Select Year: 2018 ▼ Go

The 2018 Florida Statutes

Title XL
REAL AND PERSONAL PROPERTY

Chapter 718
CONDOMINIUMS

View Entire Chapter

CHAPTER 718
CONDOMINIUMS

PART I
GENERAL PROVISIONS
(ss. 718.101-718.128)

PART II
RIGHTS AND OBLIGATIONS OF DEVELOPERS
(ss. 718.202, 718.203)

PART III
RIGHTS AND OBLIGATIONS OF ASSOCIATION
(ss. 718.301-718.303)

PART IV
SPECIAL TYPES OF CONDOMINIUMS
(ss. 718.401-718.406)

PART V
REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL CONDOMINIUMS
(ss. 718.501-718.509)

PART VI
CONVERSIONS TO CONDOMINIUM
(ss. 718.604-718.622)

PART VII
DISTRESSED CONDOMINIUM RELIEF
(ss. 718.701-718.71)

PART I
GENERAL PROVISIONS

718.101 Short title.
718.102 Purposes.
718.103 Definitions.
718.1035 Power of attorney; compliance with chapter.
718.104 Creation of condominiums; contents of declaration.
718.1045 Timeshare estates; limitation on creation.

718.105 Recording of declaration.
718.106 Condominium parcels; appurtenances; possession and enjoyment.
718.107 Restraint upon separation and partition of common elements.
718.108 Common elements.
718.1085 Certain regulations not to be retroactively applied.
718.109 Legal description of condominium parcels.
718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.
718.111 The association.
718.112 Bylaws.
718.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.
718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.
718.114 Association powers.
718.115 Common expenses and common surplus.
718.116 Assessments; liability; lien and priority; interest; collection.
718.117 Termination of condominium.
718.118 Equitable relief.
718.119 Limitation of liability.
718.120 Separate taxation of condominium parcels; survival of declaration after tax sale; assessment of timeshare estates.
718.121 Liens.
718.122 Unconscionability of certain leases; rebuttable presumption.
718.1224 Prohibition against SLAPP suits.
718.1225 Federal Condominium and Cooperative Abuse Relief Act of 1980; applicability.
718.123 Right of owners to peaceably assemble.
718.1232 Cable television service; resident's right to access without extra charge.
718.124 Limitation on actions by association.
718.125 Attorney's fees.
718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.
718.1256 Condominiums as residential property.
718.1265 Association emergency powers.
718.127 Receivership notification.
718.128 Electronic voting.

718.101 Short title.—This chapter shall be known and may be cited as the "Condominium Act."
History.—s. 1, ch. 76-222.

718.102 Purposes.—The purpose of this chapter is:

(1) To give statutory recognition to the condominium form of ownership of real property.

(2) To establish procedures for the creation, sale, and operation of condominiums.

Every condominium created and existing in this state shall be subject to the provisions of this chapter.
History.—s. 1, ch. 76-222.

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

(1) "Assessment" means a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner.

(2) "Association" means, in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed exclusively of unit owners or their elected or appointed representatives and is a required condition of unit ownership.

(3) "Association property" means that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

(4) "Board of administration" or "board" means the board of directors or other representative body which is responsible for administration of the association.

(5) "Buyer" means a person who purchases a condominium unit. The term "purchaser" may be used interchangeably with the term "buyer."

(6) "Bylaws" means the bylaws of the association as they are amended from time to time.

(7) "Committee" means a group of board members, unit owners, or board members and unit owners appointed by the board or a member of the board to make recommendations to the board regarding the proposed annual budget or to take action on behalf of the board.

(8) "Common elements" means the portions of the condominium property not included in the units.

(9) "Common expenses" means all expenses properly incurred by the association in the performance of its duties, including expenses specified in s. 718.115.

(10) "Common surplus" means the amount of all receipts or revenues, including assessments, rents, or profits, collected by a condominium association which exceeds common expenses.

(11) "Condominium" means that form of ownership of real property created pursuant to this chapter, which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.

(12) "Condominium parcel" means a unit, together with the undivided share in the common elements appurtenant to the unit.

(13) "Condominium property" means the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(14) "Conspicuous type" means bold type in capital letters no smaller than the largest type, exclusive of headings, on the page on which it appears and, in all cases, at least 10-point type. Where conspicuous type is required, it must be separated on all sides from other type and print. Conspicuous type may be used in a contract for purchase and sale of a unit, a lease of a unit for more than 5 years, or a prospectus or offering circular only where required by law.

(15) "Declaration" or "declaration of condominium" means the instrument or instruments by which a condominium is created, as they are from time to time amended.

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

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

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

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

(d) A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

(17) "Division" means the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation.

(18) "Land" means the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and

subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous, or may mean a condominium unit.

(19) "Limited common elements" means those common elements which are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration.

(20) "Multicondominium" means a real estate development containing two or more condominiums, all of which are operated by the same association.

(21) "Operation" or "operation of the condominium" includes the administration and management of the condominium property.

(22) "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

(23) "Residential condominium" means a condominium consisting of two or more units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. With respect to a condominium that is not a timeshare condominium, a residential unit includes a unit intended as a private temporary or permanent residence as well as a unit not intended for commercial or industrial use. With respect to a timeshare condominium, the timeshare instrument as defined in s. 721.05(35) shall govern the intended use of each unit in the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium. A condominium which contains both commercial and residential units is a mixed-use condominium and is subject to the requirements of s. 718.404.

(24) "Special assessment" means any assessment levied against a unit owner other than the assessment required by a budget adopted annually.

(25) "Timeshare estate" means any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various purchasers of a timeshare plan pursuant to chapter 721 on a recurring basis for a period of time.

(26) "Timeshare unit" means a unit in which timeshare estates have been created.

(27) "Unit" means a part of the condominium property which is subject to exclusive ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

(28) "Unit owner" or "owner of a unit" means a record owner of legal title to a condominium parcel.

(29) "Voting certificate" means a document which designates one of the record title owners, or the corporate, partnership, or entity representative, who is authorized to vote on behalf of a condominium unit that is owned by more than one owner or by any entity.

(30) "Voting interests" means the voting rights distributed to the association members pursuant to s. 718.104(4)(j). In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

History.—s. 1, ch. 76-222; s. 1, ch. 78-328; s. 2, ch. 80-3; s. 6, ch. 80-323; s. 1, ch. 84-368; s. 45, ch. 85-62; s. 1, ch. 90-151; s. 1, ch. 91-103; s. 5, ch. 91-426; s. 1, ch. 92-49; s. 34, ch. 95-274; s. 850, ch. 97-102; s. 1, ch. 98-322; s. 73, ch. 99-3; s. 48, ch. 2000-302; s. 19, ch. 2001-64; s. 34, ch. 2004-279; s. 12, ch. 2004-353; s. 3, ch. 2007-80; s. 45, ch. 2008-240; s. 7, ch. 2010-174.

718.1035 Power of attorney; compliance with chapter.—The use of a power of attorney that affects any aspect of the operation of a condominium shall be subject to and in compliance with the provisions of this chapter and all condominium documents, association rules and other rules adopted pursuant to this chapter, and all other covenants, conditions, and restrictions in force at the time of the execution of the power of attorney.

History.—s. 4, ch. 86-175.

718.104 Creation of condominiums; contents of declaration.—Every condominium created in this state shall be created pursuant to this chapter.

(1) A condominium may be created on land owned in fee simple or held under a lease complying with the provisions of s. 718.401.

(2) A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration. Upon the recording of the declaration, or an amendment adding a phase to the condominium under s. 718.403(6), all units described in the declaration or phase amendment as being located in or on the land then being submitted to condominium ownership shall come into existence, regardless of the state of completion of planned improvements in which the units may be located or any other requirement or description that a declaration may provide. Upon recording the declaration of condominium pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

(3) All persons who have any record interest in any mortgage encumbering the interest in the land being submitted to condominium ownership must either join in the execution of the declaration or execute, with the requirements for deed, and record, a consent to the declaration or an agreement subordinating their mortgage interest to the declaration.

(4) The declaration must contain or provide for the following matters:

(a) A statement submitting the property to condominium ownership.

(b) The name by which the condominium property is to be identified, which shall include the word "condominium" or be followed by the words "a condominium."

(c) The legal description of the land and, if a leasehold estate is submitted to condominium, an identification of the lease.

(d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.

(e) A survey of the land which meets the standards of practice established by the Board of Professional Surveyors and Mappers, pursuant to s. 472.027, and a graphic description of the improvements in which units are located and a plot plan thereof that, together with the declaration, are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. Failure of the survey to meet the standards of practice does not invalidate an otherwise validly created condominium. The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches. If the construction of the condominium is not substantially completed, there shall be a statement to that effect, and, upon substantial completion of construction, the developer or the association shall amend the declaration to include the certificate described below. The amendment may be accomplished by referring to the recording data of a survey of the condominium that complies with the certificate. A certificate of a surveyor and mapper authorized to practice in this state shall be included in or attached to the declaration or the survey or graphic description as recorded under s. 718.105 that the construction of the improvements is substantially complete so that the material, together with the provisions of the declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials. Completed units within each substantially completed building in a condominium development may be conveyed to purchasers, notwithstanding that other buildings in the condominium are not substantially completed, provided that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving such building, as set forth in the declaration, are first completed and the declaration of condominium is first recorded and provided that as to the units being conveyed there is a certificate of a surveyor and mapper as required above, including certification that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving the building in which the units to be conveyed are located have been substantially completed, and such

certificate is recorded with the original declaration or as an amendment to such declaration. This section does not, however, operate to require development of improvements and amenities declared to be included in future phases pursuant to s. 718.403 before conveying a unit as provided in this paragraph. For the purposes of this section, a "certificate of a surveyor and mapper" means certification by a surveyor and mapper in the form provided in this paragraph and may include, along with certification by a surveyor and mapper, when appropriate, certification by an architect or engineer authorized to practice in this state. Notwithstanding the requirements of substantial completion provided in this section, this paragraph does not prohibit or impair the validity of a mortgage encumbering units together with an undivided interest in the common elements as described in a declaration of condominium recorded before the recording of a certificate of a surveyor and mapper as provided in this paragraph.

(f) The undivided share of ownership of the common elements and common surplus of the condominium that is appurtenant to each unit stated as a percentage or a fraction of the whole. In the declaration of condominium for residential condominiums created after April 1, 1992, the ownership share of the common elements assigned to each residential unit shall be based either upon the total square footage of each residential unit in uniform relationship to the total square footage of each other residential unit in the condominium or on an equal fractional basis.

(g) The percentage or fractional shares of liability for common expenses of the condominium, which, for all residential units, must be the same as the undivided shares of ownership of the common elements and common surplus appurtenant to each unit as provided for in paragraph (f).

(h) If a developer reserves the right, in a declaration recorded on or after July 1, 2000, to create a multicondominium, the declaration must state, or provide a specific formula for determining, the fractional or percentage shares of liability for the common expenses of the association and of ownership of the common surplus of the association to be allocated to the units in each condominium to be operated by the association. If a declaration recorded on or after July 1, 2000, for a condominium operated by a multicondominium association as originally recorded fails to so provide, the share of liability for the common expenses of the association and of ownership of the common surplus of the association allocated to each unit in each condominium operated by the association shall be a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of units in all condominiums operated by the association.

(i) The name of the association, which must be a corporation for profit or a corporation not for profit.

(j) Unit owners' membership and voting rights in the association.

(k) The document or documents creating the association, which may be attached as an exhibit.

(l) A copy of the bylaws, which shall be attached as an exhibit. Defects or omissions in the bylaws shall not affect the validity of the condominium or title to the condominium parcels.

(m) Other desired provisions not inconsistent with this chapter.

(n) The creation of a nonexclusive easement for ingress and egress over streets, walks, and other rights-of-way serving the units of a condominium, as part of the common elements necessary to provide reasonable access to the public ways, or a dedication of the streets, walks, and other rights-of-way to the public. All easements for ingress and egress shall not be encumbered by any leasehold or lien other than those on the condominium parcels, unless:

1. Any such lien is subordinate to the rights of unit owners, or

2. The holder of any encumbrance or leasehold of any easement has executed and recorded an agreement that the use-rights of each unit owner will not be terminated as long as the unit owner has not been evicted because of a default under the encumbrance or lease, and the use-rights of any mortgagee of a unit who has acquired title to a unit may not be terminated.

(o) If timeshare estates will or may be created with respect to any unit in the condominium, a statement in conspicuous type declaring that timeshare estates will or may be created with respect to units in the condominium. In addition, the degree, quantity, nature, and extent of the timeshare estates that will or may be created shall be defined and described in detail in the declaration, with a specific statement as to the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be created with respect to any unit.

(5) The declaration as originally recorded or as amended under the procedures provided therein may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units.

(6) A person who joins in, or consents to the execution of, a declaration subjects his or her interest in the condominium property to the provisions of the declaration.

(7) All provisions of the declaration are enforceable equitable servitudes, run with the land, and are effective until the condominium is terminated.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 78-328; s. 7, ch. 78-340; s. 1, ch. 79-314; s. 3, ch. 82-199; s. 2, ch. 84-368; s. 2, ch. 90-151; s. 2, ch. 91-103; ss. 1, 5, ch. 91-426; s. 122, ch. 94-119; s. 851, ch. 97-102; s. 1, ch. 98-195; s. 49, ch. 2000-302; s. 5, ch. 2002-27; s. 1, ch. 2013-122; s. 24, ch. 2014-147.

718.1045 Timeshare estates; limitation on creation.—No timeshare estates shall be created with respect to any condominium unit except pursuant to provisions in the declaration expressly permitting the creation of such estates.

History.—s. 3, ch. 78-328.

718.105 Recording of declaration.—

(1) When executed as required by s. 718.104, a declaration together with all exhibits and all amendments is entitled to recordation as an agreement relating to the conveyance of land.

(2) Graphic descriptions of improvements constituting exhibits to a declaration, when accompanied by the certificate of a surveyor required by s. 718.104, may be recorded as a part of a declaration without approval of any public body or officer.

(3) The clerk of the circuit court recording the declaration may, for his or her convenience, file the exhibits of a declaration which contains graphic descriptions of improvements in a separate book, and shall indicate the place of filing upon the margin of the record of the declaration.

(4)(a) If the declaration does not have the certificate or the survey or graphic description of the improvements required under s. 718.104(4)(e), the developer shall deliver therewith to the clerk an estimate, signed by a surveyor authorized to practice in this state, of the cost of a final survey or graphic description providing the certificate prescribed by s. 718.104(4)(e), and shall deposit with the clerk the sum of money specified in the estimate.

(b) The clerk shall hold the money until an amendment to the declaration is recorded that complies with the certificate requirements of s. 718.104(4)(e). At that time, the clerk shall pay to the person presenting the amendment to the declaration the sum of money deposited, without making any charge for holding the sum, receiving it, or paying out, other than the fees required for recording the condominium documents.

(c) If the sum of money held by the clerk has not been paid to the developer or association as provided in paragraph (b) within 5 years after the date the declaration was originally recorded, the clerk may notify, in writing, the registered agent of the association that the sum is still available and the purpose for which it was deposited. If the association does not record the certificate within 90 days after the clerk has given the notice, the clerk may disburse the money to the developer. If the developer cannot be located, the clerk shall disburse the money to the Division of Florida Condominiums, Timeshares, and Mobile Homes for deposit in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

(5) When a declaration of condominium is recorded pursuant to this section, a certificate or receipted bill shall be filed with the clerk of the circuit court in the county where the property is located showing that all taxes due and owing on the property have been paid in full as of the date of recordation.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-340; s. 3, ch. 90-151; s. 852, ch. 97-102; s. 1, ch. 99-350; s. 46, ch. 2008-240; s. 2, ch. 2013-122.

718.106 Condominium parcels; appurtenances; possession and enjoyment.—

(1) A condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold.

(2) There shall pass with a unit, as appurtenances thereto:

(a) An undivided share in the common elements and common surplus.

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration, including the right to transfer such right to other units or unit owners to the extent authorized by the declaration as originally recorded, or amendments to the declaration adopted pursuant to the provisions contained therein. Amendments to declarations of condominium providing for the transfer of use rights with respect to limited common elements are not amendments that materially modify unit appurtenances as described in s. 718.110(4). However, in order to be effective, the transfer of use rights with respect to limited common elements must be effectuated in conformity with the procedures set forth in the declaration as originally recorded or as amended under the procedures provided therein. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(d) Membership in the association designated in the declaration, with the full voting rights appertaining thereto.

