



Criminal & Civil Justice Policy Council

Tuesday, April 6, 2010

9:00 AM

404 HOB

AMENDMENT PACKET

**Larry Cretul
Speaker**

**William Snyder
Chair**

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative Randolph offered the following:

Amendment (with title amendment)

Remove line 26 and insert:

7 subsequent time within 1 year after a prior conviction may be
8 charged with a

11 **T I T L E A M E N D M E N T**

12 Remove line 4 and insert:

13 562.11, F.S.; providing a potential increase in the penalty
14 imposed for a second

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19 that a claim or defense when initially presented to the court or
20 at any time before trial:

21 (a) Was not supported by the material facts necessary to
22 establish the claim or defense; or

23 (b) Would not be supported by the application of then-
24 existing law to those material facts.

25

26 ~~However, the losing party's attorney is not personally~~
27 ~~responsible if he or she has acted in good faith, based on the~~
28 ~~representations of his or her client as to the existence of~~
29 ~~those material facts. If the court awards attorney's fees to a~~
30 ~~claimant pursuant to this subsection, the court shall also award~~
31 ~~prejudgment interest.~~

32 ~~(2) Paragraph (1)(b) does not apply if the court~~
33 ~~determines that the claim or defense was initially presented to~~
34 ~~the court as a good faith argument for the extension,~~
35 ~~modification, or reversal of existing law or the establishment~~
36 ~~of new law, as it applied to the material facts, with a~~
37 ~~reasonable expectation of success.~~

38 (2)-(3) At any time in any civil proceeding or action in
39 which the moving party proves by a preponderance of the evidence
40 that any action taken by the opposing party, including, but not
41 limited to, the filing of any pleading or part thereof, the
42 assertion of or response to any discovery demand, the assertion
43 of any claim or defense, or the response to any request by any
44 other party, was taken primarily for the purpose of unreasonable
45 delay, the court shall award damages to the moving party for its
46 reasonable expenses incurred in obtaining the order, which may

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47 include attorney's fees, and other loss resulting from the
48 improper delay.

49 (3) Notwithstanding subsections (1) and (2), monetary
50 sanctions may not be awarded:

51 (a) Under paragraph (1)(b) if the court determines that
52 the claim or defense was initially presented to the court as a
53 good faith argument for the extension, modification, or reversal
54 of existing law or the establishment of new law, as it applied
55 to the material facts, with a reasonable expectation of success.

56 (b) Under paragraph (1)(a) or paragraph (1)(b) against the
57 losing party's attorney if he or she has acted in good faith,
58 based on the representations of his or her client as to the
59 existence of those material facts.

60 (c) Under paragraph (1)(b) against a represented party.

61 (d) On the court's initiative under subsections (1) and
62 (2) unless sanctions are awarded before a voluntary dismissal or
63 settlement of the claims made by or against the party that is,
64 or whose attorneys are, to be sanctioned.

65 (4) A motion by a party seeking sanctions under this
66 section must be served but may not be filed with or presented to
67 the court unless, within 21 days after service of the motion,
68 the challenged paper, claim, defense, contention, allegation, or
69 denial is not withdrawn or appropriately corrected.

70 (5) In administrative proceedings under chapter 120, an
71 administrative law judge shall award a reasonable attorney's fee
72 and damages to be paid to the prevailing party in equal amounts
73 by the losing party and a losing party's attorney or qualified
74 representative in the same manner and upon the same basis as

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75 provided in subsections (1)-(4). Such award shall be a final
76 order subject to judicial review pursuant to s. 120.68. If the
77 losing party is an agency as defined in s. 120.52(1), the award
78 to the prevailing party shall be against and paid by the agency.
79 A voluntary dismissal by a nonprevailing party does not divest
80 the administrative law judge of jurisdiction to make the award
81 described in this subsection.

82 (6) The provisions of this section are supplemental to
83 other sanctions or remedies available under law or under court
84 rules.

85 (7) If a contract contains a provision allowing attorney's
86 fees to a party when he or she is required to take any action to
87 enforce the contract, the court may also allow reasonable
88 attorney's fees to the other party when that party prevails in
89 any action, whether as plaintiff or defendant, with respect to
90 the contract. This subsection applies to any contract entered
91 into on or after October 1, 1988.

92 Section 2. This act shall take effect July 1, 2010.
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96 **T I T L E A M E N D M E N T**

97 Remove the entire title and insert:

98 A bill to be entitled

99 An act relating to sanctions for certain court pleadings;
100 amending s. 57.105, F.S.; prohibiting a monetary sanction
101 against a represented party for a claim that is presented as a
102 good faith argument but that is found to not be supported by the

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103 application of then-existing law to material facts; prohibiting
104 sanctions against a party or its attorneys by a court on its own
105 initiative if the case has already been settled or voluntarily
106 dismissed by that party; providing an effective date.

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ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative Horner offered the following:

Amendment (with title amendment)

6 Remove lines 171-181 and insert:

7 ~~(3) The provisions of s. 723.083 shall not be applicable~~
8 ~~to any park where the provisions of this subsection apply.~~

9 (3)-(4) A mobile home park owner applying for the removal
10 of a mobile home owner, tenant, occupant, or a mobile home shall
11 file, in the county court in the county where the mobile home
12 lot is situated, a complaint describing the lot and stating the
13 facts that authorize the removal of the mobile home owner,
14 tenant, occupant, or the mobile home. The park owner is entitled
15 to the summary procedure provided in s. 51.011, and the court
16 shall advance the cause on the calendar.

17 (4)-(5) Except for the notice to the officers of the
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T I T L E A M E N D M E N T

Remove line 9 and insert:
the land comprising the mobile home park; revising application;
requiring

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WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Bogdanoff and Hudson offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (8) is added to section 399.02,
8 Florida Statutes, to read:

9 399.02 General requirements.—

10 (8) Updates to the code requiring modifications for Phase
11 II Firefighters' Service on existing elevators, as amended into
12 the Safety Code for Existing Elevators and Escalators, ASME
13 A17.1 and A17.3, may not be enforced on elevators in
14 condominiums, cooperatives, or multifamily residential buildings
15 issued a certificate of occupancy by the local building
16 authority as of July 1, 2008, for 5 years or until the elevator
17 is replaced or requires major modification, whichever occurs
18 first. This exception does not apply to a building for which a
19 certificate of occupancy was issued after July 1, 2008. This
20 exception does not prevent an elevator owner from requesting a

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21 variance from the applicable codes before or after the
22 expiration of the 5-year term. This subsection does not prohibit
23 the division from granting variances pursuant to s. 120.542. The
24 division shall adopt rules to administer this subsection.

25 Section 2. Subsection (7) of section 617.0721, Florida
26 Statutes, is amended to read:

27 617.0721 Voting by members.—

28 (7) Subsections (1), ~~(2)~~, (5), and (6) do not apply to a
29 corporation that is an association, as defined in s. 720.301, or
30 a corporation regulated by chapter 718 or chapter 719.

31 Section 3. Subsection (3) is added to section 617.0808,
32 Florida Statutes, to read:

33 617.0808 Removal of directors.—

34 (3) This section does not apply to any corporation that is
35 an association, as defined in s. 720.301, or a corporation
36 regulated under chapter 718 or chapter 719.

37 Section 4. Section 617.1606, Florida Statutes, is created
38 to read:

39 617.1606 Access to records.—Sections 617.1601-617.1605 do
40 not apply to a corporation that is an association, as defined in
41 s. 720.301, or a corporation regulated under chapter 718 or
42 chapter 719.

43 Section 5. Section 627.714, Florida Statutes, is created to
44 read:

45 627.714 Residential condominium unit owner coverage; loss
46 assessment coverage required.—For policies issued or renewed on
47 or after July 1, 2010, coverage under a unit owner's residential
48 property policy must include at least \$2,000 in property loss
49 assessment coverage for all assessments made as a result of the

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50 same direct loss to the property, regardless of the number of
51 assessments, owned by all members of the association
52 collectively if such loss is of the type of loss covered by the
53 unit owner's residential property insurance policy, to which a
54 deductible of no more than \$250 per direct property loss
55 applies. If a deductible was or will be applied to other
56 property loss sustained by the unit owner resulting from the
57 same direct loss to the property, no deductible applies to the
58 loss assessment coverage. The maximum amount of any unit
59 owner's loss assessment coverage that can be assessed for any
60 loss will be an amount equal to that unit owner's loss
61 assessment coverage limit that was in effect one day prior to
62 the date of the occurrence. Any changes to the limits of a unit
63 owner's coverage for loss assessments that are made on or
64 subsequent to one day prior to the date that the loss occurs
65 will not be applicable to that loss. Regardless of the number of
66 assessments, no insurer providing loss assessment coverage to a
67 unit owner shall be required to pay more than an amount equal to
68 that unit owner's loss assessment coverage limit as a result of
69 the same direct loss to property. Every individual unit owner's
70 residential property policy must contain a provision stating
71 that the coverage afforded by such policy is excess coverage
72 over the amount recoverable under any other policy covering the
73 same property.

74 Section 6. Subsection (13) is added to section 633.0215,
75 Florida Statutes, to read:

76 633.0215 Florida Fire Prevention Code.—

77 (13) A condominium, cooperative, or multifamily residential
78 building that is less than four stories in height and has a

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79 corridor providing an exterior means of egress is exempt from
80 the requirement to install a manual fire alarm system under s.
81 9.6 of the Life Safety Code adopted in the Florida Fire
82 Prevention Code.

83 Section 7. Subsection (16) of section 718.103, Florida
84 Statutes, is amended to read:

85 718.103 Definitions.—As used in this chapter, the term:

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

89 (a) An owner or lessee of a condominium or cooperative unit
90 who has acquired the unit for his or her own occupancy;~~it nee~~
91 ~~does it include~~

92 (b) A cooperative association that ~~which~~ creates a
93 condominium by conversion of an existing residential cooperative
94 after control of the association has been transferred to the
95 unit owners if, following the conversion, the unit owners are
96 ~~will be~~ the same persons who were unit owners of the cooperative
97 and no units are offered for sale or lease to the public as part
98 of the plan of conversion;~~;~~

99 (c) A bulk assignee or bulk buyer as defined in s. 718.703;
100 or

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

105 Section 8. Subsection (13) of section 718.110, Florida
106 Statutes, is amended to read:

107 718.110 Amendment of declaration; correction of error or

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108 omission in declaration by circuit court.-

109 (13) An Any amendment prohibiting restricting unit owners
110 from renting their units or altering the duration of the rental
111 term or specifying or limiting the number of times unit owners
112 are entitled to rent their units during a specified period
113 ~~owners' rights relating to the rental of units~~ applies only to
114 unit owners who consent to the amendment and unit owners who
115 acquire title to purchase their units after the effective date
116 of that amendment.

117 Section 9. Paragraphs (a), (b), (c), (d), (f), (g), (j),
118 and (n) of subsection (11) and subsections (12) and (13) of
119 section 718.111, Florida Statutes, are amended to read:

120 718.111 The association.-

121 (11) INSURANCE.-In order to protect the safety, health, and
122 welfare of the people of the State of Florida and to ensure
123 consistency in the provision of insurance coverage to
124 condominiums and their unit owners, this subsection applies to
125 every residential condominium in the state, regardless of the
126 date of its declaration of condominium. It is the intent of the
127 Legislature to encourage lower or stable insurance premiums for
128 associations described in this subsection.

129 (a) Adequate property hazard insurance, regardless of any
130 requirement in the declaration of condominium for coverage by
131 the association for full insurable value, replacement cost, or
132 similar coverage, must shall be based on upon the replacement
133 cost of the property to be insured as determined by an
134 independent insurance appraisal or update of a prior appraisal.
135 The replacement cost must full insurable value shall be
136 determined at least once every 36 months.

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

140 2. The association may also provide adequate property
141 ~~hazard~~ insurance coverage for a group of at least ~~no fewer than~~
142 three communities created and operating under this chapter,
143 chapter 719, chapter 720, or chapter 721 by obtaining and
144 maintaining for such communities insurance coverage sufficient
145 to cover an amount equal to the probable maximum loss for the
146 communities for a 250-year windstorm event. Such probable
147 maximum loss must be determined through the use of a competent
148 model that has been accepted by the Florida Commission on
149 Hurricane Loss Projection Methodology. A ~~No~~ policy or program
150 providing such coverage may not ~~shall~~ be issued or renewed after
151 July 1, 2008, unless it has been reviewed and approved by the
152 Office of Insurance Regulation. The review and approval must
153 ~~shall~~ include approval of the policy and related forms pursuant
154 to ss. 627.410 and 627.411, approval of the rates pursuant to s.
155 627.062, a determination that the loss model approved by the
156 commission was accurately and appropriately applied to the
157 insured structures to determine the 250-year probable maximum
158 loss, and a determination that complete and accurate disclosure
159 of all material provisions is provided to condominium unit
160 owners before ~~prior to~~ execution of the agreement by a
161 condominium association.

162 3. When determining the adequate amount of property hazard
163 insurance coverage, the association may consider deductibles as
164 determined by this subsection.

165 (b) If an association is a developer-controlled

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166 association, the association shall exercise its best efforts to
167 obtain and maintain insurance as described in paragraph (a).
168 Failure to obtain and maintain adequate property hazard
169 insurance during any period of developer control constitutes a
170 breach of fiduciary responsibility by the developer-appointed
171 members of the board of directors of the association, unless the
172 members can show that despite such failure, they have made their
173 best efforts to maintain the required coverage.

174 (c) Policies may include deductibles as determined by the
175 board.

176 1. The deductibles must ~~shall~~ be consistent with industry
177 standards and prevailing practice for communities of similar
178 size and age, and having similar construction and facilities in
179 the locale where the condominium property is situated.

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

183 3. The board shall establish the amount of deductibles
184 based upon the level of available funds and predetermined
185 assessment authority at a meeting of the board. ~~Such meeting~~
186 ~~shall be open to all unit owners in the manner set forth in s.~~
187 ~~718.112(2)(e). The notice of such meeting must state the~~
188 ~~proposed deductible and the available funds and the assessment~~
189 ~~authority relied upon by the board and estimate any potential~~
190 ~~assessment amount against each unit, if any. The meeting~~
191 ~~described in this paragraph may be held in conjunction with a~~
192 ~~meeting to consider the proposed budget or an amendment thereto.~~

193 (d) An association controlled by unit owners operating as a
194 residential condominium shall use its best efforts to obtain and

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195 maintain adequate property insurance to protect the association,
196 the association property, the common elements, and the
197 condominium property that must ~~is required to~~ be insured by the
198 association pursuant to this subsection.

199 (f) Every property ~~hazard~~ insurance policy issued or
200 renewed on or after January 1, 2009, for the purpose of
201 protecting the condominium must ~~shall~~ provide primary coverage
202 for:

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

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

208 3. The coverage must ~~shall~~ exclude all personal property
209 within the unit or limited common elements, and floor, wall, and
210 ceiling coverings, electrical fixtures, appliances, water
211 heaters, water filters, built-in cabinets and countertops, and
212 window treatments, including curtains, drapes, blinds, hardware,
213 and similar window treatment components, or replacements of any
214 of the foregoing which are located within the boundaries of the
215 unit and serve only such unit. Such property and any insurance
216 thereupon is the responsibility of the unit owner.

217 (g) A condominium unit owner's policy must conform to the
218 requirements of s. 627.714. ~~Every hazard insurance policy issued~~
219 ~~or renewed on or after January 1, 2009, to an individual unit~~
220 ~~owner must contain a provision stating that the coverage~~
221 ~~afforded by such policy is excess coverage over the amount~~
222 ~~recoverable under any other policy covering the same property.~~
223 ~~Such policies must include special assessment coverage of no~~

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224 ~~less than \$2,000 per occurrence. An insurance policy issued to~~
225 ~~an individual unit owner providing such coverage does not~~
226 ~~provide rights of subrogation against the condominium~~
227 ~~association operating the condominium in which such individual's~~
228 ~~unit is located.~~

229 ~~1. All improvements or additions to the condominium~~
230 ~~property that benefit fewer than all unit owners shall be~~
231 ~~insured by the unit owner or owners having the use thereof, or~~
232 ~~may be insured by the association at the cost and expense of the~~
233 ~~unit owners having the use thereof.~~

234 ~~2. The association shall require each owner to provide~~
235 ~~evidence of a currently effective policy of hazard and liability~~
236 ~~insurance upon request, but not more than once per year. Upon~~
237 ~~the failure of an owner to provide a certificate of insurance~~
238 ~~issued by an insurer approved to write such insurance in this~~
239 ~~state within 30 days after the date on which a written request~~
240 ~~is delivered, the association may purchase a policy of insurance~~
241 ~~on behalf of an owner. The cost of such a policy, together with~~
242 ~~reconstruction costs undertaken by the association but which are~~
243 ~~the responsibility of the unit owner, may be collected in the~~
244 ~~manner provided for the collection of assessments in s. 718.116.~~

245 ~~1.3.~~ All reconstruction work after a property casualty loss
246 must ~~shall~~ be undertaken by the association except as otherwise
247 authorized in this section. A unit owner may undertake
248 reconstruction work on portions of the unit with the prior
249 written consent of the board of administration. However, such
250 work may be conditioned upon the approval of the repair methods,
251 the qualifications of the proposed contractor, or the contract
252 that is used for that purpose. A unit owner must ~~shall~~ obtain

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253 all required governmental permits and approvals before ~~prior to~~
254 commencing reconstruction.

255 ~~2.4.~~ Unit owners are responsible for the cost of
256 reconstruction of any portions of the condominium property for
257 which the unit owner is required to carry property casualty
258 insurance, and any such reconstruction work undertaken by the
259 association is ~~shall be~~ chargeable to the unit owner and
260 enforceable as an assessment pursuant to s. 718.116. ~~The~~
261 ~~association must be an additional named insured and loss payee~~
262 ~~on all casualty insurance policies issued to unit owners in the~~
263 ~~condominium operated by the association.~~

264 ~~3.5.~~ A multicondominium association may elect, by a
265 majority vote of the collective members of the condominiums
266 operated by the association, to operate the ~~such~~ condominiums as
267 a single condominium for purposes of insurance matters,
268 including, but not limited to, the purchase of the property
269 ~~hazard~~ insurance required by this section and the apportionment
270 of deductibles and damages in excess of coverage. The election
271 to aggregate the treatment of insurance premiums, deductibles,
272 and excess damages constitutes an amendment to the declaration
273 of all condominiums operated by the association, and the costs
274 of insurance must ~~shall~~ be stated in the association budget. The
275 amendments must ~~shall~~ be recorded as required by s. 718.110.

276 (j) Any portion of the condominium property that must
277 ~~required to~~ be insured by the association against property
278 ~~casualty~~ loss pursuant to paragraph (f) which is damaged by
279 ~~casualty~~ shall be reconstructed, repaired, or replaced as
280 necessary by the association as a common expense. All property
281 ~~hazard~~ insurance deductibles, uninsured losses, and other

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282 damages in excess of property hazard insurance coverage under
283 the property hazard insurance policies maintained by the
284 association are a common expense of the condominium, except
285 that:

286 1. A unit owner is responsible for the costs of repair or
287 replacement of any portion of the condominium property not paid
288 by insurance proceeds, if such damage is caused by intentional
289 conduct, negligence, or failure to comply with the terms of the
290 declaration or the rules of the association by a unit owner, the
291 members of his or her family, unit occupants, tenants, guests,
292 or invitees, without compromise of the subrogation rights of the
293 ~~any insurer as set forth in paragraph (g)~~.

294 2. The provisions of subparagraph 1. regarding the
295 financial responsibility of a unit owner for the costs of
296 repairing or replacing other portions of the condominium
297 property also apply to the costs of repair or replacement of
298 personal property of other unit owners or the association, as
299 well as other property, whether real or personal, which the unit
300 owners are required to insure ~~under paragraph (g)~~.

301 3. To the extent the cost of repair or reconstruction for
302 which the unit owner is responsible under this paragraph is
303 reimbursed to the association by insurance proceeds, and, ~~to the~~
304 ~~extent~~ the association has collected the cost of such repair or
305 reconstruction from the unit owner, the association shall
306 reimburse the unit owner without the waiver of any rights of
307 subrogation.

308 4. The association is not obligated to pay for
309 reconstruction or repairs of property casualty losses as a
310 common expense if the property casualty losses were known or

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311 should have been known to a unit owner and were not reported to
312 the association until after the insurance claim of the
313 association for that property casualty was settled or resolved
314 with finality, or denied because ~~on the basis that~~ it was
315 untimely filed.

316 (n) The association is not obligated to pay for any
317 reconstruction or repair expenses due to property casualty loss
318 to any improvements installed by a current or former owner of
319 the unit or by the developer if the improvement benefits only
320 the unit for which it was installed and is not part of the
321 standard improvements installed by the developer on all units as
322 part of original construction, whether or not such improvement
323 is located within the unit. This paragraph does not relieve any
324 party of its obligations regarding recovery due under any
325 insurance implemented specifically for ~~any~~ such improvements.

326 (12) OFFICIAL RECORDS.—

327 (a) From the inception of the association, the association
328 shall maintain each of the following items, if ~~when~~ applicable,
329 which shall constitute the official records of the association:

330 1. A copy of the plans, permits, warranties, and other
331 items provided by the developer pursuant to s. 718.301(4).

332 2. A photocopy of the recorded declaration of condominium
333 of each condominium operated by the association and of each
334 amendment to each declaration.

335 3. A photocopy of the recorded bylaws of the association
336 and of each amendment to the bylaws.

337 4. A certified copy of the articles of incorporation of the
338 association, or other documents creating the association, and of
339 each amendment thereto.

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- 340 5. A copy of the current rules of the association.
- 341 6. A book or books which contain the minutes of all
342 meetings of the association, of the board of administration, and
343 of unit owners, which minutes must ~~shall~~ be retained for at
344 least ~~a period of not less than~~ 7 years.
- 345 7. A current roster of all unit owners and their mailing
346 addresses, unit identifications, voting certifications, and, if
347 known, telephone numbers. The association shall also maintain
348 the electronic mailing addresses and the numbers designated by
349 unit owners for receiving notice sent by electronic transmission
350 of those unit owners consenting to receive notice by electronic
351 transmission. The electronic mailing addresses and telephone
352 numbers ~~must provided by unit owners to receive notice by~~
353 ~~electronic transmission shall~~ be removed from association
354 records if ~~when~~ consent to receive notice by electronic
355 transmission is revoked. However, the association is not liable
356 for an erroneous disclosure of the electronic mail address or
357 the number for receiving electronic transmission of notices.
- 358 8. All current insurance policies of the association and
359 condominiums operated by the association.
- 360 9. A current copy of any management agreement, lease, or
361 other contract to which the association is a party or under
362 which the association or the unit owners have an obligation or
363 responsibility.
- 364 10. Bills of sale or transfer for all property owned by the
365 association.
- 366 11. Accounting records for the association and separate
367 accounting records for each condominium which the association
368 operates. All accounting records shall be maintained for at

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369 ~~least a period of not less than~~ 7 years. Any person who
370 knowingly or intentionally defaces or destroys accounting
371 records required to be created and maintained by this chapter
372 during the period for which such records are required to be
373 maintained, or who knowingly or intentionally fails to create or
374 maintain such ~~accounting records required to be maintained by~~
375 ~~this chapter~~, with the intent of causing harm to the association
376 or one or more of its members, is personally subject to a civil
377 penalty pursuant to s. 718.501(1)(d). The accounting records
378 must ~~shall~~ include, but are not limited to:

379 a. Accurate, itemized, and detailed records of all receipts
380 and expenditures.

381 b. A current account and a monthly, bimonthly, or quarterly
382 statement of the account for each unit designating the name of
383 the unit owner, the due date and amount of each assessment, the
384 amount paid upon the account, and the balance due.

385 c. All audits, reviews, accounting statements, and
386 financial reports of the association or condominium.

387 d. All contracts for work to be performed. Bids for work to
388 be performed are ~~shall~~ also be considered official records and
389 must ~~shall~~ be maintained by the association.

390 12. Ballots, sign-in sheets, voting proxies, and all other
391 papers relating to voting by unit owners, which must ~~shall~~ be
392 maintained for ~~a period of~~ 1 year from the date of the election,
393 vote, or meeting to which the document relates, notwithstanding
394 paragraph (b).

395 13. All rental records if, ~~when~~ the association is acting
396 as agent for the rental of condominium units.

397 14. A copy of the current question and answer sheet as

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398 described in ~~by~~ s. 718.504.

399 15. All other records of the association not specifically
400 included in the foregoing which are related to the operation of
401 the association.

402 16. A copy of the inspection report as provided ~~for~~ in s.
403 718.301(4) (p).

404 (b) The official records of the association must ~~shall~~ be
405 maintained within the state for at least 7 years. The records of
406 the association shall be made available to a unit owner within
407 45 miles of the condominium property or within the county in
408 which the condominium property is located within 5 working days
409 after receipt of a written request by the board or its designee.
410 However, such distance requirement does not apply to an
411 association governing a timeshare condominium. This paragraph
412 may be complied with by having a copy of the official records of
413 the association available for inspection or copying on the
414 condominium property or association property, or the association
415 may offer the option of making the records ~~of the association~~
416 available to a unit owner ~~either~~ electronically via the Internet
417 or by allowing the records to be viewed in electronic format on
418 a computer screen and printed upon request. The association is
419 not responsible for the use or misuse of the information
420 provided to an association member or his or her authorized
421 representative pursuant to the compliance requirements of this
422 chapter unless the association has an affirmative duty not to
423 disclose such information pursuant to this chapter.

424 (c) The official records of the association are open to
425 inspection by any association member or the authorized
426 representative of such member at all reasonable times. The right

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427 to inspect the records includes the right to make or obtain
428 copies, at the reasonable expense, if any, of the ~~association~~
429 member. The association may adopt reasonable rules regarding the
430 frequency, time, location, notice, and manner of record
431 inspections and copying. The failure of an association to
432 provide the records within 10 working days after receipt of a
433 written request creates ~~shall create~~ a rebuttable presumption
434 that the association willfully failed to comply with this
435 paragraph. A unit owner who is denied access to official records
436 is entitled to the actual damages or minimum damages for the
437 association's willful failure to comply ~~with this paragraph~~. The
438 Minimum damages shall be \$50 per calendar day up to 10 days, the
439 calculation to begin on the 11th working day after receipt of
440 the written request. The failure to permit inspection of the
441 association records as provided herein entitles any person
442 prevailing in an enforcement action to recover reasonable
443 attorney's fees from the person in control of the records who,
444 directly or indirectly, knowingly denied access to the records
445 ~~for inspection~~. Any person who knowingly or intentionally
446 defaces or destroys accounting records that are required by this
447 chapter to be maintained during the period for which such
448 records are required to be maintained, or who knowingly or
449 intentionally fails to create or maintain accounting records
450 that are required to be created or maintained ~~by this chapter,~~
451 with the intent of causing harm to the association or one or
452 more of its members, is personally subject to a civil penalty
453 pursuant to s. 718.501(1)(d). The association shall maintain an
454 adequate number of copies of the declaration, articles of
455 incorporation, bylaws, and rules, and all amendments to each of

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456 the foregoing, as well as the question and answer sheet provided
457 for in s. 718.504 and year-end financial information required in
458 this section, on the condominium property to ensure their
459 availability to unit owners and prospective purchasers, and may
460 charge its actual costs for preparing and furnishing these
461 documents to those requesting the documents same.

462 Notwithstanding the provisions of this paragraph, the following
463 records are shall not be accessible to unit owners:

464 1. Any record protected by the lawyer-client privilege as
465 described in s. 90.502; and any record protected by the work-
466 product privilege, including any record prepared by an
467 association attorney or prepared at the attorney's express
468 direction; which reflects a mental impression, conclusion,
469 litigation strategy, or legal theory of the attorney or the
470 association, and which was prepared exclusively for civil or
471 criminal litigation or for adversarial administrative
472 proceedings, or which was prepared in anticipation of imminent
473 civil or criminal litigation or imminent adversarial
474 administrative proceedings until the conclusion of the
475 litigation or adversarial administrative proceedings.

476 2. Information obtained by an association in connection
477 with the approval of the lease, sale, or other transfer of a
478 unit.

479 3. Personnel records of association employees, including,
480 but not limited to, disciplinary, payroll, health, and insurance
481 records.

482 4.3. Medical records of unit owners.

483 5.4. Social security numbers, driver's license numbers,
484 credit card numbers, e-mail addresses, telephone numbers,

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485 emergency contact information, any addresses of a unit owner
486 other than as provided to fulfill the association's notice
487 requirements, and other personal identifying information of any
488 person, excluding the person's name, unit designation, mailing
489 address, and property address.

490 6. Any electronic security measure that is used by the
491 association to safeguard data, including passwords.

492 7. The software and operating system used by the
493 association which allows manipulation of data, even if the owner
494 owns a copy of the same software used by the association. The
495 data is part of the official records of the association.

