

By the Committee on Regulated Industries; and Senator Garcia

315-2492-04

1 A bill to be entitled
2 An act relating to condominium associations;
3 amending s. 718.110, F.S.; providing for
4 grandfathering and modification of certain
5 rights of a unit owner; requiring certain
6 voting and approval criteria for amendments
7 depriving owners of certain rights; creating s.
8 718.5011, F.S.; creating the Office of the
9 Condominium Ombudsman within the Division of
10 Florida Land Sales, Condominiums, and Mobile
11 Homes; authorizing appointment of ombudsman by
12 the Joint Legislative Auditing Committee;
13 prohibiting ombudsman or staff from engaging in
14 certain acts; creating s. 718.5012, F.S.;
15 granting certain powers and duties to the
16 ombudsman and the division; creating s.
17 718.5013, F.S.; authorizing disbursement from
18 the Division of Florida Land Sales,
19 Condominiums, and Mobile Homes Trust Fund with
20 approval of the committee for ombudsman costs
21 and expenses; authorizing the committee to
22 permit the ombudsman to retain certain
23 personnel; creating s. 718.5014, F.S.;
24 providing for location of the office of the
25 ombudsman; authorizing branch offices as
26 approved by the committee; creating s.
27 718.5015, F.S.; creating the Advisory Council
28 on Condominiums; providing for appointments by
29 the President of the Senate, the Speaker of the
30 House, and the Governor; providing limited
31 compensation and other terms of service;

1 specifying functions; amending s. 718.504,
2 F.S.; providing certain prospective unit buyers
3 with a separate document, rather than a
4 separate page, of frequently asked questions
5 and answers; requiring additional disclosure to
6 prospective buyers concerning court cases that
7 involve potential liabilities of the
8 association; providing an effective date.
9

10 Be It Enacted by the Legislature of the State of Florida:
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12 Section 1. Section 718.110, Florida Statutes, is
13 amended to read:

14 718.110 Amendment of declaration; correction of error
15 or omission in declaration by circuit court; grandfathering
16 and modification of certain rights.--

17 (1)(a) If the declaration fails to provide a method of
18 amendment, the declaration may be amended as to all matters
19 except those described in subsection (4) or subsection (8) if
20 the amendment is approved by the owners of not less than
21 two-thirds of the units. Except as to those matters described
22 in subsection (4) or subsection (8), no declaration recorded
23 after April 1, 1992, shall require that amendments be approved
24 by more than four-fifths of the voting interests.

25 (b) No provision of the declaration shall be revised
26 or amended by reference to its title or number only.

27 Proposals to amend existing provisions of the declaration
28 shall contain the full text of the provision to be amended;
29 new words shall be inserted in the text and underlined; and
30 words to be deleted shall be lined through with hyphens.

31 However, if the proposed change is so extensive that this

1 procedure would hinder, rather than assist, the understanding
2 of the proposed amendment, it is not necessary to use
3 underlining and hyphens as indicators of words added or
4 deleted, but, instead, a notation must be inserted immediately
5 preceding the proposed amendment in substantially the
6 following language: "Substantial rewording of declaration.
7 See provision for present text."

8 (c) Nonmaterial errors or omissions in the amendment
9 process will not invalidate an otherwise properly promulgated
10 amendment.

11 (2) An amendment, other than amendments made by the
12 developer pursuant to ss. 718.104, 718.403, and 718.504(6),
13 (7), and (9) without a vote of the unit owners and any rights
14 the developer may have in the declaration to amend without
15 consent of the unit owners which shall be limited to matters
16 other than those under subsections (4) and (8), shall be
17 evidenced by a certificate of the association which shall
18 include the recording data identifying the declaration and
19 shall be executed in the form required for the execution of a
20 deed. An amendment by the developer must be evidenced in
21 writing, but a certificate of the association is not required.
22 The developer of a timeshare condominium may reserve specific
23 rights in the declaration to amend the declaration without the
24 consent of the unit owners.

25 (3) An amendment of a declaration is effective when
26 properly recorded in the public records of the county where
27 the declaration is recorded.

28 (4) Unless otherwise provided in the declaration as
29 originally recorded, no amendment may change the configuration
30 or size of any unit in any material fashion, materially alter
31 or modify the appurtenances to the unit, or change the

1 proportion or percentage by which the unit owner shares the
2 common expenses of the condominium and owns the common surplus
3 of the condominium unless the record owner of the unit and all
4 record owners of liens on the unit join in the execution of
5 the amendment and unless all the record owners of all other
6 units in the same condominium approve the amendment. The
7 acquisition of property by the association and material
8 alterations or substantial additions to such property or the
9 common elements by the association in accordance with s.
10 718.111(7) or s. 718.113, and amendments providing for the
11 transfer of use rights in limited common elements pursuant to
12 s. 718.106(2)(b) shall not be deemed to constitute a material
13 alteration or modification of the appurtenances to the units.
14 A declaration recorded after April 1, 1992, may not require
15 the approval of less than a majority of total voting interests
16 of the condominium for amendments under this subsection,
17 unless otherwise required by a governmental entity.

18 (5) If it appears that through a scrivener's error a
19 unit has not been designated as owning an appropriate
20 undivided share of the common elements or does not bear an
21 appropriate share of the common expenses or that all the
22 common expenses or interest in the common surplus or all of
23 the common elements in the condominium have not been
24 distributed in the declaration, so that the sum total of the
25 shares of common elements which have been distributed or the
26 sum total of the shares of the common expenses or ownership of
27 common surplus fails to equal 100 percent, or if it appears
28 that more than 100 percent of common elements or common
29 expenses or ownership of the common surplus have been
30 distributed, the error may be corrected by filing an amendment
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1 | to the declaration approved by the board of administration or
2 | a majority of the unit owners.