(e) Other appurtenances as may be provided in the declaration.

(3) A unit owner is entitled to the exclusive possession of his or her unit, subject to the provisions of s. 718.111(5). He or she is entitled to use the common elements in accordance with the purposes for which they are intended, but no use may hinder or encroach upon the lawful rights of other unit owners.

(4) When a unit is leased, a tenant shall have all use rights in the association property and those common elements otherwise readily available for use generally by unit owners and the unit owner shall not have such rights except as a guest, unless such rights are waived in writing by the tenant. Nothing in this subsection shall interfere with the access rights of the unit owner as a landlord pursuant to chapter 83. The association shall have the right to adopt rules to prohibit dual usage by a unit owner and a tenant of association property and common elements otherwise readily available for use generally by unit owners.

(5) A local government may not adopt an ordinance or regulation that prohibits condominium unit owners or their guests, licensees, or invitees from pedestrian access to a public beach contiguous to a condominium property, except where necessary to protect public health, safety, or natural resources. This subsection does not prohibit a governmental entity from enacting regulations governing activities taking place on the beach.

History.—s. 1, ch. 76-222; s. 3, ch. 84-368; s. 4, ch. 90-151; s. 5, ch. 94-350; s. 853, ch. 97-102; s. 50, ch. 2000-302; s. 6, ch. 2002-27; s. 2, ch. 2007-173.

718.107 Restraint upon separation and partition of common elements.—

(1) The undivided share in the common elements which is appurtenant to a unit shall not be separated from it and shall pass with the title to the unit, whether or not separately described.

(2) The share in the common elements appurtenant to a unit cannot be conveyed or encumbered except together with the unit.

(3) The shares in the common elements appurtenant to units are undivided, and no action for partition of the common elements shall lie.

History.—s. 1, ch. 76-222.

718.108 Common elements.—

(1) "Common elements" includes within its meaning the following:

(a) The condominium property which is not included within the units.

(b) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services to units and the common elements.

(c) An easement of support in every portion of a unit which contributes to the support of a building.

(d) The property and installations required for the furnishing of utilities and other services to more than one unit or to the common elements.

(2) The declaration may designate other parts of the condominium property as common elements.

History.—s. 1, ch. 76-222.

718.1085 Certain regulations not to be retroactively applied.—Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation thereof, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium that meets the definition of "housing for older persons" in s. 760.29(4)(b)3. to comply with requirements relating to handrails and guardrails if the unit owners have voted to forego such retrofitting by the affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting in common areas in a high-rise building. For the purposes of this section, the term "high-rise building" means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable level. For the purposes of this section, the term "common areas" means stairwells and exposed, outdoor walkways and corridors. In no event shall the local authority having jurisdiction require retrofitting of common areas with handrails and guardrails before the end of 2014.

(1) A vote to forego retrofitting may not be obtained by general proxy or limited proxy, but shall be obtained by a vote personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall provide each unit owner written notice of the vote to forego retrofitting of the required handrails or guardrails, or both, in at least 16-point bold type, by certified mail, within 20 days after the association's vote. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

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

History.—s. 1, ch. 2004-80.

718.109 Legal description of condominium parcels.—Following the recording of the declaration, a description of a condominium parcel by the number or other designation by which the unit is identified in the declaration, together with the recording data identifying the declaration, shall be a sufficient legal description for all purposes. The description includes all appurtenances to the unit concerned, whether or not separately described, including, but not limited to, the undivided share in the common elements appurtenant thereto.

History.—s. 1, ch. 76-222.

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

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

(b) No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of

words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision for present text."

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

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

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

(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment. The acquisition of property by the association and material alterations or substantial additions to such property or the common elements by the association in accordance with s. 718.111(7) or s. 718.113, and amendments providing for the transfer of use rights in limited common elements pursuant to s. 718.106(2)(b) shall not be deemed to constitute a material alteration or modification of the appurtenances to the units. A declaration recorded after April 1, 1992, may not require the approval of less than a majority of total voting interests of the condominium for amendments under this subsection, unless otherwise required by a governmental entity.

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

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

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

(8) Unless otherwise provided in the declaration as originally recorded, no amendment to the declaration may permit timeshare estates to be created in any unit of the condominium, unless the record owner of each unit of

the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

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

(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, and the omission or error would affect the valid existence of the condominium, the circuit court may entertain a petition of one or more of the unit owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortgagees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address. If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium is not brought within 3 years of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, the declaration and other documents will effectively create a condominium, as of the date the declaration was recorded, regardless of whether the documents substantially comply with the mandatory requirements of law. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

(11) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve amendments to the condominium documents through legal means. Accordingly, and notwithstanding any provision to the contrary contained in this section:

(a) As to any mortgage recorded on or after October 1, 2007, any provision in the declaration, articles of incorporation, or bylaws that requires the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation, or bylaws or for any other matter shall be enforceable only as to the following matters:

1. Those matters described in subsections (4) and (8).

2. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before October 1, 2007, any existing provisions in the declaration, articles of incorporation, or bylaws requiring mortgagee consent shall be enforceable.

(c) In securing consent or joinder, the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book

and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name and address of the mortgagee or assignee of the mortgage as shown by the public record. The association shall be deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing shall be deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after October 1, 2007, in the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded. Any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraphs (a)1. and 2. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

(f) Notwithstanding the provisions of this section, any amendment or amendments to conform a declaration of condominium to the insurance coverage provisions in s. 718.111(11) may be made as provided in that section.

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

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

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

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

(13) An amendment prohibiting unit owners from renting their units or altering the duration of the rental term or specifying or limiting the number of times unit owners are entitled to rent their units during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the effective date of that amendment.

(14) Except for those portions of the common elements designed and intended to be used by all unit owners, a portion of the common elements serving only one unit or a group of units may be reclassified as a limited common element upon the vote required to amend the declaration as provided therein or as required under paragraph (1)(a), and shall not be considered an amendment pursuant to subsection (4). This is a clarification of existing law.

History.—s. 1, ch. 76-222; s. 8, ch. 77-221; s. 6, ch. 77-222; s. 5, ch. 78-328; s. 2, ch. 78-340; s. 4, ch. 84-368; s. 5, ch. 90-151; s. 3, ch. 91-103; ss. 2, 5, ch. 91-426; s. 51, ch. 2000-302; s. 7, ch. 2002-27; s. 24, ch. 2004-345; s. 1, ch. 2004-353; s. 3, ch. 2007-173; s. 8, ch. 2010-174; s. 3, ch. 2013-122.

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d) and, if applicable, a criminal penalty as provided in paragraph (d). However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he or she votes against such action or abstains from voting. A director of the association who abstains from voting on any action taken on any corporate matter shall be presumed to have taken no position with regard to the action. Directors may not vote by proxy or by secret ballot at board meetings, except that officers may be elected by secret ballot. A vote or abstention for each member present shall be recorded in the minutes.

(c) A unit owner does not have any authority to act for the association by reason of being a unit owner.

(d) As required by s. 617.0830, an officer, director, or agent shall discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834 if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834; constitutes a transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or constitutes recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, the theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, and the destruction of or the refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13 or as obstruction of justice as provided in chapter 843. An officer or director charged by information or indictment with a crime referenced in this paragraph must be removed from office, and the vacancy shall be filled as provided in s. 718.112(2)(d)2. until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

(2) POWERS AND DUTIES.—The powers and duties of the association include those set forth in this section and, except as expressly limited or restricted in this chapter, those set forth in the declaration and bylaws and part I of chapter 607 and chapter 617, as applicable.

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED; CONFLICT OF INTEREST.—The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf

of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available. An association may not hire an attorney who represents the management company of the association.

(4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.—The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property; however, the association may not charge a use fee against a unit owner for the use of common elements or association property unless otherwise provided for in the declaration of condominium or by a majority vote of the association or unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

(5) RIGHT OF ACCESS TO UNITS.—

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit.

(b)1. In addition to the association's right of access in paragraph (a) and regardless of whether authority is provided in the declaration or other recorded condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit to inspect the unit and adjoining common elements; make repairs to the unit or to the common elements serving the unit, as needed; repair the unit if mold or deterioration is present; turn on the utilities for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or

b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to unit owners who previously consented to receive notice by electronic transmission.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use its lien authority provided by s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver to lease out an abandoned unit for the benefit of the association to offset against the rental income the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney fees.

(6) OPERATION OF CONDOMINIUMS CREATED PRIOR TO 1977.—Notwithstanding any provision of this chapter, an association may operate two or more residential condominiums in which the initial condominium declaration was recorded prior to January 1, 1977, and may continue to so operate such condominiums as a single condominium for purposes of financial matters, including budgets, assessments, accounting, recordkeeping, and similar matters, if provision is made for such consolidated operation in the applicable declarations of each such condominium or in

the bylaws. An association for such condominiums may also provide for consolidated financial operation as described in this section either by amending its declaration pursuant to s. 718.110(1)(a) or by amending its bylaws and having the amendment approved by not less than two-thirds of the total voting interests. Notwithstanding any provision in this chapter, common expenses for residential condominiums in such a project being operated by a single association may be assessed against all unit owners in such project pursuant to the proportions or percentages established therefor in the declarations as initially recorded or in the bylaws as initially adopted, subject, however, to the limitations of ss. 718.116 and 718.302.

(7) TITLE TO PROPERTY.—

(a) The association has the power to acquire title to property or otherwise hold, convey, lease, and mortgage association property for the use and benefit of its members. The power to acquire personal property shall be exercised by the board of administration. Except as otherwise permitted in subsections (8) and (9) and in s. 718.114, no association may acquire, convey, lease, or mortgage association real property except in the manner provided in the declaration, and if the declaration does not specify the procedure, then approval of 75 percent of the total voting interests shall be required.

(b) Subject to the provisions of s. 718.112(2)(m), the association, through its board, has the limited power to convey a portion of the common elements to a condemning authority for the purposes of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

(8) PURCHASE OF LEASES.—The association has the power to purchase any land or recreation lease, subject to the same manner of approval as in s. 718.114 for the acquisition of leaseholds.

(9) PURCHASE OF UNITS.—The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them. There shall be no limitation on the association's right to purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments, or to take title by deed in lieu of foreclosure. However, except for a timeshare condominium, a board member, manager, or management company may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of its lien for unpaid assessments or take title by deed in lieu of foreclosure.

(10) EASEMENTS.—Unless prohibited by the declaration, the board of administration has the authority, without the joinder of any unit owner, to grant, modify, or move any easement if the easement constitutes part of or crosses the common elements or association property. This subsection does not authorize the board of administration to modify, move, or vacate any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without the consent or approval of those other persons having the use or benefit of the easement, as required by law or by the instrument creating the easement. Nothing in this subsection affects the minimum requirements of s. 718.104(4)(n) or the powers enumerated in subsection (3).

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

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

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

2. The association may also provide adequate property insurance coverage for a group of at least three communities created and operating under this chapter, chapter 719, chapter 720, or chapter 721 by obtaining and maintaining for such communities insurance coverage sufficient to cover an amount equal to the probable

maximum loss for the communities for a 250-year windstorm event. Such probable maximum loss must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology. A policy or program providing such coverage may not be issued or renewed after July 1, 2008, unless it has been reviewed and approved by the Office of Insurance Regulation. The review and approval must include approval of the policy and related forms pursuant to ss. 627.410 and 627.411, approval of the rates pursuant to s. 627.062, a determination that the loss model approved by the commission was accurately and appropriately applied to the insured structures to determine the 250-year probable maximum loss, and a determination that complete and accurate disclosure of all material provisions is provided to condominium unit owners before execution of the agreement by a condominium association.

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

(b) If an association is a developer-controlled association, the association shall exercise its best efforts to obtain and maintain insurance as described in paragraph (a). Failure to obtain and maintain adequate property insurance during any period of developer control constitutes a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless the members can show that despite such failure, they have made their best efforts to maintain the required coverage.

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

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

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

3. The board shall establish the amount of deductibles based upon the level of available funds and predetermined assessment authority at a meeting of the board in the manner set forth in s. 718.112(2)(e).

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

(e) The declaration of condominium as originally recorded, or as amended pursuant to procedures provided therein, may provide that condominium property consisting of freestanding buildings comprised of no more than one building in or on such unit need not be insured by the association if the declaration requires the unit owner to obtain adequate insurance for the condominium property. An association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance for common elements, association property, and units.

(f) Every property insurance policy issued or renewed on or after January 1, 2009, for the purpose of protecting the condominium must provide primary coverage for:

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

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

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

(g) A condominium unit owner policy must conform to the requirements of s. 627.714.

1. All reconstruction work after a property loss must be undertaken by the association except as otherwise authorized in this section. A unit owner may undertake reconstruction work on portions of the unit with the prior written consent of the board of administration. However, such work may be conditioned upon the approval of the

repair methods, the qualifications of the proposed contractor, or the contract that is used for that purpose. A unit owner must obtain all required governmental permits and approvals before commencing reconstruction.

2. Unit owners are responsible for the cost of reconstruction of any portions of the condominium property for which the unit owner is required to carry property insurance, or for which the unit owner is responsible under paragraph (j), and the cost of any such reconstruction work undertaken by the association is chargeable to the unit owner and enforceable as an assessment and may be collected in the manner provided for the collection of assessments pursuant to s. 718.116.

3. A multicondominium association may elect, by a majority vote of the collective members of the condominiums operated by the association, to operate the condominiums as a single condominium for purposes of insurance matters, including, but not limited to, the purchase of the property insurance required by this section and the apportionment of deductibles and damages in excess of coverage. The election to aggregate the treatment of insurance premiums, deductibles, and excess damages constitutes an amendment to the declaration of all condominiums operated by the association, and the costs of insurance must be stated in the association budget. The amendments must be recorded as required by s. 718.110.

(h) The association shall maintain insurance or fidelity bonding of all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the association or its management agent at any one time. As used in this paragraph, the term "persons who control or disburse funds of the association" includes, but is not limited to, those individuals authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any such bonding.

(i) The association may amend the declaration of condominium without regard to any requirement for approval by mortgagees of amendments affecting insurance requirements for the purpose of conforming the declaration of condominium to the coverage requirements of this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement as determined by the maintenance provisions of the declaration or bylaws. All property insurance deductibles and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

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

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(k) An association may, upon the approval of a majority of the total voting interests in the association, opt out of the provisions of paragraph (j) for the allocation of repair or reconstruction expenses and allocate repair or

reconstruction expenses in the manner provided in the declaration as originally recorded or as amended. Such vote may be approved by the voting interests of the association without regard to any mortgagee consent requirements.

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

(m) Any association or condominium voting to opt out of the guidelines for repair or reconstruction expenses as described in paragraph (j) must record a notice setting forth the date of the opt-out vote and the page of the official records book on which the declaration is recorded. The decision to opt out is effective upon the date of recording of the notice in the public records by the association. An association that has voted to opt out of paragraph (j) may reverse that decision by the same vote required in paragraphs (k) and (l), and notice thereof shall be recorded in the official records.

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

(o) The provisions of this subsection shall not apply to timeshare condominium associations. Insurance for timeshare condominium associations shall be maintained pursuant to s. 721.165.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitutes the official records of the association:

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

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

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

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

5. A copy of the current rules of the association.

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

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

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

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

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

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

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

16. A copy of the inspection report as described in s. 718.301(4)(p).

17. Bids for materials, equipment, or services.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for

preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers of each parcel owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(d) The association shall prepare a question and answer sheet as described in s. 718.504, and shall update it annually.

(e)1. The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent may charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, if the fee does not exceed $150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The

division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

(I) An independent website or web portal wholly owned and operated by the association; or

(II) A website or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, or collection of subpages or web portals dedicated to the association's activities and on which required notices, records, and documents may be posted by the association.

b. The association's website must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website. If protected information or

information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

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

1. An association with total annual revenues of $150,000 or more, but less than $300,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least $300,000, but less than $500,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of $500,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

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

(c) An association may prepare, without a meeting of or approval by the unit owners:

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

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

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

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

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

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

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

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(14) COMMINGLING.—All funds collected by an association shall be maintained separately in the association's name. For investment purposes only, reserve funds may be commingled with operating funds of the association. Commingled operating and reserve funds shall be accounted for separately, and a commingled account shall not, at any time, be less than the amount identified as reserve funds. This subsection does not prohibit a multicondominium association from commingling the operating funds of separate condominiums or the reserve funds of separate condominiums. Furthermore, for investment purposes only, a multicondominium association may commingle the operating funds of separate condominiums with the reserve funds of separate condominiums. A manager or business entity required to be licensed or registered under s. 468.432, or an agent, employee, officer, or director of an association, shall not commingle any association funds with his or her funds or with the funds of any other condominium association or the funds of a community association as defined in s. 468.431.