496 (13) FINANCIAL REPORTING.—Within 90 days after the end of
497 the fiscal year, or annually on a date provided in the bylaws,
498 the association shall prepare and complete, or contract for the
499 preparation and completion of, a financial report for the
500 preceding fiscal year. Within 21 days after the final financial
501 report is completed by the association or received from the
502 third party, but not later than 120 days after the end of the
503 fiscal year or other date as provided in the bylaws, the
504 association shall mail to each unit owner at the address last
505 furnished to the association by the unit owner, or hand deliver
506 to each unit owner, a copy of the financial report or a notice
507 that a copy of the financial report will be mailed or hand
508 delivered to the unit owner, without charge, upon receipt of a
509 written request from the unit owner. The division shall adopt
510 rules setting forth uniform accounting principles and standards
511 to be used by all associations and ~~shall adopt rules~~ addressing
512 the financial reporting requirements for multicondominium
513 associations. The rules must ~~shall~~ include, but not be limited

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514 to, standards for presenting a summary of association reserves,
515 including a good faith estimate disclosing the annual amount of
516 reserve funds that would be necessary for the association to
517 fully fund reserves for each reserve item based on the straight-
518 line accounting method. This disclosure is not applicable to
519 reserves funded via the pooling method. ~~uniform accounting~~
520 ~~principles and standards for stating the disclosure of at least~~
521 ~~a summary of the reserves, including information as to whether~~
522 ~~such reserves are being funded at a level sufficient to prevent~~
523 ~~the need for a special assessment and, if not, the amount of~~
524 ~~assessments necessary to bring the reserves up to the level~~
525 ~~necessary to avoid a special assessment. The person preparing~~
526 ~~the financial reports shall be entitled to rely on an inspection~~
527 ~~report prepared for or provided to the association to meet the~~
528 ~~fiscal and fiduciary standards of this chapter. In adopting such~~
529 ~~rules, the division shall consider the number of members and~~
530 ~~annual revenues of an association. Financial reports shall be~~
531 ~~prepared as follows:~~

532 (a) An association that meets the criteria of this
533 paragraph shall prepare ~~or cause to be prepared~~ a complete set
534 of financial statements in accordance with generally accepted
535 accounting principles. The financial statements must ~~shall~~ be
536 based upon the association's total annual revenues, as follows:

537 1. An association with total annual revenues of \$100,000 or
538 more, but less than \$200,000, shall prepare compiled financial
539 statements.

540 2. An association with total annual revenues of at least
541 \$200,000, but less than \$400,000, shall prepare reviewed
542 financial statements.

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543 3. An association with total annual revenues of \$400,000 or
544 more shall prepare audited financial statements.

545 (b)1. An association with total annual revenues of less
546 than \$100,000 shall prepare a report of cash receipts and
547 expenditures.

548 2. An association that ~~which~~ operates fewer ~~less~~ than 75 ~~50~~
549 units, regardless of the association's annual revenues, shall
550 prepare a report of cash receipts and expenditures in lieu of
551 financial statements required by paragraph (a).

552 3. A report of cash receipts and disbursements must
553 disclose the amount of receipts by accounts and receipt
554 classifications and the amount of expenses by accounts and
555 expense classifications, including, but not limited to, the
556 following, as applicable: costs for security, professional and
557 management fees and expenses, taxes, costs for recreation
558 facilities, expenses for refuse collection and utility services,
559 expenses for lawn care, costs for building maintenance and
560 repair, insurance costs, administration and salary expenses, and
561 reserves accumulated and expended for capital expenditures,
562 deferred maintenance, and any other category for which the
563 association maintains reserves.

564 (c) An association may prepare ~~or cause to be prepared,~~
565 without a meeting of or approval by the unit owners:

566 1. Compiled, reviewed, or audited financial statements, if
567 the association is required to prepare a report of cash receipts
568 and expenditures;

569 2. Reviewed or audited financial statements, if the
570 association is required to prepare compiled financial
571 statements; or

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572 3. Audited financial statements if the association is
573 required to prepare reviewed financial statements.

574 (d) If approved by a majority of the voting interests
575 present at a properly called meeting of the association, an
576 association may prepare ~~or cause to be prepared~~:

577 1. A report of cash receipts and expenditures in lieu of a
578 compiled, reviewed, or audited financial statement;

579 2. A report of cash receipts and expenditures or a compiled
580 financial statement in lieu of a reviewed or audited financial
581 statement; or

582 3. A report of cash receipts and expenditures, a compiled
583 financial statement, or a reviewed financial statement in lieu
584 of an audited financial statement.

585

586 Such meeting and approval must occur before ~~prior to~~ the end of
587 the fiscal year and is effective only for the fiscal year in
588 which the vote is taken, except that the approval may also ~~may~~
589 be effective for the following fiscal year. With respect to an
590 association to which the developer has not turned over control
591 of the association, all unit owners, including the developer,
592 may vote on issues related to the preparation of financial
593 reports for the first 2 fiscal years of the association's
594 operation, beginning with the fiscal year in which the
595 declaration is recorded. Thereafter, all unit owners except the
596 developer may vote on such issues until control is turned over
597 to the association by the developer. Any audit or review
598 prepared under this section shall be paid for by the developer
599 if done before ~~prior to~~ turnover of control of the association.
600 An association may not waive the financial reporting

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601 requirements of this section for more than 3 consecutive years.

602 Section 10. Paragraphs (d), (l), (n), and (o) of subsection
603 (2) of section 718.112, Florida Statutes, are amended to read:

604 718.112 Bylaws.—

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

608 (d) *Unit owner meetings.*—

609 1. ~~There shall be~~ An annual meeting of the unit owners
610 shall be held at the location provided in the association bylaws
611 and, if the bylaws are silent as to the location, the meeting
612 shall be held within 45 miles of the condominium property.

613 However, such distance requirement does not apply to an
614 association governing a timeshare condominium. Unless the bylaws
615 provide otherwise, a vacancy on the board caused by the
616 expiration of a director's term shall be filled by electing a
617 new board member, and the election must ~~shall~~ be by secret
618 ballot. ~~‡~~ However, if the number of vacancies equals or exceeds
619 the number of candidates, an ~~no~~ election is not required. Except
620 in a timeshare condominium, the terms of all members of the
621 board ~~shall~~ expire at the annual meeting and such board members
622 may stand for reelection unless otherwise permitted by the
623 bylaws. If ~~In the event that~~ the bylaws permit staggered terms
624 of no more than 2 years and upon approval of a majority of the
625 total voting interests, the association board members may serve
626 2-year staggered terms. If the number of board members whose
627 terms have expired exceeds the number of eligible members
628 showing interest in or demonstrating an intention to run for the
629 vacant positions ~~no person is interested in or demonstrates an~~

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630 ~~intention to run for the position of a board member whose term~~
631 ~~has expired according to the provisions of this subparagraph,~~
632 each such board member whose term has expired is eligible for
633 reappointment shall be automatically reappointed to the board of
634 administration and need not stand for reelection. In a
635 condominium association of more than 10 units or in a
636 condominium association that does not include timeshare units or
637 timeshare interests, coowners of a unit may not serve as members
638 of the board of directors at the same time unless they own more
639 than one unit or unless there are not enough eligible candidates
640 to fill the vacancies on the board at the time of the vacancy.
641 Any unit owner desiring to be a candidate for board membership
642 must shall comply with sub-subparagraph subparagraph 3.a. A
643 person who has been suspended or removed by the division under
644 this chapter, or who is delinquent in the payment of any fee,
645 fine, or special or regular assessment as provided in paragraph
646 (n), is not eligible for board membership. A person who has been
647 convicted of any felony in this state or in a United States
648 District or Territorial Court, or who has been convicted of any
649 offense in another jurisdiction that would be considered a
650 felony if committed in this state, is not eligible for board
651 membership unless such felon's civil rights have been restored
652 for at least ~~a period of no less than~~ 5 years as of the date on
653 which such person seeks election to the board. The validity of
654 an action by the board is not affected if it is later determined
655 that a member of the board is ineligible for board membership
656 due to having been convicted of a felony.

657 2. The bylaws must shall provide the method of calling
658 meetings of unit owners, including annual meetings. Written

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659 notice, which ~~notice~~ must include an agenda, shall be mailed,
660 hand delivered, or electronically transmitted to each unit owner
661 at least 14 days before ~~prior to~~ the annual meeting and must
662 ~~shall~~ be posted in a conspicuous place on the condominium
663 property at least 14 continuous days preceding the annual
664 meeting. Upon notice to the unit owners, the board shall, by
665 duly adopted rule, designate a specific location on the
666 condominium property or association property upon which all
667 notices of unit owner meetings shall be posted. However, if
668 there is no condominium property or association property upon
669 which notices can be posted, this requirement does not apply. In
670 lieu of or in addition to the physical posting of meeting
671 notices ~~notice of any meeting of the unit owners on the~~
672 ~~condominium property~~, the association may, by reasonable rule,
673 adopt a procedure for conspicuously posting and repeatedly
674 broadcasting the notice and the agenda on a closed-circuit cable
675 television system serving the condominium association. However,
676 if broadcast notice is used in lieu of a notice posted
677 physically on the condominium property, the notice and agenda
678 must be broadcast at least four times every broadcast hour of
679 each day that a posted notice is otherwise required under this
680 section. If ~~When~~ broadcast notice is provided, the notice and
681 agenda must be broadcast in a manner and for a sufficient
682 continuous length of time so as to allow an average reader to
683 observe the notice and read and comprehend the entire content of
684 the notice and the agenda. Unless a unit owner waives in writing
685 the right to receive notice of the annual meeting, such notice
686 must ~~shall~~ be hand delivered, mailed, or electronically
687 transmitted to each unit owner. Notice for meetings and notice

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688 for all other purposes must ~~shall~~ be mailed to each unit owner
689 at the address last furnished to the association by the unit
690 owner, or hand delivered to each unit owner. However, if a unit
691 is owned by more than one person, the association shall provide
692 notice, for meetings and all other purposes, to that one address
693 which the developer initially identifies for that purpose and
694 thereafter as one or more of the owners of the unit shall ~~se~~
695 advise the association in writing, or if no address is given or
696 the owners of the unit do not agree, to the address provided on
697 the deed of record. An officer of the association, or the
698 manager or other person providing notice of the association
699 meeting, shall provide an affidavit or United States Postal
700 Service certificate of mailing, to be included in the official
701 records of the association affirming that the notice was mailed
702 or hand delivered, in accordance with this provision.

703 3. The members of the board shall be elected by written
704 ballot or voting machine. Proxies may not ~~shall in no event~~ be
705 used in electing the board, ~~either~~ in general elections or
706 elections to fill vacancies caused by recall, resignation, or
707 otherwise, unless otherwise provided in this chapter.

708 a. At least ~~Not less than~~ 60 days before a scheduled
709 election, the association shall mail, deliver, or electronically
710 transmit, whether by separate association mailing or included in
711 another association mailing, delivery, or transmission,
712 including regularly published newsletters, to each unit owner
713 entitled to a vote, a first notice of the date of the election
714 ~~along with a certification form provided by the division~~
715 ~~attesting that he or she has read and understands, to the best~~
716 ~~of his or her ability, the governing documents of the~~

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717 ~~association and the provisions of this chapter and any~~
718 ~~applicable rules.~~ Any unit owner or other eligible person
719 desiring to be a candidate for the board must give written
720 notice of his or her intent to be a candidate to the association
721 at least ~~not less than~~ 40 days before a scheduled election.
722 Together with the written notice and agenda as set forth in
723 subparagraph 2., the association shall mail, deliver, or
724 electronically transmit a second notice of the election to all
725 unit owners entitled to vote ~~therein~~, together with a ballot
726 that lists ~~which shall list~~ all candidates. Upon request of a
727 candidate, ~~the association shall include~~ an information sheet,
728 no larger than 8 1/2 inches by 11 inches, which must be
729 furnished by the candidate at least ~~not less than~~ 35 days before
730 the election, must ~~along with the signed certification form~~
731 ~~provided for in this subparagraph,~~ to be included with the
732 mailing, delivery, or transmission of the ballot, with the costs
733 of mailing, delivery, or electronic transmission and copying to
734 be borne by the association. The association is not liable for
735 the contents of the information sheets prepared by the
736 candidates. In order to reduce costs, the association may print
737 or duplicate the information sheets on both sides of the paper.
738 The division shall by rule establish voting procedures
739 consistent with this sub-subparagraph ~~the provisions contained~~
740 ~~herein~~, including rules establishing procedures for giving
741 notice by electronic transmission and rules providing for the
742 secrecy of ballots. Elections shall be decided by a plurality of
743 those ballots cast. There is ~~shall be~~ no quorum requirement;
744 however, at least 20 percent of the eligible voters must cast a
745 ballot in order to have a valid election of members of the

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746 board. A No unit owner may not shall permit any other person to
747 vote his or her ballot, and any ~~such~~ ballots improperly cast are
748 ~~shall be deemed~~ invalid, provided any unit owner who violates
749 this provision may be fined by the association in accordance
750 with s. 718.303. A unit owner who needs assistance in casting
751 the ballot for the reasons stated in s. 101.051 may obtain such
752 ~~assistance in casting the ballot~~. The regular election must
753 ~~shall~~ occur on the date of the annual meeting. ~~The provisions of~~
754 This sub-subparagraph does subparagraph shall not apply to
755 timeshare condominium associations. Notwithstanding ~~the~~
756 ~~provisions of this subparagraph subparagraph~~, an election is
757 not required unless more candidates file notices of intent to
758 run or are nominated than board vacancies exist.

759 b. Within 90 days after being elected or appointed to the
760 board, each newly elected or appointed director shall certify in
761 writing to the secretary of the association that he or she has
762 read the association's declaration of condominium, articles of
763 incorporation, bylaws, and current written policies; that he or
764 she will work to uphold such documents and policies to the best
765 of his or her ability; and that he or she will faithfully
766 discharge his or her fiduciary responsibility to the
767 association's members. In lieu of this written certification,
768 the newly elected or appointed director may submit a certificate
769 of satisfactory completion of the educational curriculum
770 administered by a division-approved condominium education
771 provider. A director who fails to timely file the written
772 certification or educational certificate is suspended from
773 service on the board until he or she complies with this sub-
774 subparagraph. The board may temporarily fill the vacancy during

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775 the period of suspension. The secretary shall cause the
776 association to retain a director's written certification or
777 educational certificate for inspection by the members for 5
778 years after a director's election. Failure to have such written
779 certification or educational certificate on file does not affect
780 the validity of any action.

781 4. Any approval by unit owners called for by this chapter
782 or the applicable declaration or bylaws, including, but not
783 limited to, the approval requirement in s. 718.111(8), shall be
784 made at a duly noticed meeting of unit owners and ~~is shall be~~
785 subject to all requirements of this chapter or the applicable
786 condominium documents relating to unit owner decisionmaking,
787 except that unit owners may take action by written agreement,
788 without meetings, on matters for which action by written
789 agreement without meetings is expressly allowed by the
790 applicable bylaws or declaration or any statute that provides
791 for such action.

792 5. Unit owners may waive notice of specific meetings if
793 allowed by the applicable bylaws or declaration or any statute.
794 If authorized by the bylaws, notice of meetings of the board of
795 administration, unit owner meetings, except unit owner meetings
796 called to recall board members under paragraph (j), and
797 committee meetings may be given by electronic transmission to
798 unit owners who consent to receive notice by electronic
799 transmission.

800 6. Unit owners shall have the right to participate in
801 meetings of unit owners with reference to all designated agenda
802 items. However, the association may adopt reasonable rules
803 governing the frequency, duration, and manner of unit owner

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804 participation.

805 7. Any unit owner may tape record or videotape a meeting of
806 the unit owners subject to reasonable rules adopted by the
807 division.

808 8. Unless otherwise provided in the bylaws, any vacancy
809 occurring on the board before the expiration of a term may be
810 filled by the affirmative vote of the majority of the remaining
811 directors, even if the remaining directors constitute less than
812 a quorum, or by the sole remaining director. In the alternative,
813 a board may hold an election to fill the vacancy, in which case
814 the election procedures must conform to the requirements of sub-
815 subparagraph ~~subparagraph~~ 3.a. unless the association governs 10
816 units or fewer ~~less~~ and has opted out of the statutory election
817 process, in which case the bylaws of the association control.
818 Unless otherwise provided in the bylaws, a board member
819 appointed or elected under this section shall fill the vacancy
820 for the unexpired term of the seat being filled. Filling
821 vacancies created by recall is governed by paragraph (j) and
822 rules adopted by the division.

823

824 Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-
825 subparagraph (d)3.a., an association of 10 or fewer units may,
826 by the affirmative vote of a majority of the total voting
827 interests, provide for different voting and election procedures
828 in its bylaws, which vote may be by a proxy specifically
829 delineating the different voting and election procedures. The
830 different voting and election procedures may provide for
831 elections to be conducted by limited or general proxy.

832 (1) *Certificate of compliance.* ~~There shall be~~ A provision

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833 that a certificate of compliance from a licensed electrical
834 contractor or electrician may be accepted by the association's
835 board as evidence of compliance of the condominium units with
836 the applicable fire and life safety code must be included.
837 Notwithstanding ~~the provisions of~~ chapter 633 or of any other
838 code, statute, ordinance, administrative rule, or regulation, or
839 any interpretation of the foregoing, an association,
840 condominium, or unit owner is not obligated to retrofit the
841 common elements, association property, or units of a residential
842 condominium with a fire sprinkler system or any other form of
843 engineered lifesafety system in a building that has been
844 certified for occupancy by the applicable governmental entity, ~~7~~
845 if the unit owners have voted to forego such retrofitting and
846 engineered lifesafety system by the affirmative vote of two-
847 thirds of all voting interests in the affected condominium.
848 ~~However, a condominium association may not vote to forego the~~
849 ~~retrofitting with a fire sprinkler system of common areas in a~~
850 ~~high-rise building. For purposes of this subsection, the term~~
851 ~~"high-rise building" means a building that is greater than 75~~
852 ~~feet in height where the building height is measured from the~~
853 ~~lowest level of fire department access to the floor of the~~
854 ~~highest occupiable story. For purposes of this subsection, the~~
855 ~~term "common areas" means any enclosed hallway, corridor, lobby,~~
856 ~~stairwell, or entryway. In no event shall~~ The local authority
857 having jurisdiction may not require completion of retrofitting
858 ~~of common areas~~ with a sprinkler system or any other form of
859 engineered lifesafety system before the end of 2019 2014. By
860 December 31, 2016, an association that is not in compliance with
861 the requirements for a fire sprinkler system or other form of

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862 engineered lifesafety system and that has not voted to forego
863 retrofitting of such system must initiate an application for a
864 building permit for the required installation with the local
865 government having jurisdiction thereof demonstrating that the
866 association will become compliant by December 31, 2019.

867 1. A vote to forego retrofitting may be obtained by limited
868 proxy or by a ballot personally cast at a duly called membership
869 meeting, or by execution of a written consent by the member, and
870 is shall be effective upon the recording of a certificate
871 attesting to such vote in the public records of the county where
872 the condominium is located. The association shall mail or, hand
873 deliver, ~~or electronically transmit~~ to each unit owner written
874 notice at least 14 days before the ~~prior to such~~ membership
875 meeting in which the vote to forego retrofitting of the required
876 fire sprinkler system or any other form of engineered lifesafety
877 system is to take place. Within 30 days after the association's
878 opt-out vote, notice of the results of the opt-out vote must
879 ~~shall be mailed or~~, hand delivered, ~~or electronically~~
880 ~~transmitted~~ to all unit owners. Evidence of compliance with this
881 ~~30-day~~ notice requirement must shall be made by ~~an~~ affidavit
882 executed by the person providing the notice and filed among the
883 official records of the association. After ~~such~~ notice is
884 provided to each owner, a copy must ~~of such notice shall~~ be
885 provided by the current owner to a new owner before ~~prior to~~
886 closing and ~~shall be provided~~ by a unit owner to a renter before
887 ~~prior to~~ signing a lease.

888 2. If there has been a previous vote to forego
889 retrofitting, a vote to require retrofitting may be obtained at
890 a special meeting of the unit owners called by a petition of at

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891 least 10 percent of the voting interests. Such a vote may only
892 be called once every 3 years. Notice shall be provided as
893 required for any regularly called meeting of the unit owners,
894 and must state the purpose of the meeting. Electronic
895 transmission may not be used to provide notice of a meeting
896 called in whole or in part for this purpose.

897 3.2. As part of the information collected annually from
898 condominiums, the division shall require condominium
899 associations to report the membership vote and recording of a
900 certificate under this subsection and, if retrofitting has been
901 undertaken, the per-unit cost of such work. The division shall
902 annually report to the Division of State Fire Marshal of the
903 Department of Financial Services the number of condominiums that
904 have elected to forego retrofitting.

905 4. Notwithstanding s. 553.509, an association may not be
906 obligated to, and may forego the retrofitting of, any
907 improvements required by s. 553.509(2) upon an affirmative vote
908 of a majority of the voting interests in the affected
909 condominium.

910 (n) *Director or officer delinquencies.*—A director or
911 officer more than 90 days delinquent in the payment of any
912 monetary obligation due the association ~~regular assessments~~
913 shall be deemed to have abandoned the office, creating a vacancy
914 in the office to be filled according to law.

915 (o) *Director or officer offenses.*—A director or officer
916 charged by information or indictment with a felony theft or
917 embezzlement offense involving the association's funds or
918 property must ~~shall~~ be removed from office, creating a vacancy
919 in the office to be filled according to law until the end of the

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920 period of the suspension or the end of the director's term of
921 office, whichever occurs first. While such director or officer
922 has such criminal charge pending, he or she may not be appointed
923 or elected to a position as a director or officer. However, if
924 ~~should~~ the charges are ~~be~~ resolved without a finding of guilt,
925 the director or officer shall be reinstated for the remainder of
926 his or her term of office, if any.

927 Section 11. Paragraph (d) of subsection (1) of section
928 718.115, Florida Statutes, is amended to read:

929 718.115 Common expenses and common surplus.—

930 (1)

931 (d) If ~~se~~ provided in the declaration, the cost of
932 communications services as defined in chapter 202, information
933 services, or Internet services ~~a master antenna television~~
934 ~~system or duly franchised cable television service~~ obtained
935 pursuant to a bulk contract is ~~shall be deemed~~ a common expense.
936 If the declaration does not provide for the cost of such
937 services ~~a master antenna television system or duly franchised~~
938 ~~cable television service obtained under a bulk contract~~ as a
939 common expense, the board may enter into such a contract, and
940 the cost of the service will be a common expense. The cost for
941 the services under a bulk-rate contract may be ~~but~~ allocated on
942 a per-unit basis rather than a percentage basis if the
943 declaration provides for other than an equal sharing of common
944 expenses, and any contract entered into before July 1, 1998, in
945 which the cost of the service is not equally divided among all
946 unit owners, may be changed by vote of a majority of the voting
947 interests present at a regular or special meeting of the
948 association, to allocate the cost equally among all units. The

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949 contract must be for at least ~~shall be for a term of not less~~
950 ~~than~~ 2 years.

951 1. Any contract made by the board on or after July 1, 1998,
952 ~~the effective date hereof for a community antenna system or duly~~
953 ~~franchised cable television service~~ may be canceled by a
954 majority of the voting interests present at the next regular or
955 special meeting of the association. Any member may make a motion
956 to cancel the said contract, but if no motion is made or if such
957 motion fails to obtain the required majority at the next regular
958 or special meeting, whichever occurs first ~~is sooner~~, following
959 the making of the contract, ~~then~~ such contract shall be deemed
960 ratified for the term therein expressed.

961 2. Any Such contract must ~~shall~~ provide, and is ~~shall be~~
962 deemed to provide if not expressly set forth, that any hearing-
963 impaired or legally blind unit owner who does not occupy the
964 unit with a non-hearing-impaired or sighted person, or any unit
965 owner receiving supplemental security income under Title XVI of
966 the Social Security Act or food stamps as administered by the
967 Department of Children and Family Services pursuant to s.
968 414.31, may discontinue the cable or video service without
969 incurring disconnect fees, penalties, or subsequent service
970 charges, and, as to such units, the owners are ~~shall~~ not be
971 required to pay any common expenses charge related to such
972 service. If fewer ~~less~~ than all members of an association share
973 the expenses of cable or video service ~~television~~, the expense
974 shall be shared equally by all participating unit owners. The
975 association may use the provisions of s. 718.116 to enforce
976 payment of the shares of such costs by the unit owners receiving

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977 | cable or video service television.

978 | Section 12. Paragraph (b) of subsection (1), subsection
979 | (3), and paragraph (b) of subsection (5) of section 718.116,
980 | Florida Statutes, are amended, and subsection (11) is added to
981 | that section, to read:

982 | 718.116 Assessments; liability; lien and priority;
983 | interest; collection.-

984 | (1)

985 | (b) The liability of a first mortgagee or its successor or
986 | assignees who acquire title to a unit by foreclosure or by deed
987 | in lieu of foreclosure for the unpaid assessments that became
988 | due prior to the mortgagee's acquisition of title is limited to
989 | the lesser of:

990 | 1. The unit's unpaid common expenses and regular periodic
991 | assessments which accrued or came due during the 12 ~~6~~ months
992 | immediately preceding the acquisition of title and for which
993 | payment in full has not been received by the association; or

994 | 2. One percent of the original mortgage debt. The
995 | provisions of this paragraph apply only if the first mortgagee
996 | joined the association as a defendant in the foreclosure action.
997 | Joinder of the association is not required if, on the date the
998 | complaint is filed, the association was dissolved or did not
999 | maintain an office or agent for service of process at a location
1000 | which was known to or reasonably discoverable by the mortgagee.

1001 | (3) Assessments and installments on assessments ~~them~~ which
1002 | are not paid when due bear interest at the rate provided in the
1003 | declaration, from the due date until paid. This rate may not
1004 | exceed the rate allowed by law, and, if no rate is provided in

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1005 the declaration, interest accrues ~~shall acerue~~ at the rate of 18
1006 percent per year. Also, if provided by the declaration or bylaws
1007 ~~so provide~~, the association may, in addition to such interest,
1008 charge an administrative late fee of up to ~~in addition to such~~
1009 ~~interest, in an amount not to exceed~~ the greater of \$25 or 5
1010 percent of each installment of the assessment for each
1011 delinquent installment for which ~~that~~ the payment is late. Any
1012 payment received by an association must ~~shall~~ be applied first
1013 to any interest accrued by the association, then to any
1014 administrative late fee, then to any costs and reasonable
1015 attorney's fees incurred in collection, and then to the
1016 delinquent assessment. The foregoing is ~~shall be~~ applicable
1017 notwithstanding any restrictive endorsement, designation, or
1018 instruction placed on or accompanying a payment. A late fee is
1019 ~~shall not be~~ subject to ~~the provisions in~~ chapter 687 or s.
1020 718.303(3).

1021 (5)

1022 (b) To be valid, a claim of lien must state the description
1023 of the condominium parcel, the name of the record owner, the
1024 name and address of the association, the amount due, and the due
1025 dates. It must be executed and acknowledged by an officer or
1026 authorized agent of the association. The ~~No such~~ lien is not
1027 ~~shall be~~ effective longer than 1 year after the claim of lien
1028 was recorded unless, within that time, an action to enforce the
1029 lien is commenced. The 1-year period is ~~shall~~ automatically be
1030 extended for any length of time during which the association is
1031 prevented from filing a foreclosure action by an automatic stay
1032 resulting from a bankruptcy petition filed by the parcel owner

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1033 or any other person claiming an interest in the parcel. The
1034 claim of lien secures ~~shall secure~~ all unpaid assessments that
1035 ~~which~~ are due and that ~~which~~ may accrue after ~~subsequent to the~~
1036 ~~recording of the claim of lien~~ is recorded and through ~~prior to~~
1037 the entry of a final judgment ~~certificate of title~~, as well as
1038 interest and all reasonable costs and attorney's fees incurred
1039 by the association incident to the collection process. Upon
1040 payment in full, the person making the payment is entitled to a
1041 satisfaction of the lien.

1042

1043 After notice of contest of lien has been recorded, the clerk of
1044 the circuit court shall mail a copy of the recorded notice to
1045 the association by certified mail, return receipt requested, at
1046 the address shown in the claim of lien or most recent amendment
1047 to it and shall certify to the service on the face of the
1048 notice. Service is complete upon mailing. After service, the
1049 association has 90 days in which to file an action to enforce
1050 the lien; and, if the action is not filed within the 90-day
1051 period, the lien is void. However, the 90-day period shall be
1052 extended for any length of time that the association is
1053 prevented from filing its action because of an automatic stay
1054 resulting from the filing of a bankruptcy petition by the unit
1055 owner or by any other person claiming an interest in the parcel.

1056 (11) If the unit is occupied by a tenant and the unit owner
1057 is delinquent in paying any monetary obligation due to the
1058 association, the association may make a written demand that the
1059 tenant pay the future monetary obligations related to the
1060 condominium unit to the association, and the tenant must make
1061 such payment. The demand is continuing in nature and, upon

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1062 demand, the tenant must pay the monetary obligations to the
1063 association until the association releases the tenant or the
1064 tenant discontinues tenancy in the unit. The association must
1065 mail written notice to the unit owner of the association's
1066 demand that the tenant make payments to the association. The
1067 association shall, upon request, provide the tenant with written
1068 receipts for payments made. A tenant who acts in good faith in
1069 response to a written demand from an association is immune from
1070 any claim from the unit owner.