3 | (6) The common elements designated by the declaration
4 | may be enlarged by an amendment to the declaration. The
5 | amendment must describe the interest in the property and must
6 | submit the property to the terms of the declaration. The
7 | amendment must be approved and executed as provided in this
8 | section. The amendment divests the association of title to
9 | the land and vests title in the unit owners as part of the
10 | common elements, without naming them and without further
11 | conveyance, in the same proportion as the undivided shares in
12 | the common elements that are appurtenant to the unit owned by
13 | them.

14 | (7) The declarations, bylaws, and common elements of
15 | two or more independent condominiums of a single complex may
16 | be merged to form a single condominium, upon the approval of
17 | such voting interest of each condominium as is required by the
18 | declaration for modifying the appurtenances to the units or
19 | changing the proportion or percentages by which the owners of
20 | the parcel share the common expenses and own the common
21 | surplus; upon the approval of all record owners of liens; and
22 | upon the recording of new or amended articles of
23 | incorporation, declarations, and bylaws.

24 | (8) Unless otherwise provided in the declaration as
25 | originally recorded, no amendment to the declaration may
26 | permit timeshare estates to be created in any unit of the
27 | condominium, unless the record owner of each unit of the
28 | condominium and the record owners of liens on each unit of the
29 | condominium join in the execution of the amendment.

30 | (9) If there is an omission or error in a declaration,
31 | or in any other document required by law to establish the

1 condominium, the association may correct the error or omission
2 by an amendment to the declaration or to the other document
3 required to create a condominium in the manner provided in the
4 declaration to amend the declaration or, if none is provided,
5 by vote of a majority of the voting interests of the
6 condominium. The amendment is effective when passed and
7 approved and a certificate of amendment is executed and
8 recorded as provided in subsections (2) and (3). This
9 procedure for amendment cannot be used if such an amendment
10 would materially or adversely affect property rights of unit
11 owners, unless the affected unit owners consent in writing.
12 This subsection does not restrict the powers of the
13 association to otherwise amend the declaration, or other
14 documentation, but authorizes a simple process of amendment
15 requiring a lesser vote for the purpose of curing defects,
16 errors, or omissions when the property rights of unit owners
17 are not materially or adversely affected.

18 (10) If there is an omission or error in a declaration
19 of condominium, or any other document required to establish
20 the condominium, which omission or error would affect the
21 valid existence of the condominium, the circuit court has
22 jurisdiction to entertain a petition of one or more of the
23 unit owners in the condominium, or of the association, to
24 correct the error or omission, and the action may be a class
25 action. The court may require that one or more methods of
26 correcting the error or omission be submitted to the unit
27 owners to determine the most acceptable correction. All unit
28 owners, the association, and the mortgagees of a first
29 mortgage of record must be joined as parties to the action.
30 Service of process on unit owners may be by publication, but
31 the plaintiff must furnish every unit owner not personally

1 served with process with a copy of the petition and final
2 decree of the court by certified mail, return receipt
3 requested, at the unit owner's last known residence address.
4 If an action to determine whether the declaration or another
5 condominium document complies with the mandatory requirements
6 for the formation of a condominium is not brought within 3
7 years of the recording of the declaration, the declaration and
8 other documents shall be effective under this chapter to
9 create a condominium, as of the date the declaration was
10 recorded, whether or not the documents substantially comply
11 with the mandatory requirements of law. However, both before
12 and after the expiration of this 3-year period, the circuit
13 court has jurisdiction to entertain a petition permitted under
14 this subsection for the correction of the documentation, and
15 other methods of amendment may be utilized to correct the
16 errors or omissions at any time.

17 (11) Notwithstanding any provision to the contrary
18 contained in this section, any declaration recorded after
19 April 1, 1992, may not require the consent or joinder of some
20 or all mortgagees of units to or in amendments to the
21 declaration, unless the requirement is limited to amendments
22 materially affecting the rights or interests of the
23 mortgagees, or as otherwise required by the Federal National
24 Mortgage Association or the Federal Home Loan Mortgage
25 Corporation, and unless the requirement provides that such
26 consent may not be unreasonably withheld. It shall be
27 presumed that, except as to those matters described in
28 subsections (4) and (8), amendments to the declaration do not
29 materially affect the rights or interests of mortgagees. In
30 the event mortgagee consent is provided other than by properly
31 recorded joinder, such consent shall be evidenced by affidavit

1 of the association recorded in the public records of the
2 county where the declaration is recorded.

3 (12)(a) With respect to an existing multicondominium
4 association, any amendment to change the fractional or
5 percentage share of liability for the common expenses of the
6 association and ownership of the common surplus of the
7 association must be approved by at least a majority of the
8 total voting interests of each condominium operated by the
9 association unless the declarations of all condominiums
10 operated by the association uniformly require approval by a
11 greater percentage of the voting interests of each
12 condominium.

13 (b) Unless approval by a greater percentage of the
14 voting interests of an existing multicondominium association
15 is expressly required in the declaration of an existing
16 condominium, the declaration may be amended upon approval of
17 at least a majority of the total voting interests of each
18 condominium operated by the multicondominium association for
19 the purpose of:

20 1. Setting forth in the declaration the formula
21 currently utilized, but not previously stated in the
22 declaration, for determining the percentage or fractional
23 shares of liability for the common expenses of the
24 multicondominium association and ownership of the common
25 surplus of the multicondominium association.