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) Use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to s. 817.61.

History.—s. 1, ch. 76-222; s. 2, ch. 78-340; ss. 2, 3, 5, ch. 79-314; s. 1, ch. 80-323; s. 1, ch. 81-225; s. 1, ch. 82-199; s. 5, ch. 84-368; s. 5, ch. 86-175; s. 2, ch. 87-46; s. 4, ch. 87-117; s. 6, ch. 90-151; s. 4, ch. 91-103; ss. 3, 5, ch. 91-426; s. 2, ch. 92-49; s. 1, ch. 94-77; s. 231, ch. 94-218; s. 2, ch. 94-336; s. 35, ch. 95-274; s. 854, ch. 97-102; s. 2, ch. 98-322; s. 74, ch. 99-3; s. 52, ch. 2000-302; s. 20, ch. 2001-64; s. 8, ch. 2002-27; s. 4, ch. 2003-14; s. 1, ch. 2004-345; s. 2, ch. 2004-353; s. 37, ch. 2007-1; s. 4, ch. 2007-80; s. 6, ch. 2008-28; ss. 1, 3, ch. 2008-240; s. 87, ch. 2009-21; s. 9, ch. 2010-174; s. 49, ch. 2011-4; s. 2, ch. 2011-196; s. 4, ch. 2013-122; s. 2, ch. 2013-188; s. 8, ch. 2014-133; s. 69, ch. 2014-209; s. 2, ch. 2015-97; s. 1, ch. 2017-161; s. 1, ch. 2017-188; s. 1, ch. 2018-96.

718.112 Bylaws.—

(1) GENERALLY.—

(a) The operation of the association shall be governed by the articles of incorporation if the association is incorporated, and the bylaws of the association, which shall be included as exhibits to the recorded declaration. If one association operates more than one condominium, it shall not be necessary to rerecord the same articles of incorporation and bylaws as exhibits to each declaration after the first, provided that in each case where the articles and bylaws are not so recorded, the declaration expressly incorporates them by reference as exhibits and identifies the book and page of the public records where the first declaration to which they were attached is recorded.

(b) No amendment to the articles of incorporation or bylaws is valid unless recorded with identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded.

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

(a) *Administration.*—

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, unless the condominium has five or fewer units. The board shall consist of not fewer than three members in condominiums with five or fewer units that are not-for-profit corporations. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner of a residential condominium files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days after receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days after its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to provide a substantive response to the inquiry as provided herein precludes the board from recovering attorney fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may through its board of administration adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given 30-day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

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

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit owners in a residential condominium may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s.

718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members in a residential condominium. General proxies may be used for other matters for which limited proxies are not required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association or a nonresidential condominium association.

3. A proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given. Each proxy is revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present. A speaker must be used so that the conversation of such members may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of board meetings must be posted. If there is no condominium property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe

the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person

seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 ½ inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of

the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced within 60 days after the election results are announced.

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

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

8. A unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a. unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws

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

10. This chapter does not limit the use of general or limited proxies, require the use of general or limited proxies, or require the use of a written ballot or voting machine for any agenda item or election at any meeting of a timeshare condominium association or nonresidential condominium association.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

(e) *Budget meeting.*—

1. Any meeting at which a proposed annual budget of an association will be considered by the board or unit owners shall be open to all unit owners. At least 14 days prior to such a meeting, the board shall hand deliver to each unit owner, mail to each unit owner at the address last furnished to the association by the unit owner, or electronically transmit to the location furnished by the unit owner for that purpose a notice of such meeting and a copy of the proposed annual budget. An officer or manager of the association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the official records of the association.

2.a. If a board adopts in any fiscal year an annual budget which requires assessments against unit owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the unit owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the board shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Unit owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

b. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the condominium property, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, or assessments for betterments to the condominium property.

c. If the developer controls the board, assessments shall not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement,

building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Assessments.*—The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

(h) *Amendment of bylaws.*—

1. The method by which the bylaws may be amended consistent with the provisions of this chapter shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by the owners of not less than two-thirds of the voting interests.

2. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that

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

3. Nonmaterial errors or omissions in the bylaw process will not invalidate an otherwise properly promulgated amendment.

(i) *Transfer fees.*—No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed $100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

(j) *Recall of board members.*—Subject to s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting. Electronic transmission may not be used as a method of giving notice of a meeting called in whole or in part for this purpose.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. Such member or members shall be recalled effective immediately upon conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days after the vote, any and all records and property of the association in their possession.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. Such member or members shall be recalled effective immediately upon the conclusion of the board meeting, provided that the recall is facially valid. A recalled member must turn over to the board, within 10 full business days, any and all records and property of the association in their possession.

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall turn over to the board within 10 full business days after the vote any and all records and property of the association.

4. If the board fails to duly notice and hold the required meeting or at the conclusion of the meeting determines that the recall is not facially valid, the unit owner representative may file a petition pursuant to s. 718.1255 challenging the board's failure to act or challenging the board's determination on facial validity. The petition must be filed within 60 days after the expiration of the applicable 5-full-business-day period. The review of a petition under this subparagraph is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

5. If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a

result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6. A board member who has been recalled may file a petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the recall. The association and the unit owner representative shall be named as the respondents. The petition may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioner's claim is frivolous.

7. The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph 6. when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

(k) *Arbitration.*—There shall be a provision for mandatory nonbinding arbitration as provided for in s. 718.1255 for any residential condominium.

(l) *Certificate of compliance.*—A provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code must be included. Notwithstanding chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, residential condominium, or unit owner is not obligated to retrofit the common elements, association property, or units of a residential condominium with a fire sprinkler system in a building that has been certified for occupancy by the applicable governmental entity if the unit owners have voted to forego such retrofitting by the affirmative vote of a majority of all voting interests in the affected condominium. The local authority having jurisdiction may not require completion of retrofitting with a fire sprinkler system before January 1, 2020. By December 31, 2016, a residential condominium association that is not in compliance with the requirements for a fire sprinkler system and has not voted to forego retrofitting of such a system must initiate an application for a building permit for the required installation with the local government having jurisdiction demonstrating that the association will become compliant by December 31, 2019.

1. A vote to forego retrofitting may be obtained by limited proxy or by a ballot personally cast at a duly called membership meeting, or by execution of a written consent by the member, and is effective upon recording a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail or hand deliver to each unit owner written notice at least 14 days before the membership meeting in which the vote to forego retrofitting of the required fire sprinkler system is to take place. Within 30 days after the association's opt-out vote, notice of the results of the opt-out vote must be mailed or hand delivered to all unit owners. Evidence of compliance with this notice requirement must be made by affidavit executed by the person providing the notice and filed among the official records of the association. After notice is provided to each owner, a copy must be provided by the current owner to a new owner before closing and by a unit owner to a renter before signing a lease.

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

3. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire

Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

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

(m) *Common elements; limited power to convey.*—

1. With respect to condominiums created on or after October 1, 1994, the bylaws shall include a provision granting the association a limited power to convey a portion of the common elements to a condemning authority for the purpose of providing utility easements, right-of-way expansion, or other public purposes, whether negotiated or as a result of eminent domain proceedings.

2. In any case where the bylaws are silent as to the association's power to convey common elements as described in subparagraph 1., the bylaws shall be deemed to include the provision described in subparagraph 1.

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

(o) *Director or officer offenses.*—A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.

(p) *Service providers; conflicts of interest.*—An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.

(3) OPTIONAL PROVISIONS.—The bylaws as originally recorded or as amended under the procedures provided therein may provide for the following:

(a) A method of adopting and amending administrative rules and regulations governing the details of the operation and use of the common elements.

(b) Restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements.

(c) Provisions for giving notice by electronic transmission in a manner authorized by law of meetings of the board of directors and committees and of annual and special meetings of the members.

(d) Other provisions which are not inconsistent with this chapter or with the declaration, as may be desired.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 5, ch. 77-221; ss. 3, 4, ch. 77-222; s. 1, ch. 78-340; s. 6, ch. 79-314; s. 2, ch. 80-323; s. 2, ch. 81-225; s. 1, ch. 82-113; s. 4, ch. 82-199; s. 6, ch. 84-368; s. 6, ch. 86-175; s. 2, ch. 88-148; s. 7, ch. 90-151; s. 5, ch. 91-103; ss. 5, 6, ch. 91-426; s. 3, ch. 92-49; s. 3, ch. 94-336; s. 7, ch. 94-350; s. 36, ch. 95-274; s. 2, ch. 96-396; s. 32, ch. 97-93; s. 1773, ch. 97-102; s. 1, ch. 97-301; s. 2, ch. 98-195; s. 3, ch. 98-322; s. 53, ch. 2000-302; s. 21, ch. 2001-64; s. 9, ch. 2002-27; s. 5, ch. 2003-14; s. 4, ch. 2004-345; s. 4, ch. 2004-353; s. 134, ch. 2005-2; s. 7, ch. 2008-28; s. 88, ch. 2009-21; s. 10, ch. 2010-174; s. 3, ch. 2011-196; s. 5, ch. 2013-122; s. 1, ch. 2013-159; s. 3, ch. 2013-188; s. 1, ch. 2014-74; s. 9, ch. 2014-133; s. 3, ch. 2015-97; s. 3, ch. 2017-188; s. 2, ch. 2018-96.

[1]**Note.**—As amended by s. 1, ch. 2014-74. For a description of multiple acts in the same session affecting a statutory provision, *see* preface to the *Florida Statutes*, "Statutory Construction." Subparagraph (2)(b)3. was also amended by s. 9, ch. 2014-133, and that version reads:

3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked at any time at the pleasure of the unit owner executing it.

718.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.—

(1) If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may give notice of his or her intent to apply to the circuit court within whose jurisdiction the condominium lies for the appointment of a receiver to manage the affairs of the association. The form of the notice shall be as follows:

NOTICE OF INTENT TO
APPLY FOR RECEIVERSHIP

YOU ARE HEREBY NOTIFIED that the undersigned owner of a condominium unit in _(name of condominium)_ intends to file a petition in the circuit court for appointment of a receiver to manage the affairs of the association on the grounds that the association has failed to fill vacancies on the board of administration sufficient to constitute a quorum. This petition will not be filed if the vacancies are filled within 30 days after the date on which this notice was sent or posted, whichever is later. If a receiver is appointed, the receiver shall have all of the powers of the board and shall be entitled to receive a salary and reimbursement of all costs and attorney's fees payable from association funds.

(name and address of petitioning unit owner)

(2) The notice required by subsection (1) must be provided by the unit owner to the association by certified mail or personal delivery, must be posted in a conspicuous place on the condominium property, and must be provided by the unit owner to every other unit owner of the association by certified mail or personal delivery. The notice must be posted and mailed or delivered at least 30 days prior to the filing of a petition seeking receivership. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner, except that where a unit owner's address is not publicly available the notice shall be mailed to the unit.

(3) If the association fails to fill the vacancies within 30 days after the notice required by subsection (1) is posted and mailed or delivered, the unit owner may proceed with the petition.

(4) If a receiver is appointed, all unit owners shall be given written notice of such appointment as provided in s. 718.127.

(5) The association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum and the court relieves the receiver of the appointment.

History.—s. 1, ch. 81-185; s. 8, ch. 2008-28; s. 1, ch. 2008-202.

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(1) Maintenance of the common elements is the responsibility of the association. The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

(2)(a) Except as otherwise provided in this section, there shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for

approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018.

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced. This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein. If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018.

(3) A unit owner shall not do anything within his or her unit or on the common elements which would adversely affect the safety or soundness of the common elements or any portion of the association property or condominium property which is to be maintained by the association.

(4) Any unit owner may display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.

(5) Each board of administration of a residential condominium shall adopt hurricane shutter specifications for each building within each condominium operated by the association which shall include color, style, and other factors deemed relevant by the board. All specifications adopted by the board must comply with the applicable building code.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium, install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection that comply with or exceed the applicable building code. However, a vote of the owners is not required if the maintenance, repair, and replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the association pursuant to the declaration of condominium. If hurricane protection or laminated glass or window film architecturally designed to function as hurricane protection that complies with or exceeds the current applicable building code has been previously installed, the board may not install hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection except upon approval by a majority vote of the voting interests.

(b) The association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-

compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.

(c) The board may operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without permission of the unit owners only if such operation is necessary to preserve and protect the condominium property and association property. The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in this paragraph are not a material alteration to the common elements or association property within the meaning of this section.

(d) Notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by a unit owner conforming to the specifications adopted by the board.

(6) An association may not refuse the request of a unit owner for a reasonable accommodation for the attachment on the mantel or frame of the door of the unit owner of a religious object not to exceed 3 inches wide, 6 inches high, and 1.5 inches deep.

(7) Notwithstanding the provisions of this section or the governing documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

(8) The Legislature finds that the use of electric vehicles conserves and protects the state's environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. Therefore, the installation of an electric vehicle charging station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, within the boundaries of his or her limited common element parking area. The installation of such charging stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging station must be separately metered and payable by the unit owner installing such charging station.

(d) The unit owner who is installing an electric vehicle charging station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. The association may enforce payment of such costs pursuant to s. 718.116.

(e) If the unit owner or his or her successor decides there is no longer a need for the electronic vehicle charging station, such person is responsible for the cost of removal of the electronic vehicle charging station. The association may enforce payment of such costs pursuant to s. 718.116.

(f) The association may require the unit owner to:

1. Comply with bona fide safety requirements, consistent with applicable building codes or recognized safety standards, for the protection of persons and property.

2. Comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station, provided that such standards may not prohibit the installation of such charging station or substantially increase the cost thereof.

3. Engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station.

4. Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station within 14 days after receiving the association's approval to install such charging station.

5. Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station within 14 days after receiving the association's insurance premium invoice.

(g) The association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of the installation of the electric vehicle charging station and the furnishing of electrical power, including any necessary equipment, to such charging station, subject to the requirements of this subsection.

History.—s. 1, ch. 76-222; s. 1, ch. 89-161; s. 8, ch. 90-151; s. 6, ch. 91-103; s. 5, ch. 91-426; s. 4, ch. 92-49; s. 8, ch. 94-350; s. 43, ch. 95-274; s. 855, ch. 97-102; s. 54, ch. 2000-302; s. 10, ch. 2002-27; s. 1, ch. 2003-28; s. 9, ch. 2008-28; s. 26, ch. 2008-191; s. 89, ch. 2009-21; s. 59, ch. 2010-176; s. 4, ch. 2011-196; s. 4, ch. 2013-188; s. 2, ch. 2014-74; s. 3, ch. 2018-96.

718.114 Association powers.—An association may enter into agreements to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities, regardless of whether the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months of the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, are a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into such agreements except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

History.—s. 1, ch. 76-222; s. 4, ch. 79-314; s. 9, ch. 90-151; s. 1, ch. 91-67; s. 7, ch. 91-103; s. 2, ch. 91-206; s. 5, ch. 91-426; ss. 2, 6, ch. 92-280; s. 1, ch. 93-160; s. 4, ch. 2007-173; s. 3, ch. 2007-228; s. 5, ch. 2011-196; s. 6, ch. 2013-122.

718.115 Common expenses and common surplus.—

(1)(a) Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the common elements and association property, costs of carrying out the powers and duties of the association, and any other expense, whether or not included in the foregoing, designated as common expense by this chapter, the declaration, the documents creating the association, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners even if such expenses do not attach to the common elements or property of the condominium. However, such common expenses must either have been services or items provided on or after the date control of the association is transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws. Unless the manner of payment or allocation of expenses is otherwise addressed in the declaration of condominium, the expenses of any items or services required by any federal, state, or local governmental entity to be installed, maintained, or supplied to the condominium property by the association, including, but not limited to, firesafety equipment or water and sewer service where a master meter serves the condominium, shall be common expenses whether or not such items or services are specifically identified as common expenses in the declaration of condominium, articles of incorporation, or bylaws of the association.

