



360622

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2010	.	
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	.	
	.	

The Committee on Regulated Industries (Wise) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (16) of section 718.103, Florida Statutes, is amended to read:

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

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

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy; ~~or~~



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13 ~~does it include~~

14 (b) A cooperative association that ~~which~~ creates a
15 condominium by conversion of an existing residential cooperative
16 after control of the association has been transferred to the
17 unit owners if, following the conversion, the unit owners will
18 be the same persons who were unit owners of the cooperative and
19 no units are offered for sale or lease to the public as part of
20 the plan of conversion;~~-~~

21 (c) A bulk assignee or bulk buyer as defined in s. 718.703;
22 or

23 (d) A state, county, or municipal entity ~~is not a developer~~
24 ~~for any purposes under this act when it is~~ acting as a lessor
25 and not otherwise named as a developer in the declaration of
26 condominium association.

27 Section 2. Part VII of chapter 718, Florida Statutes,
28 consisting of sections 718.701, 718.702, 718.703, 718.704,
29 718.705, 718.706, 718.707, and 718.708, is created to read:

30 PART VII

31 DISTRESSED CONDOMINIUM RELIEF

32 718.701 Short title.—This part may be cited as the
33 "Distressed Condominium Relief Act."

34 718.702 Legislative intent.—

35 (1) The Legislature acknowledges the massive downturn in
36 the condominium market which has transpired throughout the state
37 and the impact of such downturn on developers, lenders, unit
38 owners, and condominium associations. Numerous condominium
39 projects have either failed or are in the process of failing,
40 whereby the condominium has a small percentage of third-party
41 unit owners as compared to the unsold inventory of units. As a



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42 result of the inability to find purchasers for this inventory of
43 units, which results in part from the devaluing of real estate
44 in this state, developers are unable to satisfy the requirements
45 of their lenders, leading to defaults on mortgages.
46 Consequently, lenders are faced with the task of finding a
47 solution to the problem in order to be paid for their
48 investments.

49 (2) The Legislature recognizes that all of the factors
50 listed in this section lead to condominiums becoming distressed,
51 resulting in detriment to the unit owners and the condominium
52 association on account of the resulting shortage of assessment
53 moneys available to support the financial requirements for
54 proper maintenance of the condominium. Such shortage and the
55 resulting lack of proper maintenance further erode property
56 values. The Legislature finds that individuals and entities
57 within Florida and in other states have expressed interest in
58 purchasing unsold inventory in one or more condominium projects,
59 but are reticent to do so because of the potential of
60 accompanying liabilities inherited from the original developer,
61 which are potentially by definition imputed to the successor
62 purchaser, including a foreclosing mortgagee. This results in
63 the potential purchaser having unknown and unquantifiable risks,
64 and potential successor purchasers are unwilling to accept such
65 risks. The result is that condominium projects stagnate, leaving
66 all parties involved at an impasse without the ability to find a
67 solution.

68 (3) The Legislature finds and declares that it is the
69 public policy of this state to protect the interests of
70 developers, lenders, unit owners, and condominium associations



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71 with regard to distressed condominiums, and that there is a need
72 for relief from certain provisions of the Florida Condominium
73 Act geared toward enabling economic opportunities within these
74 condominiums for successor purchasers, including foreclosing
75 mortgagees, while at the same time clarifying the ambiguity in
76 the law. Such relief would benefit existing unit owners and
77 condominium associations. The Legislature further finds and
78 declares that this situation cannot be open-ended without
79 potentially prejudicing the rights of unit owners and
80 condominium associations, and thereby declares that the
81 provisions of this part shall be used by purchasers of
82 condominium inventory for a specific and defined period.

83 718.703 Definitions.—As used in this part, the term:

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

85 (a) Acquires more than seven condominium units in a single
86 condominium as set forth in s. 718.707; and

87 (b) Receives an assignment of all or substantially all of
88 the rights of the developer as are set forth in the declaration
89 of condominium or in this chapter by a written instrument
90 recorded as an exhibit to the deed or as a separate instrument
91 in the public records of the county in which the condominium is
92 located.

93 (2) "Bulk buyer" means a person who acquires more than
94 seven condominium units in a single condominium as set forth in
95 s. 718.707 but who does not receive an assignment of any
96 developer rights other than, at the bulk buyer's option, the
97 right to conduct sales, leasing, and marketing activities within
98 the condominium; the right to be exempt from the payment of
99 working capital contributions to the condominium association



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100 arising out of or in connection with the bulk buyer's
101 acquisition of a bulk number of units; and the right to be
102 exempt from any rights of first refusal which may be held by the
103 condominium association and would otherwise be applicable to
104 subsequent transfers of title from the bulk buyer to any third-
105 party purchaser concerning one or more units.