26 2. Providing for the creation or enlargement of a
27 multicondominium association by the merger or consolidation of
28 two or more associations and changing the name of the
29 association, as appropriate.

30 (13)(a) Unless expressly stated in the amendment, any
31 amendment restricting unit owners' rights relating to the

1 rental of units, keeping of pets, or allocation of parking
2 spaces shall apply only to unit owners who purchase their unit
3 after the effective date of that amendment.

4 (b) Notwithstanding any other provision of law, or of
5 the declaration or bylaws, an amendment that expressly
6 deprives current unit owners of any part of their rights
7 specified in paragraph (a) must be approved by at least a
8 majority of the voting interests. A declaration or an
9 amendment to a declaration may require approval by a greater
10 than super majority vote.

11 Section 2. Section 718.5011, Florida Statutes, is
12 created to read:

13 718.5011 Ombudsman; appointment; oath; restrictions on
14 ombudsman and his or her employees.--

15 (1) There is created an Office of the Condominium
16 Ombudsman. The office is, for administrative purposes, within
17 the Division of Florida Land Sales, Condominiums, and Mobile
18 Homes but shall remain independent of the division. The office
19 shall be a separate budget entity, funded by the Division of
20 Florida Land Sales, Condominiums, and Mobile Homes Trust Fund,
21 and the ombudsman shall be the agency head for all purposes.
22 The Department of Business and Professional Regulation shall
23 provide administrative support and service to the ombudsman,
24 but the ombudsman shall not be subject to the control,
25 supervision, or direction of the department. The ombudsman
26 shall develop a budget pursuant to chapter 216 which the
27 department shall submit, without change, to the Governor along
28 with the budget of the department.

29 (2) The Governor shall appoint the ombudsman. The
30 ombudsman must be an attorney admitted to practice before the
31 Florida Supreme Court and shall serve at the pleasure of the

1 Governor. Vacancies in the office shall be filled in the same
2 manner as the original appointment. The ombudsman and
3 attorneys serving as staff shall take and subscribe to the
4 oath of office required of state officers by the State
5 Constitution. An officer or full-time employee of the
6 ombudsman's office may not actively engage in any other
7 business or profession; serve as the representative of any
8 political party or on the executive committee or other
9 governing body of any political party; serve as an executive,
10 officer, or employee of any political party, committee,
11 organization, or association; receive remuneration for
12 activities on behalf of any candidate for public office; or
13 engage in the solicitation of votes or other activities on
14 behalf of any candidate for public office. The ombudsman or
15 any employee of his or her office may not become a candidate
16 for election to public office unless he or she first resigns
17 from his or her office or employment.

18 Section 3. Section 718.5012, Florida Statutes, is
19 created to read:

20 718.5012 Ombudsman; powers and duties.--The ombudsman
21 shall have such powers as are necessary to carry out the
22 duties of his or her office, including, but not limited to,
23 the following specific powers:

24 (1) To have access to and use of all files and records
25 of the division and of all condominium associations, by
26 subpoena if necessary.

27 (2) To employ professional and clerical staff as
28 necessary for the efficient operation of the Office of the
29 Condominium Ombudsman, including experts and other technical
30 personnel for participation in contested proceedings before
31 the division when the best interests of the public will be

1 served, and with the approval of the Office of the Governor,
2 to adopt and administer a uniform personnel job classification
3 and pay plan for such employees, and to enter into contracts.

4 (3) To prepare and issue reports, recommendations, and
5 proposed orders to the division, the Governor, the Advisory
6 Council on Condominiums, the President of the Senate, the
7 Speaker of the House of Representatives, and the minority
8 leaders of the Senate and the House of Representatives on any
9 matter or subject within the jurisdiction of the division, and
10 to make such recommendations as he or she deems appropriate
11 for legislation relative to division procedures, rules,
12 jurisdiction, personnel, and functions.

13 (4) To act as liaison between the division and unit
14 owners, and to assist any unit owner in the preparation and
15 filing of a complaint to be investigated by the division. The
16 ombudsman shall establish procedures for the submittal and
17 processing of complaints, including target dates for
18 concluding any investigation by the ombudsman. The ombudsman
19 shall identify complaints that properly fall within the
20 jurisdiction of the division and require remedial action and
21 shall assist residents with promptly filing complaints with
22 the division. The ombudsman may recommend that the division
23 initiate enforcement proceedings. The department and the
24 ombudsman may submit findings of a criminal nature to the
25 state attorney's office and work with that office to bring
26 charges against the parties allegedly involved.

27 (5) To monitor, investigate, and review condominium
28 elections and meetings, which includes, but is not limited to:

29 (a) Providing information and evidence to the division
30 if a member of a condominium board attempts, engages in,
31 conspires to engage in, or willfully and knowingly benefits

1 from electoral fraud. If the information and evidence provided
2 is clear and convincing, the division shall order the member
3 removed from the board. The order of removal shall also
4 prohibit the person who is removed from running for election
5 to any office of a condominium board in the state for 4 years.
6 Any person who is so removed from office twice shall be barred
7 from serving on a condominium board in the state. Factual
8 findings forming the basis for an order of removal shall be
9 subject to judicial review only for abuse of discretion.

