condominiums with  
 828 more than 500 units, of the units in a condominium operated by  
 829 the association. Following the time the developer relinquishes  
 830 control of the association, the developer may exercise the right  
 831 to vote any developer-owned units in the same manner as any  
 832 other unit owner except for purposes of reacquiring control of  
 833 the association or selecting the majority members of the board  
 834 of administration.

835 Section 8. Part VII of chapter 718, Florida Statutes,  
 836 consisting of sections 718.701, 718.702, 718.703, 718.704,  
 837 718.705, 718.706, 718.707, and 718.708, is created to read:

838 PART VII

839 DISTRESSED CONDOMINIUM RELIEF

840 718.701 Short title.—This part may be cited as the

HB 561

2010

841 "Distressed Condominium Relief Act."

842 718.702 Legislative intent.—

843 (1) The Legislature acknowledges the massive downturn in  
844 the condominium market which has transpired throughout the state  
845 and the impact of such downturn on developers, lenders, unit  
846 owners, and condominium associations. Numerous condominium  
847 projects have either failed or are in the process of failing,  
848 whereby the condominium has a small percentage of third-party  
849 unit owners as compared to the unsold inventory of units. As a  
850 result of the inability to find purchasers for this inventory of  
851 units, which results in part from the devaluing of real estate  
852 in this state, developers are unable to satisfy the requirements  
853 of their lenders, leading to defaults on mortgages.  
854 Consequently, lenders are faced with the task of finding a  
855 solution to the problem in order to be paid for their  
856 investments.

857 (2) The Legislature recognizes that all of the factors  
858 listed in this section lead to condominiums becoming distressed,  
859 resulting in detriment to the unit owners and the condominium  
860 association on account of the resulting shortage of assessment  
861 moneys available to support the financial requirements for  
862 proper maintenance of the condominium. Such shortage and the  
863 resulting lack of proper maintenance further erode property  
864 values. The Legislature finds that individuals and entities  
865 within Florida and in other states have expressed interest in  
866 purchasing unsold inventory in one or more condominium projects,  
867 but are reticent to do so because of accompanying liabilities  
868 inherited from the original developer, which are by definition

869 imputed to the successor purchaser, including a foreclosing  
 870 mortgagee. This results in the potential purchaser having  
 871 unknown and unquantifiable risks, and potential successor  
 872 purchasers are unwilling to accept such risks. The result is  
 873 that condominium projects stagnate, leaving all parties involved  
 874 at an impasse without the ability to find a solution.

875 (3) The Legislature finds and declares that it is the  
 876 public policy of this state to protect the interests of  
 877 developers, lenders, unit owners, and condominium associations  
 878 with regard to distressed condominiums, and that there is a need  
 879 for relief from certain provisions of the Florida Condominium  
 880 Act geared toward enabling economic opportunities within these  
 881 condominiums for successor purchasers, including foreclosing  
 882 mortgagees. Such relief would benefit existing unit owners and  
 883 condominium associations. The Legislature further finds and  
 884 declares that this situation cannot be open-ended without  
 885 potentially prejudicing the rights of unit owners and  
 886 condominium associations, and thereby declares that the  
 887 provisions of this part shall be used by purchasers of  
 888 condominium inventory for a specific and defined period.

889 718.703 Definitions.—As used in this part, the term:

890 (1) "Bulk assignee" means a person who:

891 (a) Acquires more than seven condominium parcels as set  
 892 forth in s. 718.707; and

893 (b) Receives an assignment of some or all of the rights of  
 894 the developer as are set forth in the declaration of condominium  
 895 or in this chapter by a written instrument recorded as an  
 896 exhibit to the deed or as a separate instrument in the public



897 records of the county in which the condominium is located.

898 (2) "Bulk buyer" means a person who acquires more than  
 899 seven condominium parcels as set forth in s. 718.707 but who  
 900 does not receive an assignment of any developer rights other  
 901 than the right to conduct sales, leasing, and marketing  
 902 activities within the condominium.