1071 (a) If the tenant prepaid rent to the unit owner before
1072 receiving the demand from the association and provides written
1073 evidence of paying the rent to the association within 14 days
1074 after receiving the demand, the tenant shall receive credit for
1075 the prepaid rent for the applicable period and must make any
1076 subsequent rental payments to the association to be credited
1077 against the monetary obligations of the unit owner to the
1078 association.

1079 (b) The tenant is not liable for increases in the amount of
1080 the monetary obligations due unless the tenant was notified in
1081 writing of the increase at least 10 days before the date the
1082 rent is due. The liability of the tenant may not exceed the
1083 amount due from the tenant to the tenant's landlord. The
1084 tenant's landlord shall provide the tenant a credit against
1085 rents due to the unit owner in the amount of monies paid to the
1086 association under this section.

1087 (c) The association may issue notices under s. 83.56 and
1088 may sue for eviction under ss. 83.59-83.625 as if the
1089 association were a landlord under part II of chapter 83 if the
1090 tenant fails to pay a required payment to the association.

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1091 However, the association is not otherwise considered a landlord
1092 under chapter 83 and specifically has no duties under s. 83.51.

1093 (d) The tenant does not, by virtue of payment of monetary
1094 obligations to the association, have any of the rights of a unit
1095 owner to vote in any election or to examine the books and
1096 records of the association.

1097 (e) A court may supersede the effect of this subsection by
1098 appointing a receiver.

1099 Section 13. Subsections (2) and (19) of section 718.117,
1100 Florida Statutes, are amended to read:

1101 718.117 Termination of condominium.—

1102 (2) TERMINATION BECAUSE OF ECONOMIC WASTE OR
1103 IMPOSSIBILITY.—

1104 (a) Notwithstanding any provision ~~to the contrary~~ in the
1105 declaration, the condominium form of ownership of a property may
1106 be terminated by a plan of termination approved by the lesser of
1107 the lowest percentage of voting interests necessary to amend the
1108 declaration or as otherwise provided in the declaration for
1109 approval of termination if when:

1110 1. The total estimated cost of construction or repairs
1111 necessary to construct the intended improvements or restore the
1112 improvements to their former condition or bring them into
1113 compliance with applicable laws or regulations exceeds the
1114 combined fair market value of the ~~all~~ units in the condominium
1115 after completion of the construction or repairs; or

1116 2. It becomes impossible to operate or reconstruct a
1117 condominium to ~~in~~ its prior physical configuration because of
1118 land use laws or regulations.

1119 (b) Notwithstanding paragraph (a), a condominium in which
1120 75 percent or more of the units are timeshare units may be

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1121 terminated only pursuant to a plan of termination approved by 80
1122 percent of the total voting interests of the association and the
1123 holders of 80 percent of the original principal amount of
1124 outstanding recorded mortgage liens of timeshare estates in the
1125 condominium, unless the declaration provides for a lower voting
1126 percentage.

1127 (19) CREATION OF ANOTHER CONDOMINIUM.—The termination of a
1128 condominium does not bar the filing of a declaration of
1129 condominium or an amended and restated declaration of
1130 condominium creation by the termination trustee ~~of another~~
1131 ~~condominium~~ affecting any portion of the same property.

1132 Section 14. Subsection (11) of section 718.202, Florida
1133 Statutes, is created to read:

1134 718.202 Sales or reservation deposits prior to closing.—

1135 (11) All funds deposited into escrow under subsections (1)
1136 and (2) shall be held in one or more escrow accounts by the
1137 escrow agent. If only one escrow account is utilized, the
1138 escrow agent shall be required to maintain separate accounting
1139 records for each purchaser and for amounts which are separately
1140 covered under subsections (1) and (2) and, if applicable,
1141 released to the developer under subsection (3). Separate
1142 accounting by the escrow agent of the escrow funds constitutes
1143 compliance with the requirements of this section even if the
1144 funds are held by the escrow agent in a single escrow account.
1145 It is the intent of this paragraph to clarify existing law.

1146 Section 14. Subsection (1) of section 718.301, Florida
1147 Statutes, is amended to read:

1148 718.301 Transfer of association control; claims of defect

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1149 by association.-

1150 (1) ~~If~~ ~~When~~ unit owners other than the developer own 15
1151 percent or more of the units in a condominium that will be
1152 operated ultimately by an association, the unit owners other
1153 than the developer are ~~shall be~~ entitled to elect at least ~~no~~
1154 ~~less than~~ one-third of the members of the board of
1155 administration of the association. Unit owners other than the
1156 developer are entitled to elect at least ~~not less than~~ a
1157 majority of the members of the board of administration of an
1158 association:

1159 (a) Three years after 50 percent of the units that will be
1160 operated ultimately by the association have been conveyed to
1161 purchasers;

1162 (b) Three months after 90 percent of the units that will be
1163 operated ultimately by the association have been conveyed to
1164 purchasers;

1165 (c) When all the units that will be operated ultimately by
1166 the association have been completed, some of them have been
1167 conveyed to purchasers, and none of the others are being offered
1168 for sale by the developer in the ordinary course of business;

1169 (d) When some of the units have been conveyed to purchasers
1170 and none of the others are being constructed or offered for sale
1171 by the developer in the ordinary course of business;

1172 (e) When the developer files a petition seeking protection
1173 in bankruptcy;

1174 (f) When a receiver for the developer is appointed by a
1175 circuit court and is not discharged within 30 days after such
1176 appointment, unless the court determines within 30 days after
1177 appointment of the receiver that transfer of control would be

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1178 detrimental to the association or its members; or

1179 (g) Seven years after recordation of the declaration of
1180 condominium; or, in the case of an association that ~~which~~ may
1181 ultimately operate more than one condominium, 7 years after
1182 recordation of the declaration for the first condominium it
1183 operates; or, in the case of an association operating a phase
1184 condominium created pursuant to s. 718.403, 7 years after
1185 recordation of the declaration creating the initial phase,
1186 whichever occurs first. The developer is entitled to elect at
1187 least one member of the board of administration of an
1188 association as long as the developer holds for sale in the
1189 ordinary course of business at least 5 percent, in condominiums
1190 with fewer than 500 units, and 2 percent, in condominiums with
1191 more than 500 units, of the units in a condominium operated by
1192 the association. After ~~Following the time~~ the developer
1193 relinquishes control of the association, the developer may
1194 exercise the right to vote any developer-owned units in the same
1195 manner as any other unit owner except for purposes of
1196 reacquiring control of the association or selecting the majority
1197 members of the board of administration.

1198 Section 15. Section 718.303, Florida Statutes, is amended
1199 to read:

1200 718.303 Obligations of owners and occupants; remedies
1201 ~~waiver; levy of fine against unit by association.-~~

1202 (1) Each unit owner, each tenant and other invitee, and
1203 each association is ~~shall be~~ governed by, and must ~~shall~~ comply
1204 with the provisions of, this chapter, the declaration, the
1205 documents creating the association, and the association bylaws
1206 which ~~and the provisions thereof~~ shall be deemed expressly

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1207 incorporated into any lease of a unit. Actions for damages or
1208 for injunctive relief, or both, for failure to comply with these
1209 provisions may be brought by the association or by a unit owner
1210 against:

1211 (a) The association.

1212 (b) A unit owner.

1213 (c) Directors designated by the developer, for actions
1214 taken by them before ~~prior to the time~~ control of the
1215 association is assumed by unit owners other than the developer.

1216 (d) Any director who willfully and knowingly fails to
1217 comply with these provisions.

1218 (e) Any tenant leasing a unit, and any other invitee
1219 occupying a unit.

1220

1221 The prevailing party in any such action or in any action in
1222 which the purchaser claims a right of voidability based upon
1223 contractual provisions as required in s. 718.503(1)(a) is
1224 entitled to recover reasonable attorney's fees. A unit owner
1225 prevailing in an action between the association and the unit
1226 owner under this section, in addition to recovering his or her
1227 reasonable attorney's fees, may recover additional amounts as
1228 determined by the court to be necessary to reimburse the unit
1229 owner for his or her share of assessments levied by the
1230 association to fund its expenses of the litigation. This relief
1231 does not exclude other remedies provided by law. Actions arising
1232 under this subsection may ~~shall~~ not be deemed to be actions for
1233 specific performance.

1234 (2) A provision of this chapter may not be waived if the
1235 waiver would adversely affect the rights of a unit owner or the

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1236 purpose of the provision, except that unit owners or members of
1237 a board of administration may waive notice of specific meetings
1238 in writing if provided by the bylaws. Any instruction given in
1239 writing by a unit owner or purchaser to an escrow agent may be
1240 relied upon by an escrow agent, whether or not such instruction
1241 and the payment of funds thereunder might constitute a waiver of
1242 any provision of this chapter.

1243 (3) If a unit owner is delinquent for more than 90 days in
1244 paying a monetary obligation due to the association the
1245 declaration or bylaws so provide, the association may suspend
1246 the right of a unit owner or a unit's occupant, licensee, or
1247 invitee to use common elements, common facilities, or any other
1248 association property until the monetary obligation is paid. This
1249 subsection does not apply to limited common elements intended to
1250 be used only by that unit, common elements that must be used to
1251 access the unit, utility services provided to the unit, parking
1252 spaces, or elevators. The association may also levy reasonable
1253 fin~~es against a unit~~ for the failure of the owner of the unit,
1254 or its occupant, licensee, or invitee, to comply with any
1255 provision of the declaration, the association bylaws, or
1256 reasonable rules of the association. A ~~No~~ fine does not will
1257 become a lien against a unit. A ~~No~~ fine may not exceed \$100 per
1258 violation. However, a fine may be levied on the basis of each
1259 day of a continuing violation, with a single notice and
1260 opportunity for hearing. However, ~~the provided that no such~~ fine
1261 may ~~not shall~~ in the aggregate exceed \$1,000. A ~~No~~ fine may not
1262 be levied and a suspension may not be imposed unless the
1263 association first provides at least 14 days' written ~~except~~
1264 after ~~giving~~ reasonable notice and an opportunity for a hearing

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1265 to the unit owner and, if applicable, its occupant, licensee, or
1266 invitee. The hearing must be held before a committee of other
1267 unit owners who are neither board members nor persons residing
1268 in a board member's household. If the committee does not agree
1269 with the fine or suspension, the fine or suspension may not be
1270 levied or imposed. ~~The provisions of this subsection do not~~
1271 ~~apply to unoccupied units.~~

1272 (4) The notice and hearing requirements of subsection (3)
1273 do not apply to the imposition of suspensions or fines against a
1274 unit owner or a unit's occupant, licensee, or invitee because of
1275 failing to pay any amounts due the association. If such a fine
1276 or suspension is imposed, the association must levy the fine or
1277 impose a reasonable suspension at a properly noticed board
1278 meeting, and after the imposition of such fine or suspension,
1279 the association must notify the unit owner and, if applicable,
1280 the unit's occupant, licensee, or invitee by mail or hand
1281 delivery.

1282 (5) An association may also suspend the voting rights of a
1283 member due to nonpayment of any monetary obligation due to the
1284 association which is more than 90 days delinquent. The
1285 suspension ends upon full payment of all obligations currently
1286 due or overdue the association.

1287 Section 16. Subsection (1) of section 718.501, Florida
1288 Statutes, is amended to read:

1289 718.501 Authority, responsibility, and duties of Division
1290 of Florida Condominiums, Timeshares, and Mobile Homes.—

1291 (1) The division ~~may of Florida Condominiums, Timeshares,~~
1292 ~~and Mobile Homes of the Department of Business and Professional~~
1293 ~~Regulation, referred to as the "division" in this part, has the~~

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1294 ~~power to~~ enforce and ensure compliance with the provisions of
1295 this chapter and rules relating to the development,
1296 construction, sale, lease, ownership, operation, and management
1297 of residential condominium units. In performing its duties, the
1298 division has complete jurisdiction to investigate complaints and
1299 enforce compliance ~~with the provisions of this chapter~~ with
1300 respect to associations that are still under developer control
1301 or the control of a bulk assignee or bulk buyer pursuant to part
1302 VII of this chapter and complaints against developers, bulk
1303 assignees, or bulk buyers involving improper turnover or failure
1304 to turnover, pursuant to s. 718.301. However, after turnover has
1305 occurred, the division has ~~shall only have~~ jurisdiction to
1306 investigate complaints related only to financial issues,
1307 elections, and unit owner access to association records pursuant
1308 to s. 718.111(12).

1309 (a)1. The division may make necessary public or private
1310 investigations within or outside this state to determine whether
1311 any person has violated this chapter or any rule or order
1312 hereunder, to aid in the enforcement of this chapter, or to aid
1313 in the adoption of rules or forms ~~hereunder~~.

1314 2. The division may submit any official written report,
1315 worksheet, or other related paper, or a duly certified copy
1316 thereof, compiled, prepared, drafted, or otherwise made by and
1317 duly authenticated by a financial examiner or analyst to be
1318 admitted as competent evidence in any hearing in which the
1319 financial examiner or analyst is available for cross-examination
1320 and attests under oath that such documents were prepared as a
1321 result of an examination or inspection conducted pursuant to
1322 this chapter.

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1323 (b) The division may require or permit any person to file a
1324 statement in writing, under oath or otherwise, as the division
1325 determines, as to the facts and circumstances concerning a
1326 matter to be investigated.

1327 (c) For the purpose of any investigation under this
1328 chapter, the division director or any officer or employee
1329 designated by the division director may administer oaths or
1330 affirmations, subpoena witnesses and compel their attendance,
1331 take evidence, and require the production of any matter which is
1332 relevant to the investigation, including the existence,
1333 description, nature, custody, condition, and location of any
1334 books, documents, or other tangible things and the identity and
1335 location of persons having knowledge of relevant facts or any
1336 other matter reasonably calculated to lead to the discovery of
1337 material evidence. Upon the failure by a person to obey a
1338 subpoena or to answer questions propounded by the investigating
1339 officer and upon reasonable notice to all ~~persons~~ affected
1340 persons thereby, the division may apply to the circuit court for
1341 an order compelling compliance.

1342 (d) Notwithstanding any remedies available to unit owners
1343 and associations, if the division has reasonable cause to
1344 believe that a violation of any provision of this chapter or
1345 related rule has occurred, the division may institute
1346 enforcement proceedings in its own name against any developer,
1347 bulk assignee, bulk buyer, association, officer, or member of
1348 the board of administration, or its assignees or agents, as
1349 follows:

1350 1. The division may permit a person whose conduct or
1351 actions may be under investigation to waive formal proceedings

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1352 and enter into a consent proceeding whereby orders, rules, or
1353 letters of censure or warning, whether formal or informal, may
1354 be entered against the person.

1355 2. The division may issue an order requiring the developer,
1356 bulk assignee, bulk buyer, association, developer-designated
1357 officer, or developer-designated member of the board of
1358 administration, developer-designated assignees or agents, bulk
1359 assignee-designated assignees or agents, bulk buyer-designated
1360 assignees or agents, community association manager, or community
1361 association management firm to cease and desist from the
1362 unlawful practice and take such affirmative action as in the
1363 judgment of the division will carry out the purposes of this
1364 chapter. If the division finds that a developer, bulk assignee,
1365 bulk buyer, association, officer, or member of the board of
1366 administration, or its assignees or agents, is violating or is
1367 about to violate any provision of this chapter, any rule adopted
1368 or order issued by the division, or any written agreement
1369 entered into with the division, and presents an immediate danger
1370 to the public requiring an immediate final order, it may issue
1371 an emergency cease and desist order reciting with particularity
1372 the facts underlying such findings. The emergency cease and
1373 desist order is effective for 90 days. If the division begins
1374 nonemergency cease and desist proceedings, the emergency cease
1375 and desist order remains effective until the conclusion of the
1376 proceedings under ss. 120.569 and 120.57.

1377 3. If a developer, bulk assignee, or bulk buyer, fails to
1378 pay any restitution determined by the division to be owed, plus
1379 any accrued interest at the highest rate permitted by law,
1380 within 30 days after expiration of any appellate time period of

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1381 a final order requiring payment of restitution or the conclusion
1382 of any appeal thereof, whichever is later, the division must
1383 ~~shall~~ bring an action in circuit or county court on behalf of
1384 any association, class of unit owners, lessees, or purchasers
1385 for restitution, declaratory relief, injunctive relief, or any
1386 other available remedy. The division may also temporarily revoke
1387 its acceptance of the filing for the developer to which the
1388 restitution relates until payment of restitution is made.

1389 4. The division may petition the court for ~~the~~ appointment
1390 of a receiver or conservator. If appointed, the receiver or
1391 conservator may take action to implement the court order to
1392 ensure the performance of the order and to remedy any breach
1393 thereof. In addition to all other means provided by law for the
1394 enforcement of an injunction or temporary restraining order, the
1395 circuit court may impound or sequester the property of a party
1396 defendant, including books, papers, documents, and related
1397 records, and allow the examination and use of the property by
1398 the division and a court-appointed receiver or conservator.

1399 5. The division may apply to the circuit court for an order
1400 of restitution whereby the defendant in an action brought
1401 pursuant to subparagraph 4. is ~~shall be~~ ordered to make
1402 restitution of those sums shown by the division to have been
1403 obtained by the defendant in violation of this chapter. ~~Such~~
1404 ~~restitution shall,~~ At the option of the court, such restitution
1405 is ~~be~~ payable to the conservator or receiver appointed pursuant
1406 to subparagraph 4. or directly to the persons whose funds or
1407 assets were obtained in violation of this chapter.

1408 6. The division may impose a civil penalty against a
1409 developer, bulk assignee, or bulk buyer, or association, or its

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1410 assignee or agent, for any violation of this chapter or related
1411 a rule ~~adopted under this chapter~~. The division may impose a
1412 civil penalty individually against an ~~any~~ officer or board
1413 member who willfully and knowingly violates a provision of this
1414 chapter, adopted rule, or a final order of the division; may
1415 order the removal of such individual as an officer or from the
1416 board of administration or as an officer of the association; and
1417 may prohibit such individual from serving as an officer or on
1418 the board of a community association for a period of time. The
1419 term "willfully and knowingly" means that the division informed
1420 the officer or board member that his or her action or intended
1421 action violates this chapter, a rule adopted under this chapter,
1422 or a final order of the division and that the officer or board
1423 member refused to comply with the requirements of this chapter,
1424 a rule adopted under this chapter, or a final order of the
1425 division. The division, before ~~prior to~~ initiating formal agency
1426 action under chapter 120, must ~~shall~~ afford the officer or board
1427 member an opportunity to voluntarily comply and ~~with this~~
1428 ~~chapter, a rule adopted under this chapter, or a final order of~~
1429 ~~the division.~~ an officer or board member who complies within 10
1430 days is not subject to a civil penalty. A penalty may be imposed
1431 on the basis of each day of continuing violation, but ~~in no~~
1432 ~~event shall~~ the penalty for any offense may not exceed \$5,000.
1433 By January 1, 1998, the division shall adopt, by rule, penalty
1434 guidelines applicable to possible violations or to categories of
1435 violations of this chapter or rules adopted by the division. The
1436 guidelines must specify a meaningful range of civil penalties
1437 for each such violation of the statute and rules and must be
1438 based upon the harm caused by the violation, the repetition of

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1439 the violation, and upon such other factors deemed relevant by
1440 the division. For example, the division may consider whether the
1441 violations were committed by a developer, bulk assignee, or bulk
1442 buyer, or owner-controlled association, the size of the
1443 association, and other factors. The guidelines must designate
1444 the possible mitigating or aggravating circumstances that
1445 justify a departure from the range of penalties provided by the
1446 rules. It is the legislative intent that minor violations be
1447 distinguished from those which endanger the health, safety, or
1448 welfare of the condominium residents or other persons and that
1449 such guidelines provide reasonable and meaningful notice to the
1450 public of likely penalties that may be imposed for proscribed
1451 conduct. This subsection does not limit the ability of the
1452 division to informally dispose of administrative actions or
1453 complaints by stipulation, agreed settlement, or consent order.
1454 All amounts collected shall be deposited with the Chief
1455 Financial Officer to the credit of the Division of Florida
1456 Condominiums, Timeshares, and Mobile Homes Trust Fund. If a
1457 developer, bulk assignee, or bulk buyer fails to pay the civil
1458 penalty and the amount deemed to be owed to the association, the
1459 division shall issue an order directing that such developer,
1460 bulk assignee, or bulk buyer cease and desist from further
1461 operation until such time as the civil penalty is paid or may
1462 pursue enforcement of the penalty in a court of competent
1463 jurisdiction. If an association fails to pay the civil penalty,
1464 the division shall pursue enforcement in a court of competent
1465 jurisdiction, and the order imposing the civil penalty or the
1466 cease and desist order is ~~will~~ ~~not~~ ~~become~~ effective until 20
1467 days after the date of such order. Any action commenced by the

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1468 division shall be brought in the county in which the division
1469 has its executive offices or in the county where the violation
1470 occurred.

1471 7. If a unit owner presents the division with proof that
1472 the unit owner has requested access to official records in
1473 writing by certified mail, and that after 10 days the unit owner
1474 again made the same request for access to official records in
1475 writing by certified mail, and that more than 10 days has
1476 elapsed since the second request and the association has still
1477 failed or refused to provide access to official records as
1478 required by this chapter, the division shall issue a subpoena
1479 requiring production of the requested records where the records
1480 are kept pursuant to s. 718.112.

1481 8. In addition to subparagraph 6., the division may seek
1482 the imposition of a civil penalty through the circuit court for
1483 any violation for which the division may issue a notice to show
1484 cause under paragraph (r). The civil penalty shall be at least
1485 \$500 but no more than \$5,000 for each violation. The court may
1486 also award to the prevailing party court costs and reasonable
1487 attorney's fees and, if the division prevails, may also award
1488 reasonable costs of investigation.

1489 (e) The division may prepare and disseminate a prospectus
1490 and other information to assist prospective owners, purchasers,
1491 lessees, and developers of residential condominiums in assessing
1492 the rights, privileges, and duties pertaining thereto.

1493 (f) The division ~~may has authority to~~ adopt rules pursuant
1494 ~~to ss. 120.536(1) and 120.54 to administer implement~~ and enforce
1495 the provisions of this chapter.

1496 (g) The division shall establish procedures for providing

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1497 notice to an association and the developer, bulk assignee, or
1498 bulk buyer during the period in which ~~where~~ the developer, bulk
1499 assignee, or bulk buyer controls the association if ~~when~~ the
1500 division is considering the issuance of a declaratory statement
1501 with respect to the declaration of condominium or any related
1502 document governing ~~in~~ such condominium community.

1503 (h) The division shall furnish each association that ~~which~~
1504 pays the fees required by paragraph (2) (a) a copy of this
1505 chapter, as amended ~~act, subsequent changes to this act on an~~
1506 ~~annual basis, an amended version of this act as it becomes~~
1507 ~~available from the Secretary of State's office on a biennial~~
1508 ~~basis,~~ and the rules adopted thereto on an annual basis.

1509 (i) The division shall annually provide each association
1510 with a summary of declaratory statements and formal legal
1511 opinions relating to the operations of condominiums which were
1512 rendered by the division during the previous year.

1513 (j) The division shall provide training and educational
1514 programs for condominium association board members and unit
1515 owners. The training may, in the division's discretion, include
1516 web-based electronic media, and live training and seminars in
1517 various locations throughout the state. The division may ~~shall~~
1518 ~~have the authority to~~ review and approve education and training
1519 programs for board members and unit owners offered by providers
1520 and shall maintain a current list of approved programs and
1521 providers and ~~shall~~ make such list available to board members
1522 and unit owners in a reasonable and cost-effective manner.

1523 (k) The division shall maintain a toll-free telephone
1524 number accessible to condominium unit owners.

1525 (l) The division shall develop a program to certify both

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1526 volunteer and paid mediators to provide mediation of condominium
1527 disputes. The division shall provide, upon request, a list of
1528 such mediators to any association, unit owner, or other
1529 participant in arbitration proceedings under s. 718.1255
1530 requesting a copy of the list. The division shall include on the
1531 list of volunteer mediators only the names of persons who have
1532 received at least 20 hours of training in mediation techniques
1533 or who have mediated at least 20 disputes. In order to become
1534 initially certified by the division, paid mediators must be
1535 certified by the Supreme Court to mediate court cases in county
1536 or circuit courts. However, the division may adopt, by rule,
1537 additional factors for the certification of paid mediators,
1538 which ~~factors~~ must be related to experience, education, or
1539 background. Any person initially certified as a paid mediator by
1540 the division must, in order to continue to be certified, comply
1541 with the factors or requirements adopted by rule ~~imposed by~~
1542 ~~rules adopted by the division~~.

1543 (m) If ~~When~~ a complaint is made, the division must ~~shall~~
1544 conduct its inquiry with due regard for ~~to~~ the interests of the
1545 affected parties. Within 30 days after receipt of a complaint,
1546 the division shall acknowledge the complaint in writing and
1547 notify the complainant whether the complaint is within the
1548 jurisdiction of the division and whether additional information
1549 is needed by the division from the complainant. The division
1550 shall conduct its investigation and ~~shall~~, within 90 days after
1551 receipt of the original complaint or of timely requested
1552 additional information, take action upon the complaint. However,
1553 the failure to complete the investigation within 90 days does
1554 not prevent the division from continuing the investigation,

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1555 accepting or considering evidence obtained or received after 90
1556 days, or taking administrative action if reasonable cause exists
1557 to believe that a violation of this chapter or a rule ~~of the~~
1558 ~~division~~ has occurred. If an investigation is not completed
1559 within the time limits established in this paragraph, the
1560 division shall, on a monthly basis, notify the complainant in
1561 writing of the status of the investigation. When reporting its
1562 action to the complainant, the division shall inform the
1563 complainant of any right to a hearing pursuant to ss. 120.569
1564 and 120.57.

1565 (n) Condominium association directors, officers, and
1566 employees; condominium developers; bulk assignees, bulk buyers,
1567 and community association managers; and community association
1568 management firms have an ongoing duty to reasonably cooperate
1569 with the division in any investigation pursuant to this section.
1570 The division shall refer to local law enforcement authorities
1571 any person whom the division believes has altered, destroyed,
1572 concealed, or removed any record, document, or thing required to
1573 be kept or maintained by this chapter with the purpose to impair
1574 its verity or availability in the department's investigation.

1575 (o) The division may:

- 1576 1. Contract with agencies in this state or other
1577 jurisdictions to perform investigative functions; or
1578 2. Accept grants-in-aid from any source.

1579 (p) The division shall cooperate with similar agencies in
1580 other jurisdictions to establish uniform filing procedures and
1581 forms, public offering statements, advertising standards, and
1582 rules and common administrative practices.

1583 (q) The division shall consider notice to a developer, bulk

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1584 assignee, or bulk buyer to be complete when it is delivered to
1585 the ~~developer's~~ address of the developer, bulk assignee, or bulk
1586 buyer currently on file with the division.

1587 (r) In addition to its enforcement authority, the division
1588 may issue a notice to show cause, which must ~~shall~~ provide for a
1589 hearing, upon written request, in accordance with chapter 120.

1590 (s) The division shall submit to the Governor, the
1591 President of the Senate, the Speaker of the House of
1592 Representatives, and the chairs of the legislative
1593 appropriations committees an annual report that includes, but
1594 need not be limited to, the number of training programs provided
1595 for condominium association board members and unit owners, the
1596 number of complaints received by type, the number and percent of
1597 complaints acknowledged in writing within 30 days and the number
1598 and percent of investigations acted upon within 90 days in
1599 accordance with paragraph (m), and the number of investigations
1600 exceeding the 90-day requirement. The annual report must ~~shall~~
1601 also include an evaluation of the division's core business
1602 processes and make recommendations for improvements, including
1603 statutory changes. The report shall be submitted by September 30
1604 following the end of the fiscal year.

1605 Section 17. Part VII of chapter 718, Florida Statutes,
1606 consisting of sections 718.701, 718.702, 718.703, 718.704,
1607 718.705, 718.706, 718.707, and 718.708, is created to read:

1608 718.701 Short title.—This part may be cited as the
1609 "Distressed Condominium Relief Act."

1610 718.702 Legislative intent.—

1611 (1) The Legislature acknowledges the massive downturn in
1612 the condominium market which has occurred throughout the state

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1613 and the impact of such downturn on developers, lenders, unit
1614 owners, and condominium associations. Numerous condominium
1615 projects have failed or are in the process of failing such that
1616 the condominium has a small percentage of third-party unit
1617 owners as compared to the unsold inventory of units. As a result
1618 of the inability to find purchasers for this inventory of units,
1619 which results in part from the devaluing of real estate in this
1620 state, developers are unable to satisfy the requirements of
1621 their lenders, leading to defaults on mortgages. Consequently,
1622 lenders are faced with the task of finding a solution to the
1623 problem in order to receive payment for their investments.