106 718.704 Assignment of developer rights to and assumption of
107 developer rights by bulk assignee; bulk buyer.-

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

111 (a) Warranties of a developer under s. 718.203(1) or s.
112 718.618, except for design, construction, development, or repair
113 work performed by or on behalf of such bulk assignee.

114 (b) The obligation to:

115 1. Fund converter reserves under s. 718.618 for a unit that
116 was not acquired by the bulk assignee; or

117 2. Provide converter warranties on any portion of the
118 condominium property except as may be expressly provided by the
119 bulk assignee in the contract for purchase and sale executed
120 with a purchaser and pertaining to any design, construction,
121 development, or repair work performed by or on behalf of the
122 bulk assignee.

123 (c) The requirement to provide the association with a
124 cumulative audit of the association's finances from the date of
125 formation of the condominium association as required by s.
126 718.301. However, the bulk assignee shall provide an audit for
127 the period for which the bulk assignee elects a majority of the
128 members of the board of administration.



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129 (d) Any liability arising out of or in connection with
130 actions taken by the board of administration or the developer-
131 appointed directors before the bulk assignee elects a majority
132 of the members of the board of administration.

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

137
138 Further, the bulk assignee is responsible for delivering
139 documents and materials in accordance with s. 718.705(3). A bulk
140 assignee may expressly assume some or all of the obligations of
141 the developer described in paragraphs (a)-(e).

142 (2) A bulk assignee receiving the assignment of the rights
143 of the developer to guarantee the level of assessments and fund
144 budgetary deficits pursuant to s. 718.116 shall be deemed to
145 have assumed and is liable for all obligations of the developer
146 with respect to such guarantee, including any applicable funding
147 of reserves to the extent required by law, for as long as the
148 guarantee remains in effect. A bulk assignee not receiving an
149 assignment of the right of the developer to guarantee the level
150 of assessments and fund budgetary deficits pursuant to s.

151 718.116 or a bulk buyer is not deemed to have assumed and is not
152 liable for the obligations of the developer with respect to such
153 guarantee, but is responsible for payment of assessments in the
154 same manner as all other owners of condominium units.

155 (3) A bulk buyer is liable for the duties and
156 responsibilities of the developer under the declaration and this
157 chapter only to the extent provided in this part, together with



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158 any other duties or responsibilities of the developer expressly
159 assumed in writing by the bulk buyer.

160 (4) An acquirer of condominium units is not considered a
161 bulk assignee or a bulk buyer if the transfer to such acquirer
162 was made prior to the effective date of this Distressed
163 Condominium Relief Act or was made with the intent to hinder,
164 delay, or defraud any purchaser, unit owner, or the association,
165 or if the acquirer is a person who would constitute an insider
166 under s. 726.102(7).

167 (5) An assignment of developer rights to a bulk assignee
168 may be made by the developer, a previous bulk assignee, or a
169 court of competent jurisdiction acting on behalf of the
170 developer or the previous bulk assignee. At any particular time,
171 there may be no more than one bulk assignee within a
172 condominium, but there may be more than one bulk buyer. If more
173 than one acquirer of condominium units in the same condominium
174 receives an assignment of developer rights from the same person,
175 the bulk assignee is the acquirer whose instrument of assignment
176 is recorded first in applicable public records.

177 718.705 Board of administration; transfer of control.—

178 (1) For purposes of determining the timing for transfer of
179 control of the board of administration of the association to
180 unit owners other than the developer under s. 718.301(1)(a) and
181 (b), if a bulk assignee is entitled to elect a majority of the
182 members of the board, any condominium unit acquired by the bulk
183 assignee shall not be deemed to be conveyed to a purchaser, or
184 to be owned by an owner other than the developer, until such
185 condominium unit is conveyed to an owner who is not a bulk
186 assignee.



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187 (2) Unless control of the board of administration of the
188 association has already been relinquished pursuant to s.
189 718.301(1), the bulk assignee is obligated to relinquish control
190 of the association in accordance with s. 718.301(1) or (2) and
191 this part as if the bulk assignee were the developer.