903 718.704 Assignment of developer rights to and assumption  
 904 of developer rights by bulk assignee; bulk buyer.—

905 (1) A bulk assignee shall be deemed to have assumed and is  
 906 liable for all duties and responsibilities of the developer  
 907 under the declaration and this chapter, except:

908 (a) Warranties of the developer under s. 718.203(1) or s.  
 909 718.618, except for design, construction, development, or repair  
 910 work performed by or on behalf of such bulk assignee.

911 (b) The obligation to:

912 1. Fund converter reserves under s. 718.618 for a unit  
 913 which was not acquired by the bulk assignee; or

914 2. Provide converter warranties on any portion of the  
 915 condominium property except as may be expressly provided by the  
 916 bulk assignee in the contract for purchase and sale executed  
 917 with a purchaser and pertaining to any design, construction,  
 918 development, or repair work performed by or on behalf of the  
 919 bulk assignee.

920 (c) The requirement to provide the association with a  
 921 cumulative audit of the association's finances from the date of  
 922 formation of the condominium association as required by s.  
 923 718.301. However, the bulk assignee shall provide an audit for  
 924 the period for which the bulk assignee elects a majority of the

HB 561

2010

925 members of the board of administration.

926 (d) Any liability arising out of or in connection with  
927 actions taken by the board of administration or the developer-  
928 appointed directors before the bulk assignee elects a majority  
929 of the members of the board of administration.

930 (e) Any liability for or arising out of the developer's  
931 failure to fund previous assessments or to resolve budgetary  
932 deficits in relation to a developer's right to guarantee  
933 assessments, except as otherwise provided in subsection (2).

934

935 Further, the bulk assignee is responsible for delivering  
936 documents and materials in accordance with s. 718.705(3). A bulk  
937 assignee may expressly assume some or all of the obligations of  
938 the developer described in paragraphs (a)-(e).

939 (2) A bulk assignee receiving the assignment of the rights  
940 of the developer to guarantee the level of assessments and fund  
941 budgetary deficits pursuant to s. 718.116 shall be deemed to  
942 have assumed and is liable for all obligations of the developer  
943 with respect to such guarantee, including any applicable funding  
944 of reserves to the extent required by law, for as long as the  
945 guarantee remains in effect. A bulk assignee not receiving an  
946 assignment of the right of the developer to guarantee the level  
947 of assessments and fund budgetary deficits pursuant to s.  
948 718.116 or a bulk buyer is not deemed to have assumed and is not  
949 liable for the obligations of the developer with respect to such  
950 guarantee, but is responsible for payment of assessments in the  
951 same manner as all other owners of condominium parcels.

952 (3) A bulk buyer is liable for the duties and

953 responsibilities of the developer under the declaration and this  
954 chapter only to the extent provided in this part, together with  
955 any other duties or responsibilities of the developer expressly  
956 assumed in writing by the bulk buyer.

957 (4) An acquirer of condominium parcels is not considered a  
958 bulk assignee or a bulk buyer if the transfer to such acquirer  
959 was made with the intent to hinder, delay, or defraud any  
960 purchaser, unit owner, or the association, or if the acquirer is  
961 a person who would constitute an insider under s. 726.102(7).

962 (5) An assignment of developer rights to a bulk assignee  
963 may be made by the developer, a previous bulk assignee, or a  
964 court of competent jurisdiction acting on behalf of the  
965 developer or the previous bulk assignee. At any particular time,  
966 there may be no more than one bulk assignee within a  
967 condominium, but there may be more than one bulk buyer. If more  
968 than one acquirer of condominium parcels receives an assignment  
969 of developer rights from the same person, the bulk assignee is  
970 the acquirer whose instrument of assignment is recorded first in  
971 applicable public records.

972 718.705 Board of administration; transfer of control.—

973 (1) For purposes of determining the timing for transfer of  
974 control of the board of administration of the association to  
975 unit owners other than the developer under s. 718.301(1)(a) or  
976 (b), if a bulk assignee is entitled to elect a majority of the  
977 members of the board, a condominium parcel acquired by the bulk  
978 assignee shall not be deemed to be conveyed to a purchaser, or  
979 to be owned by an owner other than the developer, until such  
980 condominium parcel is conveyed to an owner who is not a bulk

981 assignee.