1624 (2) The Legislature recognizes that all of the factors
1625 listed in this section lead to condominiums becoming distressed,
1626 resulting in detriment to the unit owners and the condominium
1627 association due to the resulting shortage of assessment moneys
1628 available for proper maintenance of the condominium. Such
1629 shortage and the resulting lack of proper maintenance further
1630 erodes property values. The Legislature finds that individuals
1631 and entities within this state and in other states have
1632 expressed interest in purchasing unsold inventory in one or more
1633 condominium projects, but are reticent to do so because of
1634 accompanying liabilities inherited from the original developer,
1635 which are by definition imputed to the successor purchaser,
1636 including a foreclosing mortgagee. This results in the potential
1637 successor purchaser having unknown and unquantifiable risks that
1638 the potential purchaser is unwilling to accept. As a result,
1639 condominium projects stagnate, leaving all parties involved at
1640 an impasse and without the ability to find a solution.

1641 (3) The Legislature declares that it is the public policy

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1642 of this state to protect the interests of developers, lenders,
1643 unit owners, and condominium associations with regard to
1644 distressed condominiums, and that there is a need for relief
1645 from certain provisions of the Florida Condominium Act geared
1646 toward enabling economic opportunities for successor purchasers,
1647 including foreclosing mortgagees. Such relief would benefit
1648 existing unit owners and condominium associations. The
1649 Legislature further finds and declares that this situation
1650 cannot be open-ended without potentially prejudicing the rights
1651 of unit owners and condominium associations, and thereby
1652 declares that the provisions of this part may be used by
1653 purchasers of condominium inventory for only a specific and
1654 defined period.

1655 718.703 Definitions.—As used in this part, the term:

1656 (1) "Bulk assignee" means a person who:

1657 (a) Acquires more than seven condominium parcels as set
1658 forth in s. 718.707; and

1659 (b) Receives an assignment of some or all of the rights of
1660 the developer as set forth in the declaration of condominium or
1661 this chapter by a written instrument recorded as an exhibit to
1662 the deed or as a separate instrument in the public records of
1663 the county in which the condominium is located.

1664 (2) "Bulk buyer" means a person who acquires more than
1665 seven condominium parcels as set forth in s. 718.707, but who
1666 does not receive an assignment of developer rights other than
1667 the right to conduct sales, leasing, and marketing activities
1668 within the condominium; the right to be exempt from the payment
1669 of working capital contributions to the condominium association
1670 arising out of, or in connection with, the bulk buyer's

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1671 acquisition of a bulk number of units; and the right to be
1672 exempt from any rights of first refusal which may be held by the
1673 condominium association and would otherwise be applicable to
1674 subsequent transfers of title from the bulk buyer to a third
1675 party purchaser concerning one or more units.

1676 718.704 Assignment and assumption of developer rights by
1677 bulk assignee; bulk buyer.-

1678 (1) A bulk assignee assumes and is liable for all duties
1679 and responsibilities of the developer under the declaration and
1680 this chapter, except:

1681 (a) Warranties of the developer under s. 718.203(1) or s.
1682 718.618, except for design, construction, development, or repair
1683 work performed by or on behalf of such bulk assignee;

1684 (b) The obligation to:

1685 1. Fund converter reserves under s. 718.618 for a unit that
1686 was not acquired by the bulk assignee; or

1687 2. Provide converter warranties on any portion of the
1688 condominium property except as expressly provided by the bulk
1689 assignee in the contract for purchase and sale executed with a
1690 purchaser and pertaining to any design, construction,
1691 development, or repair work performed by or on behalf of the
1692 bulk assignee;

1693 (c) The requirement to provide the association with a
1694 cumulative audit of the association's finances from the date of
1695 formation of the condominium association as required by s.
1696 718.301(4)(c). However, the bulk assignee must provide an audit
1697 for the period during which the bulk assignee elects a majority
1698 of the members of the board of administration;

1699 (d) Any liability arising out of or in connection with

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1700 actions taken by the board of administration or the developer-
1701 appointed directors before the bulk assignee elects a majority
1702 of the members of the board of administration; and

1703 (e) Any liability for or arising out of the developer's
1704 failure to fund previous assessments or to resolve budgetary
1705 deficits in relation to a developer's right to guarantee
1706 assessments, except as otherwise provided in subsection (2).

1707
1708 The bulk assignee is also responsible for delivering documents
1709 and materials in accordance with s. 718.705(3). A bulk assignee
1710 may expressly assume some or all of the obligations of the
1711 developer described in paragraphs (a)-(e).

1712 (2) A bulk assignee receiving the assignment of the rights
1713 of the developer to guarantee the level of assessments and fund
1714 budgetary deficits pursuant to s. 718.116 assumes and is liable
1715 for all obligations of the developer with respect to such
1716 guarantee, including any applicable funding of reserves to the
1717 extent required by law, for as long as the guarantee remains in
1718 effect. A bulk assignee not receiving such assignment or a bulk
1719 buyer does not assume and is not liable for the obligations of
1720 the developer with respect to such guarantee, but is responsible
1721 for payment of assessments in the same manner as all other
1722 owners of condominium parcels.

1723 (3) A bulk buyer is liable for the duties and
1724 responsibilities of the developer under the declaration and this
1725 chapter only to the extent provided in this part, together with
1726 any other duties or responsibilities of the developer expressly
1727 assumed in writing by the bulk buyer.

1728 (4) An acquirer of condominium parcels is not a bulk

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1729 assignee or a bulk buyer if the transfer to such acquirer was
1730 made before the effective date of this part with the intent to
1731 hinder, delay, or defraud any purchaser, unit owner, or the
1732 association, or if the acquirer is a person who would be
1733 considered an insider under s. 726.102(7).

1734 (5) An assignment of developer rights to a bulk assignee
1735 may be made by the developer, a previous bulk assignee, or a
1736 court acting on behalf of the developer or the previous bulk
1737 assignee. At any particular time, there may be no more than one
1738 bulk assignee within a condominium, but there may be more than
1739 one bulk buyer. If more than one acquirer of condominium parcels
1740 in the same condominium receives an assignment of developer
1741 rights from the same person, the bulk assignee is the acquirer
1742 whose instrument of assignment is recorded first.

1743 718.705 Board of administration; transfer of control.—

1744 (1) For purposes of determining the timing for transfer of
1745 control of the board of administration of the association to
1746 unit owners other than the developer under s. 718.301(1)(a) and
1747 (b), if a bulk assignee is entitled to elect a majority of the
1748 members of the board, a condominium parcel acquired by the bulk
1749 assignee is conveyed to a purchaser, or owned by an owner other
1750 than the developer, until the condominium parcel is conveyed to
1751 an owner who is not a bulk assignee.

1752 (2) Unless control of the board of administration of the
1753 association has already been relinquished pursuant to s.
1754 718.301(1), the bulk assignee must relinquish control of the
1755 association pursuant to s. 718.301 and this part, as if the bulk
1756 assignee were the developer.

1757 (3) If a bulk assignee relinquishes control of the board of

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1758 administration as set forth in s. 718.301, the bulk assignee
1759 must deliver all of those items required by s. 718.301(4).
1760 However, the bulk assignee is not required to deliver items and
1761 documents not in the possession of the bulk assignee during the
1762 period during which the bulk assignee was entitled to elect at
1763 least a majority of the members of the board of administration.
1764 In conjunction with acquisition of condominium parcels, a bulk
1765 assignee shall undertake a good faith effort to obtain the
1766 documents and materials that must be provided to the association
1767 pursuant to s. 718.301(4). If the bulk assignee is not able to
1768 obtain all of such documents and materials, the bulk assignee
1769 must certify in writing to the association the names or
1770 descriptions of the documents and materials that were not
1771 obtainable by the bulk assignee. Delivery of the certificate
1772 relieves the bulk assignee of responsibility for delivering the
1773 documents and materials referenced in the certificate as
1774 otherwise required under ss. 718.112 and 718.301 and this part.
1775 The responsibility of the bulk assignee for the audit required
1776 by s. 718.301(4) commences as of the date on which the bulk
1777 assignee elected a majority of the members of the board of
1778 administration.

1779 (4) If a conflict arises between the provisions or
1780 application of this section and s. 718.301, this section
1781 prevails.

1782 (5) Failure of a bulk assignee or bulk buyer to
1783 substantially comply with all the requirements in this part
1784 results in the loss of any and all protections or exemptions
1785 provided under this part.

1786 718.706 Specific provisions pertaining to offering of units

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1787 by a bulk assignee or bulk buyer.-

1788 (1) Before offering any units for sale or for lease for a
1789 term exceeding 5 years, a bulk assignee or a bulk buyer must
1790 file the following documents with the division and provide such
1791 documents to a prospective purchaser or tenant:

1792 (a) An updated prospectus or offering circular, or a
1793 supplement to the prospectus or offering circular, filed by the
1794 original developer prepared in accordance with s. 718.504, which
1795 must include the form of contract for sale and for lease in
1796 compliance with s. 718.503(2);

1797 (b) An updated Frequently Asked Questions and Answers
1798 sheet;

1799 (c) The executed escrow agreement if required under s.
1800 718.202; and

1801 (d) The financial information required by s. 718.111(13).
1802 However, if a financial information report does not exist for
1803 the fiscal year before acquisition of title by the bulk assignee
1804 or bulk buyer, or accounting records cannot be obtained in good
1805 faith by the bulk assignee or the bulk buyer which would permit
1806 preparation of the required financial information report, the
1807 bulk assignee or bulk buyer is excused from the requirement of
1808 this paragraph. However, the bulk assignee or bulk buyer must
1809 include in the purchase contract the following statement in
1810 conspicuous type:

1811

1812 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
1813 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR
1814 OF THE ASSOCIATION IS NOT AVAILABLE OR CANNOT BE
1815 CREATED BY THE SELLER DUE TO THE INSUFFICIENT

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1816 ACCOUNTING RECORDS OF THE ASSOCIATION.

1817

1818 (2) Before offering any units for sale or for lease for a
1819 term exceeding 5 years, a bulk assignee must file with the
1820 division and provide to a prospective purchaser a disclosure
1821 statement that includes, but is not limited to:

1822 (a) A description of any rights of the developer which have
1823 been assigned to the bulk assignee or bulk buyer;

1824 (b) The following statement in conspicuous type:

1825

1826 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE
1827 DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS
1828 APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION,
1829 DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF
1830 OF SELLER; and

1831 (c) If the condominium is a conversion subject to part VI,
1832 the following statement in conspicuous type:

1833

1834 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER
1835 RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S.
1836 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY
1837 EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE SELLER IN
1838 THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
1839 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO
1840 ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK
1841 PERFORMED BY OR ON BEHALF OF THE SELLER.

1842 (3) A bulk assignee, while it is in control of the board of
1843 administration of the association, may not authorize, on behalf
1844 of the association:

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1845 (a) The waiver of reserves or the reduction of funding of
1846 the reserves pursuant to s. 718.112(2)(f)2., unless approved by
1847 a majority of the voting interests not controlled by the
1848 developer, bulk assignee, and bulk buyer; or

1849 (b) The use of reserve expenditures for other purposes
1850 pursuant to s. 718.112(2)(f)3., unless approved by a majority of
1851 the voting interests not controlled by the developer, bulk
1852 assignee, and bulk buyer.

1853 (4) A bulk assignee or a bulk buyer must comply with all
1854 the requirements of s. 718.302 regarding any contracts entered
1855 into by the association during the period the bulk assignee or
1856 bulk buyer maintains control of the board of administration.
1857 Unit owners shall be afforded all the protections contained in
1858 s. 718.302 regarding agreements entered into by the association
1859 before unit owners other than the developer, bulk assignee, or
1860 bulk buyer elected a majority of the board of administration.

1861 (5) A bulk buyer must comply with the requirements
1862 contained in the declaration regarding any transfer of a unit,
1863 including sales, leases, and subleases. A bulk buyer is not
1864 entitled to any exemptions afforded a developer or successor
1865 developer under this chapter regarding the transfer of a unit,
1866 including sales, leases, or subleases.

1867 718.707 Time limitation for classification as bulk assignee
1868 or bulk buyer.—A person acquiring condominium parcels may not be
1869 classified as a bulk assignee or bulk buyer unless the
1870 condominium parcels were acquired before July 1, 2012. The date
1871 of such acquisition shall be determined by the date of recording
1872 of a deed or other instrument of conveyance for such parcels in
1873 the public records of the county in which the condominium is

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1874 located, or by the date of issuance of a certificate of title in
1875 a foreclosure proceeding with respect to such condominium
1876 parcels.

1877 718.708 Liability of developers and others.—An assignment
1878 of developer rights to a bulk assignee or bulk buyer does not
1879 release the original developer from liabilities under the
1880 declaration or this chapter. This part does not limit the
1881 liability of the original developer for claims brought by unit
1882 owners, bulk assignees, or bulk buyers for violations of this
1883 chapter by the creating developer, unless specifically excluded
1884 in this part. This part does not waive, release, compromise, or
1885 limit liability established under chapter 718 except as
1886 specifically excluded under this part.

1887 Section 18. Paragraph (d) of subsection (1) of section
1888 719.106, Florida Statutes, is amended to read:

1889 719.106 Bylaws; cooperative ownership.—

1890 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
1891 documents shall provide for the following, and if they do not,
1892 they shall be deemed to include the following:

1893 (d) *Shareholder meetings.*—There shall be an annual meeting
1894 of the shareholders. All members of the board of administration
1895 shall be elected at the annual meeting unless the bylaws provide
1896 for staggered election terms or for their election at another
1897 meeting. Any unit owner desiring to be a candidate for board
1898 membership must ~~shall~~ comply with subparagraph 1. The bylaws
1899 must ~~shall~~ provide the method for calling meetings, including
1900 annual meetings. Written notice, which must ~~notice shall~~
1901 incorporate an identification of agenda items, shall be given to
1902 each unit owner at least 14 days before ~~prior to~~ the annual

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1903 meeting and ~~shall be~~ posted in a conspicuous place on the
1904 cooperative property at least 14 continuous days preceding the
1905 annual meeting. Upon notice to the unit owners, the board must
1906 ~~shall~~ by duly adopted rule designate a specific location on the
1907 cooperative property upon which all notice of unit owner
1908 meetings are ~~shall be~~ posted. In lieu of or in addition to the
1909 physical posting of the meeting notice ~~of any meeting of the~~
1910 ~~shareholders on the cooperative property~~, the association may,
1911 by reasonable rule, adopt a procedure for conspicuously posting
1912 and repeatedly broadcasting the notice and the agenda on a
1913 closed-circuit cable television system serving the cooperative
1914 association. However, if broadcast notice is used in lieu of a
1915 posted notice ~~posted physically on the cooperative property~~, the
1916 notice and agenda must be broadcast at least four times every
1917 broadcast hour of each day that a posted notice is otherwise
1918 required under this section. If ~~When~~ broadcast notice is
1919 provided, the notice and agenda must be broadcast in a manner
1920 and for a sufficient continuous length of time ~~so as~~ to allow an
1921 average reader to observe the notice and read and comprehend the
1922 entire content of the notice and the agenda. Unless a unit owner
1923 waives in writing the right to receive notice of the annual
1924 meeting, the notice of the annual meeting must ~~shall~~ be sent by
1925 mail, hand delivered, or electronically transmitted to each unit
1926 owner. An officer of the association must ~~shall~~ provide an
1927 affidavit or United States Postal Service certificate of
1928 mailing, to be included in the official records of the
1929 association, affirming that notices of the association meeting
1930 were mailed, hand delivered, or electronically transmitted, in
1931 accordance with this provision, to each unit owner at the

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1932 address last furnished to the association.
1933 1. ~~After January 1, 1992,~~ The board of administration shall
1934 be elected by written ballot or voting machine. A proxy may not
1935 ~~Proxies shall in no event~~ be used in electing the board of
1936 administration, ~~either~~ in general elections or elections to fill
1937 vacancies caused by recall, resignation, or otherwise unless
1938 otherwise provided in this chapter. At least ~~Not less than~~ 60
1939 days before a scheduled election, the association shall mail,
1940 deliver, or transmit, whether by separate association mailing,
1941 delivery, or electronic transmission or included in another
1942 association mailing, delivery, or electronic transmission,
1943 including regularly published newsletters, to each unit owner
1944 entitled to vote, a first notice of the date of the election.
1945 Any unit owner or other eligible person desiring to be a
1946 candidate for the board of administration must ~~shall~~ give
1947 written notice to the association at least ~~not less than~~ 40 days
1948 before a scheduled election. Together with the written notice
1949 and agenda as set forth in this section, the association shall
1950 mail, deliver, or electronically transmit a second notice of
1951 election to all unit owners entitled to vote ~~therein~~, together
1952 with a ballot which lists ~~shall list~~ all candidates. Upon
1953 request of a candidate, the association shall include an
1954 information sheet, no larger than 8 1/2 inches by 11 inches,
1955 which must be furnished by the candidate at least ~~not less than~~
1956 35 days before ~~prior to~~ the election, to be included with the
1957 mailing, delivery, or electronic transmission of the ballot,
1958 with the costs of mailing, delivery, or transmission and copying
1959 to be borne by the association. The association is not liable
1960 ~~has no liability~~ for the contents of the information sheets

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1961 provided by the candidates. In order to reduce costs, the
1962 association may print or duplicate the information sheets on
1963 both sides of the paper. The division shall by rule establish
1964 voting procedures consistent with this subparagraph ~~the~~
1965 ~~provisions contained herein~~, including rules establishing
1966 procedures for giving notice by electronic transmission and
1967 rules providing for the secrecy of ballots. Elections shall be
1968 decided by a plurality of those ballots cast. There is ~~shall be~~
1969 no quorum requirement. However, at least 20 percent of the
1970 eligible voters must cast a ballot in order to have a valid
1971 election ~~of members of the board of administration~~. A ~~No~~ unit
1972 owner may not ~~shall~~ permit any other person to vote his or her
1973 ballot, and any such ballots improperly cast are ~~shall be deemed~~
1974 invalid. A unit owner who needs assistance in casting the ballot
1975 for the reasons stated in s. 101.051 may obtain assistance in
1976 casting the ballot. Any unit owner violating this provision may
1977 be fined by the association in accordance with s. 719.303. The
1978 regular election must ~~shall~~ occur on the date of the annual
1979 meeting. ~~The provisions of~~ This subparagraph does ~~shall~~ not
1980 apply to timeshare cooperatives. Notwithstanding ~~the provisions~~
1981 ~~of~~ this subparagraph, an election and balloting are not required
1982 unless more candidates file a notice of intent to run or are
1983 nominated than vacancies exist on the board.

1984 2. Any approval by unit owners called for by this chapter,
1985 or the applicable cooperative documents, must ~~shall~~ be made at a
1986 duly noticed meeting of unit owners and is ~~shall be~~ subject to
1987 ~~all requirements of~~ this chapter or the applicable cooperative
1988 documents relating to unit owner decisionmaking, except that
1989 unit owners may take action by written agreement, without

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1990 meetings, on matters for which action by written agreement
1991 without meetings is expressly allowed by the applicable
1992 cooperative documents or law ~~any Florida statute~~ which provides
1993 for the unit owner action.

1994 3. Unit owners may waive notice of specific meetings if
1995 allowed by the applicable cooperative documents or law ~~any~~
1996 ~~Florida statute~~. If authorized by the bylaws, notice of meetings
1997 of the board of administration, shareholder meetings, except
1998 shareholder meetings called to recall board members under
1999 paragraph (f), and committee meetings may be given by electronic
2000 transmission to unit owners who consent to receive notice by
2001 electronic transmission.

2002 4. Unit owners ~~shall~~ have the right to participate in
2003 meetings of unit owners with reference to all designated agenda
2004 items. However, the association may adopt reasonable rules
2005 governing the frequency, duration, and manner of unit owner
2006 participation.

2007 5. Any unit owner may tape record or videotape meetings of
2008 the unit owners subject to reasonable rules adopted by the
2009 division.

2010 6. Unless otherwise provided in the bylaws, a vacancy
2011 occurring on the board before the expiration of a term may be
2012 filled by the affirmative vote of the majority of the remaining
2013 directors, even if the remaining directors constitute less than
2014 a quorum, or by the sole remaining director. In the alternative,
2015 a board may hold an election to fill the vacancy, in which case
2016 the election procedures must conform to the requirements of
2017 subparagraph 1. unless the association has opted out of the
2018 statutory election process, in which case the bylaws of the

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2019 association control. Unless otherwise provided in the bylaws, a
2020 board member appointed or elected under this subparagraph shall
2021 fill the vacancy for the unexpired term of the seat being
2022 filled. Filling vacancies created by recall is governed by
2023 paragraph (f) and rules adopted by the division.
2024

2025 Notwithstanding subparagraphs (b)2. and (d)1., an association
2026 may, by the affirmative vote of a majority of the total voting
2027 interests, provide for a different voting and election procedure
2028 in its bylaws, which vote may be by a proxy specifically
2029 delineating the different voting and election procedures. The
2030 different voting and election procedures may provide for
2031 elections to be conducted by limited or general proxy.

2032 Section 19. Subsection (5) of section 719.1055, Florida
2033 Statutes, is amended to read:

2034 719.1055 Amendment of cooperative documents; alteration and
2035 acquisition of property.—

2036 (5) The bylaws must include a provision whereby a
2037 certificate of compliance from a licensed electrical contractor
2038 or electrician may be accepted by the association's board as
2039 evidence of compliance of the cooperative units with the
2040 applicable fire and life safety code. Notwithstanding the
2041 provisions of chapter 633 or of any other code, statute,
2042 ordinance, administrative rule, or regulation, or any
2043 interpretation of the foregoing, a cooperative or unit owner is
2044 not obligated to retrofit the common elements, common areas,
2045 association property, or units of a residential cooperative with
2046 a fire sprinkler system or any other form of engineered
2047 lifesafety life-safety system in a building that has been

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2048 certified for occupancy by the applicable governmental entity,
2049 if the unit owners have voted to forego such retrofitting and
2050 engineered lifesafety ~~life safety~~ system by the affirmative vote
2051 of two-thirds of all voting interests in the affected
2052 cooperative. ~~However, a cooperative may not forego the~~
2053 ~~retrofitting with a fire sprinkler system of common areas in a~~
2054 ~~high-rise building. For purposes of this subsection, the term~~
2055 ~~"high-rise building" means a building that is greater than 75~~
2056 ~~feet in height where the building height is measured from the~~
2057 ~~lowest level of fire department access to the floor of the~~
2058 ~~highest occupiable story. For purposes of this subsection, the~~
2059 ~~term "common areas" means any enclosed hallway, corridor, lobby,~~
2060 ~~stairwell, or entryway. In no event shall The local authority~~
2061 ~~having jurisdiction~~ may not require completion of retrofitting
2062 ~~of common areas with a sprinkler system or other form of~~
2063 engineered lifesafety system before the end of 2019 ~~2014~~.

2064 (a) A vote to forego retrofitting may be obtained by
2065 limited proxy or by a ballot personally cast at a duly called
2066 membership meeting, or by execution of a written consent by the
2067 member, and is ~~shall be~~ effective upon ~~the~~ recording ~~of~~ a
2068 certificate attesting to such vote in the public records of the
2069 county where the cooperative is located. The association shall
2070 mail or, ~~hand deliver, or electronically transmit~~ to each unit
2071 owner written notice at least 14 days before ~~prior to~~ such
2072 membership meeting in which the vote to forego retrofitting of
2073 the required fire sprinkler system or any other form of
2074 engineered lifesafety system is to take place. Within 30 days
2075 after the association's opt-out vote, notice of the results of
2076 the opt-out vote shall be mailed or, ~~hand delivered, or~~

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2077 ~~electronically transmitted~~ to all unit owners. Evidence of
2078 compliance with this ~~30-day~~ notice must ~~shall~~ be made by an
2079 affidavit executed by the person providing the notice and filed
2080 among the official records of the association. After such notice
2081 is provided to each owner, a copy of the ~~such~~ notice shall be
2082 provided by the current owner to a new owner before ~~prior to~~
2083 closing and ~~shall be provided~~ by a unit owner to a renter before
2084 ~~prior to~~ signing a lease.

2085 (b) If there has been a previous vote to forego
2086 retrofitting, a vote to require retrofitting may be obtained at
2087 a special meeting of the unit owners called by a petition of
2088 least 10 percent of the voting interests. Such vote may only be
2089 called once every 3 years. Notice must be provided as required
2090 for any regularly called meeting of the unit owners, and the
2091 notice must state the purpose of the meeting. Electronic
2092 transmission may not be used to provide notice of a meeting
2093 called in whole or in part for this purpose.

2094 (c) ~~(b)~~ As part of the information collected annually from
2095 cooperatives, the division shall require associations to report
2096 the membership vote and recording of a certificate under this
2097 subsection and, if retrofitting has been undertaken, the per-
2098 unit cost of such work. The division shall annually report to
2099 the Division of State Fire Marshal of the Department of
2100 Financial Services the number of cooperatives that have elected
2101 to forego retrofitting.

2102 Section 20. Subsections (3) and (4) of section 719.108,
2103 Florida Statutes, are amended, and subsection (10) is added to
2104 that section, to read:

2105 719.108 Rents and assessments; liability; lien and

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2106 priority; interest; collection; cooperative ownership.—
2107 (3) Rents and assessments, and installments on them, not
2108 paid when due bear interest at the rate provided in the
2109 cooperative documents from the date due until paid. This rate
2110 may not exceed the rate allowed by law, and, if a ~~no~~ rate is not
2111 provided in the cooperative documents, ~~then~~ interest accrues
2112 ~~shall accrue~~ at 18 percent per annum. ~~Also,~~ If the cooperative
2113 documents or bylaws so provide, the association may charge an
2114 administrative late fee in addition to such interest, in an
2115 amount not to exceed the greater of \$25 or 5 percent of each
2116 installment of the assessment for each delinquent installment
2117 that the payment is late. Any payment received by an association
2118 must ~~shall~~ be applied first to any interest accrued by the
2119 association, then to any administrative late fee, then to any
2120 costs and reasonable attorney's fees incurred in collection, and
2121 then to the delinquent assessment. The foregoing applies ~~shall~~
2122 ~~be applicable~~ notwithstanding any restrictive endorsement,
2123 designation, or instruction placed on or accompanying a payment.
2124 A late fee is not subject to chapter 687 or s. 719.303(3).
2125 (4) The association has ~~shall have~~ a lien on each
2126 cooperative parcel for any unpaid rents and assessments, plus
2127 interest, any authorized administrative late fees, and any
2128 reasonable costs for collection services for which the
2129 association has contracted against the unit owner of the
2130 cooperative parcel. If authorized by the cooperative documents,
2131 the said lien shall also secures ~~secure~~ reasonable attorney's
2132 fees incurred by the association incident to the collection of
2133 the rents and assessments or enforcement of such lien. The lien
2134 is effective from and after ~~the~~ recording ~~of~~ a claim of lien in

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2135 the public records in the county in which the cooperative parcel
2136 is located which states the description of the cooperative
2137 parcel, the name of the unit owner, the amount due, and the due
2138 dates. The lien expires ~~shall expire~~ if a claim of lien is not
2139 filed within 1 year after the date the assessment was due, and
2140 the no-such lien does not shall continue for a longer period
2141 than 1 year after the claim of lien has been recorded unless,
2142 within that time, an action to enforce the lien is commenced ~~in~~
2143 ~~a court of competent jurisdiction.~~ Except as otherwise provided
2144 in this chapter, a lien may not be filed by the association
2145 against a cooperative parcel until 30 days after the date on
2146 which a notice of intent to file a lien has been delivered to
2147 the owner.

2148 (a) The notice must be sent to the unit owner at the
2149 address of the unit by first-class United States mail and:

2150 1. If the most recent address of the unit owner on the
2151 records of the association is the address of the unit, the
2152 notice must be sent by registered or certified mail, return
2153 receipt requested, to the unit owner at the address of the unit.

2154 2. If the most recent address of the unit owner on the
2155 records of the association is in the United States, but is not
2156 the address of the unit, the notice must be sent by registered
2157 or certified mail, return receipt requested, to the unit owner
2158 at his or her most recent address.

2159 3. If the most recent address of the unit owner on the
2160 records of the association is not in the United States, the
2161 notice must be sent by first-class United States mail to the
2162 unit owner at his or her most recent address.

2163 (b) A notice that is sent pursuant to this subsection is

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2164 ~~deemed delivered upon mailing. No lien may be filed by the~~
2165 ~~association against a cooperative parcel until 30 days after the~~
2166 ~~date on which a notice of intent to file a lien has been served~~
2167 ~~on the unit owner of the cooperative parcel by certified mail or~~
2168 ~~by personal service in the manner authorized by chapter 48 and~~
2169 ~~the Florida Rules of Civil Procedure.~~

2170 (10) If the unit is occupied by a tenant and the unit owner
2171 is delinquent in paying any monetary obligation due to the
2172 association, the association may make a written demand that the
2173 tenant pay the future monetary obligations related to the
2174 cooperative share to the association and the tenant must make
2175 such payment. The demand is continuing in nature, and upon
2176 demand, the tenant must pay the monetary obligations to the
2177 association until the association releases the tenant or the
2178 tenant discontinues tenancy in the unit. The association must
2179 mail written notice to the unit owner of the association's
2180 demand that the tenant make payments to the association. The
2181 association shall, upon request, provide the tenant with written
2182 receipts for payments made. A tenant who acts in good faith in
2183 response to a written demand from an association is immune from
2184 any claim from the unit owner.