(b) The common expenses of a condominium within a multicondominium are the common expenses directly attributable to the operation of that condominium. The common expenses of a multicondominium association do not include the common expenses directly attributable to the operation of any specific condominium or condominiums within the multicondominium. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(c) The common expenses of a multicondominium association may include categories of expenses related to the property or common elements within a specific condominium in the multicondominium if such property or common elements are areas in which all members of the multicondominium association have use rights or from which all members receive tangible economic benefits. Such common expenses of the association shall be identified in the declaration or bylaws as originally recorded or as amended under the procedures provided therein of each condominium within the multicondominium association. This paragraph is intended to clarify existing law and applies to associations existing on the effective date of this act.

(d) If provided in the declaration, the cost of communications services as defined in chapter 202, information services, or Internet services obtained pursuant to a bulk contract is a common expense. If the declaration does not provide for the cost of such services as a common expense, the board may enter into such a contract, and the cost of the service will be a common expense. The cost for the services under a bulk rate contract may be allocated on a per-unit basis rather than a percentage basis if the declaration provides for other than an equal sharing of common expenses, and any contract entered into before July 1, 1998, in which the cost of the service is not equally divided among all unit owners, may be changed by vote of a majority of the voting interests present at a regular or special meeting of the association, to allocate the cost equally among all units. The contract must be for at least 2 years.

1. Any contract made by the board on or after July 1, 1998, may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever occurs first, following the making of the contract, such contract shall be deemed ratified for the term therein expressed.

2. Such contract must provide, and is deemed to provide if not expressly set forth, that any hearing-impaired or legally blind unit owner who does not occupy the unit with a non-hearing-impaired or sighted person, or any unit owner receiving supplemental security income under Title XVI of the Social Security Act or food assistance as administered by the Department of Children and Families pursuant to s. 414.31, may discontinue the cable or video service without incurring disconnect fees, penalties, or subsequent service charges, and, as to such units, the owners are not required to pay any common expenses charge related to such service. If fewer than all members of an association share the expenses of cable or video service, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners receiving cable or video service.

(e) The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However, if the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the cost of the installation of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection is not a common expense and shall be charged individually to the unit owners based on the cost of installation of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection appurtenant to the unit. Notwithstanding s. 718.116(9), and regardless of whether or not the declaration requires the association or unit owners to maintain, repair, or replace hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection, a unit

owner who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant hurricane protection that comply with the current applicable building code shall receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit. However, such unit owner remains responsible for the pro rata share of expenses for hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection.

(f) Common expenses include the costs of insurance acquired by the association under the authority of s. 718.111(11), including costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to s. 624.462.

(g) If any unpaid share of common expenses or assessments is extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure thereof, the unpaid share of common expenses or assessments are common expenses collectible from all the unit owners in the condominium in which the unit is located.

(2) Except as otherwise provided by this chapter, funds for payment of the common expenses of a condominium shall be collected by assessments against the units in that condominium in the proportions or percentages provided in that condominium's declaration. In a residential condominium, or mixed-use condominium created after January 1, 1996, each unit's share of the common expenses of the condominium and common surplus of the condominium shall be the same as the unit's appurtenant ownership interest in the common elements.

(3) Common surplus is owned by unit owners in the same shares as their ownership interest in the common elements.

(4)(a) Funds for payment of the common expenses of a condominium within a multicondominium shall be collected as provided in subsection (2). Common expenses of a multicondominium association shall be funded by assessments against all unit owners in the association in the proportion or percentage set forth in the declaration as required by s. 718.104(4)(h) or s. 718.110(12), as applicable.

(b) In a multicondominium association, the total common surplus owned by a unit owner consists of that owner's share of the common surplus of the association plus that owner's share of the common surplus of the condominium in which the owner's unit is located, in the proportion or percentage set forth in the declaration as required by s. 718.104(4)(h) or s. 718.110(12), as applicable.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 7, ch. 84-368; s. 1, ch. 88-148; s. 11, ch. 90-151; s. 8, ch. 91-103; s. 3, ch. 91-116; ss. 5, 8, ch. 91-426; s. 5, ch. 92-49; s. 9, ch. 94-350; s. 3, ch. 96-396; s. 4, ch. 98-322; s. 55, ch. 2000-302; s. 11, ch. 2002-27; s. 5, ch. 2007-80; s. 10, ch. 2008-28; s. 4, ch. 2008-240; s. 11, ch. 2010-174; s. 40, ch. 2010-209; s. 5, ch. 2013-188; s. 283, ch. 2014-19.

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all assessments which come due while he or she is the unit owner. Additionally, a unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner. For the purposes of this paragraph, the term "previous owner" does not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. A present unit owner's liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

(b)1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due before the mortgagee's acquisition of

title is limited to the lesser of:

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

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

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(c) The person acquiring title shall pay the amount owed to the association within 30 days after transfer of title. Failure to pay the full amount when due shall entitle the association to record a claim of lien against the parcel and proceed in the same manner as provided in this section for the collection of unpaid assessments.

(d) With respect to each timeshare unit, each owner of a timeshare estate therein is jointly and severally liable for the payment of all assessments and other charges levied against or with respect to that unit pursuant to the declaration or bylaws, except to the extent that the declaration or bylaws may provide to the contrary.

(e) Notwithstanding the provisions of paragraph (b), a first mortgagee or its successor or assignees who acquire title to a condominium unit as a result of the foreclosure of the mortgage or by deed in lieu of foreclosure of the mortgage shall be exempt from liability for all unpaid assessments attributable to the parcel or chargeable to the previous owner which came due prior to acquisition of title if the first mortgage was recorded prior to April 1, 1992. If, however, the first mortgage was recorded on or after April 1, 1992, or on the date the mortgage was recorded, the declaration included language incorporating by reference future amendments to this chapter, the provisions of paragraph (b) shall apply.

(f) The provisions of this subsection are intended to clarify existing law, and shall not be available in any case where the unpaid assessments sought to be recovered by the association are secured by a lien recorded prior to the recording of the mortgage. Notwithstanding the provisions of chapter 48, the association shall be a proper party to intervene in any foreclosure proceeding to seek equitable relief.

(g) For purposes of this subsection, the term "successor or assignee" as used with respect to a first mortgagee includes only a subsequent holder of the first mortgage.

(2) The liability for assessments may not be avoided by waiver of the use or enjoyment of any common element or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of $25 or 5 percent of each delinquent installment for which the payment is late. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

(4) If the association is authorized by the declaration or bylaws to approve or disapprove a proposed lease of a unit, the grounds for disapproval may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time approval is sought.

(5)(a) The association has a lien on each condominium parcel to secure the payment of assessments. Except as otherwise provided in subsection (1) and as set forth below, the lien is effective from and shall relate back to the

recording of the original declaration of condominium, or, in the case of lien on a parcel located in a phase condominium, the last to occur of the recording of the original declaration or amendment thereto creating the parcel. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the condominium parcel is located. Nothing in this subsection shall be construed to bestow upon any lien, mortgage, or certified judgment of record on April 1, 1992, including the lien for unpaid assessments created herein, a priority which, by law, the lien, mortgage, or judgment did not have before that date.

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, administrative late fees, and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: _(Name and address of association)_ You are notified that the undersigned contests the claim of lien filed by you on , _(year)_, and recorded in Official Records Book at Page , of the public records of County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this day of , _(year)_.

Signed: _(Owner or Attorney)_

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

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $, hereby waives and releases its lien and right to claim a lien for unpaid assessments through , _(year)_, recorded in the Official Records Book at Page , of the public records of County, Florida, for the following described real property:

UNIT NO. OF _(NAME OF CONDOMINIUM)_, A CONDOMINIUM AS SET FORTH IN THE DECLARATION OF CONDOMINIUM AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK , PAGE , OF THE PUBLIC RECORDS OF COUNTY, FLORIDA. THE ABOVE DESCRIPTION INCLUDES, BUT IS NOT LIMITED TO, ALL APPURTENANCES TO THE CONDOMINIUM UNIT ABOVE DESCRIBED, INCLUDING THE UNDIVIDED INTEREST IN THE COMMON ELEMENTS OF SAID CONDOMINIUM.

(Signature of Authorized Agent) _(Signature of Witness)_

(Print Name) _(Print Name)_

(Signature of Witness)
(Print Name)

Sworn to (or affirmed) and subscribed before me this day of , _(year)_, by _(name of person making statement)_.
(Signature of Notary Public)
(Print, type, or stamp commissioned name of Notary Public)
Personally Known OR Produced as identification.

(6)(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien. The association is entitled to recover its reasonable attorney's fees incurred in either a lien foreclosure action or an action to recover a money judgment for unpaid assessments.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. The notice must be in substantially the following form:

DELINQUENT ASSESSMENT

This letter is to inform you a Claim of Lien has been filed against your property because you have not paid the _(type of assessment)_ assessment to _(name of association)_. The association intends to foreclose the lien and collect the unpaid amount within 30 days of this letter being provided to you.

You owe the interest accruing from _(month/year)_ to the present. As of the date of this letter, the total amount due with interest is $. All costs of any action and interest from this day forward will also be charged to your account.

Any questions concerning this matter should be directed to _(insert name, addresses, and telephone numbers of association representative)_.

If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his or her last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a notice of contest of lien as provided in subsection (5). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual, constructive, or substitute service of process has been made on the unit owner.

(c) If the unit owner remains in possession of the unit after a foreclosure judgment has been entered, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit. If the unit is rented or leased during the pendency of the foreclosure action, the association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver shall be paid by the party which does not prevail in the foreclosure action.

(d) The association has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

(7) A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(8) Within 10 business days after receiving a written or electronic request therefor from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, the association shall issue the estoppel certificate. Each association shall designate on its website a person or entity with a street or e-mail address for receipt of a request for an estoppel certificate issued pursuant to this section. The estoppel certificate must be provided by hand delivery, regular mail, or e-mail to the requestor on the date of issuance of the estoppel certificate.

(a) An estoppel certificate may be completed by any board member, authorized agent, or authorized representative of the association, including any authorized agent, authorized representative, or employee of a management company authorized to complete this form on behalf of the board or association. The estoppel certificate must contain all of the following information and must be substantially in the following form:

1. Date of issuance:
2. Name(s) of the unit owner(s) as reflected in the books and records of the association:
3. Unit designation and address:
4. Parking or garage space number, as reflected in the books and records of the association:
5. Attorney's name and contact information if the account is delinquent and has been turned over to an attorney for collection. No fee may be charged for this information.
6. Fee for the preparation and delivery of the estoppel certificate:
7. Name of the requestor:
8. Assessment information and other information:

ASSESSMENT INFORMATION:

a. The regular periodic assessment levied against the unit is $ per _(insert frequency of payment)_.
b. The regular periodic assessment is paid through _(insert date paid through)_.
c. The next installment of the regular periodic assessment is due _(insert due date)_ in the amount of $.
d. An itemized list of all assessments, special assessments, and other moneys owed on the date of issuance to the association by the unit owner for a specific unit is provided.
e. An itemized list of any additional assessments, special assessments, and other moneys that are scheduled to become due for each day after the date of issuance for the effective period of the estoppel certificate is provided. In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

OTHER INFORMATION:

f. Is there a capital contribution fee, resale fee, transfer fee, or other fee due? _(Yes)__(No)_. If yes, specify the type and the amount of the fee.
g. Is there any open violation of rule or regulation noticed to the unit owner in the association official records? _(Yes)__(No)_.
h. Do the rules and regulations of the association applicable to the unit require approval by the board of directors of the association for the transfer of the unit? _(Yes)__(No)_. If yes, has the board approved the transfer of the unit? _(Yes)__(No)_.
i. Is there a right of first refusal provided to the members or the association? _(Yes)__(No)_. If yes, have the members or the association exercised that right of first refusal? _(Yes)__(No)_.
j. Provide a list of, and contact information for, all other associations of which the unit is a member.
k. Provide contact information for all insurance maintained by the association.
l. Provide the signature of an officer or authorized agent of the association.

The association, at its option, may include additional information in the estoppel certificate.

(b) An estoppel certificate that is hand delivered or sent by electronic means has a 30-day effective period. An estoppel certificate that is sent by regular mail has a 35-day effective period. If additional information or a

mistake related to the estoppel certificate becomes known to the association within the effective period, an amended estoppel certificate may be delivered and becomes effective if a sale or refinancing of the unit has not been completed during the effective period. A fee may not be charged for an amended estoppel certificate. An amended estoppel certificate must be delivered on the date of issuance, and a new 30-day or 35-day effective period begins on such date.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns.

(d) If an association receives a request for an estoppel certificate from a unit owner or the unit owner's designee, or a unit mortgagee or the unit mortgagee's designee, and fails to deliver the estoppel certificate within 10 business days, a fee may not be charged for the preparation and delivery of that estoppel certificate.

(e) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney fees.

(f) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an association or its authorized agent may charge a reasonable fee for the preparation and delivery of an estoppel certificate, which may not exceed $250, if, on the date the certificate is issued, no delinquent amounts are owed to the association for the applicable unit. If an estoppel certificate is requested on an expedited basis and delivered within 3 business days after the request, the association may charge an additional fee of $100. If a delinquent amount is owed to the association for the applicable unit, an additional fee for the estoppel certificate may not exceed $150.

(g) If estoppel certificates for multiple units owned by the same owner are simultaneously requested from the same association and there are no past due monetary obligations owed to the association, the statement of moneys due for those units may be delivered in one or more estoppel certificates, and, even though the fee for each unit shall be computed as set forth in paragraph (f), the total fee that the association may charge for the preparation and delivery of the estoppel certificates may not exceed, in the aggregate:

1. For 25 or fewer units, $750.
2. For 26 to 50 units, $1,000.
3. For 51 to 100 units, $1,500.
4. For more than 100 units, $2,500.

(h) The authority to charge a fee for the preparation and delivery of the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract and is payable upon the preparation of the certificate. If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section. The right to reimbursement may not be waived or modified by any contract or agreement. The prevailing party in any action brought to enforce a right of reimbursement shall be awarded damages and all applicable attorney fees and costs.

(i) The fees specified in this subsection shall be adjusted every 5 years in an amount equal to the total of the annual increases for that 5-year period in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items. The Department of Business and Professional Regulation shall periodically calculate the fees, rounded to the nearest dollar, and publish the amounts, as adjusted, on its website.

(9)(a) A unit owner may not be excused from payment of the unit owner's share of common expenses unless all other unit owners are likewise proportionately excluded from payment, except as provided in subsection (1) and in the following cases:

1. If authorized by the declaration, a developer who is offering units for sale may elect to be excused from payment of assessments against those unsold units for a stated period of time after the declaration is recorded. However, the developer must pay common expenses incurred during such period which exceed regular periodic

assessments against other unit owners in the same condominium. The stated period must terminate no later than the first day of the fourth calendar month following the month in which the first closing occurs of a purchase contract for a unit in that condominium. If a developer-controlled association has maintained all insurance coverage required by s. 718.111(11)(a), common expenses incurred during the stated period resulting from a natural disaster or an act of God occurring during the stated period, which are not covered by proceeds from insurance maintained by the association, may be assessed against all unit owners owning units on the date of such natural disaster or act of God, and their respective successors and assigns, including the developer with respect to units owned by the developer. In the event of such an assessment, all units shall be assessed in accordance with s. 718.115(2).

2. A developer who owns condominium units, and who is offering the units for sale, may be excused from payment of assessments against those unsold units for the period of time the developer has guaranteed to all purchasers or other unit owners in the same condominium that assessments will not exceed a stated dollar amount and that the developer will pay any common expenses that exceed the guaranteed amount. Such guarantee may be stated in the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of the unit owners other than the developer and may provide that, after the initial guarantee period, the developer may extend the guarantee for one or more stated periods. If a developer-controlled association has maintained all insurance coverage required by s. 718.111(11)(a), common expenses incurred during a guarantee period, as a result of a natural disaster or an act of God occurring during the same guarantee period, which are not covered by the proceeds from such insurance, may be assessed against all unit owners owning units on the date of such natural disaster or act of God, and their successors and assigns, including the developer with respect to units owned by the developer. Any such assessment shall be in accordance with s. 718.115(2) or (4), as applicable.