192 (3) When a bulk assignee relinquishes control of the board
193 of administration, the bulk assignee shall deliver all of those
194 items required by s. 718.301(4). However, the bulk assignee is
195 not required to deliver items and documents not in the
196 possession of the bulk assignee during the period during which
197 the bulk assignee was entitled to elect not less than a majority
198 of the members of the board of administration. In conjunction
199 with the acquisition of condominium units, a bulk assignee shall
200 undertake a good faith effort to obtain the documents and
201 materials required to be provided to the association pursuant to
202 s. 718.301(4). To the extent the bulk assignee is not able to
203 obtain all of such documents and materials, the bulk assignee
204 shall certify in writing to the association the names or
205 descriptions of the documents and materials that were not
206 obtainable by the bulk assignee. Delivery of the certificate
207 relieves the bulk assignee of responsibility for the delivery of
208 the documents and materials referenced in the certificate as
209 otherwise required under ss. 718.112 and 718.301 and this part.
210 The responsibility of the bulk assignee for the audit required
211 by s. 718.301(4) shall commence as of the date on which the bulk
212 assignee elected a majority of the members of the board of
213 administration.

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



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216 prevail.

217 (5) Failure of a bulk assignee or bulk buyer to
218 substantially comply with all the requirements contained in this
219 part shall result in the loss of all protections or exemptions
220 provided under this part.

221 718.706 Specific provisions pertaining to offering of units
222 by a bulk assignee or bulk buyer.-

223 (1) Before offering any units for sale or for lease for a
224 term exceeding 5 years, a bulk assignee or a bulk buyer shall
225 file the following documents with the division and provide such
226 documents to a prospective purchaser or lessee:

227 (a) An updated prospectus or offering circular, or a
228 supplement to the prospectus or offering circular, filed by the
229 creating developer prepared in accordance with s. 718.504, which
230 shall include the form of contract for sale and for lease in
231 compliance with s. 718.503(1)(a);

232 (b) An updated Frequently Asked Questions and Answers
233 sheet;

234 (c) The executed escrow agreement if required under s.
235 718.202; and

236 (d) The financial information required by s. 718.111(13).
237 However, if a financial information report does not exist for
238 the fiscal year before acquisition of title by the bulk assignee
239 or bulk buyer, or accounting records cannot be obtained in good
240 faith by the bulk assignee or the bulk buyer which would permit
241 preparation of the required financial information report, the
242 bulk assignee or bulk buyer is excused from the requirement of
243 this paragraph. However, the bulk assignee or bulk buyer must
244 include in the purchase contract the following statement in



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245 conspicuous type:

246

247 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER SECTION
248 718.111(13), FLORIDA STATUTES, FOR THE IMMEDIATELY PRECEDING
249 FISCAL YEAR OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE
250 CREATED BY THE SELLER AS A RESULT OF INSUFFICIENT ACCOUNTING
251 RECORDS OF THE ASSOCIATION.

252

253 (2) Before offering any units for sale or for lease for a
254 term exceeding 5 years, a bulk assignee shall file with the
255 division and provide to a prospective purchaser a disclosure
256 statement that must include, but is not limited to:

257 (a) A description of any rights of the developer which have
258 been assigned to the bulk assignee;

259 (b) The following statement in conspicuous type:

260

261 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER
262 UNDER SECTION 718.203(1) OR SECTION 718.618, FLORIDA STATUTES,
263 AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR
264 REPAIR WORK PERFORMED BY OR ON BEHALF OF SELLER.

265

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

268

269 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO
270 PROVIDE CONVERTER WARRANTIES UNDER SECTION 718.618, FLORIDA
271 STATUTES, ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS
272 MAY BE EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR
273 PURCHASE AND SALE EXECUTED BY THE SELLER AND THE DEVELOPER AND



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274 PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR
275 WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

276
277 (3) While in control of the board of administration of the
278 association, a bulk assignee may not authorize, on behalf of the
279 association:

280 (a) The waiver of reserves or the reduction of funding of
281 the reserves in accordance with s. 718.112(2)(f)2., unless
282 approved by a majority of the voting interests not controlled by
283 the developer, bulk assignee, and bulk buyer; or

284 (b) The use of reserve expenditures for other purposes in
285 accordance with s. 718.112(2)(f)3., unless approved by a
286 majority of the voting interests not controlled by the
287 developer, bulk assignee, and bulk buyer.

288 (4) A bulk assignee or bulk buyer shall comply with all the
289 requirements of s. 718.302 regarding any contracts entered into
290 by the association during the period the bulk assignee or bulk
291 buyer maintains control of the board of administration. Unit
292 owners shall be afforded all the protections contained in s.
293 718.302 regarding agreements entered into by the association
294 before unit owners other than the developer, bulk assignee, or
295 bulk buyer elected a majority of the board of administration.