2185 (a) If the tenant prepaid rent to the unit owner before
2186 receiving the demand from the association and provides written
2187 evidence of paying the rent to the association within 14 days
2188 after receiving the demand, the tenant shall receive credit for
2189 the prepaid rent for the applicable period and must make any
2190 subsequent rental payments to the association to be credited
2191 against the monetary obligations of the unit owner to the
2192 association.

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2193 (b) The tenant is not liable for increases in the amount of
2194 the regular monetary obligations due unless the tenant was
2195 notified in writing of the increase at least 10 days before the
2196 date on which the rent is due. The liability of the tenant may
2197 not exceed the amount due from the tenant to the tenants'
2198 landlord. The tenant's landlord shall provide the tenant a
2199 credit against rents due to the unit owner in the amount of
2200 monies paid to the association under this section.

2201 (c) The association may issue notices under s. 83.56 and
2202 may sue for eviction under ss. 83.59-83.625 as if the
2203 association were a landlord under part II of chapter 83 if the
2204 tenant fails to pay a required payment. However, the association
2205 is not otherwise considered a landlord under chapter 83 and
2206 specifically has no duties under s. 83.51.

2207 (d) The tenant does not, by virtue of payment of monetary
2208 obligations, have any of the rights of a unit owner to vote in
2209 any election or to examine the books and records of the
2210 association.

2211 (e) A court may supersede the effect of this subsection by
2212 appointing a receiver.

2213 Section 21. Paragraph (b) of subsection (2) of section
2214 720.304, Florida Statutes, is amended to read:

2215 720.304 Right of owners to peaceably assemble; display of
2216 flag; SLAPP suits prohibited.--

2217 (2)

2218 (b) Any homeowner may erect a freestanding flagpole no more
2219 than 20 feet high on any portion of the homeowner's real
2220 property, regardless of any covenants, restrictions, bylaws,
2221 rules, or requirements of the association, if the flagpole does

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2222 not obstruct sightlines at intersections and is not erected
2223 within or upon an easement. The homeowner may further display in
2224 a respectful manner from that flagpole, regardless of any
2225 covenants, restrictions, bylaws, rules, or requirements of the
2226 association, one official United States flag, not larger than 4
2227 1/2 feet by 6 feet, and may additionally display one official
2228 flag of the State of Florida or the United States Army, Navy,
2229 Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such
2230 additional flag must be equal in size to or smaller than the
2231 United States flag. The flagpole and display are subject to all
2232 building codes, zoning setbacks, and other applicable
2233 governmental regulations, including, but not limited to, noise
2234 and lighting ordinances in the county or municipality in which
2235 the flagpole is erected and all setback and locational criteria
2236 contained in the governing documents.

2237 Section 22. Subsection (2) of section 720.305, Florida
2238 Statutes, is amended to read:

2239 720.305 Obligations of members; remedies at law or in
2240 equity; levy of fines and suspension of use rights.-

2241 (2) If a member is delinquent for more than 90 days in
2242 paying a monetary obligation due the association the governing
2243 documents so provide, an association may suspend, until such
2244 monetary obligation is paid for a reasonable period of time, the
2245 rights of a member or a member's tenants, guests, or invitees,
2246 or both, to use common areas and facilities and may levy
2247 reasonable fines of up to, not to exceed \$100 per violation,
2248 against any member or any tenant, guest, or invitee. A fine may
2249 be levied for on the basis of each day of a continuing
2250 violation, with a single notice and opportunity for hearing,

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2251 except that a no such fine may not shall exceed \$1,000 in the
2252 aggregate unless otherwise provided in the governing documents.
2253 A fine of less than \$1,000 may shall not become a lien against a
2254 parcel. In any action to recover a fine, the prevailing party is
2255 entitled to collect its reasonable attorney's fees and costs
2256 from the nonprevailing party as determined by the court. The
2257 provisions regarding the suspension-of-use rights do not apply
2258 to the portion of common areas that must be used to provide
2259 access to the parcel or utility services provided to the parcel.

2260 (a) A fine or suspension may not be imposed without ~~notice~~
2261 ~~of~~ at least 14 days notice to the person sought to be fined or
2262 suspended and an opportunity for a hearing before a committee of
2263 at least three members appointed by the board who are not
2264 officers, directors, or employees of the association, or the
2265 spouse, parent, child, brother, or sister of an officer,
2266 director, or employee. If the committee, by majority vote, does
2267 not approve a proposed fine or suspension, it may not be
2268 imposed. If the association imposes a fine or suspension, the
2269 association must provide written notice of such fine or
2270 suspension by mail or hand delivery to the parcel owner and, if
2271 applicable, to any tenant, licensee, or invitee of the parcel
2272 owner.

2273 ~~(b) The requirements of this subsection do not apply to the~~
2274 ~~imposition of suspensions or fines upon any member because of~~
2275 ~~the failure of the member to pay assessments or other charges~~
2276 ~~when due if such action is authorized by the governing~~
2277 ~~documents.~~

2278 (b)-(c) Suspension of common-area-use rights do shall not
2279 impair the right of an owner or tenant of a parcel to have

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2280 vehicular and pedestrian ingress to and egress from the parcel,
2281 including, but not limited to, the right to park.

2282 Section 23. Subsections (7) and (9) of section 720.306,
2283 Florida Statutes, are amended to read:

2284 720.306 Meetings of members; voting and election
2285 procedures; amendments.—

2286 (7) ADJOURNMENT.—Unless the bylaws require otherwise,
2287 adjournment of an annual or special meeting to a different date,
2288 time, or place must be announced at that meeting before an
2289 adjournment is taken, or notice must be given of the new date,
2290 time, or place pursuant to s. 720.303(2). Any business that
2291 might have been transacted on the original date of the meeting
2292 may be transacted at the adjourned meeting. If a new record date
2293 for the adjourned meeting is or must be fixed under s. 607.0707
2294 ~~s. 617.0707~~, notice of the adjourned meeting must be given to
2295 persons who are entitled to vote and are members as of the new
2296 record date but were not members as of the previous record date.

2297 (9) ELECTIONS AND BOARD VACANCIES.—Elections of directors
2298 must be conducted in accordance with the procedures set forth in
2299 the governing documents of the association. All members of the
2300 association are ~~shall be~~ eligible to serve on the board of
2301 directors, and a member may nominate himself or herself as a
2302 candidate for the board at a meeting where the election is to be
2303 held. Except as otherwise provided in the governing documents,
2304 boards of directors must be elected by a plurality of the votes
2305 cast by eligible voters. Any election dispute between a member
2306 and an association must be submitted to mandatory binding
2307 arbitration with the division. Such proceedings must ~~shall~~ be
2308 conducted in the manner provided by s. 718.1255 and the

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2309 procedural rules adopted by the division. Unless otherwise
2310 provided in the bylaws, any vacancy occurring on the board
2311 before the expiration of a term may be filled by an affirmative
2312 vote of the majority of the remaining directors, even if the
2313 remaining directors constitute less than a quorum, or by the
2314 sole remaining director. In the alternative, a board may hold an
2315 election to fill the vacancy, in which case the election
2316 procedures must conform to the requirements of the governing
2317 documents. Unless otherwise provided in the bylaws, a board
2318 member appointed or elected under this section is appointed for
2319 the unexpired term of the seat being filled. Filling vacancies
2320 created by recall is governed by s. 720.303(10) and rules
2321 adopted by the division.

2322 Section 24. Subsection (8) is added to section 720.3085,
2323 Florida Statutes, to read:

2324 720.3085 Payment for assessments; lien claims.—

2325 (8) If the parcel is occupied by a tenant and the parcel
2326 owner is delinquent in paying any monetary obligation due to the
2327 association, the association may demand that the tenant pay to
2328 the association the future monetary obligations related to the
2329 parcel. The demand is continuing in nature, and upon demand, the
2330 tenant must continue to pay the monetary obligations until the
2331 association releases the tenant or the tenant discontinues
2332 tenancy in the parcel. A tenant who acts in good faith in
2333 response to a written demand from an association is immune from
2334 any claim from the parcel owner.

2335 (a) If the tenant prepaid rent to the parcel owner before
2336 receiving the demand from the association and provides written
2337 evidence of paying the rent to the association within 14 days

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2338 after receiving the demand, the tenant shall receive credit for
2339 the prepaid rent for the applicable period and must make any
2340 subsequent rental payments to the association to be credited
2341 against the monetary obligations of the parcel owner to the
2342 association. The association shall, upon request, provide the
2343 tenant with written receipts for payments made. The association
2344 shall mail written notice to the parcel owner of the
2345 association's demand that the tenant pay monetary obligations to
2346 the association.

2347 (b) The tenant is not liable for increases in the amount of
2348 the monetary obligations due unless the tenant was notified in
2349 writing of the increase at least 10 days before the date on
2350 which the rent is due. The tenant shall be given a credit
2351 against rents due to the parcel owner in the amount of
2352 assessments paid to the association.

2353 (c) The association may issue notices under s. 83.56 and
2354 may sue for eviction under ss. 83.59-83.625 as if the
2355 association were a landlord under part II of chapter 83 if the
2356 tenant fails to pay a monetary obligation. However, the
2357 association is not otherwise considered a landlord under chapter
2358 83 and specifically has no duties under s. 83.51.

2359 (d) The tenant does not, by virtue of payment of monetary
2360 obligations, have any of the rights of a parcel owner to vote in
2361 any election or to examine the books and records of the
2362 association.

2363 (e) A court may supersede the effect of this subsection by
2364 appointing a receiver.

2365 Section 25. Subsection (6) is added to section 720.31,
2366 Florida Statutes, to read:

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2367 720.31 Recreational leaseholds; right to acquire;
2368 escalation clauses.—

2369 (6) An association may enter into agreements to acquire
2370 leaseholds, memberships, and other possessory or use interests
2371 in lands or facilities, including, but not limited to, country
2372 clubs, golf courses, marinas, submerged land, parking areas,
2373 conservation areas, and other recreational facilities. An
2374 association may enter into such agreements regardless of whether
2375 the lands or facilities are contiguous to the lands of the
2376 community or whether such lands or facilities are intended to
2377 provide enjoyment, recreation, or other use or benefit to the
2378 owners. All leaseholds, memberships, and other possessory or use
2379 interests existing or created at the time of recording the
2380 declaration must be stated and fully described in the
2381 declaration. Subsequent to recording the declaration, agreements
2382 acquiring leaseholds, memberships, or other possessory or use
2383 interests not entered into within 12 months after recording the
2384 declaration may be entered into only if authorized by the
2385 declaration as a material alteration or substantial addition to
2386 the common areas or association property. If the declaration is
2387 silent, any such transaction requires the approval of 75 percent
2388 of the total voting interests of the association. The
2389 declaration may provide that the rental, membership fees,
2390 operations, replacements, or other expenses are common expenses;
2391 impose covenants and restrictions concerning their use; and
2392 contain other provisions not inconsistent with this subsection.
2393 An association exercising its rights under this subsection may
2394 join with other associations that are part of the same
2395 development or with a master association responsible for the

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2396 enforcement of shared covenants, conditions, and restrictions in
2397 carrying out the intent of this subsection. This subsection is
2398 intended to clarify law in existence before July 1, 2010.

2399 Section 26. Paragraph (b) of subsection (2), paragraphs (a)
2400 and (c) of subsection (5), and paragraphs (b), (c), (d), (f),
2401 and (g) of subsection (6) of section 720.303, Florida Statutes,
2402 are amended, and subsection (12) is added to that section, to
2403 read:

2404 720.303 Association powers and duties; meetings of board;
2405 official records; budgets; financial reporting; association
2406 funds; recalls.—

2407 (2) BOARD MEETINGS.—

2408 (b) Members have the right to attend all meetings of the
2409 board and to speak on any matter placed on the agenda by
2410 petition of the voting interests for at least 3 minutes. The
2411 association may adopt written reasonable rules expanding the
2412 right of members to speak and governing the frequency, duration,
2413 and other manner of member statements, which rules must be
2414 consistent with this paragraph and may include a sign-up sheet
2415 for members wishing to speak. Notwithstanding any other law, ~~the~~
2416 ~~requirement that board meetings and committee meetings be open~~
2417 ~~to the members is inapplicable to~~ meetings between the board or
2418 a committee and the association's attorney to discuss proposed
2419 or pending litigation, or with respect to meetings of the board
2420 held for the purpose of discussing personnel matters are not
2421 required to be open to the members other than directors.

2422 (5) INSPECTION AND COPYING OF RECORDS.—The official records
2423 shall be maintained within the state and must be open to
2424 inspection and available for photocopying by members or their

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2425 authorized agents at reasonable times and places within 10
2426 business days after receipt of a written request for access.
2427 This subsection may be complied with by having a copy of the
2428 official records available for inspection or copying in the
2429 community. If the association has a photocopy machine available
2430 where the records are maintained, it must provide parcel owners
2431 with copies on request during the inspection if the entire
2432 request is limited to no more than 25 pages.

2433 (a) The failure of an association to provide access to the
2434 records within 10 business days after receipt of a written
2435 request submitted by certified mail, return receipt requested,
2436 creates a rebuttable presumption that the association willfully
2437 failed to comply with this subsection.

2438 (c) The association may adopt reasonable written rules
2439 governing the frequency, time, location, notice, records to be
2440 inspected, and manner of inspections, but may not require ~~impose~~
2441 ~~a requirement that~~ a parcel owner to demonstrate any proper
2442 purpose for the inspection, state any reason for the inspection,
2443 or limit a parcel owner's right to inspect records to less than
2444 one 8-hour business day per month. The association may impose
2445 fees to cover the costs of providing copies of the official
2446 records, including, without limitation, the costs of copying.
2447 The association may charge up to 50 cents per page for copies
2448 made on the association's photocopier. If the association does
2449 not have a photocopy machine available where the records are
2450 kept, or if the records requested to be copied exceed 25 pages
2451 in length, the association may have copies made by an outside
2452 vendor or association management company personnel and may
2453 charge the actual cost of copying, including any reasonable

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2454 costs involving personnel fees and charges at an hourly rate for
2455 vendor or employee time to cover administrative costs to the
2456 vendor or association. The association shall maintain an
2457 adequate number of copies of the recorded governing documents,
2458 to ensure their availability to members and prospective members.
2459 Notwithstanding ~~the provisions of~~ this paragraph, the following
2460 records are ~~shall~~ not be accessible to members or parcel owners:

2461 1. Any record protected by the lawyer-client privilege as
2462 described in s. 90.502 and any record protected by the work-
2463 product privilege, including, but not limited to, any record
2464 prepared by an association attorney or prepared at the
2465 attorney's express direction which reflects a mental impression,
2466 conclusion, litigation strategy, or legal theory of the attorney
2467 or the association and which was prepared exclusively for civil
2468 or criminal litigation or for adversarial administrative
2469 proceedings or which was prepared in anticipation of imminent
2470 civil or criminal litigation or imminent adversarial
2471 administrative proceedings until the conclusion of the
2472 litigation or ~~adversarial~~ administrative proceedings.

2473 2. Information obtained by an association in connection
2474 with the approval of the lease, sale, or other transfer of a
2475 parcel.

2476 3. ~~Disciplinary, health, insurance, and Personnel records~~
2477 of the association's employees, including, but not limited to,
2478 disciplinary, payroll, health, and insurance records.

2479 4. Medical records of parcel owners or community residents.

2480 5. Social security numbers, driver's license numbers,
2481 credit card numbers, electronic mailing addresses, telephone
2482 numbers, emergency contact information, any addresses for a

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2483 parcel owner other than as provided for association notice
2484 requirements, and other personal identifying information of any
2485 person, excluding the person's name, parcel designation, mailing
2486 address, and property address.

2487 6. Any electronic security measure that is used by the
2488 association to safeguard data, including passwords.

2489 7. The software and operating system used by the
2490 association which allows the manipulation of data, even if the
2491 owner owns a copy of the same software used by the association.
2492 The data is part of the official records of the association.

2493 (6) BUDGETS.—

2494 (b) In addition to annual operating expenses, the budget
2495 may include reserve accounts for capital expenditures and
2496 deferred maintenance for which the association is responsible.
2497 If reserve accounts are not established pursuant to paragraph
2498 (d), funding of such reserves is limited to the extent that the
2499 governing documents do not limit increases in assessments,
2500 including reserves. If the budget of the association includes
2501 reserve accounts established pursuant to paragraph (d), such
2502 reserves shall be determined, maintained, and waived in the
2503 manner provided in this subsection. Once an association provides
2504 for reserve accounts pursuant to paragraph (d) in the budget,
2505 the association shall thereafter determine, maintain, and waive
2506 reserves in compliance with this subsection. This section does
2507 not preclude the termination of a reserve account established
2508 pursuant to this paragraph upon approval of a majority of the
2509 total voting interests of the association. Upon such approval,
2510 the terminating reserve account shall be removed from the
2511 budget.

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2512 (c) 1. If the budget of the association does not provide for
2513 reserve accounts pursuant to paragraph (d) ~~governed by this~~
2514 ~~subsection~~ and the association is responsible for the repair and
2515 maintenance of capital improvements that may result in a special
2516 assessment if reserves are not provided, each financial report
2517 for the preceding fiscal year required by subsection (7) must
2518 ~~shall~~ contain the following statement in conspicuous type:
2519

2520 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR
2521 RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED
2522 MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
2523 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS
2524 PURSUANT TO ~~THE PROVISIONS OF~~ SECTION 720.303(6),
2525 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF NOT
2526 ~~LESS THAN~~ A MAJORITY OF THE TOTAL VOTING INTERESTS OF
2527 THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR
2528 BY WRITTEN CONSENT.

2529 2. If the budget of the association does provide for
2530 funding accounts for deferred expenditures, including, but not
2531 limited to, funds for capital expenditures and deferred
2532 maintenance, but such accounts are not created or established
2533 pursuant to paragraph (d), each financial report for the
2534 preceding fiscal year required under subsection (7) must also
2535 contain the following statement in conspicuous type:
2536

2537 THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED
2538 VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING
2539 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT
2540 TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING

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2541 DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
2542 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION
2543 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT
2544 SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET
2545 FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN
2546 ACCORDANCE WITH THAT STATUTE.

2547 (d) An association is ~~shall be~~ deemed to have provided for
2548 reserve accounts if ~~when~~ reserve accounts have been initially
2549 established by the developer or if ~~when~~ the membership of the
2550 association affirmatively elects to provide for reserves. If
2551 reserve accounts are not initially provided ~~for~~ by the
2552 developer, the membership of the association may elect to do so
2553 upon the affirmative approval of ~~not less than~~ a majority of the
2554 total voting interests of the association. Such approval may be
2555 obtained ~~attained~~ by vote of the members at a duly called
2556 meeting of the membership or by the ~~upon a~~ written consent of
2557 ~~executed by not less than~~ a majority of the total voting
2558 interests of the association ~~in the community~~. The approval
2559 action of the membership must ~~shall~~ state that reserve accounts
2560 shall be provided for in the budget and must designate the
2561 components for which the reserve accounts are to be established.
2562 Upon approval by the membership, the board of directors shall
2563 include ~~provide for~~ the required reserve accounts ~~for inclusion~~
2564 in the budget in the next fiscal year following the approval and
2565 ~~in~~ each year thereafter. Once established as provided in this
2566 subsection, the reserve accounts must ~~shall~~ be funded or
2567 maintained or ~~shall~~ have their funding waived in the manner
2568 provided in paragraph (f).

2569 (f) After one or more ~~Once a reserve account or~~ reserve

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2570 accounts are established, the membership of the association,
2571 upon a majority vote at a meeting at which a quorum is present,
2572 may provide for no reserves or less reserves than required by
2573 this section. If a meeting of the unit owners has been called to
2574 determine whether to waive or reduce the funding of reserves and
2575 ~~ne~~ such result is not achieved or a quorum is not present, the
2576 reserves as included in the budget ~~shall~~ go into effect. After
2577 the turnover, the developer may vote its voting interest to
2578 waive or reduce the funding of reserves. Any vote taken pursuant
2579 to this subsection to waive or reduce reserves is ~~shall be~~
2580 applicable only to one budget year.

2581 (g) Funding formulas for reserves authorized by this
2582 section must ~~shall~~ be based on ~~either~~ a separate analysis of
2583 each of the required assets or a pooled analysis of two or more
2584 of the required assets.

2585 1. If the association maintains separate reserve accounts
2586 for each of the required assets, the amount of the contribution
2587 to each reserve account is ~~shall be~~ the sum of the following two
2588 calculations:

2589 a. The total amount necessary, if any, to bring a negative
2590 component balance to zero.

2591 b. The total estimated deferred maintenance expense or
2592 estimated replacement cost of the reserve component less the
2593 estimated balance of the reserve component as of the beginning
2594 of the period ~~for which~~ the budget will be in effect. The
2595 remainder, if greater than zero, shall be divided by the
2596 estimated remaining useful life of the component.

2597

2598 The formula may be adjusted each year for changes in estimates

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2599 and deferred maintenance performed during the year and may
2600 include factors such as inflation and earnings on invested
2601 funds.

2602 2. If the association maintains a pooled account of two or
2603 more of the required reserve assets, the amount of the
2604 contribution to the pooled reserve account as disclosed on the
2605 proposed budget may ~~shall~~ not be less than that required to
2606 ensure that the balance on hand at the beginning of the period
2607 ~~for which~~ the budget will go into effect plus the projected
2608 annual cash inflows over the remaining estimated useful life of
2609 all of the assets that make up the reserve pool are equal to or
2610 greater than the projected annual cash outflows over the
2611 remaining estimated useful lives of all ~~of~~ the assets that make
2612 up the reserve pool, based on the current reserve analysis. The
2613 projected annual cash inflows may include estimated earnings
2614 from investment of principal and accounts receivable minus the
2615 allowance for doubtful accounts. The reserve funding formula may
2616 ~~shall~~ not include any type of balloon payments.

2617 (12) COMPENSATION PROHIBITED.—A director, officer, or
2618 committee member of the association may not directly receive any
2619 salary or compensation from the association for the performance
2620 of duties as a director, officer, or committee member and may
2621 not in any other way benefit financially from service to the
2622 association. This subsection does not preclude:

2623 (a) Participation by such person in a financial benefit
2624 accruing to all or a significant number of members as a result
2625 of actions lawfully taken by the board or a committee of which
2626 he or she is a member, including, but not limited to, routine
2627 maintenance, repair, or replacement of community assets.

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2628 (b) Reimbursement for out-of-pocket expenses incurred by
2629 such person on behalf of the association, subject to approval in
2630 accordance with procedures established by the association's
2631 governing documents or, in the absence of such procedures, in
2632 accordance with an approval process established by the board.

2633 (c) Any recovery of insurance proceeds derived from a
2634 policy of insurance maintained by the association for the
2635 benefit of its members.

2636 (d) Any fee or compensation authorized in the governing
2637 documents.

2638 (e) Any fee or compensation authorized in advance by a vote
2639 of a majority of the voting interests voting in person or by
2640 proxy at a meeting of the members.

2641 (f) A developer or its representative from serving as a
2642 director, officer, or committee member of the association and
2643 benefitting financially from service to the association.

2644 Section 27. Subsections (8) and (9) of section 720.306,
2645 Florida Statutes, are amended to read:

2646 720.306 Meetings of members; voting and election
2647 procedures; amendments.—

2648 (8) PROXY VOTING.—The members have the right, unless
2649 otherwise provided in this subsection or in the governing
2650 documents, to vote in person or by proxy.

2651 (a) To be valid, a proxy must be dated, must state the
2652 date, time, and place of the meeting for which it was given, and
2653 must be signed by the authorized person who executed the proxy.
2654 A proxy is effective only for the specific meeting for which it
2655 was originally given, as the meeting may lawfully be adjourned
2656 and reconvened from time to time, and automatically expires 90

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2657 days after the date of the meeting for which it was originally
2658 given. A proxy is revocable at any time at the pleasure of the
2659 person who executes it. If the proxy form expressly so provides,
2660 any proxy holder may appoint, in writing, a substitute to act in
2661 his or her place.

2662 (b) If the governing documents permit voting by secret
2663 ballot by members who are not in attendance at a meeting of the
2664 members for the election of directors, such ballots must be
2665 placed in an inner envelope with no identifying markings and
2666 mailed or delivered to the association in an outer envelope
2667 bearing identifying information reflecting the name of the
2668 member, the lot or parcel for which the vote is being cast, and
2669 the signature of the lot or parcel owner casting that ballot. If
2670 the eligibility of the member to vote is confirmed and no other
2671 ballot has been submitted for that lot or parcel, the inner
2672 envelope shall be removed from the outer envelope bearing the
2673 identification information, placed with the ballots which were
2674 personally cast, and opened when the ballots are counted. If
2675 more than one ballot is submitted for a lot or parcel, the
2676 ballots for that lot or parcel shall be disqualified. Any vote
2677 by ballot received after the closing of the balloting may not be
2678 considered.

2679 (9) ELECTIONS.—Elections of directors must be conducted in
2680 accordance with the procedures set forth in the governing
2681 documents of the association. All members of the association are
2682 ~~shall be~~ eligible to serve on the board of directors, and a
2683 member may nominate himself or herself as a candidate for the
2684 board at a meeting where the election is to be held or, if the
2685 election process allows voting by absentee ballot, in advance of

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2686 the balloting. Except as otherwise provided in the governing
2687 documents, boards of directors must be elected by a plurality of
2688 the votes cast by eligible voters. Any election dispute between
2689 a member and an association must be submitted to mandatory
2690 binding arbitration with the division. Such proceedings must
2691 ~~shall~~ be conducted in the manner provided by s. 718.1255 and the
2692 procedural rules adopted by the division.

2693 Section 28. Section 720.315, Florida Statutes, is created
2694 to read:

2695 720.315 Passage of special assessments.—Before turnover,
2696 the board of directors controlled by the developer may not levy
2697 a special assessment unless a majority of the parcel owners
2698 other than the developer have approved the special assessment by
2699 a majority vote at a duly called special meeting of the
2700 membership at which a quorum is present.