10 (b) Working with the division to adopt rules governing
11 proceedings to remove a board member for electoral fraud. The
12 division shall adopt rules governing such removal which shall,
13 at minimum, provide the accused board member with adequate
14 notice, opportunity to be heard, the right to confront and
15 cross-examine witnesses, the right to submit rebuttal
16 evidence, and the right to counsel. Before the division
17 develops a rule proposal on removal, the division and the
18 office shall meet and confer regarding issues to be addressed
19 in the rule. After the division develops a rule proposal on
20 removal, and before the proposal is finalized for publication
21 or other presentation to the public, the division shall
22 provide the office with a reasonable opportunity to review and
23 provide written comments on the proposal and consider any
24 comments the ombudsman provides.

25
26 Neither this subsection nor rules adopted to implement it
27 shall be construed to require the ombudsman to provide counsel
28 or witnesses, or other assistance, at public expense.

29 (6) To make recommendations to the division for
30 changes in rules and procedures for the filing, investigation,
31

1 and resolution of complaints filed by unit owners,
2 associations and managers.

3 Section 4. Section 718.5014, Florida Statutes, is
4 created to read:

5 718.5014 Ombudsman; location.--The ombudsman shall
6 maintain his or her principal office in Leon County on the
7 premises of the division or, if suitable space cannot be
8 provided there, at such other place convenient to the offices
9 of the division as will enable the ombudsman to expeditiously
10 carry out the duties and functions of his or her office. The
11 ombudsman may establish branch offices upon the concurrence of
12 the Joint Legislative Auditing Committee.

13 Section 5. Section 718.5015, Florida Statutes, is
14 created to read:

15 718.5015 Advisory council; membership functions.--

16 (1) There is created the Advisory Council on
17 Condominiums. The council shall consist of seven appointed
18 members. Two members shall be appointed by the President of
19 the Senate, two members shall be appointed by the Speaker of
20 the House of Representatives, and three members shall be
21 appointed by the Governor. At least one member that is
22 appointed by the Governor shall represent timeshare
23 condominiums. Members shall be appointed to 2-year terms;
24 however, one of the persons initially appointed by the
25 Governor, by the President of the Senate, and by the Speaker
26 of the House of Representatives, shall be appointed to a
27 1-year term. The director of the division shall serve as an ex
28 officio nonvoting member. The Legislature intends that the
29 persons appointed represent a cross-section of persons
30 interested in condominium issues. The council shall be located
31 within the division for administrative purposes. Members of

1 the council shall serve without compensation, but are entitled
2 to receive per diem and travel expenses pursuant to s. 112.061
3 while on official business.

4 (2) The functions of the advisory council shall be to:

5 (a) Receive, from the public, input regarding issues
6 of concern with respect to condominiums and recommendations
7 for changes in the condominium law. The issues that the
8 council shall consider include, but are not limited to, the
9 rights and responsibilities of the unit owners in relation to
10 the rights and responsibilities of the association.

11 (b) Review, evaluate, and advise the division
12 concerning revisions and adoption of rules affecting
13 condominiums.

14 (c) Recommend improvements, if needed, in the
15 education programs offered by the division.

16 (3) The council may elect a chair and vice chair and
17 such other officers as it may deem advisable. The council
18 shall meet at the call of its chair, at the request of a
19 majority of its membership, at the request of the division, or
20 at such times as it may prescribe. A majority of the members
21 of the council shall constitute a quorum. Council action may
22 be taken by vote of a majority of the voting members who are
23 present at a meeting where there is a quorum.

24 Section 6. Section 718.504, Florida Statutes, is
25 amended to read:

26 718.504 Prospectus or offering circular; "Frequently
27 Asked Questions and Answers".--Every developer of a
28 residential condominium which contains more than 20
29 residential units, or which is part of a group of residential
30 condominiums which will be served by property to be used in
31 common by unit owners of more than 20 residential units, shall

1 | prepare a prospectus or offering circular and file it with the
2 | Division of Florida Land Sales, Condominiums, and Mobile Homes
3 | prior to entering into an enforceable contract of purchase and
4 | sale of any unit or lease of a unit for more than 5 years and
5 | shall furnish a copy of the prospectus or offering circular to
6 | each buyer. In addition to the prospectus or offering
7 | circular, any prospective ~~each~~ buyer from the developer or
8 | current owner shall be furnished a separate document ~~page~~
9 | entitled "Frequently Asked Questions and Answers," which shall
10 | be in accordance with a format approved by the division and a
11 | copy of the financial information required by s. 718.111.
12 | This document ~~page~~ shall, in readable language, inform
13 | prospective purchasers regarding their voting rights and unit
14 | use restrictions, including restrictions on the leasing of a
15 | unit; shall indicate whether and in what amount the unit
16 | owners or the association is obligated to pay rent or land use
17 | fees for recreational or other commonly used facilities; shall
18 | contain a statement identifying that amount of assessment
19 | which, pursuant to the budget, would be levied upon each unit
20 | type, exclusive of any special assessments, and which shall
21 | further identify the basis upon which assessments are levied,
22 | whether monthly, quarterly, or otherwise; shall state and
23 | identify any court cases in which the association is currently
24 | a party of record in which the association may face liability
25 | of \$25,000 or more in excess of \$100,000; and which shall
26 | further state whether membership in a recreational facilities
27 | association is mandatory, and if so, shall identify the fees
28 | currently charged per unit type. The division shall by rule
29 | require such other disclosure as in its judgment will assist
30 | prospective purchasers. The prospectus or offering circular
31 | may include more than one condominium, although not all such

1 units are being offered for sale as of the date of the
2 prospectus or offering circular. The prospectus or offering
3 circular must contain the following information:

4 (1) The front cover or the first page must contain
5 only:

6 (a) The name of the condominium.