(b) If the purchase contract, declaration, prospectus, or written agreement between the developer and a majority of unit owners other than the developer provides for the developer to be excused from payment of assessments under paragraph (a), only regular periodic assessments for common expenses as provided for in the declaration and prospectus and disclosed in the estimated operating budget shall be used for payment of common expenses during any period in which the developer is excused. Accordingly, no funds which are receivable from unit purchasers or unit owners and payable to the association, including capital contributions or startup funds collected from unit purchasers at closing, may be used for payment of such common expenses.

(c) If a developer of a multicondominium is excused from payment of assessments under paragraph (a), the developer's financial obligation to the multicondominium association during any period in which the developer is excused from payment of assessments is as follows:

1. The developer shall pay the common expenses of a condominium affected by a guarantee, including the funding of reserves as provided in the adopted annual budget of that condominium, which exceed the regular periodic assessments at the guaranteed level against all other unit owners within that condominium.

2. The developer shall pay the common expenses of a multicondominium association, including the funding of reserves as provided in the adopted annual budget of the association, which are allocated to units within a condominium affected by a guarantee and which exceed the regular periodic assessments against all other unit owners within that condominium.

(10) The specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 718.111(11), approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

(11)(a) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner

related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit.

1. The association must provide the tenant a notice, by hand delivery or United States mail, in substantially the following form:

Pursuant to section 718.116(11), Florida Statutes, the association demands that you pay your rent directly to the condominium association and continue doing so until the association notifies you otherwise.

Payment due the condominium association may be in the same form as you paid your landlord and must be sent by United States mail or hand delivery to _(full address)_, payable to _(name)_.

Your obligation to pay your rent to the association begins immediately, unless you have already paid rent to your landlord for the current period before receiving this notice. In that case, you must provide the association written proof of your payment within 14 days after receiving this notice and your obligation to pay rent to the association would then begin with the next rental period.

Pursuant to section 718.116(11), Florida Statutes, your payment of rent to the association gives you complete immunity from any claim for the rent by your landlord for all amounts timely paid to the association.

2. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association.

3. The association shall, upon request, provide the tenant with written receipts for payments made.

4. A tenant is immune from any claim by the landlord or unit owner related to the rent timely paid to the association after the association has made written demand.

(b) If the tenant paid rent to the landlord or unit owner for a given rental period before receiving the demand from the association and provides written evidence to the association of having paid the rent within 14 days after receiving the demand, the tenant shall begin making rental payments to the association for the following rental period and shall continue making rental payments to the association to be credited against the monetary obligations of the unit owner until the association releases the tenant or the tenant discontinues tenancy in the unit.

(c) The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the landlord in the amount of moneys paid to the association.

(d) The association may issue notice under s. 83.56 and sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment to the association after written demand has been made to the tenant. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations under s. 83.51.

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

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

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 77-221; s. 7, ch. 77-222; s. 6, ch. 78-328; s. 8, ch. 84-368; s. 12, ch. 90-151; s. 9, ch. 91-103; ss. 4, 5, ch. 91-426; s. 6, ch. 92-49; s. 10, ch. 94-350; s. 87, ch. 95-211; s. 856, ch. 97-102; s. 7, ch. 98-322; s. 33, ch. 99-6; s. 1, ch. 2000-201; s. 56, ch. 2000-302; s. 7, ch. 2003-14; s. 6, ch. 2007-80; s. 5, ch. 2008-240; s. 12, ch. 2010-174; s. 6, ch. 2011-196; s. 10, ch. 2014-133; s. 3, ch. 2014-146; s. 89, ch. 2015-2; s. 9, ch. 2015-97; s. 1, ch. 2017-93.

718.117 Termination of condominium.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Condominiums are created as authorized by statute and are subject to covenants that encumber the land and restrict the use of real property.

(b) In some circumstances, the continued enforcement of those covenants may create economic waste and areas of disrepair which threaten the safety and welfare of the public or cause obsolescence of the property for its intended use and thereby lower property tax values, and it is the public policy of this state to provide by statute a

method to preserve the value of the property interests and the rights of alienation thereof that owners have in the condominium property before and after termination.

(c) It is contrary to the public policy of this state to require the continued operation of a condominium when to do so constitutes economic waste or when the ability to do so is made impossible by law or regulation.

(d) It is in the best interest of the state to provide for termination of the covenants of a declaration of condominium in certain circumstances in order to:

1. Ensure the continued maintenance, management, and repair of stormwater management systems, conservation areas, and conservation easements.

2. Avoid transferring the expense of maintaining infrastructure serving the condominium property, including, but not limited to, stormwater systems and conservation areas, to the general tax bases of the state and local governments.

3. Prevent covenants from impairing the continued productive use of the property.

4. Protect state residents from health and safety hazards created by derelict, damaged, obsolete, or abandoned condominium properties.

5. Provide fair treatment and just compensation for individuals and preserve property values and the local property tax base.

6. Preserve the state's long history of protecting homestead property and homestead property rights by ensuring that such protection is extended to homestead property owners in the context of a termination of the covenants of a declaration of condominium.

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

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

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

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

(b) Notwithstanding paragraph (a), a condominium in which 75 percent or more of the units are timeshare units may be terminated only pursuant to a plan of termination approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.

(c) Notwithstanding paragraph (a), a condominium that includes units and timeshare estates where the improvements have been totally destroyed or demolished may be terminated pursuant to a plan of termination proposed by a unit owner upon the filing of a petition in court seeking equitable relief. Within 10 days after the filing of a petition as provided in this paragraph and in lieu of the requirements of paragraph (15)(a), the petitioner shall record the proposed plan of termination and mail a copy of the proposed plan and a copy of the petition to:

1. If the association has not been dissolved as a matter of law, each member of the board of directors of the association identified in the most recent annual report filed with the Department of State and the registered agent of the association;

2. The managing entity as defined in s. 721.05(22);

3. Each unit owner and each timeshare estate owner at the address reflected in the official records of the association, or, if the association records cannot be obtained by the petitioner, each unit owner and each timeshare estate owner at the address listed in the office of the tax collector for tax notices; and

4. Each holder of a recorded mortgage lien affecting a unit or timeshare estate at the address appearing on the recorded mortgage or any recorded assignment thereof.

The association, if it has not been dissolved as a matter of law, acting as class representative, or the managing entity as defined in s. 721.05(22), any unit owner, any timeshare estate owner, or any holder of a recorded mortgage lien affecting a unit or timeshare estate may intervene in the proceedings to contest the proposed plan of termination brought pursuant to this paragraph. The provisions of subsection (9), to the extent inconsistent with this paragraph, and subsection (16) are not applicable to a party contesting a plan of termination under this paragraph. If no party intervenes to contest the proposed plan within 45 days after the filing of the petition, the petitioner may move the court to enter a final judgment to authorize implementation of the plan of termination. If a party timely intervenes to contest the proposed plan, the plan may not be implemented until a final judgment has been entered by the court finding that the proposed plan of termination is fair and reasonable and authorizing implementation of the plan.

(3) OPTIONAL TERMINATION.—The condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination meeting the requirements of this section and approved by the division. Before a residential association submits a plan to the division, the plan must be approved by at least 80 percent of the total voting interests of the condominium. However, if 5 percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections, the plan of termination may not proceed.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 5 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 24 months after the date of the rejection.

(b) This subsection does not apply to any condominium created pursuant to part VI of this chapter until 5 years after the recording of the declaration of condominium, unless there is no objection to the plan of termination.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered an insider, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and shall be required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment shall be in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. For their respective units, all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. The fair market value shall be determined as of a date that is no earlier than 90 days before the date that the plan of termination is recorded and shall be determined by an independent appraiser selected by the termination trustee. For a person whose unit was granted homestead exemption status by the applicable county property appraiser, or was an owner-occupied operating business, as of the date that the plan of termination is recorded and who is current in payment of both assessments and other monetary obligations to the association as of the date the plan of termination is recorded, the fair market value shall be at least the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure shall not be considered for purposes of determining fair market value.

4. The plan of termination must provide for payment of a first mortgage encumbering a unit to the extent necessary to satisfy the lien, but the payment may not exceed the unit's share of the proceeds of termination under the plan. If the unit owner is current in payment of both assessments and other monetary obligations to the association and any mortgage encumbering the unit as of the date the plan of termination is recorded, the receipt by the holder of the unit's share of the proceeds of termination under the plan or the outstanding balance of the mortgage, whichever is less, shall be deemed to have satisfied the first mortgage in full.

5. Before a plan of termination is presented to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 25 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 10 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

d. The factual circumstances that show that the plan complies with the requirements of this section and that the plan supports the expressed public policies of this section.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(e) The division shall examine the plan of termination to determine its procedural sufficiency and, within 45 days after receipt of the initial filing, the division shall notify the association by mail of any procedural deficiencies or that the filing is accepted. If the notice is not given within 45 days after the receipt of the filing, the plan of termination is presumed to be accepted. If the division determines that the conditions required by this section have been met and that the plan complies with the procedural requirements of this section, the division shall authorize the termination, and the termination may proceed pursuant to this section.

(f) Subsection (2) does not apply to optional termination pursuant to this subsection.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination.

(5) MORTGAGE LIENHOLDERS.—Notwithstanding any provision to the contrary in the declaration or this chapter, approval of a plan of termination by the holder of a recorded mortgage lien affecting a condominium parcel in which fewer than 75 percent of the units are timeshare units is not required unless the plan of termination will

result in less than the full satisfaction of the mortgage lien affecting the condominium parcel. If such approval is required and not given, a holder of a recorded mortgage lien who objects to the plan of termination may contest the plan as provided in subsection (16). At the time of sale, the lien shall be transferred to the proportionate share of the proceeds assigned to the condominium parcel in the plan of termination or as subsequently modified by the court.

(6) POWERS IN CONNECTION WITH TERMINATION.—The approval of the plan of termination does not terminate the association. It shall continue in existence following approval of the plan of termination with all powers and duties it had before approval of the plan. Notwithstanding any provision to the contrary in the declaration or bylaws, after approval of the plan the board shall:

(a) Employ directors, agents, attorneys, and other professionals to liquidate or conclude its affairs.

(b) Conduct the affairs of the association as necessary for the liquidation or termination.

(c) Carry out contracts and collect, pay, and settle debts and claims for and against the association.

(d) Defend suits brought against the association.

(e) Sue in the name of the association for all sums due or owed to the association or to recover any of its property.

(f) Perform any act necessary to maintain, repair, or demolish unsafe or uninhabitable improvements or other condominium property in compliance with applicable codes.

(g) Sell at public or private sale or exchange, convey, or otherwise dispose of assets of the association for an amount deemed to be in the best interests of the association, and execute bills of sale and deeds of conveyance in the name of the association.

(h) Collect and receive rents, profits, accounts receivable, income, maintenance fees, special assessments, or insurance proceeds for the association.

(i) Contract and do anything in the name of the association which is proper or convenient to terminate the affairs of the association.

(7) NATURAL DISASTERS.—

(a) If, after a natural disaster, the identity of the directors or their right to hold office is in doubt, if they are deceased or unable to act, if they fail or refuse to act, or if they cannot be located, any interested person may petition the circuit court to determine the identity of the directors or, if found to be in the best interests of the unit owners, to appoint a receiver to conclude the affairs of the association after a hearing following notice to such persons as the court directs. Lienholders shall be given notice of the petition and have the right to propose persons for the consideration by the court as receiver. If a receiver is appointed, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

(b) The receiver shall have all powers given to the board pursuant to the declaration, bylaws, and subsection (6), and any other powers that are necessary to conclude the affairs of the association and are set forth in the order of appointment. The appointment of the receiver is subject to the bonding requirements of such order. The order shall also provide for the payment of a reasonable fee to the receiver from the sources identified in the order, which may include rents, profits, incomes, maintenance fees, or special assessments collected from the condominium property.

(8) REPORTS AND REPLACEMENT OF RECEIVER.—

(a) The association, receiver, or termination trustee shall prepare reports each quarter following the approval of the plan of termination setting forth the status and progress of the termination, costs and fees incurred, the date the termination is expected to be completed, and the current financial condition of the association, receivership, or trusteeship and provide copies of the report by regular mail to the unit owners and lienors at the mailing address provided to the association by the unit owners and the lienors.

(b) The unit owners of an association in termination may recall or remove members of the board of administration with or without cause at any time as provided in s. 718.112(2)(j).

(c) The lienors of an association in termination representing at least 50 percent of the outstanding amount of liens may petition the court for the appointment of a termination trustee, which shall be granted upon good cause shown.

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 18 months after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

(10) PLAN OF TERMINATION; REQUIRED PROVISIONS.—The plan of termination must specify:

(a) The name, address, and powers of the termination trustee.

(b) A date after which the plan of termination is void if it has not been recorded.

(c) The interests of the respective unit owners in the association property, common surplus, and other assets of the association, which shall be the same as the respective interests of the unit owners in the common elements immediately before the termination, unless otherwise provided in the declaration.

(d) The interests of the respective unit owners in any proceeds from the sale of the condominium property. The plan of termination may apportion those proceeds pursuant to any method prescribed in subsection (12). If, pursuant to the plan of termination, condominium property or real property owned by the association is to be sold following termination, the plan must provide for the sale and may establish any minimum sale terms.

(e) Any interests of the respective unit owners in insurance proceeds or condemnation proceeds that are not used for repair or reconstruction at the time of termination. Unless the declaration expressly addresses the distribution of insurance proceeds or condemnation proceeds, the plan of termination may apportion those proceeds pursuant to any method prescribed in subsection (12).

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION; WITHDRAWAL; ERRORS.—

(a) Unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess that portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit and common elements automatically terminate on the effective date of termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner or other person to retain exclusive right of possession for that portion of the real estate that formerly constituted the unit or to use the common elements of the condominium after termination, the plan must specify the terms and conditions of possession. In a partial termination, the plan of termination as specified in subsection (10) must also identify the units that survive the partial termination and provide that such units remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium

or an amended and restated declaration. In a partial termination, title to the surviving units and common elements that remain part of the condominium property specified in the plan of termination remain vested in the ownership shown in the public records and do not vest in the termination trustee.

(b) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded. In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.

(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

(d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan of termination may require separate valuations for the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units. In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.

(b) The portion of proceeds allocated to the units shall be apportioned among the individual units. The apportionment is deemed fair and reasonable if it is determined by any of the following methods:

1. The respective values of the units based on the fair market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;

2. The respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or

3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

(c) The methods of apportionment in paragraph (b) do not prohibit any other method of apportioning the proceeds of sale allocated to the units or any other method of valuing the units agreed upon in the plan of termination. Any portion of the proceeds separately allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination, liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. The holder of a lien that encumbers a unit at the time of recording a plan must, within 30 days after the written request from the termination trustee, deliver a statement to the termination trustee confirming the outstanding amount of any obligations of the unit owner secured by the lien.

(e) The termination trustee may setoff against, and reduce the share of, the termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association associated with the unit, its owner, or the owner's family members, guests, tenants, occupants,

licensees, invitees, or other persons.

2. All costs of clearing title to the owner's unit, including, but not limited to, locating lienors, obtaining statements from such lienors confirming the outstanding amount of any obligations of the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and filing suit to quiet title or remove title defects.

3. All costs of removing the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as required by the plan.

4. All costs arising from, or related to, any breach of the plan by the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

5. All costs arising out of, or related to, the removal and storage of all personal property remaining in a unit, other than personal property owned by the association, so that the unit may be delivered vacant and clear of the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons as required by the plan.

6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

(13) TERMINATION TRUSTEE.—The association shall serve as termination trustee unless another person is appointed in the plan of termination. If the association is unable, unwilling, or fails to act as trustee, any unit owner may petition the court to appoint a trustee. Upon the date of the recording or at a later date specified in the plan, title to the condominium property vests in the trustee. Unless prohibited by the plan, the termination trustee shall be vested with the powers given to the board pursuant to the declaration, bylaws, and subsection (6). If the association is not the termination trustee, the trustee's powers shall be coextensive with those of the association to the extent not prohibited in the plan of termination or the order of appointment. If the association is not the termination trustee, the association shall transfer any association property to the trustee. If the association is dissolved, the trustee shall also have such other powers necessary to conclude the affairs of the association.

(14) TITLE VESTED IN TERMINATION TRUSTEE.—If termination is pursuant to a plan of termination under subsection (2) or subsection (3), title to the condominium property being terminated vests in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination as set forth in the plan. The termination trustee may deal with the condominium property being terminated or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property being terminated, but the contract is not binding on the unit owners until the plan is approved pursuant to subsection (2) or subsection (3).