2701 Section 29. This act shall take effect July 1, 2010.

2702

2703

2704

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

2705
2706 Remove the entire title and insert:

2707 An act relating to community associations; amending s. 399.02,
2708 F.S.; exempting certain elevators from specific code update
2709 requirements; providing a phase-in period for such elevators;
2710 amending s. 617.0721, F.S.; revising the limitations on the
2711 right of members to vote on corporate matters for certain
2712 corporations not for profit that are regulated under ch. 718 or
2713 ch. 719, F.S.; amending s. 617.0808, F.S.; excepting certain

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2714 corporations not for profit that are an association as defined
2715 in s. 720.301, F.S., or a corporation regulated under ch. 718 or
2716 ch. 719, F.S., from certain provisions relating to the removal
2717 of a director; amending s. 617.1606, F.S.; providing that
2718 certain statutory provisions providing for the inspection of
2719 corporate records do not apply to a corporation not for profit
2720 that is an association as defined in s. 720.301, or a
2721 corporation regulated under ch. 718 or ch. 719, F.S.; creating
2722 s. 627.714, F.S.; requiring that coverage under a unit owner's
2723 policy for certain assessments include at least a minimum amount
2724 of loss assessment coverage; requiring that every property
2725 insurance policy to an individual unit owner contain a specified
2726 provision; amending s. 633.0215, F.S.; exempting certain
2727 residential buildings from a requirement to install a manual
2728 fire alarm system; amending s. 718.103, F.S.; redefining the
2729 term "developer"; amending s. 718.110, F.S.; allowing the
2730 condominium association to have the authority to restrict
2731 through an amendment to a declaration of condominium, rather
2732 than prohibit, the rental of condominium units; amending s.
2733 718.111, F.S.; deleting a requirement for the board of a
2734 condominium to hold a meeting open to unit owners to establish
2735 the amount of an insurance deductible; revising the property to
2736 which a property insurance policy for a condominium association
2737 applies; revising the requirements for a condominium unit
2738 owner's property insurance policy; limiting the circumstances
2739 under which a person who violates requirements to maintain
2740 association records may be personally liable for a civil
2741 penalty; providing that a condominium association is not

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2742 responsible for the use of certain information provided to an
2743 association member under certain circumstances; specifying
2744 records of a condominium association that are exempt from a
2745 requirement for records to be available for inspection by an
2746 association member; increasing the amount of time within which a
2747 condominium association must provide unit owners with a copy of
2748 the association's annual financial report; revising the
2749 requirements for rules relating to the financial report that
2750 must be adopted by the Division of Florida Condominiums,
2751 Timeshares, and Mobile Homes of the Department of Business and
2752 Professional Regulation; revising the requirements for a
2753 financial report based on the amount of a condominium's
2754 revenues; amending s. 718.112, F.S.; revising provisions
2755 relating to the terms or appointment or election of condominium
2756 members to a board of administration; creating exceptions to
2757 such provisions for condominiums that contain timeshares;
2758 specifying a certification that a person who is appointed or
2759 elected to a board of administration must make or educational
2760 requirements such board member must satisfy; conforming cross-
2761 references to changes made by the act; deleting a provision
2762 prohibiting an association from foregoing the retrofitting with
2763 a fire sprinkler system of common areas in a high-rise building;
2764 prohibiting local authorities having jurisdiction from requiring
2765 retrofitting with a sprinkler system or other engineered
2766 lifesafety system before a specified date; requiring an
2767 association that has not voted to forego retrofitting to file
2768 for a building permit by a certain date; authorizing an
2769 association to forego retrofitting under certain circumstances;

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2770 providing requirements for a special meeting of unit owners
2771 which may be called every 3 years in order to vote to forgo
2772 retrofitting of the sprinkler system or other engineered
2773 lifesafety systems; providing meeting notice requirements;
2774 expanding the monetary obligations that a director or officer
2775 must satisfy to avoid abandoning his or her office; amending s.
2776 718.115, F.S.; specifying certain services provided in a
2777 declaration of condominium which are obtained pursuant to a bulk
2778 contract to be deemed a common expense; specifying provisions
2779 that must be contained in a bulk contract; specifying
2780 cancellation procedures for bulk contracts; amending s. 718.116,
2781 F.S.; increasing the liability of a first mortgagee or assignee
2782 of a first mortgagee for assessments owed at the time of a
2783 foreclosure sale; requiring a tenant in a unit owned by a person
2784 who is delinquent in the payment of a monetary obligation to the
2785 condominium association to pay rent to the association under
2786 certain circumstances; authorizing the condominium association
2787 to sue such tenant who fails to pay rent for eviction under
2788 certain circumstances; providing that the tenant is immune from
2789 claims from the unit owner as the result of paying rent to the
2790 association under certain circumstances; amending s. 718.117,
2791 F.S.; revising the circumstances under which a condominium
2792 association may be terminated due to economic waste or
2793 impossibility; revising provisions specifying the effect of a
2794 termination of condominium; amending s. 718.202, F.S.; providing
2795 that certain escrow funds may be maintained in a common escrow
2796 account; amending s. 718.301, F.S.; revising conditions under
2797 which unit owners other than the developer may elect at least a

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2798 majority of the members of the board of administration of an
2799 association; amending s. 718.303, F.S.; authorizing an
2800 association to suspend for a reasonable time the right of a unit
2801 owner or the unit's occupant, licensee, or invitee to use
2802 certain common elements under certain circumstances; prohibiting
2803 a fine from being levied or a suspension from being imposed
2804 unless the association meets certain requirements for notice and
2805 provides an opportunity for a hearing; authorizing an
2806 association to suspend voting rights of a member due to
2807 nonpayment of assessments, fines, or other charges under certain
2808 circumstances; amending s. 718.501, F.S.; specifying that the
2809 jurisdiction of the Division of Florida Condominiums,
2810 Timeshares, and Mobile Homes includes bulk assignees and bulk
2811 buyers; creating part VII of ch. 718, F.S.; creating the
2812 "Distressed Condominium Relief Act"; providing legislative
2813 findings and intent; defining the terms "bulk assignee" and
2814 "bulk buyer"; providing for the assignment of developer rights
2815 by a bulk assignee; specifying liabilities of bulk assignees and
2816 bulk buyers; providing exceptions; providing additional
2817 responsibilities of bulk assignees and bulk buyers; authorizing
2818 certain entities to assign developer rights to a bulk assignee;
2819 limiting the number of bulk assignees at any given time;
2820 providing for the transfer of control of a board of
2821 administration to unit owners; providing effects of such
2822 transfer on parcels acquired by a bulk assignee; providing
2823 obligations of a bulk assignee upon the transfer of control of a
2824 board of administration; requiring that a bulk assignee certify
2825 certain information in writing; providing for the resolution of

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2826 a conflict between specified provisions of state law; providing
2827 that the failure of a bulk assignee or bulk buyer to comply with
2828 specified provisions of state law results in the loss of certain
2829 protections and exemptions; requiring that a bulk assignee or
2830 bulk buyer file certain information with the Division of Florida
2831 Condominiums, Timeshares, and Mobile Homes of the Department of
2832 Business and Professional Regulation before offering any units
2833 for sale or lease in excess of a specified term; requiring that
2834 a copy of such information be provided to a prospective
2835 purchaser or tenant; requiring that certain contracts and
2836 disclosure statements contain specified statements; requiring
2837 that a bulk assignee or bulk buyer comply with certain
2838 disclosure requirements; prohibiting a bulk assignee from
2839 authorizing certain actions on behalf of an association while
2840 the bulk assignee is in control of the board of administration
2841 of the association; requiring that a bulk assignee or bulk buyer
2842 comply with certain laws with respect to contracts entered into
2843 by the association while the bulk assignee or bulk buyer was in
2844 control of the board of administration; providing parcel owners
2845 with specified protections regarding certain contracts;
2846 requiring that a bulk buyer comply with certain requirements
2847 regarding the transfer of a parcel; prohibiting a person from
2848 being classified as a bulk assignee or bulk buyer unless
2849 condominium parcels were acquired before a specified date;
2850 providing that the assignment of developer rights to a bulk
2851 assignee does not release a developer from certain liabilities;
2852 amending s. 719.106, F.S.; providing for the filling of
2853 vacancies on the condominium board of administration; amending

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2854 s. 719.1055, F.S.; providing an additional required provision in
2855 cooperative bylaws; deleting a provision prohibiting an
2856 association from foregoing the retrofitting with a fire
2857 sprinkler system of common areas in a high-rise building;
2858 prohibiting local authorities having jurisdiction from requiring
2859 retrofitting with a sprinkler system or other engineered
2860 lifesafety system before a specified date; providing
2861 requirements for a special meeting of unit owners which may be
2862 called every 3 years in order to vote to require retrofitting of
2863 the sprinkler system or other engineered lifesafety system;
2864 providing meeting notice requirements; amending s. 719.108,
2865 F.S.; providing a prioritized list for disbursement of payments
2866 received by an association; providing for a lien by an
2867 association on a condominium unit for certain fees and costs;
2868 providing procedures and notice requirements for the filing of a
2869 lien by an association; requiring a tenant in a unit owned by a
2870 person who is delinquent in the payment of a monetary obligation
2871 to the condominium association to pay rent to the association
2872 under certain circumstances; amending s. 720.304, F.S.;;
2873 providing that a flagpole and any flagpole display are subject
2874 to certain codes and regulations; amending s. 720.305, F.S.;;
2875 authorizing the association to suspend rights to use common
2876 areas and facilities if the member is delinquent on the payment
2877 of a monetary obligation due for a certain period of time;
2878 providing procedures and notice requirements for levying a fine
2879 or imposing a suspension; amending s. 720.306, F.S.;; providing
2880 procedures for filling a vacancy on the board of directors;
2881 amending s. 720.3085, F.S.;; requiring a tenant in a property

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2882 owned by a person who is delinquent in the payment of a monetary
2883 obligation to the condominium association to pay rent to the
2884 association under certain circumstances; amending s. 720.31,
2885 F.S.; authorizing an association to enter into certain
2886 agreements to use lands or facilities; requiring that certain
2887 items be stated and fully described in the declaration; limiting
2888 an association's power to enter into such agreements after a
2889 specified period following the recording of a declaration;
2890 requiring that certain agreements be approved by a specified
2891 percentage of voting interests of an association when the
2892 declaration is silent as to the authority of an association to
2893 enter into such agreement; authorizing an association to join
2894 with other associations or a master association under certain
2895 circumstances and for specified purposes; amending s. 720.303,
2896 F.S.; revising provisions relating to homeowners' association
2897 board meetings, inspection and copying of records, and reserve
2898 accounts of budgets; expanding the list of association records
2899 that are not accessible to members and parcel owners;
2900 prohibiting certain association personnel from receiving a
2901 salary or compensation; providing exceptions; amending s.
2902 720.306, F.S.; providing requirements for secret ballots;
2903 providing for filling vacancies on the homeowners' association
2904 board; creating s. 720.315, F.S.; prohibiting the board of
2905 directors of a homeowners' association from levying a special
2906 assessment before turnover of the association by the developer
2907 unless certain conditions are met; providing an effective date.

Amendment No. 1a

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Bogdanoff offered the following:

4
5 **Amendment to Amendment (1) by Representative Bogdanoff**
6 **(with directory and title amendments)**

7 Between lines 926 and 927, insert:

8 (e) Provisions which authorize a community umbrella
9 organization for a community containing a minimum of 1,000
10 units, or a committee thereof, to employ an entity to market the
11 amenities of the community and financed as a common expense of
12 all of the unit owners, provided that no unit owner has a
13 controlling interest in any marketing firm employed by the
14 association. Any such funds are also prohibited from being
15 utilized for any purposes except marketing expenses for the
16 benefit of all unit owners.

17
18
19 -----

Amendment No. 1a

20 **D I R E C T O R Y A M E N D M E N T**

21 Remove lines 602-603 and insert:

22 Section 10. Paragraphs (d), (l), (n), and (o) of subsection
23 (2) are amended, and paragraph (e) is added to subsection (3) of
24 section 718.112, Florida Statutes, to read:

25

26

27

28 **T I T L E A M E N D M E N T**

29 Remove line 2775 and insert:

30 must satisfy to avoid abandoning his or her office; providing
31 that a condominium association may expend monies in for
32 neighborhood marketing activities; amending s.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Precourt offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 558.0035, Florida Statutes, is created
8 to read:

9 558.0035 Limitation of liability.--

10 (1) A claimant contracting for the professional services of
11 a design professional does not have a cause of action in tort
12 against the design professional for the recovery of economic
13 damages resulting from a construction defect.

14 (2) This section does not apply to claims for economic
15 damages resulting from personal injury or damage to property
16 other than the property that is the subject of the contract.

17 (3) If the contract requires professional liability
18 insurance, the liability of the design professional may not be

Amendment No. 1

19 limited in the contract to an amount less than the liability
20 insurance amount required by the contract.

21 Section 2. Subsection (3) of section 471.023, Florida
22 Statutes, is amended to read:

23 471.023 Certification of business organizations.—

24 (3) Except as provided in s. 558.0035, the fact that a
25 licensed engineer practices through a business organization does
26 not relieve the licensee from personal liability for negligence,
27 misconduct, or wrongful acts committed by him or her.
28 Partnerships and all partners shall be jointly and severally
29 liable for the negligence, misconduct, or wrongful acts
30 committed by their agents, employees, or partners while acting
31 in a professional capacity. Any officer, agent, or employee of a
32 business organization other than a partnership shall be
33 personally liable and accountable only for negligent acts,
34 wrongful acts, or misconduct committed by him or her or
35 committed by any person under his or her direct supervision and
36 control, while rendering professional services on behalf of the
37 business organization. The personal liability of a shareholder
38 or owner of a business organization, in his or her capacity as
39 shareholder or owner, shall be no greater than that of a
40 shareholder-employee of a corporation incorporated under chapter
41 607. The business organization shall be liable up to the full
42 value of its property for any negligent acts, wrongful acts, or
43 misconduct committed by any of its officers, agents, or
44 employees while they are engaged on its behalf in the rendering
45 of professional services.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 701 (2010)

Amendment No. 1

46 Section 3. Subsection (3) of section 472.021, Florida
47 Statutes, is amended to read:

48 472.021 Certification of partnerships and corporations.—

49 (3) Except as provided in s. 558.0035, the fact that any
50 registered surveyor and mapper practices through a corporation
51 or partnership shall not relieve the registrant from personal
52 liability for negligence, misconduct, or wrongful acts committed
53 by him or her. Partnerships and all partners shall be jointly
54 and severally liable for the negligence, misconduct, or wrongful
55 acts committed by their agents, employees, or partners while
56 acting in a professional capacity. Any officer, agent, or
57 employee of a business organization other than a partnership
58 shall be personally liable and accountable only for negligent
59 acts, wrongful acts, or misconduct committed by him or her or
60 committed by any person under his or her direct supervision and
61 control while rendering professional services on behalf of the
62 business organization. The personal liability of a shareholder
63 or owner of a business organization, in his or her capacity as
64 shareholder or owner, shall be no greater than that of a
65 shareholder-employee of a corporation incorporated under chapter
66 607. The business organization shall be liable up to the full
67 value of its property for any negligent acts, wrongful acts, or
68 misconduct committed by any of its officers, agents, or
69 employees while they are engaged on its behalf in the rendering
70 of professional services.

71 Section 4. Subsection (11) of section 481.219, Florida
72 Statutes, is amended to read:

Amendment No. 1

73 481.219 Certification of partnerships, limited liability
74 companies, and corporations.—

75 (11) No corporation, limited liability company, or
76 partnership shall be relieved of responsibility for the conduct
77 or acts of its agents, employees, or officers by reason of its
78 compliance with this section. However, except as provided in s.
79 558.0035, the architect who signs and seals the construction
80 documents and instruments of service shall be liable for the
81 professional services performed, and the interior designer who
82 signs and seals the interior design drawings, plans, or
83 specifications shall be liable for the professional services
84 performed.

85 Section 5. Subsection (6) of section 481.319, Florida
86 Statutes, is amended to read:

87 481.319 Corporate and partnership practice of landscape
88 architecture; certificate of authorization.—

89 (6) Except as provided in s. 558.0035, the fact that
90 registered landscape architects practice landscape architecture
91 through a corporation or partnership as provided in this section
92 shall not relieve any landscape architect from personal
93 liability for his or her professional acts.

94 Section 6. This act does not apply to contracts or
95 agreements entered into, or professional services performed,
96 before July 1, 2010.

97 Section 7. This act shall take effect July 1, 2010.
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Amendment No. 1

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

Remove the entire title and insert:

An act relating to design professionals; creating s. 558.0035, F.S.; providing for limited liability for engineers, surveyors and mappers, architects, interior designers, and registered landscape architects as a result of construction defects resulting from the performance of a contract; providing that, if a contract requires professional liability insurance, the contract may not limit liability to an amount less than the insurance amount required by the contract; amending ss. 471.023, 472.021, 481.219, and 481.319, F.S.; conforming sections to the limitation of liability for certain design professionals provided in s. 558.0035, F.S.; providing that the act does not affect contracts or agreements entered into, or professional services performed, before July 1, 2010; providing an effective date.

Amendment No. 1a

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Schenck offered the following:
4

5 **Amendment to Amendment (1) by Representative Precourt (with**
6 **title amendment)**

7 Remove lines 10-20 and insert:

8 (1) When a design professional contracts with a claimant
9 to provide professional services, the claimant does not have a
10 cause of action in tort against the contracting design
11 professional or its employees for the recovery of economic
12 damages resulting from a construction defect if:

13 (a) The contracting design professional maintains, as
14 specified in the contract, insurance covering its contractual
15 liability for adequate performance of the professional services;
16 and

17 (b) The contract does not reduce the liability of the
18 contracting design professional to less than the insurance
19 specified in the contract.

Amendment No. 1a

20 (2) This section does not apply to claims for economic
21 damages resulting from personal injury or damage to property
22 other than the property that is the subject of the contract.
23

24

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27

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

28

Remove lines 107-110 and insert:

29

resulting from the performance of a contract; providing an
exception for certain claims; amending ss. 471.023,

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Carroll offered the following:

4

5 **Amendment**

6 Remove lines 715-716 and insert:

7 case of loss or damage, and setting forth a specific liability
8 per article or item, ~~or~~ value per unit of weight, or any other
9 negotiated limitation of damages as agreed between the parties,

10 beyond which

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee
3 Representative(s) Carroll offered the following:

4
5 **Amendment**
6 Remove line 755 and insert:
7 the document of title or by a nonnegotiable warehouse receipt,
8 or, if a ~~ne~~ period is not fixed, within a

Amendment No. 3

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Carroll offered the following:
4

5 **Amendment**

6 Remove lines 912-926 and insert:

7 (b) The notification must be delivered in person or sent
8 by registered or certified letter to the last known address of
9 any person to be notified.

10 (c) The notification shall ~~must~~ include an itemized
11 statement of the claim, a description of the goods subject to
12 the lien, a demand for payment within a specified time not less
13 than 10 days after receipt of the notification, and a
14 conspicuous statement that unless the claim is paid within that
15 time the goods will be advertised for sale and sold by auction
16 at a specified time and place.

17 (d) The sale shall ~~must~~ conform to the terms of the
18 notification.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 3

19 (e) The sale shall ~~must~~ be held at the nearest suitable
20 place to ~~that~~ where the goods are held or stored.

21 (f) After the expiration of the time given in the

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 4

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Carroll offered the following:

4

5 **Amendment**

6 Remove line 104 and insert:

7 ~~or color in contrast to the surrounding text of the same size;~~

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 5

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Carroll offered the following:

4

5 **Amendment**

6 Remove lines 297-298 and insert:
7 objects, and, except as otherwise provided chapter 679, receipt
8 by the bailee of notification

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 6

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Carroll offered the following:

4
5 **Amendment**

6 Remove line 424 and insert:
7 of the item or possession or control of the accompanying or
8 associated

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 7

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Carroll offered the following:

4
5 **Amendment**

6 Remove line 505 and insert:

7 677.103 Relation of chapter to treaty, statute, ~~tariff,~~

Amendment No. 8

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Carroll offered the following:

Amendment (with title amendment)

Between lines 183 and 184, insert:

Section 3. Paragraph (d) of subsection (16) of section
668.50, Florida Statutes, is amended to read:

668.50 Uniform Electronic Transaction Act.—

(16) TRANSFERABLE RECORDS.—

(d) Except as otherwise agreed, a person having control of
a transferable record is the holder, as defined in s.

671.201(21), of the transferable record and has the same rights
and defenses as a holder of an equivalent record or writing
under the Uniform Commercial Code, including, if the applicable
statutory requirements under s. 673.3021, s. 677.501, or s.
679.330 ~~679.308~~ are satisfied, the rights and defenses of a
holder in due course, a holder to which a negotiable document of
title has been duly negotiated, or a purchaser, respectively.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 731 (2010)

Amendment No. 8

20 Delivery, possession, and indorsement are not required to obtain
21 or exercise any of the rights under this paragraph.

22 Section 4. Subsection (5) of section 671.304, Florida
23 Statutes, is amended to read:

24 671.304 Laws not repealed; precedence where code
25 provisions in conflict with other laws; certain statutory
26 remedies retained.—

27 (5) The effectiveness of any financing statement or
28 continuation statement filed prior to January 1, 1980, or any
29 continuation statement filed on or after October 1, 1984, which
30 states that the debtor is a transmitting utility as provided in
31 s. 679.515(6) ~~679.403(6)~~ shall continue until a termination
32 statement is filed, except that if this act requires a filing in
33 an office where there was no previous financing statement, a new
34 financing statement conforming to s. 680.109(4), Florida
35 Statutes 1979, shall be filed in that office.

36

37

38

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

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40

Remove line 8 and insert:

41

Commissioners on Uniform State Laws; amending ss. 668.50 and

42

671.304; correcting cross-references; amending ss. 671.201,

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Holder offered the following:

4
5 **Amendment**

6 Remove lines 190-217 and insert:

7 Section 4. Section 800.09, Florida Statutes, is created to read:
8 800.09 Lewd or lascivious exhibition in the presence of an
9 employee.-

10 (1) As used in this section, the term:

11 (a) "Facility" means a state correctional institution, as
12 defined in s. 944.02, or a private correctional facility, as
13 defined in s. 944.710.

14 (b) "Employee" means any person employed by or performing
15 contractual services for a public or private entity operating a
16 facility or any person employed by or performing contractual
17 services for the corporation operating the prison industry
18 enhancement programs or the correctional work programs under

Amendment No. 1

19 part II of chapter 946. The term also includes any person who is
20 a parole examiner with the Parole Commission.

21 (2) (a) A person who is detained in a facility may not:

22 1. Intentionally masturbate;

23 2. Intentionally expose the genitals in a lewd or
24 lascivious manner; or

25 3. Intentionally commit any other sexual act that does not
26 involve actual physical or sexual contact with the victim,
27 including, but not limited to, sadomasochistic abuse, sexual
28 bestiality, or the simulation of any act involving sexual
29 activity,

30
31 in the presence of a person he or she knows or reasonably should
32 know is an employee.

33 (b) A person who violates paragraph (a) commits lewd or
34 lascivious exhibition in the presence of an employee, a felony
35 of the third degree, punishable as provided in s. 775.082, s.
36 775.083, or s. 775.084.

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative Nehr offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (5) of section 768.28, Florida
8 Statutes, is amended to read:

9 768.28 Waiver of sovereign immunity in tort actions;
10 recovery limits; limitation on attorney fees; statute of
11 limitations; exclusions; indemnification; risk management
12 programs.—

13 (5) The state and its agencies and subdivisions shall be
14 liable for tort claims in the same manner and to the same extent
15 as a private individual under like circumstances, but liability
16 shall not include punitive damages or interest for the period
17 before judgment. Neither the state nor its agencies or
18 subdivisions shall be liable to pay a claim or a judgment by any
19 one person which exceeds the sum of \$200,000 ~~\$100,000~~ or any

Amendment No.

20 claim or judgment, or portions thereof, which, when totaled with
21 all other claims or judgments paid by the state or its agencies
22 or subdivisions arising out of the same incident or occurrence,
23 exceeds the sum of \$300,000 ~~\$200,000~~. However, a judgment or
24 judgments may be claimed and rendered in excess of these amounts
25 and may be settled and paid pursuant to this act up to \$200,000
26 ~~\$100,000~~ or \$300,000 ~~\$200,000~~, as the case may be; and that
27 portion of the judgment that exceeds these amounts may be
28 reported to the Legislature, but may be paid in part or in whole
29 only by further act of the Legislature. Notwithstanding the
30 limited waiver of sovereign immunity provided herein, the state
31 or an agency or subdivision thereof may agree, within the limits
32 of insurance coverage provided, to settle a claim made or a
33 judgment rendered against it without further action by the
34 Legislature, but the state or agency or subdivision thereof
35 shall not be deemed to have waived any defense of sovereign
36 immunity or to have increased the limits of its liability as a
37 result of its obtaining insurance coverage for tortious acts in
38 excess of the \$200,000 ~~\$100,000~~ or \$300,000 ~~\$200,000~~ waiver
39 provided above. The limitations of liability set forth in this
40 subsection shall apply to the state and its agencies and
41 subdivisions whether or not the state or its agencies or
42 subdivisions possessed sovereign immunity before July 1, 1974.

43 Section 2. This act shall take effect October 1, 2011, and
44 applies to claims arising on or after that date.
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47

Amendment No.

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

Remove the entire title and insert:
An act relating to sovereign immunity; amending s. 768.28,
F.S.; increasing the statutory limits on liability for
tort claims against the state and its agencies and
subdivisions; providing for application of the act to
claims arising on or after the effective date; providing
an effective date.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council
3 Representative(s) Hukill offered the following:

4
5 **Amendment**

6 Remove line 350 and insert:

7 surviving spouse of the decedent unless the decedent and the
8 spouse voluntarily cohabitated as husband and wife with full
9 knowledge of the facts constituting the fraud, duress, or undue
10 influence or both spouses otherwise

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Criminal & Civil Justice Policy
2 Council

3 Representative(s) Dorworth offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (jj) is added to subsection (5) of
8 section 721.07, Florida Statutes, to read:

9 721.07 Public offering statement.—Prior to offering any
10 timeshare plan, the developer must submit a filed public
11 offering statement to the division for approval as prescribed by
12 s. 721.03, s. 721.55, or this section. Until the division
13 approves such filing, any contract regarding the sale of that
14 timeshare plan is subject to cancellation by the purchaser
15 pursuant to s. 721.10.

16 (5) Every filed public offering statement for a timeshare
17 plan which is not a multisite timeshare plan shall contain the
18 information required by this subsection. The division is

Amendment No. 1

19 authorized to provide by rule the method by which a developer
20 must provide such information to the division.

21 (jj) The following statement in conspicuous type:

22
23 The managing entity has a lien against each timeshare
24 interest to secure the payment of assessments, ad
25 valorem assessments, tax assessments, and special
26 assessments. Your failure to make any required
27 payments may result in the judicial or trustee
28 foreclosure of an assessment lien and the loss of your
29 timeshare interest. If the managing entity initiates a
30 trustee foreclosure procedure, you shall have the
31 option to object to the use of the trustee foreclosure
32 procedure and the managing entity may only proceed by
33 filing a judicial foreclosure action.

34
35 Section 2. Subsection (13) is added to section 721.13,
36 Florida Statutes, to read:

37 721.13 Management.—

38 (13) Notwithstanding anything to the contrary contained in
39 chapter 607, chapter 617, or chapter 718, an officer, director,
40 or agent of an owners' association shall discharge his or her
41 duties in good faith, with the care an ordinarily prudent person
42 in a like position would exercise under similar circumstances,
43 and in a manner he or she reasonably believes to be in the
44 interests of the owners' association. An officer, director, or
45 agent of an owners' association shall be exempt from liability
46 for monetary damages in the same manner as would be provided in

Amendment No. 1

47 | s. 617.0834 unless such officer, director, or agent breached or
48 | failed to perform his or her duties and the breach of, or
49 | failure to perform, his or her duties constitutes a violation of
50 | criminal law as provided in s. 617.0834; constitutes a
51 | transaction from which the officer or director derived an
52 | improper personal benefit, either directly or indirectly; or
53 | constitutes recklessness or an act or omission that was in bad
54 | faith, with malicious purpose, or in a manner exhibiting wanton
55 | and willful disregard of human rights, safety, or property.

56 | Section 3. Subsections (2) and (3) of section 721.16,
57 | Florida Statutes, are amended to read:

58 | 721.16 Liens for overdue assessments; liens for labor
59 | performed on, or materials furnished to, a timeshare unit.—

60 | (2) The managing entity may bring a judicial ~~an~~ action in
61 | its name to foreclose a lien under subsection (1) in the manner
62 | a mortgage of real property is foreclosed and may also bring an
63 | action to recover a money judgment for the unpaid assessments
64 | without waiving any claim of lien. As an alternative to
65 | initiating a judicial action, the managing entity may initiate a
66 | trustee procedure to foreclose an assessment lien under s.
67 | 721.855.

68 | (3) The lien is effective from the date of recording a
69 | claim of lien in the official ~~public~~ records of the county or
70 | counties in which the timeshare interest is ~~accommodations and~~
71 | ~~facilities constituting the timeshare plan~~ are located. The
72 | claim of lien shall state the name of the timeshare plan and
73 | identify the timeshare interest for which the lien is effective,
74 | state the name of the purchaser, state the assessment amount

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75 due, and state the due dates. Notwithstanding any provision of
76 s. 718.116(5)~~(a)~~ or s. 719.108(4) to the contrary, the lien is
77 effective until satisfied or until 5 years have expired after
78 the date the claim of lien is recorded unless, within that time,
79 an action to enforce the lien is commenced pursuant to
80 subsection (2). A claim of lien for assessments may include only
81 assessments which are due when the claim is recorded. A claim of
82 lien shall be signed and acknowledged by an officer or agent of
83 the managing entity. Upon full payment, the person making the
84 payment is entitled to receive a satisfaction of the lien.

85 Section 4. Part III of chapter 721, Florida Statutes,
86 entitled "Foreclosure of Liens on Timeshare Estates," is renamed
87 "Foreclosure of Liens on Timeshare Interests."

88 Section 5. Section 721.81, Florida Statutes, is amended to
89 read:

90 721.81 Legislative purpose.—The purposes of this part are
91 to:

92 (1) Recognize that timeshare interests estates are ~~parcels~~
93 ~~of real property~~ used for vacation experience rather than for
94 homestead or investment purposes and that there are numerous
95 timeshare interests estates in this ~~the~~ state.

96 (2) Recognize that the economic health and efficient
97 operation of the vacation ownership industry are in part
98 dependent upon the availability of an efficient and economical
99 process for all timeshare interest foreclosures ~~foreclosure~~.

100 (3) Recognize the need to assist both owners' associations
101 and mortgagees by simplifying and expediting the process for the

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102 judicial and trustee of foreclosure of assessment liens and
103 mortgage liens against timeshare interests estates.

104 (4) Improve judicial economy and reduce court congestion
105 and the cost to taxpayers by establishing streamlined procedures
106 for the judicial and trustee foreclosure of assessment liens and
107 mortgage liens against timeshare interests estates.

108 (5) Recognize that nearly all timeshare interest
109 foreclosures are uncontested.

110 (6) Protect the ability of consumers who own timeshare
111 interests located in this state to choose a judicial proceeding
112 for the foreclosure of an assessment lien or a mortgage lien
113 against their timeshare interest.

114 (7) Recognize that the use of the trustee foreclosure
115 procedure established under ss. 721.855 and 721.856 shall have
116 the same force and effect as the use of the judicial foreclosure
117 procedure against a timeshare interest with respect to the
118 provisions of this chapter or any other applicable law. However,
119 obligors shall not be subject to a deficiency judgment even if
120 the proceeds from the sale of the timeshare interest are
121 insufficient to offset the amounts secured by the lien.