7 (b) The following statements in conspicuous type:

8 1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS
9 IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM
10 UNIT.

11 2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN
12 NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL
13 REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND
14 SALES MATERIALS.

15 3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS
16 CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER
17 TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR
18 CORRECT REPRESENTATIONS.

19 (2) Summary: The next page must contain all
20 statements required to be in conspicuous type in the
21 prospectus or offering circular.

22 (3) A separate index of the contents and exhibits of
23 the prospectus.

24 (4) Beginning on the first page of the text (not
25 including the summary and index), a description of the
26 condominium, including, but not limited to, the following
27 information:

28 (a) Its name and location.

29 (b) A description of the condominium property,
30 including, without limitation:

31

1 1. The number of buildings, the number of units in
2 each building, the number of bathrooms and bedrooms in each
3 unit, and the total number of units, if the condominium is not
4 a phase condominium, or the maximum number of buildings that
5 may be contained within the condominium, the minimum and
6 maximum numbers of units in each building, the minimum and
7 maximum numbers of bathrooms and bedrooms that may be
8 contained in each unit, and the maximum number of units that
9 may be contained within the condominium, if the condominium is
10 a phase condominium.

11 2. The page in the condominium documents where a copy
12 of the plot plan and survey of the condominium is located.

13 3. The estimated latest date of completion of
14 constructing, finishing, and equipping. In lieu of a date,
15 the description shall include a statement that the estimated
16 date of completion of the condominium is in the purchase
17 agreement and a reference to the article or paragraph
18 containing that information.

19 (c) The maximum number of units that will use
20 facilities in common with the condominium. If the maximum
21 number of units will vary, a description of the basis for
22 variation and the minimum amount of dollars per unit to be
23 spent for additional recreational facilities or enlargement of
24 such facilities. If the addition or enlargement of facilities
25 will result in a material increase of a unit owner's
26 maintenance expense or rental expense, if any, the maximum
27 increase and limitations thereon shall be stated.

28 (5)(a) A statement in conspicuous type describing
29 whether the condominium is created and being sold as fee
30 simple interests or as leasehold interests. If the condominium
31

1 is created or being sold on a leasehold, the location of the
2 lease in the disclosure materials shall be stated.

3 (b) If timeshare estates are or may be created with
4 respect to any unit in the condominium, a statement in
5 conspicuous type stating that timeshare estates are created
6 and being sold in units in the condominium.

7 (6) A description of the recreational and other
8 commonly used facilities that will be used only by unit owners
9 of the condominium, including, but not limited to, the
10 following:

11 (a) Each room and its intended purposes, location,
12 approximate floor area, and capacity in numbers of people.

13 (b) Each swimming pool, as to its general location,
14 approximate size and depths, approximate deck size and
15 capacity, and whether heated.

16 (c) Additional facilities, as to the number of each
17 facility, its approximate location, approximate size, and
18 approximate capacity.

19 (d) A general description of the items of personal
20 property and the approximate number of each item of personal
21 property that the developer is committing to furnish for each
22 room or other facility or, in the alternative, a
23 representation as to the minimum amount of expenditure that
24 will be made to purchase the personal property for the
25 facility.

26 (e) The estimated date when each room or other
27 facility will be available for use by the unit owners.

28 (f)1. An identification of each room or other facility
29 to be used by unit owners that will not be owned by the unit
30 owners or the association;

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1 2. A reference to the location in the disclosure
2 materials of the lease or other agreements providing for the
3 use of those facilities; and

4 3. A description of the terms of the lease or other
5 agreements, including the length of the term; the rent
6 payable, directly or indirectly, by each unit owner, and the
7 total rent payable to the lessor, stated in monthly and annual
8 amounts for the entire term of the lease; and a description of
9 any option to purchase the property leased under any such
10 lease, including the time the option may be exercised, the
11 purchase price or how it is to be determined, the manner of
12 payment, and whether the option may be exercised for a unit
13 owner's share or only as to the entire leased property.

14 (g) A statement as to whether the developer may
15 provide additional facilities not described above; their
16 general locations and types; improvements or changes that may
17 be made; the approximate dollar amount to be expended; and the
18 maximum additional common expense or cost to the individual
19 unit owners that may be charged during the first annual period
20 of operation of the modified or added facilities.

21
22 Descriptions as to locations, areas, capacities, numbers,
23 volumes, or sizes may be stated as approximations or minimums.

24 (7) A description of the recreational and other
25 facilities that will be used in common with other
26 condominiums, community associations, or planned developments
27 which require the payment of the maintenance and expenses of
28 such facilities, either directly or indirectly, by the unit
29 owners. The description shall include, but not be limited to,
30 the following:

31 (a) Each building and facility committed to be built.

1 (b) Facilities not committed to be built except under
2 certain conditions, and a statement of those conditions or
3 contingencies.

4 (c) As to each facility committed to be built, or
5 which will be committed to be built upon the happening of one
6 of the conditions in paragraph (b), a statement of whether it
7 will be owned by the unit owners having the use thereof or by
8 an association or other entity which will be controlled by
9 them, or others, and the location in the exhibits of the lease
10 or other document providing for use of those facilities.

11 (d) The year in which each facility will be available
12 for use by the unit owners or, in the alternative, the maximum
13 number of unit owners in the project at the time each of all
14 of the facilities is committed to be completed.