(15) NOTICE.—

(a) Within 30 days after a plan of termination has been recorded, the termination trustee shall deliver by certified mail, return receipt requested, notice to all unit owners, lienors of the condominium property, and lienors of all units at their last known addresses that a plan of termination has been recorded. The notice must include the book and page number of the public records in which the plan was recorded, notice that a copy of the plan shall be furnished upon written request, and notice that the unit owner or lienor has the right to contest the fairness of the plan.

(b) The trustee, within 90 days after the effective date of the plan, shall provide to the division a certified copy of the recorded plan, the date the plan was recorded, and the county, book, and page number of the public records in which the plan is recorded.

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition for mandatory nonbinding arbitration pursuant to s. 718.1255 within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the liens of the first mortgages of unit owners other than the bulk owner have not or will not be satisfied to the extent required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor

in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The arbitrator shall determine the rights and interests of the parties in the apportionment of the sale proceeds. If the arbitrator determines that the apportionment of sales proceeds is not fair and reasonable, the arbitrator may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, the arbitrator may void the plan or grant other relief it deems just and proper. The arbitrator shall automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(c)5. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney fees and costs.

(17) DISTRIBUTION.—

(a) Following termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee pursuant to the plan of termination, as trustee for unit owners and holders of liens on the units, in their order of priority unless otherwise set forth in the plan of termination.

(b) Not less than 30 days before the first distribution, the termination trustee shall deliver by certified mail, return receipt requested, a notice of the estimated distribution to all unit owners, lienors of the condominium property, and lienors of each unit at their last known addresses stating a good faith estimate of the amount of the distributions to each class and the procedures and deadline for notifying the termination trustee of any objections to the amount. The deadline must be at least 15 days after the date the notice was mailed. The notice may be sent with or after the notice required by subsection (15). If a unit owner or lienor files a timely objection with the termination trustee, the trustee need not distribute the funds and property allocated to the respective unit owner or lienor until the trustee has had a reasonable time to determine the validity of the adverse claim. In the alternative, the trustee may interplead the unit owner, lienor, and any other person claiming an interest in the unit and deposit the funds allocated to the unit in the court registry, at which time the condominium property, association property, common surplus, and other assets of the association are free of all claims and liens of the parties to the suit. In an interpleader action, the trustee and prevailing party may recover reasonable attorney's fees and costs.

(c) The proceeds from any sale of condominium property or association property and any remaining condominium property or association property, common surplus, and other assets shall be distributed in the following priority:

1. To pay the reasonable termination trustee's fees and costs and accounting fees and costs.
2. To lienholders of liens recorded prior to the recording of the declaration.
3. To purchase-money lienholders on units to the extent necessary to satisfy their liens; however, the distribution may not exceed a unit owner's share of the proceeds.
4. To lienholders of liens of the association which have been consented to under s. 718.121(1).
5. To creditors of the association, as their interests appear.
6. To unit owners, the proceeds of any sale of condominium property subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or lienor as provided in paragraph (b).
7. To unit owners, the remaining condominium property, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

8. To unit owners, the proceeds of any sale of association property, the remaining association property, common surplus, and other assets of the association, subject to satisfaction of liens on each unit in their order of priority, in shares specified in the plan of termination, unless objected to by a unit owner or a lienor as provided in paragraph (b).

(d) After determining that all known debts and liabilities of an association in the process of termination have been paid or adequately provided for, the termination trustee shall distribute the remaining assets pursuant to the plan of termination. If the termination is by court proceeding or subject to court supervision, the distribution may not be made until any period for the presentation of claims ordered by the court has elapsed.

(e) Assets held by an association upon a valid condition requiring return, transfer, or conveyance, which condition has occurred or will occur, shall be returned, transferred, or conveyed in accordance with the condition. The remaining association assets shall be distributed pursuant to paragraph (c).

(f) Distribution may be made in money, property, or securities and in installments or as a lump sum, if it can be done fairly and ratably and in conformity with the plan of termination. Distribution shall be made as soon as is reasonably consistent with the beneficial liquidation of the assets.

(18) ASSOCIATION STATUS.—The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs. In a partial termination, the association may continue as the condominium association for the property that remains subject to the declaration of condominium.

(19) CREATION OF ANOTHER CONDOMINIUM.—The termination or partial termination of a condominium does not bar the filing of a new declaration of condominium by the termination trustee, or the trustee's successor in interest, for the terminated property or any portion thereof. The partial termination of a condominium may provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium by the condominium association for any portion of the property not terminated from the condominium form of ownership.

(20) EXCLUSION.—This section does not apply to the termination of a condominium incident to a merger of that condominium with one or more other condominiums under s. 718.110(7).

(21) APPLICABILITY.—This section applies to all condominiums in this state in existence on or after July 1, 2007.

History.—s. 1, ch. 76-222; s. 4, ch. 88-148; s. 47, ch. 95-274; s. 3, ch. 98-195; s. 57, ch. 2000-302; s. 1, ch. 2007-226; s. 11, ch. 2008-28; s. 2, ch. 2008-202; s. 6, ch. 2008-240; s. 13, ch. 2010-174; s. 7, ch. 2011-196; s. 11, ch. 2014-133; s. 1, ch. 2015-175; s. 1, ch. 2017-122.

718.118 Equitable relief.—In the event of substantial damage to or destruction of all or a substantial part of the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the condominium and a partition.

History.—s. 1, ch. 76-222.

718.119 Limitation of liability.—

(1) The liability of the owner of a unit for common expenses is limited to the amounts for which he or she is assessed for common expenses from time to time in accordance with this chapter, the declaration, and bylaws.

(2) The owner of a unit may be personally liable for the acts or omissions of the association in relation to the use of the common elements, but only to the extent of his or her pro rata share of that liability in the same percentage as his or her interest in the common elements, and then in no case shall that liability exceed the value of his or her unit.

(3) In any legal action in which the association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the association shall give notice of the exposure within a reasonable time to all unit owners, and they shall have the right to intervene and defend.

History.—s. 1, ch. 76-222; s. 6, ch. 77-221; s. 5, ch. 77-222; s. 857, ch. 97-102.

718.120 Separate taxation of condominium parcels; survival of declaration after tax sale; assessment of timeshare estates.—

(1) Ad valorem taxes, benefit taxes, and special assessments by taxing authorities shall be assessed against the condominium parcels and not upon the condominium property as a whole. No ad valorem tax, benefit tax, or special assessment, including those made by special districts, drainage districts, or water management districts, may be separately assessed against recreational facilities or other common elements if such facilities or common elements are owned by the condominium association or are owned jointly by the owners of the condominium parcels. Each condominium parcel shall be separately assessed for ad valorem taxes and special assessments as a single parcel. The taxes and special assessments levied against each condominium parcel shall constitute a lien only upon the condominium parcel assessed and upon no other portion of the condominium property.

(2) All provisions of a declaration relating to a condominium parcel which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master's deed, upon foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of the title immediately prior to the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573.

(3) Condominium property divided into fee timeshare real property shall be assessed for purposes of ad valorem taxes and special assessments as provided in s. 192.037.

History.—s. 1, ch. 76-222; s. 58, ch. 82-226; s. 1, ch. 84-261; s. 217, ch. 85-342; s. 4, ch. 91-116.

718.121 Liens.—

(1) Subsequent to recording the declaration and while the property remains subject to the declaration, no liens of any nature are valid against the condominium property as a whole except with the unanimous consent of the unit owners. During this period, liens may arise or be created only against individual condominium parcels.

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to part I of chapter 713, the Construction Lien Law, against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished for the installation of an electronic vehicle charging station pursuant to s. 718.113(8) may not be the basis for filing a lien under part I of chapter 713 against the association, but such a lien may be filed against the unit owner. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

(3) If a lien against two or more condominium parcels becomes effective, each owner may relieve his or her condominium parcel of the lien by exercising any of the rights of a property owner under chapter 713, or by payment of the proportionate amount attributable to his or her condominium parcel. Upon the payment, the lienor shall release the lien of record for that condominium parcel.

(4) Except as otherwise provided in this chapter, no lien may be filed by the association against a condominium unit until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner by registered or certified mail, return receipt requested, and by first-class United States mail to the owner at his or her last address as reflected in the records of the association, if the address is within the United States, and delivered to the owner at the address of the unit if the owner's address as reflected in the records of the association is not the unit address. If the address reflected in the records is outside the United States, sending the notice to that address and to the unit address by first-class United States mail is sufficient. Delivery of the notice shall be deemed given upon mailing as required by this subsection. The notice must be in substantially the following form:

NOTICE OF INTENT
TO RECORD A CLAIM OF LIEN

RE: Unit of _(name of association)_

The following amounts are currently due on your account to _(name of association)_, and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association's notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due _(dates)_	$.
Late fee, if applicable	$.
Interest through _(dates)_*	$.
Certified mail charges	$.
Other costs	$.
TOTAL OUTSTANDING	$.

*Interest accrues at the rate of percent per annum.

History.—s. 1, ch. 76-222; s. 26, ch. 90-109; s. 858, ch. 97-102; s. 12, ch. 2008-28; s. 3, ch. 2008-202; s. 4, ch. 2014-146; s. 4, ch. 2018-96.

[1]Note.—The word "be" was inserted by the editors.

718.122 Unconscionability of certain leases; rebuttable presumption.—

(1) A lease pertaining to use by condominium unit owners of recreational or other common facilities, irrespective of the date on which such lease was entered into, is presumptively unconscionable if all of the following elements exist:

(a) The lease was executed by persons none of whom at the time of the execution of the lease were elected by condominium unit owners, other than the developer, to represent their interests;

(b) The lease requires either the condominium association or the condominium unit owners to pay real estate taxes on the subject real property;

(c) The lease requires either the condominium association or the condominium unit owners to insure buildings or other facilities on the subject real property against fire or any other hazard;

(d) The lease requires either the condominium association or the condominium unit owners to perform some or all maintenance obligations pertaining to the subject real property or facilities located upon the subject real property;

(e) The lease requires either the condominium association or the condominium unit owners to pay rents to the lessor for a period of 21 years or more;

(f) The lease provides that failure of the lessee to make payments of rents due under the lease either creates, establishes, or permits establishment of a lien upon individual condominium units of the condominium to secure claims for rent;

(g) The lease requires an annual rental which exceeds 25 percent of the appraised value of the leased property as improved, provided that, for purposes of this paragraph, "annual rental" means the amount due during the first 12 months of the lease for all units, regardless of whether such units were in fact occupied or sold during that period, and "appraised value" means the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium;

(h) The lease provides for a periodic rental increase; and

(i) The lease or other condominium documents require that every transferee of a condominium unit must assume obligations under the lease.

(2) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of condominiums were entered into by parties wholly representative of the interests of a condominium developer at a time when the condominium unit owners not only did not control the administration of their condominium, but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a condominium association and condominium unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants

the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (1). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its conscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any condominium lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

(3) Any provision of the Florida Statutes to the contrary notwithstanding, neither the statute of limitations nor laches shall prohibit unit owners from maintaining a cause of action under the provisions of this section.

History.—s. 3, ch. 77-221; s. 11, ch. 94-350.

718.1224 Prohibition against SLAPP suits.—

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP suits," as they are typically referred to, have occurred when association members are sued by individuals, business entities, or governmental entities arising out of a condominium unit owner's appearance and presentation before a governmental entity on matters related to the condominium association. However, it is the public policy of this state that governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners, and ensure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) A condominium unit owner sued by a governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the governmental entity's, business organization's, or individual's response. The court may award the condominium unit owner sued by the governmental entity, business organization, or individual actual damages arising from the governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award

in its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(4) Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit owner.

History.—s. 13, ch. 2008-28.

718.1225 Federal Condominium and Cooperative Abuse Relief Act of 1980; applicability.—It is the intent of the Legislature that the provisions of Title VI of Pub. L. No. 96-399, other than the exceptions stated in s. 611 of that act, shall not apply in this state.

History.—s. 6, ch. 82-199.

718.123 Right of owners to peaceably assemble.—

(1) All common elements, common areas, and recreational facilities serving any condominium shall be available to unit owners in the condominium or condominiums served thereby and their invited guests for the use intended for such common elements, common areas, and recreational facilities, subject to the provisions of s. 718.106(4). The entity or entities responsible for the operation of the common elements, common areas, and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common elements, common areas, and recreational facilities. No entity or entities shall unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, common areas, and recreational facilities.

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any condominium document or rule which operates to deprive the owner of such rights.

History.—s. 1, ch. 77-222; s. 262, ch. 79-400; s. 2, ch. 81-185; s. 13, ch. 90-151.

718.1232 Cable television service; resident's right to access without extra charge.—No resident of any condominium dwelling unit, whether tenant or owner, shall be denied access to any available franchised or licensed cable television service, nor shall such resident or cable television service be required to pay anything of value in order to obtain or provide such service except those charges normally paid for like services by residents of, or providers of such services to, single-family homes within the same franchised or licensed area and except for installation charges as such charges may be agreed to between such resident and the provider of such services.

History.—s. 16, ch. 81-185.

718.124 Limitation on actions by association.—The statute of limitations for any actions in law or equity which a condominium association or a cooperative association may have shall not begin to run until the unit owners have elected a majority of the members of the board of administration.

History.—s. 9, ch. 77-222; s. 263, ch. 79-400.

718.125 Attorney's fees.—If a contract or lease between a condominium unit owner or association and a developer contains a provision allowing attorney's fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney's fees to the unit owner or association when the unit owner or association prevails in any action by or against the unit owner or association with respect to the contract or lease.

History.—s. 9, ch. 78-340.

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(2) VOLUNTARY MEDIATION.—Voluntary mediation through Citizen Dispute Settlement Centers as provided for in s. 44.201 is encouraged.

(3) LEGISLATIVE FINDINGS.—

(a) The Legislature finds that unit owners are frequently at a disadvantage when litigating against an association. Specifically, a condominium association, with its statutory assessment authority, is often more able to bear the costs and expenses of litigation than the unit owner who must rely on his or her own financial resources to satisfy the costs of litigation against the association.

(b) The Legislature finds that alternative dispute resolution has been making progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to court litigation. However, the Legislature also finds that alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.

(c) There exists a need to develop a flexible means of alternative dispute resolution that directs disputes to the most efficient means of resolution.

(d) The high cost and significant delay of circuit court litigation faced by unit owners in the state can be alleviated by requiring nonbinding arbitration and mediation in appropriate cases, thereby reducing delay and attorney's fees while preserving the right of either party to have its case heard by a jury, if applicable, in a court of law.

(4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF DISPUTES.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation may employ full-time attorneys to act as arbitrators to conduct the arbitration hearings provided by this chapter. The division may also certify attorneys who are not employed by the division to act as arbitrators to conduct the arbitration hearings provided by this chapter. No person may be employed by the department as a full-time arbitrator unless he or she is a member in good standing of The Florida Bar. A person may only be certified by the division to act as an arbitrator if he or she has been a member in good standing of The Florida Bar for at least 5 years and has mediated or arbitrated at least 10 disputes involving condominiums in this state during the 3 years immediately preceding the date of application, mediated or arbitrated at least 30 disputes in any subject area in this state during the 3 years immediately preceding the date of application, or attained board certification in real estate law or condominium and planned development law from The Florida Bar. Arbitrator certification is valid for 1 year. An arbitrator who does not maintain the minimum qualifications for initial certification may not have his or her certification renewed. The department may not enter into a legal services contract for an arbitration hearing under this chapter with an attorney who is not a certified arbitrator unless a certified arbitrator is not available within 50 miles of the dispute. The department shall adopt rules of procedure to govern such arbitration hearings including mediation incident thereto. The decision of an arbitrator shall be final; however, a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a

trial de novo unless the parties have agreed that the arbitration is binding. If judicial proceedings are initiated, the final decision of the arbitrator shall be admissible in evidence in the trial de novo.

(a) Prior to the institution of court litigation, a party to a dispute shall petition the division for nonbinding arbitration. The petition must be accompanied by a filing fee in the amount of $50. Filing fees collected under this section must be used to defray the expenses of the alternative dispute resolution program.