122 Section 6. Section 721.82, Florida Statutes, is amended to
123 read:

124 721.82 Definitions.—As used in this part, the term:

125 (1) "Amounts secured by the lien" means all amounts
126 secured by an assessment lien or mortgage lien, including, but
127 not limited to, all past due amounts, accrued interest, late
128 fees, taxes, advances for the payment of taxes, insurance and
129 maintenance of the timeshare interest, and any fees or costs

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130 incurred by the lienholder or trustee, including any reasonable
131 attorney's fees, trustee's fees, and costs incurred in
132 connection with the default.

133 (2)-(1) "Assessment lien" means:

134 (a) A lien for delinquent assessments as provided in ss.
135 ~~721.16, 718.116, and 719.108, and 721.16 as to timeshare~~
136 ~~condominiums; or~~

137 (b) A lien for unpaid ad valorem assessments, tax
138 assessments, taxes and special assessments as provided in s.
139 192.037(8).

140 (3)-(2) "Junior interestholder" means any person who has a
141 lien or interest of record against a timeshare interest estate
142 in the county or counties in which the timeshare interest estate
143 is located, which is inferior to the mortgage lien or assessment
144 lien being foreclosed under this part.

145 (4)-(3) "Lienholder" means a holder of an assessment lien
146 or a holder of a mortgage lien, as applicable. A receiver
147 appointed under s. 721.26 is a lienholder for purposes of
148 foreclosure of assessment liens under this part.

149 (5)-(4) "Mortgage" has the same meaning set forth in s.
150 697.01.

151 (6)-(5) "Mortgage lien" means a security interest in a
152 timeshare interest estate created by a mortgage encumbering the
153 timeshare interest estate.

154 (7)-(6) "Mortgagee" means a person holding a mortgage lien.

155 (8)-(7) "Mortgagor" means a person granting a mortgage lien
156 or a person who has assumed the obligation secured by a mortgage
157 lien.

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158 (9)-(8) "Notice address" means:

159 (a) As to an assessment lien, the address of the ~~current~~
160 owner of a timeshare interest estate as reflected by the books
161 and records of the timeshare plan under ss. 721.13(4) and
162 721.15(7).

163 (b) As to a mortgage lien:

164 1. The address of the mortgagor as set forth in the
165 mortgage, the promissory note or a separate document executed by
166 the mortgagor at the time the mortgage lien was created, or the
167 most current address of the mortgagor according to the records
168 of the mortgagee; and

169 2. If the ~~current~~ owner of the timeshare interest estate
170 is different from the mortgagor, the address of the ~~current~~
171 owner of the timeshare interest estate as reflected by the books
172 and records of the mortgagee.

173 (c) As to a junior interestholder, the address as set
174 forth in the recorded instrument creating the junior lien
175 ~~interest~~ or interest lien, or in any recorded amendment
176 ~~supplement~~ thereto changing the address, or in any written
177 notification by the junior interestholder to the foreclosing
178 lienholder changing the ~~of such change in~~ address.

179 (10)-(9) "Obligor" means the mortgagor, the person subject
180 to an assessment lien, or the record owner of the timeshare
181 interest estate.

182 (11) "Permitted delivery service" means any nationally
183 recognized common carrier delivery service or international
184 airmail service that allows for return receipt service.

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185 ~~(12)~~~~(10)~~ "Registered agent" means an agent duly appointed
186 by the obligor under s. 721.84 for the purpose of accepting all
187 notices and service of process under this part. A registered
188 agent may be an individual resident in this state whose business
189 office qualifies as a registered office, or a domestic or
190 foreign corporation or a not-for-profit corporation as defined
191 in chapter 617 authorized to transact business or to conduct its
192 affairs in this state, whose business office qualifies as a
193 registered office. A registered agent for any obligor may not be
194 the lienholder or the attorney for the lienholder.

195 ~~(13)~~~~(11)~~ "Registered office" means the street address of
196 the business office of the registered agent appointed under s.
197 721.84, located in this state.

198 (14) "Trustee" means an attorney who is a member in good
199 standing of The Florida Bar and who has been practicing law for
200 at least 5 years or that attorney's law firm, or a title insurer
201 authorized to transact business in this state under s. 624.401
202 and who has been authorized to transact business for at least 5
203 years, appointed as trustee or as substitute trustee in
204 accordance with s. 721.855 or s. 721.856. A receiver appointed
205 under s. 721.26 may act as a trustee under s. 721.855. A trustee
206 must be independent as defined in s. 721.05(20).

207 Section 7. Section 721.83, Florida Statutes, is amended to
208 read:

209 721.83 Consolidation of judicial foreclosure actions.—

210 (1) A complaint in a foreclosure proceeding involving
211 timeshare interests estates may join in the same action multiple

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212 defendant obligors and junior interestholders of separate
213 timeshare interests estates, provided:

214 (a) The foreclosure proceeding involves a single timeshare
215 property.

216 (b) The foreclosure proceeding is filed by a single
217 plaintiff.

218 (c) The default and remedy provisions in the written
219 instruments on which the foreclosure proceeding is based are
220 substantially the same for each defendant.

221 (d) The nature of the defaults alleged is the same for
222 each defendant.

223 (e) No more than 15 timeshare interests estates, without
224 regard to the number of defendants, are joined within the same
225 consolidated foreclosure action.

226 (2) In any foreclosure proceeding involving multiple
227 defendants filed under subsection (1), the court shall sever for
228 separate trial any count of the complaint in which a defense or
229 counterclaim is timely raised by a defendant.

230 (3) A consolidated timeshare foreclosure action shall be
231 considered a single action, suit, or proceeding for the payment
232 of filing fees and service charges pursuant to general law. In
233 addition to the payment of such filing fees and service charges,
234 an additional filing fee of up to \$10 for each timeshare
235 interest estate joined in that action shall be paid to the clerk
236 of court.

237 Section 8. Section 721.85, Florida Statutes, is amended to
238 read:

239 721.85 Service to notice address or on registered agent.—

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240 (1) Service of process for a foreclosure proceeding
241 involving a timeshare interest ~~estate~~ may be made by any means
242 recognized by law. In addition, substituted service on an
243 obligor ~~a party~~ who has appointed a registered agent under s.
244 721.84 may be made on such registered agent at the registered
245 office. Also, when using s. 48.194 where in rem or quasi in rem
246 relief only is sought, such service of process provisions are
247 modified in connection with a foreclosure proceeding against a
248 timeshare interest ~~estate~~ to provide that:

249 (a) Such service of process may be made on any person
250 whether the person is located inside or outside this state, by
251 certified mail, ~~or~~ registered mail, or permitted delivery
252 service, return receipt requested, addressed to the person to be
253 served at the notice address, or on the person's ~~party's~~
254 registered agent duly appointed under s. 721.84, at the
255 registered office; and

256 (b) Service shall be considered obtained upon the signing
257 of the return receipt by any person at the notice address, or by
258 the registered agent.

259 (2) The current owner and the mortgagor of a timeshare
260 interest ~~estate~~ must promptly notify the owners' association and
261 the mortgagee of any change of address.

262 (3) Substituted notice under s. 721.855 or s. 721.856 for
263 any party who has appointed a registered agent under s. 721.84
264 may be made on such registered agent at the registered office.

265 Section 9. Section 721.855, Florida Statutes, is created
266 to read:

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267 721.855 Procedure for the trustee foreclosure of
268 assessment liens.—The provisions of this section establish a
269 trustee foreclosure procedure for assessment liens.

270 (1) APPOINTMENT OF TRUSTEE.—

271 (a) A trustee or a substitute trustee may be appointed by
272 a lienholder at any time by recording a notice of appointment of
273 trustee or notice of substitution of trustee in the official
274 records of the county or counties in which the timeshare
275 interest is located. A lienholder may appoint multiple trustees
276 in a single appointment, and any appointed trustee may be used
277 by the lienholder regarding the trustee foreclosure of any
278 assessment lien under any timeshare plan for which the trustee
279 is appointed.

280 (b) A trustee shall use good faith, skill, care, and
281 diligence in discharging all of the trustee duties under this
282 section and shall deal honestly and fairly with all parties.

283 (c) The recorded notice of appointment of trustee or
284 notice of substitution of trustee shall contain the name and
285 address of the trustee or substitute trustee, the name and
286 address of the lienholder, and the name and address of the
287 timeshare plan.

288 (2) INITIATING THE USE OF A TRUSTEE FORECLOSURE
289 PROCEDURE.—

290 (a) Before initiating the trustee foreclosure procedure
291 against any timeshare interest in a given timeshare plan:

292 1. If a timeshare instrument contains any provision that
293 specifically prevents the use of the trustee foreclosure
294 procedure, or if the managing entity otherwise determines that

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295 the timeshare instrument should be amended to specifically
296 provide for the use of the trustee foreclosure procedure, an
297 amendment to the timeshare instrument permitting the use of the
298 trustee foreclosure procedure set forth in this section must be
299 adopted and recorded prior to the use of the non-judicial
300 foreclosure procedure. Such amendment to the timeshare
301 instrument containing a statement in substantially similar form
302 may be adopted by a majority of those present and voting at a
303 duly called meeting of the owners' association at which at least
304 15 percent of the voting interest are present in person or by
305 proxy:

306
307 If a timeshare owner fails to make timely payments of
308 timeshare plan common expenses, ad valorem taxes, or
309 special assessments, an assessment lien against the
310 timeshare owner's timeshare interest may be foreclosed
311 in accordance with a judicial foreclosure procedure or
312 a trustee foreclosure procedure, either of which may
313 result in the loss of the timeshare owner's timeshare
314 interest. If the managing entity initiates a trustee
315 foreclosure procedure, the timeshare owner shall have
316 the option to object pursuant to Florida law, and in
317 such event the managing entity may thereafter proceed
318 only by filing a judicial foreclosure action.

319
320 2. The managing entity shall inform owners of timeshare
321 interests in the timeshare plan in writing that the managing
322 entity has the right to elect to use the trustee foreclosure

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323 procedure with respect to foreclosure of assessment liens as
324 established in this section. The managing entity shall be deemed
325 to have complied with the requirements of this subparagraph if
326 the owners of timeshare interests in the given timeshare plan
327 are informed by mail sent to each owner's notice address, in the
328 notice of an annual or special meeting of the owners, by posting
329 on the website of the applicable timeshare plan, or by any owner
330 communication used by the managing entity.

331 (b) Before initiating the trustee foreclosure procedure
332 against any timeshare interest, a claim of lien against the
333 timeshare interest shall be recorded under s. 721.16 or, if
334 applicable, s. 718.116 or s. 719.108, and the notice of the
335 intent to file a lien shall be given under s. 718.121 for
336 timeshare condominiums and s. 719.108 for timeshare
337 cooperatives.

338 (c)1. In order to initiate a trustee foreclosure procedure
339 against a timeshare interest, the lienholder shall deliver an
340 affidavit to the trustee that identifies the obligor; the notice
341 address of the obligor; the timeshare interest; the date that
342 the notice of the intent to file a lien was given, if
343 applicable; the official records book and page number where the
344 claim of lien is recorded; and the name and notice address of
345 any junior interestholder. The affidavit shall be accompanied by
346 a title search of the timeshare interest identifying any junior
347 interestholders of record, and the effective date of the title
348 search must be a date that is within 60 calendar days before the
349 date of the affidavit.

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350 2. The affidavit shall also state the facts that establish
351 that the obligor has defaulted in the obligation to make a
352 payment under a specified provision of the timeshare instrument
353 or applicable law.

354 3. The affidavit shall also specify the amounts secured by
355 the lien as of the date of the affidavit and a per diem amount
356 to account for further accrual of the amounts secured by the
357 lien.

358 4. The affidavit shall also state that the assessment lien
359 was properly created and authorized pursuant to the timeshare
360 instrument and applicable law.

361 (3) OBLIGOR'S RIGHTS.-

362 (a) The obligor may object to the lienholder's use of the
363 trustee foreclosure procedure for a specific default any time
364 before the sale of the timeshare interest under subsection (7)
365 by delivering a written objection to the trustee using the
366 objection form provided for in subsection (5). If the trustee
367 receives the written objection from the obligor, the trustee may
368 not proceed with the trustee foreclosure procedure as to the
369 default specified in the notice of default and intent to
370 foreclose under subsection (5), and the lienholder may proceed
371 thereafter only with a judicial foreclosure action as to that
372 specified default.

373 (b) At any time before the trustee issues the certificate
374 of sale under paragraph (7) (f), the obligor may cure the default
375 and redeem the timeshare interest by paying the amounts secured
376 by the lien in cash or certified funds to the trustee. After the

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377 trustee issues the certificate of sale, there is no right of
378 redemption.

379 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.—A
380 trustee may sell an encumbered timeshare interest foreclosed
381 under this section if:

382 (a) The trustee has received the affidavit from the
383 lienholder under paragraph (2)(c);

384 (b) The trustee has not received a written objection to
385 the use of the trustee foreclosure procedure under paragraph
386 (3)(a) and the timeshare interest was not redeemed under
387 paragraph (3)(b);

388 (c) There is no lis pendens recorded and pending against
389 the same timeshare interest and the trustee has not been served
390 notice of the filing of any action to enjoin the trustee
391 foreclosure sale;

392 (d) The trustee has provided written notice of default and
393 intent to foreclose as required under subsection (5) and a
394 period of at least 30 calendar days has elapsed after such
395 notice is deemed perfected under subsection (5); and

396 (e) The notice of sale required under subsection (6) has
397 been recorded in the official records of the county or counties
398 in which the timeshare interest is located.

399 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.—

400 (a) In any foreclosure proceeding under this section, the
401 trustee is required to notify the obligor of the proceeding by
402 sending the obligor a written notice of default and intent to
403 foreclose to the notice address of the obligor by certified
404 mail, registered mail, or permitted delivery service, return

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405 receipt requested, and by first-class mail or permitted delivery
406 service, postage prepaid, as follows:

407 1. The notice of default and intent to foreclose shall
408 identify the obligor, the notice address of the obligor, the
409 legal description of the timeshare interest, the nature of the
410 default, the amounts secured by the lien, and a per diem amount
411 to account for further accrual of the amounts secured by the
412 lien and shall state the method by which the obligor may cure
413 the default, including the period of time after the date of the
414 notice of default and intent to foreclose within which the
415 obligor may cure the default.

416 2. The notice of default and intent to foreclose shall
417 include an objection form with which the obligor can object to
418 the use of the trustee foreclosure procedure by signing and
419 returning the objection form to the trustee. The objection form
420 shall identify the obligor, the notice address of the obligor,
421 the timeshare interest, and the return address of the trustee
422 and shall state: "The undersigned obligor exercises the
423 obligor's right to object to the use of the trustee foreclosure
424 procedure contained in section 721.855, Florida Statutes."

425 3. The notice of default and intent to foreclose shall
426 also contain a statement in substantially the following form:

427
428 If you fail to cure the default as set forth in this
429 notice or take other appropriate action with regard to
430 this foreclosure matter, you risk losing ownership of
431 your timeshare interest through the trustee
432 foreclosure procedure established in section 721.855,

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433 Florida Statutes. You may choose to sign and send to
434 the trustee the enclosed objection form, exercising
435 your right to object to the use of the trustee
436 foreclosure procedure. Upon the trustee's receipt of
437 your signed objection form, the foreclosure of the
438 lien with respect to the default specified in this
439 notice shall be subject to the judicial foreclosure
440 procedure only. You have the right to cure your
441 default in the manner set forth in this notice at any
442 time before the trustee's sale of your timeshare
443 interest. If you do not object to the use of the
444 trustee foreclosure procedure, you will not be subject
445 to a deficiency judgment even if the proceeds from the
446 sale of your timeshare interest are insufficient to
447 offset the amounts secured by the lien.

448
449 4. The trustee shall also mail a copy of the notice of
450 default and intent to foreclose, without the objection form, to
451 the notice address of any junior interestholder by certified
452 mail, registered mail, or permitted delivery service, return
453 receipt requested, and by first-class mail or permitted delivery
454 service, postage prepaid.

455 5. Notice under this paragraph is considered perfected
456 upon the trustee receiving the return receipt bearing the
457 signature of the obligor or junior interestholder, as
458 applicable, within 30 calendar days after the trustee sent the
459 notice under this paragraph. Notice under this paragraph is not
460 perfected if the notice is returned as undeliverable within 30

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461 calendar days after the trustee sent the notice, if the trustee
462 cannot ascertain from the receipt that the obligor or junior
463 interestholder, as applicable, is the person who signed the
464 receipt, or if the receipt from the obligor or junior
465 interestholder, as applicable, is returned or refused within 30
466 calendar days after the trustee sent the notice.

467 (b) If the notice required by paragraph (a) is returned as
468 undeliverable within 30 calendar days after the trustee sent the
469 notice, the trustee shall perform a diligent search and inquiry
470 to obtain a different address for the obligor or junior
471 interestholder. For purposes of this paragraph, any address
472 known and used by the lienholder for sending regular mailings or
473 other communications from the lienholder to the obligor or
474 junior interestholder, as applicable, shall be included with
475 other addresses produced from the diligent search and inquiry,
476 if any.

477 1. If the trustee's diligent search and inquiry produces
478 an address different from the notice address, the trustee shall
479 mail a copy of the notice by certified mail, registered mail, or
480 permitted delivery service, return receipt requested, and by
481 first-class mail or permitted delivery service, postage prepaid,
482 to the new address. Notice under this subparagraph is considered
483 perfected upon the trustee receiving the return receipt bearing
484 the signature of the obligor or junior interestholder, as
485 applicable, within 30 calendar days after the trustee sent the
486 notice under this subparagraph. Notice under this subparagraph
487 is not perfected if the trustee cannot ascertain from the
488 receipt that the obligor or junior interestholder, as

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489 applicable, is the person who signed the receipt or the receipt
490 from the obligor or junior interestholder, as applicable, is
491 returned refused. If the trustee does not perfect notice under
492 this subparagraph, the trustee shall perfect service in the
493 manner set forth in paragraph (c).

494 2. If the trustee's diligent search and inquiry does not
495 locate a different address for the obligor or junior
496 interestholder, as applicable, the trustee may perfect notice
497 against that person under paragraph (c).

498 (c) If the notice is not perfected under subparagraph
499 (a)5., and such notice was not returned as undeliverable, or if
500 the notice was not perfected under subparagraph (b)1., the
501 trustee may perfect notice by publication in a newspaper of
502 general circulation in the county or counties in which the
503 timeshare interest is located. The notice shall appear at least
504 once a week for 2 consecutive weeks. The trustee may group an
505 unlimited number of notices in the same publication, if all of
506 the notices pertain to the same timeshare plan. Notice under
507 this paragraph is considered perfected upon publication as
508 required in this paragraph.

509 (d) If notice is perfected under subparagraph (a)5., the
510 trustee shall execute an affidavit in recordable form setting
511 forth the manner in which notice was perfected and attach the
512 affidavit to the certificate of compliance set forth in
513 subsection (9). The affidavit shall state the nature of the
514 notice, the date on which the notice was mailed, the name and
515 address on the envelope containing the notice, the manner in
516 which the notice was mailed, and the basis for that knowledge.

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517 (e) If notice is perfected under subparagraph (b)1., the
518 trustee shall execute an affidavit in recordable form setting
519 forth the manner in which notice was perfected and attach the
520 affidavit to the certificate of compliance set forth in
521 subsection (9). The affidavit shall state the nature of the
522 notice, the dates on which the notice was mailed, the name and
523 addresses on the envelopes containing the notice, the manner in
524 which the notices were mailed, the fact that a signed receipt
525 from the certified mail, registered mail, or permitted delivery
526 service was timely received, and the name and address on the
527 envelopes containing the notice.

528 (f) If notice is perfected by publication under paragraph
529 (c), the trustee shall execute an affidavit in recordable form
530 setting forth the manner in which notice was perfected and
531 attach the affidavit to the certificate of compliance set forth
532 in subsection (9). The affidavit shall include all the
533 information contained in either paragraph (d) or paragraph (e),
534 as applicable, shall state that the notice was perfected by
535 publication after diligent search and inquiry was made for the
536 current address for the person, and shall include a statement
537 that notice was perfected by publication, and shall set forth
538 the information required by s. 49.041 in the case of a natural
539 person or s. 49.051 in the case of a corporation, whichever is
540 applicable. No other action of the trustee is necessary to
541 perfect notice.

542 (6) NOTICE OF SALE.-

543 (a) The notice of sale shall set forth:

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- 544 1. The name and notice addresses of the obligor and any
545 junior interestholder.
- 546 2. The legal description of the timeshare interest.
- 547 3. The name and address of the trustee.
- 548 4. A description of the default that is the basis for the
549 foreclosure.
- 550 5. The official records book and page numbers where the
551 claim of lien is recorded.
- 552 6. The amounts secured by the lien and a per diem amount
553 to account for further accrual of the amounts secured by the
554 lien.
- 555 7. The date, location, and starting time of the trustee's
556 sale.
- 557 8. The right of and the method by which the obligor may
558 cure the default or the right of any junior interestholder to
559 redeem its interest up to the date the trustee issues the
560 certificate of sale in accordance with paragraph (7) (f).
- 561 (b) The trustee shall send a copy of the notice of sale
562 within 3 business days after the date it is submitted for
563 recording, by first-class mail or permitted delivery service,
564 postage prepaid, to the notice addresses of the obligor and any
565 junior interestholder.
- 566 (c) After the date of recording of the notice of sale,
567 notice is not required to be given to any person claiming an
568 interest in the timeshare interest except as provided in this
569 section. The recording of the notice of sale has the same force
570 and effect as the filing of a lis pendens in a judicial
571 proceeding under s. 48.23.

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572 (d)1. The trustee shall publish the notice of sale in a
573 newspaper of general circulation in the county or counties in
574 which the timeshare interest is located at least once a week for
575 2 consecutive weeks before the date of the sale. The last
576 publication shall occur at least 5 calendar days before the
577 sale.

578 2. The trustee may group an unlimited number of notices of
579 sale in the same publication, if all of the notices of sale
580 pertain to the same timeshare plan.

581 (7) MANNER OF SALE.—

582 (a) The sale of a timeshare interest by the trustee in a
583 public auction shall be held in the county in which the
584 timeshare interest is located, on the date, location, and
585 starting time designated in the notice of sale, which shall be
586 after 9:00 a.m. but before 4:00 p.m. on a business day not less
587 than 30 calendar days after the recording of the notice of sale.
588 The trustee's sale may occur online at a specific website on the
589 Internet or in any other manner used by the clerk of the court
590 for a judicial foreclosure sales procedure in the county or
591 counties in which the timeshare interest is located.

592 (b) The trustee shall conduct the sale and act as the
593 auctioneer.

594 (c) The lienholder and any person other than the trustee
595 may bid at the sale. In lieu of participating in the sale, the
596 lienholder may send the trustee written bidding instructions
597 that the trustee shall announce as appropriate during the sale.

598 (d) The trustee may postpone the sale from time to time.
599 In such case, notice of postponement must be given by the

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600 trustee at the date, time, and location contained in the notice
601 of sale. The notice of sale for the postponed sale shall be
602 mailed under paragraph (6) (b), recorded under paragraph (4) (e),
603 and published under paragraph (6) (d). The effective date of the
604 initial notice of sale under paragraph (6) (b) is not affected by
605 a postponed sale.

606 (e) The highest bidder of the timeshare interest shall pay
607 the price bid to the trustee in cash or certified funds on the
608 day of the sale. If the lienholder is the highest bidder, the
609 lienholder shall receive a credit up to the amount set forth in
610 the notice of sale as required under subparagraph (6) (a) 6.

611 (f) On the date of the sale and upon receipt of the cash
612 or certified funds due from the highest bidder, the trustee
613 shall issue to the highest bidder a certificate of sale stating
614 that a foreclosure conforming to the requirements of this
615 section has occurred, including the time, location, and date of
616 the sale, that the timeshare interest was sold, the amounts
617 secured by the lien, and the amount of the highest bid. A copy
618 of the certificate of sale shall be mailed by certified mail,
619 registered mail, or permitted delivery service, return receipt
620 requested, to all persons entitled to receive a notice of sale
621 under subsection (6).

622 (g) Before a sale conducted under this subsection, a
623 junior interestholder may pursue adjudication by court, by
624 interpleader, or in any other authorized manner respecting any
625 matter that is disputed by the junior interestholder.

626 (8) EFFECT OF TRUSTEE'S SALE.—

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627 (a) A sale conducted under subsection (7) forecloses and
628 terminates all interests of any person with notice to whom
629 notice is given under paragraph (4)(d) and paragraph (6)(b), and
630 of any other person claiming interests by, through, or under any
631 such person, in the affected timeshare interest. A failure to
632 give notice to any person entitled to notice does not affect the
633 validity of the sale as to the interests of any person properly
634 notified. A person entitled to notice but not given notice has
635 the rights of a person not made a defendant in a judicial
636 foreclosure.

637 (b) On the issuance of a certificate of sale under
638 paragraph (7)(f), all rights of redemption that have been
639 foreclosed under this section shall terminate.

640 (c) A sale conducted under subsection (7) releases the
641 obligor's liability for all amounts secured by the lien. The
642 lienholder has no right to any deficiency judgment against the
643 obligor after a sale of the obligor's timeshare interest under
644 this section.

645 (d) The issuance and recording of the trustee's deed is
646 presumed valid and may be relied upon by third parties without
647 actual knowledge of irregularities in the foreclosure
648 proceedings. If for any reason there is an irregularity in the
649 foreclosure proceedings, a purchaser becomes subrogated to all
650 the rights of the lienholder to the indebtedness that it secured
651 to the extent necessary to reforeclose the assessment lien in
652 order to correct the irregularity and becomes entitled to an
653 action de novo for the foreclosure of such assessment lien. Any

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654 subsequent reforeclosure required to correct an irregularity may
655 be conducted under this section.

656 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.-

657 (a) Within 10 calendar days after the trustee conducts a
658 sale, the trustee shall execute and acknowledge a certificate of
659 compliance that:

660 1. Confirms delivery of the notice of default and intent
661 to foreclose and attaches the affidavit required under
662 subsection (5).

663 2. States that the default was not cured, that the trustee
664 did not receive any written objection under paragraph (3) (a),
665 and that the timeshare interest was not redeemed under paragraph
666 (3) (b).

667 3. Confirms that the notice of sale was published as
668 required under paragraph (6) (d) and attaches an affidavit of
669 publication for the notice of sale.

670 4. Confirms that the notice of sale was mailed under
671 paragraph (6) (b) together with a list of the parties to whom the
672 notice of sale was mailed.

673 (b) In furtherance of the execution of the certificate of
674 compliance required under this subsection, the trustee is
675 entitled to rely upon an affidavit or certification from the
676 lienholder as to the facts and circumstances of default and
677 failure to cure the default.

678 (10) TRUSTEE'S DEED.-

679 (a) The trustee's deed shall include the name and address
680 of the trustee, the name and address of the highest bidder, the
681 name of the former owner, a legal description of the timeshare

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682 interest, and the name and address of the preparer of the
683 trustee's deed. The trustee's deed shall recite that the
684 certificate of compliance was recorded and shall contain no
685 warranties of title from the trustee. The certificate of
686 compliance shall be attached as an exhibit to the trustee's
687 deed.

688 (b) Ten calendar days after a sale, absent the prior
689 filing and service on the trustee of a judicial action to enjoin
690 issuance of the trustee's deed to the timeshare interest, the
691 trustee shall:

692 1. Issue a trustee's deed to the highest bidder.

693 2. Record the trustee's deed in the official records of
694 the county or counties in which the timeshare interest is
695 located.

696 (c)1. The certificate of compliance and trustee's deed
697 together are presumptive evidence of the truth of the matters
698 set forth in them, and an action to set aside the sale and void
699 the trustee's deed may not be filed or otherwise pursued against
700 any person acquiring the timeshare interest for value.

701 2. The trustee's deed conveys to the highest bidder all
702 rights, title, and interest in the timeshare interest that the
703 former owner had, or had the power to convey, at the time of the
704 recording of the claim of lien, together with all rights, title,
705 and interest that the former owner or his or her successors in
706 interest acquired after the recording of the claim of lien.

707 3. The issuance and recording of a trustee's deed shall
708 have the same force and effect as the issuance and recording of

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709 a certificate of title by the clerk of the court in a judicial
710 foreclosure action.

711 (11) DISPOSITION OF PROCEEDS OF SALE.-

712 (a) The trustee shall apply the proceeds of the sale as
713 follows:

714 1. To the expenses of the sale, including compensation of
715 the trustee.

716 2. To the amount owed and set forth in the notice as
717 required in subparagraph (6)(a)6.

718 3. If there are junior interestholders, the trustee may
719 file an action in interpleader, pay the surplus to a court of
720 competent jurisdiction, name the competing junior
721 interestholders, and ask the court to determine the proper
722 distribution of the surplus. In any interpleader action, the
723 trustee shall recover reasonable attorney's fees and costs.

724 4. If there are no junior interestholders, or if all
725 junior interestholders have been paid, any surplus shall be paid
726 to the former owner. If the trustee is unable to locate the
727 former owner within 1 year after the sale, the surplus, if any,
728 shall be deposited with the Chief Financial Officer under
729 chapter 717.