982 (2) Unless control of the board of administration of the  
 983 association has already been relinquished pursuant to s.  
 984 718.301(1), the bulk assignee is obligated to relinquish control  
 985 of the association in accordance with s. 718.301 and this part.

986 (3) When a bulk assignee relinquishes control of the board  
 987 of administration as set forth in s. 718.301, the bulk assignee  
 988 shall deliver all of those items required by s. 718.301(4).  
 989 However, the bulk assignee is not required to deliver items and  
 990 documents not in the possession of the bulk assignee during the  
 991 period during which the bulk assignee was the owner of  
 992 condominium parcels. In conjunction with the acquisition of  
 993 condominium parcels, a bulk assignee shall undertake a good  
 994 faith effort to obtain the documents and materials required to  
 995 be provided to the association pursuant to s. 718.301(4). To the  
 996 extent the bulk assignee is not able to obtain all of such  
 997 documents and materials, the bulk assignee shall certify in  
 998 writing to the association the names or descriptions of the  
 999 documents and materials that were not obtainable by the bulk  
 1000 assignee. Delivery of the certificate relieves the bulk assignee  
 1001 of responsibility for the delivery of the documents and  
 1002 materials referenced in the certificate as otherwise required  
 1003 under ss. 718.112 and 718.301 and this part. The responsibility  
 1004 of the bulk assignee for the audit required by s. 718.301(4)  
 1005 shall commence as of the date on which the bulk assignee elected  
 1006 a majority of the members of the board of administration.

1007 (4) If a conflict arises between the provisions or  
 1008 application of this section and s. 718.301, this section shall

1009 prevail.

1010 (5) Failure of a bulk assignee or bulk buyer to comply  
 1011 with all the requirements contained in this part shall result in  
 1012 the loss of any and all protections or exemptions provided under  
 1013 this part.

1014 718.706 Specific provisions pertaining to offering of  
 1015 units by a bulk assignee or bulk buyer.—

1016 (1) Before offering any units for sale or for lease for a  
 1017 term exceeding 5 years, a bulk assignee or bulk buyer must file  
 1018 the following documents with the division and provide such  
 1019 documents to a prospective purchaser:

1020 (a) An updated prospectus or offering circular, or a  
 1021 supplement to the prospectus or offering circular, filed by the  
 1022 creating developer prepared in accordance with s. 718.504, which  
 1023 shall include the form of contract for purchase and sale in  
 1024 compliance with s. 718.503(2).

1025 (b) An updated Frequently Asked Questions and Answers  
 1026 sheet.

1027 (c) The executed escrow agreement if required under s.  
 1028 718.202.

1029 (d) The financial information required by s. 718.111(13).  
 1030 However, if a financial information report does not exist for  
 1031 the fiscal year before acquisition of title by the bulk assignee  
 1032 or bulk buyer, or accounting records cannot be obtained in good  
 1033 faith by the bulk assignee or bulk buyer which would permit  
 1034 preparation of the required financial information report, the  
 1035 bulk assignee or bulk buyer is excused from the requirement of  
 1036 this paragraph. However, the bulk assignee or bulk buyer must

1037 include in the purchase contract the following statement in  
 1038 conspicuous type:

1040 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER  
 1041 SECTION 718.111(13), FLORIDA STATUTES, FOR THE  
 1042 IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION  
 1043 IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS  
 1044 A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE  
 1045 ASSOCIATION.

1046  
 1047 (2) Before offering any units for sale or for lease for a  
 1048 term exceeding 5 years, a bulk assignee must file with the  
 1049 division and provide to a prospective purchaser a disclosure  
 1050 statement that must include, but is not limited to:

1051 (a) A description to the purchaser of any rights of the  
 1052 developer which have been assigned to the bulk assignee.

1053 (b) The following statement in conspicuous type:

1054  
 1055 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE  
 1056 DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618,  
 1057 FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN,  
 1058 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY  
 1059 OR ON BEHALF OF SELLER.