15 (e) A general description of the items of personal
16 property, and the approximate number of each item of personal
17 property, that the developer is committing to furnish for each
18 room or other facility or, in the alternative, a
19 representation as to the minimum amount of expenditure that
20 will be made to purchase the personal property for the
21 facility.

22 (f) If there are leases, a description thereof,
23 including the length of the term, the rent payable, and a
24 description of any option to purchase.

25
26 Descriptions shall include location, areas, capacities,
27 numbers, volumes, or sizes and may be stated as approximations
28 or minimums.

29 (8) Recreation lease or associated club membership:

30 (a) If any recreational facilities or other facilities
31 offered by the developer and available to, or to be used by,

1 unit owners are to be leased or have club membership
2 associated, the following statement in conspicuous type shall
3 be included: THERE IS A RECREATIONAL FACILITIES LEASE
4 ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB
5 MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM. There shall be a
6 reference to the location in the disclosure materials where
7 the recreation lease or club membership is described in
8 detail.

9 (b) If it is mandatory that unit owners pay a fee,
10 rent, dues, or other charges under a recreational facilities
11 lease or club membership for the use of facilities, there
12 shall be in conspicuous type the applicable statement:

13 1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS
14 MANDATORY FOR UNIT OWNERS; or

15 2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF
16 OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES
17 LEASE; or

18 3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE
19 COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP,
20 REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES
21 LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

22 4. A similar statement of the nature of the
23 organization or the manner in which the use rights are
24 created, and that unit owners are required to pay.

25
26 Immediately following the applicable statement, the location
27 in the disclosure materials where the development is described
28 in detail shall be stated.

29 (c) If the developer, or any other person other than
30 the unit owners and other persons having use rights in the
31 facilities, reserves, or is entitled to receive, any rent,

1 fee, or other payment for the use of the facilities, then
2 there shall be the following statement in conspicuous type:
3 THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND
4 USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES.
5 Immediately following this statement, the location in the
6 disclosure materials where the rent or land use fees are
7 described in detail shall be stated.

8 (d) If, in any recreation format, whether leasehold,
9 club, or other, any person other than the association has the
10 right to a lien on the units to secure the payment of
11 assessments, rent, or other exactions, there shall appear a
12 statement in conspicuous type in substantially the following
13 form:

14 1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO
15 SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE
16 RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE
17 PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

18 2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO
19 SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING
20 DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE
21 RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S
22 FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF
23 THE LIEN.

24
25 Immediately following the applicable statement, the location
26 in the disclosure materials where the lien or lien right is
27 described in detail shall be stated.

28 (9) If the developer or any other person has the right
29 to increase or add to the recreational facilities at any time
30 after the establishment of the condominium whose unit owners
31 have use rights therein, without the consent of the unit

1 owners or associations being required, there shall appear a
2 statement in conspicuous type in substantially the following
3 form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED
4 WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S).
5 Immediately following this statement, the location in the
6 disclosure materials where such reserved rights are described
7 shall be stated.

8 (10) A statement of whether the developer's plan
9 includes a program of leasing units rather than selling them,
10 or leasing units and selling them subject to such leases. If
11 so, there shall be a description of the plan, including the
12 number and identification of the units and the provisions and
13 term of the proposed leases, and a statement in boldfaced type
14 that: **THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.**

15 (11) The arrangements for management of the
16 association and maintenance and operation of the condominium
17 property and of other property that will serve the unit owners
18 of the condominium property, and a description of the
19 management contract and all other contracts for these purposes
20 having a term in excess of 1 year, including the following:

- 21 (a) The names of contracting parties.
22 (b) The term of the contract.
23 (c) The nature of the services included.
24 (d) The compensation, stated on a monthly and annual
25 basis, and provisions for increases in the compensation.
26 (e) A reference to the volumes and pages of the
27 condominium documents and of the exhibits containing copies of
28 such contracts.

29
30 Copies of all described contracts shall be attached as
31 exhibits. If there is a contract for the management of the

1 condominium property, then a statement in conspicuous type in
2 substantially the following form shall appear, identifying the
3 proposed or existing contract manager: THERE IS (IS TO BE) A
4 CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH
5 (NAME OF THE CONTRACT MANAGER). Immediately following this
6 statement, the location in the disclosure materials of the
7 contract for management of the condominium property shall be
8 stated.

9 (12) If the developer or any other person or persons
10 other than the unit owners has the right to retain control of
11 the board of administration of the association for a period of
12 time which can exceed 1 year after the closing of the sale of
13 a majority of the units in that condominium to persons other
14 than successors or alternate developers, then a statement in
15 conspicuous type in substantially the following form shall be
16 included: THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO
17 RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE
18 UNITS HAVE BEEN SOLD. Immediately following this statement,
19 the location in the disclosure materials where this right to
20 control is described in detail shall be stated.

21 (13) If there are any restrictions upon the sale,
22 transfer, conveyance, or leasing of a unit, then a statement
23 in conspicuous type in substantially the following form shall
24 be included: THE SALE, LEASE, OR TRANSFER OF UNITS IS
25 RESTRICTED OR CONTROLLED. Immediately following this
26 statement, the location in the disclosure materials where the
27 restriction, limitation, or control on the sale, lease, or
28 transfer of units is described in detail shall be stated.

29 (14) If the condominium is part of a phase project,
30 the following information shall be stated:
31

1 (a) A statement in conspicuous type in substantially
2 the following form: THIS IS A PHASE CONDOMINIUM. ADDITIONAL
3 LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM. Immediately
4 following this statement, the location in the disclosure
5 materials where the phasing is described shall be stated.