730 (b) In disposing of the proceeds of the sale, the trustee
731 may rely on the information provided in the affidavit of the
732 lienholder under paragraph (2)(c) and, in the event of a dispute
733 or uncertainty over such claims, the trustee has the discretion
734 to submit the matter to adjudication by court, by interpleader,
735 or in any other authorized manner and shall recover reasonable
736 attorney's fees and costs.

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737 | (12) TRUSTEE FORECLOSURE ACTIONS.—The trustee foreclosure
738 | procedure established in this section does not impair or
739 | otherwise affect the lienholder's continuing right to bring a
740 | judicial foreclosure action, in lieu of using the trustee
741 | foreclosure procedure, with respect to any assessment lien.

742 | (13) APPLICATION.—This section applies to any default
743 | giving rise to the imposition of an assessment lien which occurs
744 | after the effective date of this section.

745 | (14) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
746 | PROCEDURE.—An action for actual damages for a material violation
747 | of this section may be brought by an obligor against the
748 | lienholder for the failure to follow the trustee foreclosure
749 | procedure contained in this section.

750 | Section 10. Section 721.856, Florida Statutes, is created
751 | to read:

752 | 721.856 Procedure for the trustee foreclosure of mortgage
753 | liens.—The provisions of this section establish a trustee
754 | foreclosure procedure for mortgage liens.

755 | (1) APPOINTMENT OF TRUSTEE.—

756 | (a) A trustee or a substitute trustee may be appointed by
757 | a lienholder at any time by recording a notice of appointment of
758 | trustee or notice of substitution of trustee in the official
759 | records of the county or counties in which the timeshare
760 | interest is located. A lienholder may appoint multiple trustees
761 | in a single appointment, and any appointed trustee may be used
762 | by the lienholder regarding the trustee foreclosure of any
763 | mortgage lien.

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764 (b) A trustee shall use good faith, skill, care, and
765 diligence in discharging all of the trustee duties under this
766 section and shall deal honestly and fairly with all parties.

767 (c) The recorded notice of appointment of trustee or
768 notice of substitution of trustee shall contain the name and
769 address of the trustee or substitute trustee, the name and
770 address of the lienholder, and the name and address of the
771 timeshare plan.

772 (2) INITIATING THE TRUSTEE FORECLOSURE OF MORTGAGE LIENS.-

773 (a) Before initiating the trustee foreclosure against a
774 timeshare interest, the mortgage, or an amendment to a mortgage
775 executed by the obligor before the effective date of this
776 section, must contain a statement in substantially the following
777 form:

778
779 If the mortgagor fails to make timely payments under
780 the obligation secured by this mortgage, or is
781 otherwise deemed in uncured default of this mortgage,
782 the lien against the mortgagor's timeshare interest
783 created by this mortgage may be foreclosed in
784 accordance with either a judicial foreclosure
785 procedure or a trustee foreclosure procedure and may
786 result in the loss of your timeshare interest. If the
787 mortgagee initiates a trustee foreclosure procedure,
788 the mortgagor shall have the option to object and the
789 mortgagee may proceed only by filing a judicial
790 foreclosure action.

791

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792 (b)1. In order to initiate a trustee foreclosure procedure
793 against a timeshare interest, the lienholder shall deliver an
794 affidavit to the trustee that identifies the obligor, the notice
795 address of the obligor, the timeshare interest, the official
796 records book and page number where the mortgage is recorded, and
797 the name and notice address of any junior interestholder. The
798 affidavit shall be accompanied by a title search of the
799 timeshare interest identifying any junior interestholders of
800 record, and the effective date of the title search must be a
801 date that is within 60 calendar days before the date of the
802 affidavit.

803 2. The affidavit shall also state the facts that establish
804 that the obligor has defaulted in the obligation to make a
805 payment under a specified provision of the mortgage or is
806 otherwise deemed in uncured default under a specified provision
807 of the mortgage.

808 3. The affidavit shall also specify the amounts secured by
809 the lien as of the date of the affidavit and a per diem amount
810 to account for further accrual of the amounts secured by the
811 lien.

812 4. The affidavit shall also state that the appropriate
813 amount of documentary stamp tax and intangible taxes has been
814 paid upon recording of the mortgage, or otherwise paid to the
815 state.

816 5. The affidavit shall also state that the lienholder is
817 the holder of the note, and has complied with all preconditions
818 in the note and mortgage to determine the amounts secured by the
819 lien and to initiate the use of the trustee foreclosure

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820 procedure.

821 (3) OBLIGOR'S RIGHTS.-

822 (a) The obligor may object to the lienholder's use of the
823 trustee foreclosure procedure for a specific default any time
824 before the sale of the timeshare interest under subsection (7)
825 by delivering a written objection to the trustee using the
826 objection form provided for in subsection (5). If the trustee
827 receives the written objection from the obligor, the trustee may
828 not proceed with the trustee foreclosure procedure as to the
829 default specified in the notice of default and intent to
830 foreclose under subsection (5), and the lienholder may proceed
831 thereafter only with a judicial foreclosure action as to that
832 specified default.

833 (b) At any time before the trustee issues the certificate
834 of sale under paragraph (7)(f), the obligor may cure the default
835 and redeem the timeshare interest by paying the amounts secured
836 by the lien in cash or certified funds to the trustee. After the
837 trustee issues the certificate of sale, there is no right of
838 redemption.

839 (4) CONDITIONS TO TRUSTEE'S EXERCISE OF POWER OF SALE.-A
840 trustee may sell an encumbered timeshare interest foreclosed
841 under this section if:

842 (a) The trustee has received the affidavit from the
843 lienholder under paragraph (2)(c);

844 (b) The trustee has not received a written objection to
845 the use of the trustee foreclosure procedure under paragraph
846 (3)(a) and the timeshare interest was not redeemed under
847 paragraph (3)(b);

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848 (c) There is no lis pendens recorded and pending against
849 the same timeshare interest, and the trustee has not been served
850 notice of the filing of any action to enjoin the trustee
851 foreclosure sale;

852 (d) The trustee is in possession of the original
853 promissory note executed by the mortgagor and secured by the
854 mortgage lien;

855 (e) The trustee has provided written notice of default and
856 intent to foreclose as required under subsection (5) and a
857 period of at least 30 calendar days has elapsed after such
858 notice is deemed perfected under subsection (5); and

859 (f) The notice of sale required under subsection (6) has
860 been recorded in the official records of the county in which the
861 mortgage was recorded.

862 (5) NOTICE OF DEFAULT AND INTENT TO FORECLOSE.--

863 (a) In any foreclosure proceeding under this section, the
864 trustee is required to notify the obligor of the proceeding by
865 sending the obligor a written notice of default and intent to
866 foreclose to the notice address of the obligor by certified
867 mail, registered mail, or permitted delivery service, return
868 receipt requested, and by first-class mail or permitted delivery
869 service, postage prepaid, as follows:

870 1. The notice of default and intent to foreclose shall
871 identify the obligor, the notice address of the obligor, the
872 legal description of the timeshare interest, the nature of the
873 default, the amounts secured by the lien, and a per diem amount
874 to account for further accrual of the amounts secured by the
875 lien and shall state the method by which the obligor may cure

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876 the default, including the period of time after the date of the
877 notice of default and intent to foreclose within which the
878 obligor may cure the default.

879 2. The notice of default and intent to foreclose shall
880 include an objection form with which the obligor can object to
881 the use of the trustee foreclosure procedure by signing and
882 returning the objection form to the trustee. The objection form
883 shall identify the obligor, the notice address of the obligor,
884 the timeshare interest, and the return address of the trustee
885 and shall state: "The undersigned obligor exercises the
886 obligor's right to object to the use of the trustee foreclosure
887 procedure contained in section 721.856, Florida Statutes."

888 3. The notice of default and intent to foreclose shall
889 also contain a statement in substantially the following form:

890

891 If you fail to cure the default as set forth in this
892 notice or take other appropriate action with regard to
893 this foreclosure matter, you risk losing ownership of
894 your timeshare interest through the trustee
895 foreclosure procedure established in section 721.856,
896 Florida Statutes. You may choose to sign and send to
897 the trustee the enclosed objection form, exercising
898 your right to object to the use of the trustee
899 foreclosure procedure. Upon the trustee's receipt of
900 your signed objection form, the foreclosure of the
901 lien with respect to the default specified in this
902 notice shall be subject to the judicial foreclosure
903 procedure only. You have the right to cure your

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904 default in the manner set forth in this notice at any
905 time before the trustee's sale of your timeshare
906 interest. If you do not object to the use of the
907 trustee foreclosure procedure, you will not be subject
908 to a deficiency judgment even if the proceeds from the
909 sale of your timeshare interest are insufficient to
910 offset the amounts secured by the lien.

911
912 4. The trustee shall also mail a copy of the notice of
913 default and intent to foreclose, without the objection form, to
914 the notice address of any junior interestholder by certified
915 mail, registered mail, or permitted delivery service, return
916 receipt requested, and by first-class mail or permitted delivery
917 service, postage prepaid.

918 5. Notice under this paragraph is considered perfected
919 upon the trustee receiving the return receipt bearing the
920 signature of the obligor or junior interestholder, as
921 applicable, within 30 calendar days after the trustee sent the
922 notice under this paragraph. Notice under this paragraph is not
923 perfected if the notice is returned as undeliverable within 30
924 calendar days after the trustee sent the notice, if the trustee
925 cannot ascertain from the receipt that the obligor or junior
926 interestholder, as applicable, is the person who signed the
927 receipt, or if the receipt from the obligor or junior
928 interestholder, as applicable, is returned or refused within 30
929 calendar days after the trustee sent the notice.

930 (b) If the notice required by paragraph (a) is returned as
931 undeliverable within 30 calendar days after the trustee sent the

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932 notice, the trustee shall perform a diligent search and inquiry
933 to obtain a different address for the obligor or junior
934 interestholder. For purposes of this paragraph, any address
935 known and used by the lienholder for sending regular mailings or
936 other communications from the lienholder to the obligor or
937 junior interestholder, as applicable, shall be included with
938 other addresses produced from the diligent search and inquiry,
939 if any.

940 1. If the trustee's diligent search and inquiry produces
941 an address different from the notice address, the trustee shall
942 mail a copy of the notice by certified mail, registered mail, or
943 permitted delivery service, return receipt requested, and by
944 first-class mail or permitted delivery service, postage prepaid,
945 to the new address. Notice under this subparagraph is considered
946 perfected upon the trustee receiving the return receipt bearing
947 the signature of the obligor or junior interestholder, as
948 applicable, within 30 calendar days after the trustee sent the
949 notice under this subparagraph. Notice under this subparagraph
950 is not perfected if the trustee cannot ascertain from the
951 receipt that the obligor or junior interestholder, as
952 applicable, is the person who signed the receipt or the receipt
953 from the obligor or junior interestholder, as applicable, is
954 returned refused. If the trustee does not perfect notice under
955 this subparagraph, the trustee shall perfect service in the
956 manner set forth in paragraph (c).

957 2. If the trustee's diligent search and inquiry does not
958 locate a different address for the obligor or junior

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959 interestholder, as applicable, the trustee may perfect notice
960 against that person under paragraph (c).

961 (c) If the notice is not perfected under subparagraph
962 (a)5., and such notice was not returned as undeliverable, or if
963 the notice was not perfected under subparagraph (b)1., the
964 trustee may perfect notice by publication in a newspaper of
965 general circulation in the county or counties in which the
966 timeshare interest is located. The notice shall appear at least
967 once a week for 2 consecutive weeks. The trustee may group an
968 unlimited number of notices in the same publication, if all of
969 the notices pertain to the same timeshare plan. Notice under
970 this paragraph is considered perfected upon publication as
971 required in this paragraph.

972 (d) If notice is perfected under subparagraph (a)5., the
973 trustee shall execute an affidavit in recordable form setting
974 forth the manner in which notice was perfected and attach the
975 affidavit to the certificate of compliance set forth in
976 subsection (9). The affidavit shall state the nature of the
977 notice, the date on which the notice was mailed, the name and
978 address on the envelope containing the notice, the manner in
979 which the notice was mailed, and the basis for that knowledge.

980 (e) If notice is perfected under subparagraph (b)1., the
981 trustee shall execute an affidavit in recordable form setting
982 forth the manner in which notice was perfected and attach the
983 affidavit to the certificate of compliance set forth in
984 subsection (9). The affidavit shall state the nature of the
985 notice, the dates on which the notice was mailed, the name and
986 addresses on the envelopes containing the notice, the manner in

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987 which the notice was mailed, the fact that a signed receipt from
988 the certified mail, registered mail, or permitted delivery
989 service was timely received, and the name and address on the
990 envelopes containing the notice.

991 (f) If notice is perfected under paragraph (c), the
992 trustee shall execute an affidavit in recordable form setting
993 forth the manner in which notice was perfected and attach the
994 affidavit to the certificate of compliance set forth in
995 subsection (9). The affidavit shall include all the information
996 contained in either paragraph (d) or paragraph (e), as
997 applicable, shall state that the notice was perfected by
998 publication after diligent search and inquiry was made for the
999 current address for the person, shall include a statement that
1000 notice was perfected by publication, and shall set forth the
1001 information required by s. 49.041 in the case of a natural
1002 person or s. 49.051 in the case of a corporation, whichever is
1003 applicable. No other action of the trustee is necessary to
1004 perfect notice.

1005 (6) NOTICE OF SALE.-

1006 (a) The notice of sale shall set forth:

1007 1. The name and notice addresses of the obligor and any
1008 junior interestholder.

1009 2. The legal description of the timeshare interest.

1010 3. The name and address of the trustee.

1011 4. A description of the default that is the basis for the
1012 foreclosure.

1013 5. The official records book and page numbers where the
1014 mortgage is recorded.

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1015 6. The amounts secured by the lien and a per diem amount
1016 to account for further accrual of the amounts secured by the
1017 lien.

1018 7. The date, location, and starting time of the trustee's
1019 sale.

1020 8. The right of and the method by which the obligor may
1021 cure the default or the right of any junior interestholder to
1022 redeem its interest up to the date the trustee issues the
1023 certificate of sale in accordance with paragraph (7)(f).

1024 (b) The trustee shall send a copy of the notice of sale
1025 within 3 business days after the date it is submitted for
1026 recording, by first-class mail or permitted delivery service,
1027 postage prepaid, to the notice addresses of the obligor and any
1028 junior interestholder.

1029 (c) After the date of recording of the notice of sale,
1030 notice is not required to be given to any person claiming an
1031 interest in the timeshare interest except as provided in this
1032 section. The recording of the notice of sale has the same force
1033 and effect as the filing of a lis pendens in a judicial
1034 proceeding under s. 48.23.

1035 (d)1. The trustee shall publish the notice of sale in a
1036 newspaper of general circulation in the county or counties in
1037 which the timeshare interest is located at least once a week for
1038 2 consecutive weeks before the date of the sale. The last
1039 publication shall occur at least 5 calendar days before the
1040 sale.

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1041 2. The trustee may group an unlimited number of notices of
1042 sale in the same publication, if all of the notices of sale
1043 pertain to the same timeshare plan.

1044 (7) MANNER OF SALE.—

1045 (a) The sale of a timeshare interest by the trustee in a
1046 public auction shall be held in the county in which the
1047 timeshare interest is located, on the date, location, and
1048 starting time designated in the notice of sale, which shall be
1049 after 9:00 a.m. but before 4:00 p.m. on a business day not less
1050 than 30 calendar days after the recording of the notice of sale.
1051 The trustee's sale may occur online at a specific website on the
1052 Internet or in any other manner used by the clerk of the court
1053 for a judicial foreclosure sales procedure in the county or
1054 counties in which the timeshare interest is located.

1055 (b) The trustee shall conduct the sale and act as the
1056 auctioneer.

1057 (c) The lienholder and any person other than the trustee
1058 may bid at the sale. In lieu of participating in the sale, the
1059 lienholder may send the trustee written bidding instructions
1060 that the trustee shall announce as appropriate during the sale.

1061 (d) The trustee may postpone the sale from time to time.
1062 In such case, notice of postponement must be given by the
1063 trustee at the date, time, and location contained in the notice
1064 of sale. The notice of sale for the postponed sale shall be
1065 mailed under paragraph (6) (b), recorded under paragraph (4) (f),
1066 and published under paragraph (6) (d). The effective date of the
1067 initial notice of sale under paragraph (6) (b) is not affected by
1068 a postponed sale.

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1069 (e) The highest bidder of the timeshare interest shall pay
1070 the price bid to the trustee in cash or certified funds on the
1071 day of the sale. If the lienholder is the highest bidder, the
1072 lienholder shall receive a credit up to the amount set forth in
1073 the notice of sale as required under subparagraph (6) (a) 6.

1074 (f) On the date of the sale and upon receipt of the cash
1075 or certified funds due from the highest bidder, the trustee
1076 shall issue to the highest bidder a certificate of sale stating
1077 that a foreclosure conforming to the requirements of this
1078 section has occurred, including the time, location, and date of
1079 the sale, that the timeshare interest was sold, the amounts
1080 secured by the lien, and the amount of the highest bid. A copy
1081 of the certificate of sale shall be mailed by certified mail,
1082 registered mail, or permitted delivery service, return receipt
1083 requested, to all persons entitled to receive a notice of sale
1084 under subsection (6).

1085 (g) Before a sale conducted pursuant to this subsection, a
1086 junior interestholder may pursue adjudication by court, by
1087 interpleader, or in any other authorized manner respecting any
1088 matter that is disputed by the junior interestholder.

1089 (8) EFFECT OF TRUSTEE'S SALE.--

1090 (a) A sale conducted under subsection (7) forecloses and
1091 terminates all interests of any person with notice to whom
1092 notice is given under paragraph (4) (e) and paragraph (6) (b), and
1093 of any other person claiming interests by, through, or under any
1094 such person, in the affected timeshare interest. A failure to
1095 give notice to any person entitled to notice does not affect the
1096 validity of the sale as to the interests of any person properly

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1097 notified. A person entitled to notice but not given notice has
1098 the rights of a person not made a defendant in a judicial
1099 foreclosure.

1100 (b) On the issuance of a certificate of sale under
1101 paragraph (7)(f), all rights of redemption that have been
1102 foreclosed under this section shall terminate.

1103 (c) A sale conducted under subsection (7) releases the
1104 obligor's liability for all amounts secured by the lien. The
1105 lienholder has no right to any deficiency judgment against the
1106 obligor after a sale of the obligor's timeshare interest under
1107 this section.

1108 (d) The issuance and recording of the trustee's deed is
1109 presumed valid and may be relied upon by third parties without
1110 actual knowledge of any irregularities in the foreclosure
1111 proceedings. If for any reason there is an irregularity in the
1112 foreclosure proceedings, a purchaser becomes subrogated to all
1113 the rights of the lienholder to the indebtedness that it secured
1114 to the extent necessary to reforeclose the mortgage lien in
1115 order to correct the irregularity and becomes entitled to an
1116 action de novo for the foreclosure of such mortgage lien. Any
1117 subsequent reforeclosure required to correct an irregularity may
1118 be conducted under this section.

1119 (9) TRUSTEE'S CERTIFICATE OF COMPLIANCE.-

1120 (a) Within 10 calendar days after the trustee conducts a
1121 sale, the trustee shall execute and acknowledge a certificate of
1122 compliance which:

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1123 1. Confirms delivery of the notice of default and intent
1124 to foreclose and attaches the affidavit required under
1125 subsection (5).

1126 2. States that the default was not cured, that the trustee
1127 did not receive any written objection under paragraph (3)(a),
1128 and that the timeshare interest was not redeemed under paragraph
1129 (3)(b).

1130 3. States that the trustee is in possession of the
1131 original promissory note executed by the mortgagor and secured
1132 by the mortgage lien.

1133 4. Confirms that the notice of sale was published as
1134 required under paragraph (6)(d) and attaches an affidavit of
1135 publication for the notice of sale.

1136 5. Confirms that the notice of sale was mailed under
1137 paragraph (6)(b) together with a list of the parties to whom the
1138 notice of sale was mailed.

1139 (b) In furtherance of the execution of the certificate of
1140 compliance required under this subsection, the trustee is
1141 entitled to rely upon an affidavit or certification from the
1142 lienholder as to the facts and circumstances of default and
1143 failure to cure the default.

1144 (10) TRUSTEE'S DEED.—

1145 (a) The trustee's deed shall include the name and address
1146 of the trustee, the name and address of the highest bidder, the
1147 name of the former owner, a legal description of the timeshare
1148 interest, and the name and address of the preparer of the
1149 trustee's deed. The trustee's deed shall recite that the
1150 certificate of compliance was recorded and shall contain no

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1151 warranties of title from the trustee. The certificate of
1152 compliance shall be attached as an exhibit to the trustee's
1153 deed.

1154 (b) Ten calendar days after a sale, absent the prior
1155 filing and service on the trustee of a judicial action to enjoin
1156 issuance of the trustee's deed to the timeshare interest, the
1157 trustee shall:

1158 1. Cancel the original promissory note executed by the
1159 mortgagor and secured by the mortgage lien.

1160 2. Issue a trustee's deed to the highest bidder.

1161 3. Record the trustee's deed in the official records of
1162 the county or counties in which the timeshare interest is
1163 located.

1164 (c)1. The certificate of compliance and trustee's deed
1165 together are presumptive evidence of the truth of the matters
1166 set forth in them, and an action to set aside the sale and void
1167 the trustee's deed may not be filed or otherwise pursued against
1168 any person acquiring the timeshare interest for value.

1169 2. The trustee's deed conveys to the highest bidder all
1170 rights, title, and interest in the timeshare interest that the
1171 former owner had, or had the power to convey, together with all
1172 rights, title, and interest that the former owner or his or her
1173 successors in interest acquired after the execution of the
1174 mortgage.

1175 3. The issuance and recording of a trustee's deed shall
1176 have the same force and effect as the issuance and recording of
1177 a certificate of title by the clerk of the court in a judicial
1178 foreclosure action.

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1179 (11) DISPOSITION OF PROCEEDS OF SALE.—

1180 (a) The trustee shall apply the proceeds of the sale as
1181 follows:

1182 1. To the expenses of the sale, including compensation of
1183 the trustee.

1184 2. To the amount owed and set forth in the notice as
1185 required under subparagraph (6) (a) 6.

1186 3. If there are junior interestholders, the trustee may
1187 file an action in interpleader, pay the surplus to a court of
1188 competent jurisdiction, name the competing junior
1189 interestholders, and ask the court to determine the proper
1190 distribution of the surplus. In any interpleader action, the
1191 trustee shall recover reasonable attorney's fees and costs.

1192 4. If there are no junior interestholders, or if all
1193 junior interestholders have been paid, any surplus shall be paid
1194 to the former owner. If the trustee is unable to locate the
1195 former owner within 1 year after the sale, the surplus, if any,
1196 shall be deposited with the Chief Financial Officer under
1197 chapter 717.

1198 (b) In disposing of the proceeds of the sale, the trustee
1199 may rely on the information provided in the affidavit of the
1200 lienholder under paragraph (2) (c) and, in the event of a dispute
1201 or uncertainty over such claims, the trustee has the discretion
1202 to submit the matter to adjudication by court, by interpleader,
1203 or in any other authorized manner and shall recover reasonable
1204 attorney's fees and costs.

1205 (12) JUDICIAL FORECLOSURE ACTIONS.—The trustee foreclosure
1206 procedure established in this section does not impair or

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1207 otherwise affect the lienholder's continuing right to bring a
1208 judicial foreclosure action, in lieu of using the trustee
1209 foreclosure procedure, with respect to any mortgage lien.

1210 (13) ACTIONS FOR FAILURE TO FOLLOW THE TRUSTEE FORECLOSURE
1211 PROCEDURE.—An action for actual damages for a material violation
1212 of this section may be brought by an obligor against the
1213 lienholder for the failure to follow the trustee foreclosure
1214 procedure contained in this section.

1215 Section 11. Subsections (1) and (4) of section 721.86,
1216 Florida Statutes, are amended to read:

1217 721.86 Miscellaneous provisions.—

1218 (1) In the event of a conflict between the provisions of
1219 this part and the other provisions of this chapter, chapter 702,
1220 or other applicable law, the provisions of this part shall
1221 prevail. The procedures in this part must be given effect in the
1222 context of any foreclosure proceedings against timeshare
1223 interests ~~estates~~ governed by this chapter, chapter 702, chapter
1224 718, or chapter 719.

1225 (4) In addition to assessment liens and mortgage liens
1226 arising after the effective date of this part, except as
1227 provided in s. 721.855(13), the provisions of this part apply to
1228 all assessment liens and mortgage liens existing prior to the
1229 effective date of this act regarding which a foreclosure
1230 proceeding has not yet commenced.

1231 Section 12. Subsection (2) of section 721.20, Florida
1232 Statutes, is amended to read:

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1233 721.20 Licensing requirements; suspension or revocation of
1234 license; exceptions to applicability; collection of advance fees
1235 for listings unlawful.—

1236 (2) Solicitors who engage only in the solicitation of
1237 prospective purchasers and any purchaser who refers no more than
1238 20 people to a developer or managing entity per year or who
1239 otherwise provides testimonials on behalf of a developer or
1240 managing entity are exempt from the provisions of chapter 475.

1241 Section 13. Subsection (5) is added to section 727.113,
1242 Florida Statutes, to read:

1243 727.113 Objections to claims.—

1244 (5) In determining the amount of any deficiency pursuant to
1245 subsection (4) that may exist with respect to property abandoned
1246 to a secured creditor, the court shall determine the amount of
1247 any such deficiency as of the date of the assignee's motion to
1248 abandon or notice of abandonment by deducting the fair market
1249 value of the abandoned property from the amount owed to the
1250 secured creditor. This subsection is remedial in nature and
1251 shall apply to cases pending on the effective date of this act.

1252 Section 14. This act shall take effect upon becoming a
1253 law.

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

1257 Remove the entire title and insert:

1258 An act relating to foreclosures; amending s. 721.07, F.S.;
1259 providing lien disclosure requirements for filed public offering
1260

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1261 statements for certain timeshare plans; amending s. 721.13,
1262 F.S.; requiring officers, directors and agents of a timeshare
1263 owners' association to act in good faith; providing for damages;
1264 providing exceptions; amending s. 721.16, F.S.; authorizing a
1265 managing entity to bring a judicial action or a trustee
1266 procedure to foreclose certain liens under specified conditions;
1267 revising when a lien is effective; renaming part III of chapter
1268 721, F.S., to conform to changes made by this act; amending s.
1269 721.81, F.S.; revising and providing legislative purposes of the
1270 part; amending s. 721.82 F.S.; revising and providing
1271 definitions; amending s. 721.83, F.S., relating to consolidation
1272 of foreclosure actions; clarifying application to judicial
1273 foreclosure actions; amending s. 721.85, F.S., relating to
1274 service to notice address or on registered agent; conforming
1275 provisions to changes made by this act; creating s. 721.855,
1276 F.S.; establishing procedure for the trustee foreclosure of
1277 assessment liens; providing for the appointment of a trustee;
1278 providing recording requirements for such liens; providing
1279 procedures for the initiation of a trustee foreclosure procedure
1280 against a timeshare interest; providing procedures for an
1281 obligor's objection to the trustee foreclosure procedure;
1282 providing conditions to a trustee's exercise of power of sale;
1283 providing requirements for a notice of default and intent to
1284 sell; providing requirements for a notice of sale; providing
1285 requirements for the sale by auction of foreclosed encumbered
1286 timeshare interests; providing requirements for a trustee's
1287 certificate of compliance; providing for the effect of a
1288 trustee's sale; providing requirements for a trustee's deed;

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1289 providing for the disposition of proceeds of the sale; providing
1290 that the trustee foreclosure procedure does not impair or
1291 otherwise affect the right to bring certain actions; providing
1292 application; providing for actions for failure to follow the
1293 trustee foreclosure procedure; creating s. 721.856, F.S.;
1294 establishing procedure for the trustee foreclosure of mortgage
1295 liens; providing for the appointment of a trustee; providing
1296 recording requirements for such liens; providing procedures for
1297 the initiation of a trustee foreclosure procedure against a
1298 timeshare interest; providing procedures for an obligor's
1299 objection to the trustee foreclosure procedure; providing
1300 conditions to a trustee's exercise of power of sale; providing
1301 requirements for a notice of default and intent to sell;
1302 providing requirements for a notice of sale; providing
1303 requirements for the sale by auction of foreclosed encumbered
1304 timeshare interests; providing requirements for a trustee's
1305 certificate of compliance; providing for the effect of a
1306 trustee's sale; providing requirements for a trustee's deed;
1307 providing for the disposition of proceeds of the sale; providing
1308 that the trustee foreclosure procedure does not impair or
1309 otherwise affect the right to bring certain actions; providing
1310 for actions for failure to follow the trustee foreclosure
1311 procedure; amending s. 721.86, F.S.; providing for priority of
1312 application in case of conflict; conforming terminology to
1313 changes made by this act; amending s. 721.20, F.S.; revising
1314 exemptions from certain licensing requirements; amending s.
1315 727.113, F.S.; providing for calculation of deficiency judgments
1316 related to an assignment for the benefit of creditors when the

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1317 property is abandoned to the mortgagee; providing an effective
1318 date.