1060  
 1061 (c) If the condominium is a conversion subject to part VI,  
 1062 the following statement in conspicuous type:

1063  
 1064 SELLER HAS NO OBLIGATION TO FUND CONVERTER

1065 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER  
 1066 SECTION 718.618, FLORIDA STATUTES, ON ANY PORTION OF  
 1067 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY  
 1068 REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE  
 1069 AND SALE EXECUTED BY THE SELLER AND THE PREVIOUS  
 1070 DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION,  
 1071 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF  
 1072 OF THE SELLER.

1074 (3) In addition to the requirements set forth in  
 1075 subsection (1), a bulk assignee or bulk buyer must comply with  
 1076 the nondeveloper disclosure requirements set forth in s.  
 1077 718.503(2) before offering any units for sale or for lease for a  
 1078 term exceeding 5 years.

1079 (4) A bulk assignee, while in control of the board of  
 1080 administration of the association, may not authorize, on behalf  
 1081 of the association:

1082 (a) The waiver of reserves or the reduction of funding of  
 1083 the reserves in accordance with s. 718.112(2)(f)2., unless  
 1084 approved by a majority of the voting interests not controlled by  
 1085 the developer, bulk assignee, or bulk buyer; or

1086 (b) The use of reserve expenditures for other purposes in  
 1087 accordance with s. 718.112(2)(f)3., unless approved by a  
 1088 majority of the voting interests not controlled by the  
 1089 developer, bulk assignee, or bulk buyer.

1090 (5) A bulk assignee, while in control of the board of  
 1091 administration of the association, must comply with the  
 1092 requirements imposed upon developers to transfer control of the

1093 association to the unit owners in accordance with s. 718.301.

1094 (6) A bulk assignee or bulk buyer must comply with all the  
 1095 requirements of s. 718.302 regarding any contracts entered into  
 1096 by the association during the period the bulk assignee or bulk  
 1097 buyer maintains control of the board of administration. Unit  
 1098 owners shall be afforded all the protections contained in s.  
 1099 718.302 regarding agreements entered into by the association  
 1100 before unit owners other than the developer, bulk assignee, or  
 1101 bulk buyer elected a majority of the board of administration.

1102 (7) A bulk buyer must comply with the requirements  
 1103 contained in the declaration regarding any transfer of a unit,  
 1104 including sales, leases, and subleases. A bulk buyer is not  
 1105 entitled to any exemptions afforded a developer or successor  
 1106 developer under this chapter regarding any transfer of a unit,  
 1107 including sales, leases, or subleases.

1108 718.707 Time limitation for classification as bulk  
 1109 assignee or bulk buyer.—A person acquiring condominium parcels  
 1110 may not be classified as a bulk assignee or bulk buyer unless  
 1111 the condominium parcels were acquired before July 1, 2011. The  
 1112 date of such acquisition shall be determined by the date of  
 1113 recording of a deed or other instrument of conveyance for such  
 1114 parcels in the public records of the county in which the  
 1115 condominium is located or by the date of issuance of a  
 1116 certificate of title in a foreclosure proceeding with respect to  
 1117 such condominium parcels.

1118 718.708 Liability of developers and others.—An assignment  
 1119 of developer rights to a bulk assignee or bulk buyer does not  
 1120 release the developer from any liabilities under the declaration



HB 561

2010

1121 or this chapter. This part does not limit the liability of the  
1122 developer for claims brought by unit owners, bulk assignees, or  
1123 bulk buyers for violations of this chapter by the developer,  
1124 unless specifically excluded in this part. Nothing contained  
1125 within this part waives, releases, compromises, or limits the  
1126 liability of contractors, subcontractors, materialmen,  
1127 manufacturers, architects, engineers, or any participant in the  
1128 design or construction of a condominium for any claim brought by  
1129 an association, unit owners, bulk assignees, or bulk buyers  
1130 arising from the design of the condominium, construction  
1131 defects, misrepresentations associated with condominium  
1132 property, or violations of this chapter, unless specifically  
1133 excluded in this part.

1134 Section 9. Subsection (2) of section 553.509, Florida  
1135 Statutes, is repealed.

1136 Section 10. This act shall take effect upon becoming a  
1137 law.