(b) The petition must recite, and have attached thereto, supporting proof that the petitioner gave the respondents:

1. Advance written notice of the specific nature of the dispute;
2. A demand for relief, and a reasonable opportunity to comply or to provide the relief; and
3. Notice of the intention to file an arbitration petition or other legal action in the absence of a resolution of the dispute.

Failure to include the allegations or proof of compliance with these prerequisites requires dismissal of the petition without prejudice.

(c) Upon receipt, the petition shall be promptly reviewed by the division to determine the existence of a dispute and compliance with the requirements of paragraphs (a) and (b). If emergency relief is required and is not available through arbitration, a motion to stay the arbitration may be filed. The motion must be accompanied by a verified petition alleging facts that, if proven, would support entry of a temporary injunction, and if an appropriate motion and supporting papers are filed, the division may abate the arbitration pending a court hearing and disposition of a motion for temporary injunction.

(d) Upon determination by the division that a dispute exists and that the petition substantially meets the requirements of paragraphs (a) and (b) and any other applicable rules, the division shall assign or enter into a contract with an arbitrator and serve a copy of the petition upon all respondents. The arbitrator shall conduct a hearing within 30 days after being assigned or entering into a contract unless the petition is withdrawn or a continuance is granted for good cause shown.

(e) Before or after the filing of the respondents' answer to the petition, any party may request that the arbitrator refer the case to mediation under this section and any rules adopted by the division. Upon receipt of a request for mediation, the division shall promptly contact the parties to determine if there is agreement that mediation would be appropriate. If all parties agree, the dispute must be referred to mediation. Notwithstanding a lack of an agreement by all parties, the arbitrator may refer a dispute to mediation at any time.

(f) Upon referral of a case to mediation, the parties must select a mutually acceptable mediator. To assist in the selection, the arbitrator shall provide the parties with a list of both volunteer and paid mediators that have been certified by the division under s. 718.501. If the parties are unable to agree on a mediator within the time allowed by the arbitrator, the arbitrator shall appoint a mediator from the list of certified mediators. If a case is referred to mediation, the parties shall attend a mediation conference, as scheduled by the parties and the mediator. If any party fails to attend a duly noticed mediation conference, without the permission or approval of the arbitrator or mediator, the arbitrator must impose sanctions against the party, including the striking of any pleadings filed, the entry of an order of dismissal or default if appropriate, and the award of costs and attorney fees incurred by the other parties. Unless otherwise agreed to by the parties or as provided by order of the arbitrator, a party is deemed to have appeared at a mediation conference by the physical presence of the party or its representative having full authority to settle without further consultation, provided that an association may comply by having one or more representatives present with full authority to negotiate a settlement and recommend that the board of administration ratify and approve such a settlement within 5 days from the date of the mediation conference. The parties shall share equally the expense of mediation, unless they agree otherwise.

(g) The purpose of mediation as provided for by this section is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.

(h) Mediation proceedings must generally be conducted in accordance with the Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Persons who are not parties to the dispute are not allowed to attend the mediation conference without the consent of all

parties, with the exception of counsel for the parties and corporate representatives designated to appear for a party. If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates, unless all parties agree in writing to continue the arbitration proceeding, in which case the arbitrator's decision shall be binding or nonbinding, as agreed upon by the parties; in the arbitration proceeding, the arbitrator shall not consider any evidence relating to the unsuccessful mediation except in a proceeding to impose sanctions for failure to appear at the mediation conference. If the parties do not agree to continue arbitration, the arbitrator shall enter an order of dismissal, and either party may institute a suit in a court of competent jurisdiction. The parties may seek to recover any costs and attorney fees incurred in connection with arbitration and mediation proceedings under this section as part of the costs and fees that may be recovered by the prevailing party in any subsequent litigation.

(i) Arbitration shall be conducted according to rules adopted by the division. The filing of a petition for arbitration shall toll the applicable statute of limitations.

(j) At the request of any party to the arbitration, the arbitrator shall issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence and any party on whose behalf a subpoena is issued may apply to the court for orders compelling such attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by the Florida Rules of Civil Procedure. Discovery may, in the discretion of the arbitrator, be permitted in the manner provided by the Florida Rules of Civil Procedure. Rules adopted by the division may authorize any reasonable sanctions except contempt for a violation of the arbitration procedural rules of the division or for the failure of a party to comply with a reasonable nonfinal order issued by an arbitrator which is not under judicial review.

(k) The arbitration decision shall be rendered within 30 days after the hearing and presented to the parties in writing. An arbitration decision is final in those disputes in which the parties have agreed to be bound. An arbitration decision is also final if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days. The right to file for a trial de novo entitles the parties to file a complaint in the appropriate trial court for a judicial resolution of the dispute. The prevailing party in an arbitration proceeding shall be awarded the costs of the arbitration and reasonable attorney fees in an amount determined by the arbitrator. Such an award shall include the costs and reasonable attorney fees incurred in the arbitration proceeding as well as the costs and reasonable attorney fees incurred in preparing for and attending any scheduled mediation. An arbitrator's failure to render a written decision within 30 days after the hearing may result in the cancellation of his or her arbitration certification.

(l) The party who files a complaint for a trial de novo shall be assessed the other party's arbitration costs, court costs, and other reasonable costs, including attorney fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorney fees.

(m) Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition for enforcement is granted, the petitioner shall recover reasonable attorney fees and costs incurred in enforcing the arbitration award. A mediation settlement may also be enforced through the county or circuit court, as applicable, and any costs and fees incurred in the enforcement of a settlement agreement reached at mediation must be awarded to the prevailing party in any enforcement action.

(5) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every arbitration petition received by the division and required to be filed under this section challenging the legality of the election of any director of the board of administration must be handled on an expedited basis in the manner provided by the division's rules for recall arbitration disputes.

(6) APPLICABILITY.—This section does not apply to a nonresidential condominium unless otherwise specifically provided for in the declaration of the nonresidential condominium.

History.—s. 4, ch. 82-199; s. 4, ch. 85-60; s. 10, ch. 91-103; s. 5, ch. 91-426; s. 7, ch. 92-49; s. 232, ch. 94-218; s. 12, ch. 94-350; s. 37, ch. 95-274; s. 859, ch. 97-102; s. 2, ch. 97-301; s. 12, ch. 2002-27; s. 14, ch. 2008-28; s. 47, ch. 2008-240; s. 3, ch. 2014-74; s. 2, ch. 2015-175; s. 4, ch. 2017-188.

718.1256 Condominiums as residential property.—For the purpose of property and casualty insurance risk classification, condominiums shall be classed as residential property.

History.—s. 23, ch. 94-350.

718.1265 Association emergency powers.—

(1) To the extent allowed by law and unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, and consistent with the provisions of s. 617.0830, the board of administration, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the locale in which the condominium is located, may, but is not required to, exercise the following powers:

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

(b) Cancel and reschedule any association meeting.

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

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

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

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

(g) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

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

(i) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the condominium property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

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

(k) Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible, but which are necessary to prevent further damage to the condominium property. In such event, the unit owner or owners on whose behalf the board has contracted are responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 718.116 to enforce collection of the charges. Without limitation, such items or services may include the drying

of units, the boarding of broken windows or doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the property.

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

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

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

History.—s. 15, ch. 2008-28.

718.127 Receivership notification.—Upon the appointment of a receiver by a court for any reason relating to a condominium association, the court shall direct the receiver to provide to all unit owners written notice of his or her appointment as receiver. Such notice shall be mailed or delivered within 10 days after the appointment. Notice by mail to a unit owner shall be sent to the address used by the county property appraiser for notice to the unit owner.

History.—s. 16, ch. 2008-28; s. 4, ch. 2008-202.

718.128 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, in writing, to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously

on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner's consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare condominium association.

History.—s. 4, ch. 2015-97.

PART II
RIGHTS AND OBLIGATIONS OF DEVELOPERS

718.202 Sales or reservation deposits prior to closing.
718.203 Warranties.

718.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director has the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

(a) If a buyer properly terminates the contract pursuant to its terms or pursuant to this chapter, the funds shall be paid to the buyer together with any interest earned.

(b) If the buyer defaults in the performance of his or her obligations under the contract of purchase and sale, the funds shall be paid to the developer together with any interest earned.

(c) If the contract does not provide for the payment of any interest earned on the escrowed funds, interest shall be paid to the developer at the closing of the transaction.

(d) If the funds of a buyer have not been previously disbursed in accordance with the provisions of this subsection, they may be disbursed to the developer by the escrow agent at the closing of the transaction, unless prior to the disbursement the escrow agent receives from the buyer written notice of a dispute between the buyer and developer.

(2) All payments which are in excess of the 10 percent of the sale price described in subsection (1) and which have been received prior to completion of construction by the developer from the buyer on a contract for purchase of a condominium parcel shall be held in a special escrow account established as provided in subsection (1) and controlled by an escrow agent and may not be used by the developer prior to closing the transaction, except as provided in subsection (3) or except for refund to the buyer. If the money remains in this special account for more than 3 months and earns interest, the interest shall be paid as provided in subsection (1).

(3) If the contract for sale of the condominium unit so provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the special account required by subsection (2) when the construction of improvements has begun. He or she may use the funds in the actual construction and development of the condominium property in which the unit to be sold is located. However, no part of these funds may be used for salaries, commissions, or expenses of salespersons or for advertising purposes. A contract which permits use of the advance payments for these purposes shall include the following legend conspicuously printed or stamped in boldfaced type on the first page of the contract and immediately above the place for the signature of the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

(4) The term "completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and, in a jurisdiction where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

(5) The failure to comply with the provisions of this section renders the contract voidable by the buyer, and, if voided, all sums deposited or advanced under the contract shall be refunded with interest at the highest rate then being paid on savings accounts, excluding certificates of deposit, by savings and loan associations in the area in which the condominium property is located.

(6) If a developer enters into a reservation agreement, the developer shall pay into an escrow account all reservation deposit payments. Reservation deposits shall be payable to the escrow agent, who shall give to the prospective purchaser a receipt for the deposit, acknowledging that the deposit is being held pursuant to the requirements of this subsection. The funds may be placed in either interest-bearing or non-interest-bearing accounts, provided that the funds shall at all reasonable times be available for withdrawal in full by the escrow agent. The developer shall maintain separate records for each condominium or proposed condominium for which deposits are being accepted. Upon written request to the escrow agent by the prospective purchaser or developer, the funds shall be immediately and without qualification refunded in full to the prospective purchaser. Upon such refund, any interest shall be paid to the prospective purchaser, unless otherwise provided in the reservation agreement. A reservation deposit shall not be released directly to the developer except as a down payment on the purchase price simultaneously with or subsequent to the execution of a contract. Upon the execution of a purchase agreement for a unit, any funds paid by the purchaser as a deposit to reserve the unit pursuant to a reservation agreement, and any interest thereon, shall cease to be subject to the provisions of this subsection and shall instead be subject to the provisions of subsections (1)-(5).

(7) Any developer who willfully fails to comply with the provisions of this section concerning establishment of an escrow account, deposits of funds into escrow, and withdrawal of funds from escrow is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, or the successor thereof. The failure to establish an escrow account or to place funds in an escrow account is prima facie evidence of an intentional and purposeful violation of this section.

(8) Every escrow account required by this section shall be established with a bank; a savings and loan association; an attorney who is a member of The Florida Bar; a real estate broker registered under chapter 475; a title insurer authorized to do business in this state, acting through either its employees or a title insurance agent licensed under chapter 626; or any financial lending institution having a net worth in excess of $5 million. The escrow agent shall not be located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to the jurisdiction of the division and the courts of this state for any cause of action arising from the escrow. Every escrow agent shall be independent of the developer, and no developer or any officer, director, affiliate, subsidiary, or employee of a developer may serve as escrow agent. Escrow funds may be invested only in securities of the United States or an agency thereof or in accounts in institutions the deposits of which are insured by an agency of the United States.

(9) Any developer who is subject to the provisions of this section is not subject to the provisions of s. 501.1375.

(10) Nothing in this section shall be construed to require any filing with the division in the case of condominiums other than residential condominiums.

(11) All funds deposited into escrow pursuant to subsection (1) or subsection (2) may be held in one or more escrow accounts by the escrow agent. If only one escrow account is used, the escrow agent must maintain separate accounting records for each purchaser and for amounts separately covered under subsections (1) and (2) and, if applicable, released to the developer pursuant to subsection (3). Separate accounting by the escrow agent of the escrow funds constitutes compliance with this section even if the funds are held by the escrow agent in a single escrow account. It is the intent of this subsection to clarify existing law.

History.—s. 1, ch. 76-222; s. 7, ch. 79-314; s. 3, ch. 80-323; s. 3, ch. 81-185; s. 9, ch. 84-368; s. 5, ch. 87-117; s. 14, ch. 90-151; s. 860, ch. 97-102; s. 14, ch. 2010-174.

718.203 Warranties.—

(1) The developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to each unit, a warranty for 3 years commencing with the completion of the building containing the unit.

(b) As to the personal property that is transferred with, or appurtenant to, each unit, a warranty which is for the same period as that provided by the manufacturer of the personal property, commencing with the date of closing of the purchase or the date of possession of the unit, whichever is earlier.

(c) As to all other improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(d) As to all other personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(e) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building, except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(f) As to all other property which is conveyed with a unit, a warranty to the initial purchaser of each unit for a period of 1 year from the date of closing of the purchase or the date of possession, whichever occurs first.

(2) The contractor, and all subcontractors and suppliers, grant to the developer and to the purchaser of each unit implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is issued, the term means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(5) The warranties provided by this section shall inure to the benefit of each owner and his or her successor owners and to the benefit of the developer.

(6) Nothing in this section affects a condominium as to which rights are established by contracts for sale of 10 percent or more of the units in the condominium by the developer to prospective unit owners prior to July 1, 1974, or as to condominium buildings on which construction has been commenced prior to July 1, 1974.

(7) Residential condominiums may be covered by an insured warranty program underwritten by a licensed insurance company registered in this state, provided that such warranty program meets the minimum requirements of this chapter; to the degree that such warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

History.—s. 1, ch. 76-222; s. 1, ch. 77-221; s. 8, ch. 77-222; s. 3, ch. 78-340; s. 9, ch. 79-314; s. 11, ch. 91-103; s. 5, ch. 91-426; s. 8, ch. 92-49; s. 861, ch. 97-102; s. 4, ch. 2015-165.

PART III
RIGHTS AND OBLIGATIONS OF ASSOCIATION

718.301 Transfer of association control; claims of defect by association.

718.302 Agreements entered into by the association.

718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.

718.3026 Contracts for products and services; in writing; bids; exceptions.
718.3027 Conflicts of interest.
718.303 Obligations of owners and occupants; remedies.

718.301 Transfer of association control; claims of defect by association.—

(1) If unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association, upon the first to occur of any of the following events:

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

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

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

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

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

(f) When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members; or

(g) Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that may ultimately operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

(2) Within 75 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 60 days' notice of an election for the members of the board of administration. The election shall proceed as provided in s. 718.112(2)(d). The notice may be given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer. However, an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer or an officer or agent of the developer as being a complete copy of the actual recorded declaration.

2. A certified copy of the articles of incorporation of the association or, if the association was created prior to the effective date of this act and it is not incorporated, copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations that have been promulgated.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records must be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements must be prepared in accordance with generally accepted accounting principles and must be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, which is represented by the developer to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer or the developer's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph do not apply.

(g) A list of the names and addresses of all contractors, subcontractors, and suppliers utilized in the construction or remodeling of the improvements and in the landscaping of the condominium or association property which the developer had knowledge of at any time in the development of the condominium.

(h) Insurance policies.

(i) Copies of any certificates of occupancy that may have been issued for the condominium property.

(j) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within 1 year prior to the date the unit owners other than the developer took control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(m) Leases of the common elements and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the association is a party.

(p) A report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.

(q) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurred first.

(5) If, during the period prior to the time that the developer relinquishes control of the association pursuant to subsection (4), any provision of the Condominium Act or any rule promulgated thereunder is violated by the association, the developer is responsible for such violation and is subject to the administrative action provided in this chapter for such violation or violations and is liable for such violation or violations to third parties. This subsection is intended to clarify existing law.

(6) Prior to the developer relinquishing control of the association pursuant to subsection (4), actions taken by members of the board of administration designated by the developer are considered actions taken by the developer, and the developer is responsible to the association and its members for all such actions.