296 (5) A bulk buyer shall comply with the requirements
297 contained in the declaration regarding any transfer of a unit,
298 including sales, leases, and subleases. A bulk buyer is not
299 entitled to any exemptions afforded a developer or successor
300 developer under this chapter regarding any transfer of a unit,
301 including sales, leases, or subleases.

302 718.707 Time limitation for classification as bulk assignee



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303 or bulk buyer.-A person acquiring condominium units may not be
304 classified as a bulk assignee or bulk buyer unless the
305 condominium units were acquired before July 1, 2012. The date of
306 such acquisition shall be determined by the date of recording of
307 a deed or other instrument of conveyance for such units in the
308 public records of the county in which the condominium is located
309 or by the date of issuance of a certificate of title in a
310 foreclosure proceeding with respect to such condominium units.

311 718.708 Liability of developers and others.-An assignment
312 of developer rights to a bulk assignee or bulk buyer does not
313 release the creating developer from any liabilities under the
314 declaration or this chapter. This part does not limit the
315 liability of the creating developer for claims brought by unit
316 owners, bulk assignees, or bulk buyers for violations of this
317 chapter by the creating developer, unless specifically excluded
318 in this part. Nothing contained within this part waives,
319 releases, compromises, or limits the liability of contractors,
320 subcontractors, materialmen, manufacturers, architects,
321 engineers, or any participant in the design or construction of a
322 condominium for any claim brought by an association, unit
323 owners, bulk assignees, or bulk buyers arising from the design
324 of the condominium, construction defects, misrepresentations
325 associated with condominium property, or violations of this
326 chapter, unless specifically excluded in this part.

327 Section 3. This act shall take effect upon becoming a law.
328
329

330 ===== T I T L E A M E N D M E N T =====

331 And the title is amended as follows:



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332 Delete everything before the enacting clause
333 and insert:

334 A bill to be entitled
335 An act relating to community associations; amending s.
336 718.103, F.S.; revising the definition of the term
337 "developer" to exclude a bulk assignee or bulk buyer;
338 creating part VII of ch. 718, F.S., relating to
339 distressed condominium relief; providing a short
340 title; providing legislative findings and intent;
341 defining the terms "bulk assignee" and "bulk buyer";
342 providing for the assignment of developer rights to
343 and the assumption of developer rights by a bulk
344 assignee; specifying liabilities of bulk assignees and
345 bulk buyers; providing exceptions; providing
346 additional responsibilities of bulk assignees and bulk
347 buyers; authorizing certain entities to assign
348 developer rights to a bulk assignee; limiting the
349 number of bulk assignees at any given time; providing
350 for the transfer of control of a board of
351 administration; providing effects of such transfer on
352 units acquired by a bulk assignee; providing
353 obligations of a bulk assignee upon the transfer of
354 control of a board of administration; requiring that a
355 bulk assignee certify certain information in writing;
356 providing for the resolution of a conflict between
357 specified provisions of state law; providing that the
358 failure of a bulk assignee or bulk buyer to comply
359 with specified provisions of state law results in the
360 loss of certain protections and exemptions; requiring



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361 that a bulk assignee or bulk buyer file certain
362 information with the Division of Florida Condominiums,
363 Timeshares, and Mobile Homes of the Department of
364 Business and Professional Regulation before offering
365 any units for sale or lease in excess of a specified
366 term; requiring that a copy of such information be
367 provided to a prospective purchaser; requiring that
368 certain contracts and disclosure statements contain
369 specified statements; requiring that a bulk assignee
370 or bulk buyer comply with certain disclosure
371 requirements; prohibiting a bulk assignee from taking
372 certain actions on behalf of an association while the
373 bulk assignee is in control of the board of
374 administration of the association and requiring that
375 such bulk assignee comply with certain requirements;
376 requiring that a bulk assignee or bulk buyer comply
377 with certain requirements regarding certain contracts;
378 providing unit owners with specified protections
379 regarding certain contracts; requiring that a bulk
380 buyer comply with certain requirements regarding the
381 transfer of a unit; prohibiting a person from being
382 classified as a bulk assignee or bulk buyer unless
383 condominium units were acquired before a specified
384 date; providing for the determination of the date of
385 acquisition of a unit; providing that the assignment
386 of developer rights to a bulk assignee or bulk buyer
387 does not release a developer from certain liabilities;
388 preserving certain liabilities for certain parties;
389 providing an effective date.