6 (b) A summary of the provisions of the declaration
7 which provide for the phasing.

8 (c) A statement as to whether or not residential
9 buildings and units which are added to the condominium may be
10 substantially different from the residential buildings and
11 units originally in the condominium. If the added residential
12 buildings and units may be substantially different, there
13 shall be a general description of the extent to which such
14 added residential buildings and units may differ, and a
15 statement in conspicuous type in substantially the following
16 form shall be included: BUILDINGS AND UNITS WHICH ARE ADDED TO
17 THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER
18 BUILDINGS AND UNITS IN THE CONDOMINIUM. Immediately following
19 this statement, the location in the disclosure materials where
20 the extent to which added residential buildings and units may
21 substantially differ is described shall be stated.

22 (d) A statement of the maximum number of buildings
23 containing units, the maximum and minimum numbers of units in
24 each building, the maximum number of units, and the minimum
25 and maximum square footage of the units that may be contained
26 within each parcel of land which may be added to the
27 condominium.

28 (15) If a condominium created on or after July 1,
29 2000, is or may become part of a multicondominium, the
30 following information must be provided:
31

1 (a) A statement in conspicuous type in substantially
2 the following form: THIS CONDOMINIUM IS (MAY BE) PART OF A
3 MULTICONDOMINIUM DEVELOPMENT IN WHICH OTHER CONDOMINIUMS WILL
4 (MAY) BE OPERATED BY THE SAME ASSOCIATION. Immediately
5 following this statement, the location in the prospectus or
6 offering circular and its exhibits where the multicondominium
7 aspects of the offering are described must be stated.

8 (b) A summary of the provisions in the declaration,
9 articles of incorporation, and bylaws which establish and
10 provide for the operation of the multicondominium, including a
11 statement as to whether unit owners in the condominium will
12 have the right to use recreational or other facilities located
13 or planned to be located in other condominiums operated by the
14 same association, and the manner of sharing the common
15 expenses related to such facilities.

16 (c) A statement of the minimum and maximum number of
17 condominiums, and the minimum and maximum number of units in
18 each of those condominiums, which will or may be operated by
19 the association, and the latest date by which the exact number
20 will be finally determined.

21 (d) A statement as to whether any of the condominiums
22 in the multicondominium may include units intended to be used
23 for nonresidential purposes and the purpose or purposes
24 permitted for such use.

25 (e) A general description of the location and
26 approximate acreage of any land on which any additional
27 condominiums to be operated by the association may be located.

28 (16) If the condominium is created by conversion of
29 existing improvements, the following information shall be
30 stated:

31 (a) The information required by s. 718.616.

1 (b) A caveat that there are no express warranties
2 unless they are stated in writing by the developer.

3 (17) A summary of the restrictions, if any, to be
4 imposed on units concerning the use of any of the condominium
5 property, including statements as to whether there are
6 restrictions upon children and pets, and reference to the
7 volumes and pages of the condominium documents where such
8 restrictions are found, or if such restrictions are contained
9 elsewhere, then a copy of the documents containing the
10 restrictions shall be attached as an exhibit.

11 (18) If there is any land that is offered by the
12 developer for use by the unit owners and that is neither owned
13 by them nor leased to them, the association, or any entity
14 controlled by unit owners and other persons having the use
15 rights to such land, a statement shall be made as to how such
16 land will serve the condominium. If any part of such land
17 will serve the condominium, the statement shall describe the
18 land and the nature and term of service, and the declaration
19 or other instrument creating such servitude shall be included
20 as an exhibit.

21 (19) The manner in which utility and other services,
22 including, but not limited to, sewage and waste disposal,
23 water supply, and storm drainage, will be provided and the
24 person or entity furnishing them.

25 (20) An explanation of the manner in which the
26 apportionment of common expenses and ownership of the common
27 elements has been determined.

28 (21) An estimated operating budget for the condominium
29 and the association, and a schedule of the unit owner's
30 expenses shall be attached as an exhibit and shall contain the
31 following information:

1 (a) The estimated monthly and annual expenses of the
2 condominium and the association that are collected from unit
3 owners by assessments.

4 (b) The estimated monthly and annual expenses of each
5 unit owner for a unit, other than common expenses paid by all
6 unit owners, payable by the unit owner to persons or entities
7 other than the association, as well as to the association,
8 including fees assessed pursuant to s. 718.113(1) for
9 maintenance of limited common elements where such costs are
10 shared only by those entitled to use the limited common
11 element, and the total estimated monthly and annual expense.
12 There may be excluded from this estimate expenses which are
13 not provided for or contemplated by the condominium documents,
14 including, but not limited to, the costs of private telephone;
15 maintenance of the interior of condominium units, which is not
16 the obligation of the association; maid or janitorial services
17 privately contracted for by the unit owners; utility bills
18 billed directly to each unit owner for utility services to his
19 or her unit; insurance premiums other than those incurred for
20 policies obtained by the condominium; and similar personal
21 expenses of the unit owner. A unit owner's estimated payments
22 for assessments shall also be stated in the estimated amounts
23 for the times when they will be due.

24 (c) The estimated items of expenses of the condominium
25 and the association, except as excluded under paragraph (b),
26 including, but not limited to, the following items, which
27 shall be stated either as an association expense collectible
28 by assessments or as unit owners' expenses payable to persons
29 other than the association:

- 30 1. Expenses for the association and condominium:
31 a. Administration of the association.

- 1 b. Management fees.
- 2 c. Maintenance.
- 3 d. Rent for recreational and other commonly used
- 4 facilities.
- 5 e. Taxes upon association property.
- 6 f. Taxes upon leased areas.
- 7 g. Insurance.
- 8 h. Security provisions.
- 9 i. Other expenses.
- 10 j. Operating capital.
- 11 k. Reserves.
- 12 l. Fees payable to the division.
- 13 2. Expenses for a unit owner:
- 14 a. Rent for the unit, if subject to a lease.
- 15 b. Rent payable by the unit owner directly to the
- 16 lessor or agent under any recreational lease or lease for the
- 17 use of commonly used facilities, which use and payment is a
- 18 mandatory condition of ownership and is not included in the
- 19 common expense or assessments for common maintenance paid by
- 20 the unit owners to the association.
- 21 (d) The estimated amounts shall be stated for a period
- 22 of at least 12 months and may distinguish between the period
- 23 prior to the time unit owners other than the developer elect a
- 24 majority of the board of administration and the period after
- 25 that date.
- 26 (22) A schedule of estimated closing expenses to be
- 27 paid by a buyer or lessee of a unit and a statement of whether
- 28 title opinion or title insurance policy is available to the
- 29 buyer and, if so, at whose expense.
- 30 (23) The identity of the developer and the chief
- 31 operating officer or principal directing the creation and sale

1 of the condominium and a statement of its and his or her
2 experience in this field.

3 (24) Copies of the following, to the extent they are
4 applicable, shall be included as exhibits:

5 (a) The declaration of condominium, or the proposed
6 declaration if the declaration has not been recorded.

7 (b) The articles of incorporation creating the
8 association.

9 (c) The bylaws of the association.

10 (d) The ground lease or other underlying lease of the
11 condominium.

12 (e) The management agreement and all maintenance and
13 other contracts for management of the association and
14 operation of the condominium and facilities used by the unit
15 owners having a service term in excess of 1 year.

16 (f) The estimated operating budget for the condominium
17 and the required schedule of unit owners' expenses.

18 (g) A copy of the floor plan of the unit and the plot
19 plan showing the location of the residential buildings and the
20 recreation and other common areas.

21 (h) The lease of recreational and other facilities
22 that will be used only by unit owners of the subject
23 condominium.

24 (i) The lease of facilities used by owners and others.

25 (j) The form of unit lease, if the offer is of a
26 leasehold.

27 (k) A declaration of servitude of properties serving
28 the condominium but not owned by unit owners or leased to them
29 or the association.

30
31

1 (1) The statement of condition of the existing
2 building or buildings, if the offering is of units in an
3 operation being converted to condominium ownership.

4 (m) The statement of inspection for termite damage and
5 treatment of the existing improvements, if the condominium is
6 a conversion.

7 (n) The form of agreement for sale or lease of units.

8 (o) A copy of the agreement for escrow of payments
9 made to the developer prior to closing.

10 (p) A copy of the documents containing any
11 restrictions on use of the property required by subsection
12 (17).

13 (25) Any prospectus or offering circular complying,
14 prior to the effective date of this act, with the provisions
15 of former ss. 711.69 and 711.802 may continue to be used
16 without amendment or may be amended to comply with the
17 provisions of this chapter.

18 (26) A brief narrative description of the location and
19 effect of all existing and intended easements located or to be
20 located on the condominium property other than those described
21 in the declaration.

22 (27) If the developer is required by state or local
23 authorities to obtain acceptance or approval of any dock or
24 marina facilities intended to serve the condominium, a copy of
25 any such acceptance or approval acquired by the time of filing
26 with the division under s. 718.502(1) or a statement that such
27 acceptance or approval has not been acquired or received.

28 (28) Evidence demonstrating that the developer has an
29 ownership, leasehold, or contractual interest in the land upon
30 which the condominium is to be developed.

31

1 Section 7. The Department of Business and Professional
2 Regulation may continue to prosecute any existing judicial or
3 administrative legal proceedings that are in existence on the
4 effective date of this act.

5 Section 8. This act shall take effect upon becoming a
6 law.

7
8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill 2498

11 The committee substitute deletes the provisions that provided
12 for: new definitions; eligibility restrictions on association
13 members; increasing the percentage of mortgage debt used as a
14 limit on liability in certain foreclosure actions; all
15 provisions relating to liens; criminal penalties for willful
16 and malicious imposition, enforcement or overvaluation of a
17 lien; requiring a super majority board approval for excess
18 funds from a special assessment to be credited against future
19 assessment; requiring board actions imposing financial
20 hardships to be ratified by a majority of all voting
21 interests; requiring additional disclosures for contract
22 validity or enforceability; providing that certain business
23 entities may be contracted by the association to provide
24 certain services if approved by a majority of all unit owners;
25 authorization to conduct criminal background checks of
26 potential unit owners and tenants; mandatory training for
27 certain board members.

28 It requires that at least a majority rather than three fourths
29 of the voting interests are needed to amend the declaration of
30 condominium relating to rental of units, keeping of pets, or
31 allocation of parking spaces.

It provides that the Governor shall appoint the Condominium
Ombudsman rather than the Joint Legislative Auditing Committee
and the Governor shall approve the administering of a uniform
personnel job classification and pay plan for the
administrative staff of the Office of the Ombudsman.

It clarifies that the Director of the Division of Florida Land
Sales, Condominiums, and Mobile Homes shall be an ex officio
nonvoting member of the Advisory Council on Condominiums.