(7) In any claim against a developer by an association alleging a defect in design, structural elements, construction, or any mechanical, electrical, fire protection, plumbing, or other element that requires a licensed professional for design or installation under chapter 455, chapter 471, chapter 481, chapter 489, or chapter 633, such defect must be examined and certified by an appropriately licensed Florida engineer, design professional, contractor, or otherwise licensed Florida individual or entity.

(8) The division has authority to adopt rules pursuant to the Administrative Procedure Act to ensure the efficient and effective transition from developer control of a condominium to the establishment of a unit-owner controlled association.

History.—s. 1, ch. 76-222; s. 7, ch. 77-221; s. 10, ch. 79-314; s. 264, ch. 79-400; s. 4, ch. 81-185; s. 10, ch. 84-368; s. 3, ch. 88-148; s. 15, ch. 90-151; s. 12, ch. 91-103; s. 5, ch. 91-426; s. 9, ch. 92-49; s. 862, ch. 97-102; s. 4, ch. 98-195; s. 1, ch. 2005-192; s. 17, ch. 2008-

28; s. 15, ch. 2010-174; s. 7, ch. 2013-122; s. 165, ch. 2014-17.

718.302 Agreements entered into by the association.—

(1) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be fair and reasonable, and such grant, reservation, or contract may be canceled by unit owners other than the developer:

(a) If the association operates only one condominium and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than 75 percent of the voting interests in the condominium, the cancellation shall be by concurrence of the owners of not less than 75 percent of the voting interests other than the voting interests owned by the developer. If a grant, reservation, or contract is so canceled and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of not less than a majority of the voting interests in the condominium other than the voting interests owned by the developer.

(b) If the association operates more than one condominium and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own at least 75 percent of the voting interests in a condominium operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that condominium or of improvements used only by unit owners of that condominium may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the condominium other than the voting interests owned by the developer. No grant, reservation, or contract for maintenance, management, or operation of recreational areas or any other property serving more than one condominium, and operated by more than one association, may be canceled except pursuant to paragraph (d).

(c) If the association operates more than one condominium and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of voting interests in all condominiums operated by the association other than the voting interests owned by the developer.

(d) If the owners of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may be canceled until unit owners other than the developer have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of voting interests in those condominiums other than voting interests owned by the developer.

(2) Any grant or reservation made by a declaration, lease, or other document, or any contract made by the developer or association prior to the time when unit owners other than the developer elect a majority of the board of administration, which grant, reservation, or contract requires the association to purchase condominium property or to lease condominium property to another party, shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of administration. This subsection does not apply to any grant or reservation made by a declaration whereby persons other than the developer or the developer's heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the condominium property, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property.

(3) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall not be in conflict with the powers and duties of the association or

the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable.

(5) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium management contract which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(6) Any action to compel compliance with the provisions of this section or of s. 718.301 may be brought pursuant to the summary procedure provided for in s. 51.011. In any such action brought to compel compliance with the provisions of s. 718.301, the prevailing party is entitled to recover reasonable attorney's fees.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 11, ch. 79-314; s. 11, ch. 84-368; s. 43, ch. 86-175; s. 863, ch. 97-102.

718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.—

(1) No written contract between a party contracting to provide maintenance or management services and an association which contract provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall be valid or enforceable unless the contract:

(a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners.

(b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the association to the party contracting to provide maintenance or management services.

(c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof.

(d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

(e) Discloses any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

(f) Discloses any financial or ownership interest a board member or any party providing maintenance or management services to the association holds with the contracting party.

(2) In any case in which the party contracting to provide maintenance or management services fails to provide such services in accordance with the contract, the association is authorized to procure such services from some other party and shall be entitled to collect any fees or charges paid for service performed by another party from the party contracting to provide maintenance or management services.

(3) Any services or obligations not stated on the face of the contract shall be unenforceable.

(4) Notwithstanding the fact that certain vendors contract with associations to maintain equipment or property which is made available to serve unit owners, it is the intent of the Legislature that this section applies to contracts for maintenance or management services for which the association pays compensation. This section does not apply to contracts for services or property made available for the convenience of unit owners by lessees or licensees of the association, such as coin-operated laundry, food, soft drink, or telephone vendors; cable television operators; retail store operators; businesses; restaurants; or similar vendors.

(5) A party contracting to provide maintenance or management services to an association managing a residential condominium after transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or an officer or board member of such party, may not purchase a unit at a foreclosure sale resulting from the association's foreclosure of association lien for unpaid assessments or take a deed in lieu of foreclosure. If 50 percent or more of the units in the condominium are owned by a party contracting to provide maintenance or management services to an association managing a residential condominium after

transfer of control of the association, as provided in s. 718.301, which is not a timeshare condominium association, or by an officer or board member of such party, the contract with the party providing maintenance or management services may be canceled by a majority vote of the unit owners other than the contracting party or an officer or board member of such party.

History.—s. 5, ch. 78-340; s. 12, ch. 79-314; s. 7, ch. 86-175; s. 18, ch. 2008-28; s. 5, ch. 2017-188.

718.3026 Contracts for products and services; in writing; bids; exceptions.—Associations with 10 or fewer units may opt out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

(1) All contracts as further described herein or any contract that is not to be fully performed within 1 year after the making thereof, for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association on behalf of any condominium operated by the association in the aggregate that exceeds 5 percent of the total annual budget of the association, including reserves, the association shall obtain competitive bids for the materials, equipment, or services. Nothing contained herein shall be construed to require the association to accept the lowest bid.

(2)(a) Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to the provisions of this section.

(b) Nothing contained herein is intended to limit the ability of an association to obtain needed products and services in an emergency.

(c) This section shall not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

(d) Nothing contained herein shall excuse a party contracting to provide maintenance or management services from compliance with s. 718.3025.

History.—s. 13, ch. 91-103; s. 5, ch. 91-426; s. 10, ch. 92-49; s. 44, ch. 95-274; s. 19, ch. 2008-28; s. 5, ch. 2018-96.

718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (5):

(a) A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.

(b) A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If a director or an officer, or a relative of a director or an officer, proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. The association shall comply with the requirements of s. 617.0832, and the disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(3) If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.

(4) A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, or the relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

(6) As used in this section, the term "relative" means a relative within the third degree of consanguinity by blood or marriage.

History.—s. 6, ch. 2017-188; s. 6, ch. 2018-96.

718.303 Obligations of owners and occupants; remedies.—

(1) Each unit owner, each tenant and other invitee, and each association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which shall be deemed expressly incorporated into any lease of a unit. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

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

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

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

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of specific meetings in writing if provided by the bylaws. Any instruction given in writing by a unit owner or purchaser to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice to the unit owner and, if applicable, any occupant, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the fine is approved. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

(4) If a unit owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

(7) The suspensions permitted by paragraph (3)(a) and subsections (4) and (5) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple units owned by a member.

(8) A receiver may not exercise voting rights of any unit owner whose unit is placed in receivership for the benefit of the association pursuant to this chapter.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 12, ch. 84-368; s. 16, ch. 90-151; s. 14, ch. 91-103; s. 5, ch. 91-426; s. 11, ch. 92-49; s. 864, ch. 97-102; s. 14, ch. 2003-14; s. 20, ch. 2008-28; s. 16, ch. 2010-174; s. 8, ch. 2011-196; s. 6, ch. 2013-188; s. 10, ch. 2015-97; s. 7, ch. 2017-188; s. 7, ch. 2018-96.

PART IV

SPECIAL TYPES OF CONDOMINIUMS

718.401 Leaseholds.
718.4015 Condominium leases; escalation clauses.
718.402 Conversion of existing improvements to condominium.
718.403 Phase condominiums.
718.404 Mixed-use condominiums.
718.405 Multicondominiums; multicondominium associations.
718.406 Condominiums created within condominium parcels.

718.401 Leaseholds.—

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. However, if the condominium constitutes a nonresidential condominium or commercial condominium, or a timeshare condominium created pursuant to chapter 721, the lease shall have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(d)1. In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or she or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any

deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph affects litigation commenced prior to October 1, 1979.

(e) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f)1. A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration conducted pursuant to chapter 44 or chapter 682. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2. If the lessor wishes to sell his or her interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3. The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. The provisions of this paragraph do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other

exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this paragraph do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(2) Subsection (1) does not apply to residential cooperatives created prior to January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(3) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable:

(a) Disclosures contemplated by paragraph (1)(b), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) apply but are not required to be stated in the lease.

(d) The provisions of paragraph (1)(g) do not apply.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; ss. 6, 13, ch. 78-340; s. 1, ch. 79-166; s. 13, ch. 79-314; ss. 4, 7, ch. 80-323; s. 5, ch. 81-185; s. 13, ch. 84-368; s. 46, ch. 85-62; s. 6, ch. 88-148; s. 1, ch. 88-225; s. 17, ch. 90-151; s. 15, ch. 91-103; s. 1, ch. 91-236; s. 5, ch. 91-426; s. 865, ch. 97-102.

718.4015 Condominium leases; escalation clauses.—

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) This public policy prohibits the inclusion or enforcement of such escalation clauses in leases related to condominiums for which the declaration of condominium was recorded on or after June 4, 1975; it prohibits the enforcement of escalation clauses in leases related to condominiums for which the declaration of condominium was recorded prior to June 4, 1975, but which have been refused enforcement on the grounds that the parties agreed to be bound by subsequent amendments to the Florida Statutes or which have been found to be void because of a finding that such lease is unconscionable or which have been refused enforcement on the basis of the application of former s. 711.231 or former s. 718.401(8); and it prohibits any further escalation of rental fees after October 1, 1988, pursuant to escalation clauses in leases related to condominiums for which the declaration was recorded prior to June 4, 1975.

(3) The provisions of this section do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

History.—s. 7, ch. 88-148; s. 2, ch. 88-225; s. 1, ch. 89-164.

718.402 Conversion of existing improvements to condominium.—A developer may create a condominium by converting existing, previously occupied improvements to such ownership by complying with part I of this chapter. A developer of a residential condominium must also comply with part VI of this chapter, but the failure to comply will not affect the validity of the condominium.

History.—s. 1, ch. 76-222; s. 14, ch. 79-314; s. 3, ch. 80-3; s. 14, ch. 84-368.

718.403 Phase condominiums.—

(1) Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.

(a) All phases must be added to the condominium within 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, unless the unit owners vote to approve an amendment extending the 7-year period pursuant to paragraph (b).

(b) An amendment to extend the 7-year period shall require the approval of the owners necessary to amend the declaration of condominium pursuant to s. 718.110(1)(a). An extension of the 7-year period may be submitted for approval only during the last 3 years of the 7-year period.

(c) An amendment must describe the time period within which all phases must be added to the condominium, and such time period may not exceed 10 years from the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

(d) An amendment that extends the 7-year period pursuant to this section is not subject to the requirements of s. 718.110(4).

(2) The original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer, shall describe:

(a) The land which may become part of the condominium and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium. The plot plan may be modified by the developer as to unit or building types but, in a residential condominium, only to the extent that such changes are described in the declaration. If provided in the declaration, the developer may make nonmaterial changes in the legal description of a phase.

(b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which

may not be built or provided if any phase or phases are not developed and added as a part of the condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not timeshare estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

(3) The developer shall notify owners of existing units of the decision not to add one or more additional phases. Notice shall be by first-class mail addressed to each owner at the address of his or her unit or at his or her last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common elements within the phases actually developed and added as a part of the condominium.

(5) If the declaration requires the developer to convey any additional lands or facilities to the condominium after the completion of the first phase and he or she fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Notwithstanding other provisions of this chapter, any amendment by the developer which adds any land to the condominium shall be consistent with the provisions of the declaration granting such right and shall contain or provide for the following matters:

(a) A statement submitting the additional land to condominium ownership as an addition to the condominium.

(b) The legal description of the land being added to the condominium.

(c) An identification by letter, name, or number, or a combination thereof, of each unit within the land added to the condominium, to ensure that no unit in the condominium, including the additional land, will bear the same designation as any other unit.

(d) A survey of the additional land and a graphic description of the improvements in which any units are located and a plot plan thereof and a certificate of a surveyor, in conformance with s. 718.104(4)(e).

(e) The undivided share in the common elements appurtenant to each unit in the condominium, stated as a percentage or fraction which, in the aggregate, must equal the whole and must be determined in conformance with the manner of allocation set forth in the original declaration of condominium.

(f) The proportion or percentage of, and the manner of sharing, common expenses and owning common surplus, which for a residential unit must be the same as the undivided share in the common elements.

An amendment which adds phases to a condominium does not require the execution of such amendment or consent thereto by unit owners other than the developer, unless the amendment permits the creation of timeshare estates in any unit of the additional phase of the condominium and such creation is not authorized by the original declaration.

(7) An amendment to the declaration of condominium which adds land to the condominium shall be recorded in the public records of the county where the land is located and shall be executed and acknowledged in compliance with the same requirements as for a deed. All persons who have record title to the interest in the land submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the amendment. Every such amendment shall comply with the provisions of s. 718.104(3).

(8) Upon recording the declaration of condominium or amendments adding phases pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

(9) Paragraphs (2)(b)-(f) and subsection (8) do not apply to nonresidential condominiums.

History.—s. 1, ch. 76-222; s. 7, ch. 78-328; s. 15, ch. 84-368; s. 64, ch. 87-226; s. 18, ch. 90-151; s. 866, ch. 97-102; s. 5, ch. 98-195; s. 58, ch. 2000-302; s. 8, ch. 2013-122; s. 7, ch. 2013-188; s. 4, ch. 2014-74.

718.404 Mixed-use condominiums.—When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

(3) In the declaration of condominium for mixed-use condominiums created after January 1, 1996, the ownership share of the common elements assigned to each unit shall be based either on the total square footage of each unit in uniform relationship to the total square footage of each other unit in the condominium or on an equal fractional basis.

(4) The provisions of this section shall not apply to timeshare condominiums.

History.—s. 38, ch. 95-274; s. 4, ch. 96-396; s. 5, ch. 2007-173.

718.405 Multicondominiums; multicondominium associations.—

(1) An association may operate more than one condominium. For multicondominiums created on or after July 1, 2000, the declaration for each condominium to be operated by that association must provide for participation in a multicondominium, in conformity with this section, and disclose or describe:

(a) The manner or formula by which the assets, liabilities, common surplus, and common expenses of the association will be apportioned among the units within the condominiums operated by the association, in accordance with s. 718.104(4)(g) or (h), as applicable.

(b) Whether unit owners in any other condominium, or any other persons, will or may have the right to use recreational areas or any other facilities or amenities that are common elements of the condominium, and, if so, the specific formula by which the other users will share the common expenses related to those facilities or amenities.

(c) Recreational and other commonly used facilities or amenities which the developer has committed to provide that will be owned, leased by, or dedicated by a recorded plat to the association but which are not included within any condominium operated by the association. The developer may reserve the right to add additional facilities or amenities if the declaration and prospectus for each condominium to be operated by the association contains the following statement in conspicuous type and in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

(d) The voting rights of the unit owners in the election of directors and in other multicondominium association affairs when a vote of the owners is taken, including, but not limited to, a statement as to whether each unit owner will have a right to personally cast his or her own vote in all matters voted upon.

(2) If any declaration requires a developer to convey additional lands or facilities to a multicondominium association and the developer fails to do so within the time specified, or within a reasonable time if none is specified in the declaration, any unit owner or the association may enforce that obligation against the developer or bring an action against the developer for specific performance or for damages that result from the developer's failure or refusal to convey the additional lands or facilities.

(3) The declaration for each condominium to be operated by a multicondominium association may not, at the time of the initial recording of the declaration, contain any provision with respect to allocation of the association's assets, liabilities, common surplus, or common expenses which is inconsistent with this chapter or the provisions of a declaration for any other condominium then being operated by the multicondominium association.

(4) This section does not prevent or restrict the formation of a multicondominium by the merger or consolidation of two or more condominium associations. Mergers or consolidations of associations shall be

accomplished in accordance with this chapter, the declarations of the condominiums being merged or consolidated, and chapter 617. Section 718.110(4) does not apply to amendments to declarations necessary to effect a merger or consolidation. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

History.—s. 59, ch. 2000-302; s. 13, ch. 2002-27.

718.406 Condominiums created within condominium parcels.—

(1) Unless otherwise expressed in the declaration of condominium, if a condominium is created within a condominium parcel, the term:

(a) "Primary condominium" means any condominium that is not a secondary condominium and contains one or more subdivided parcels.

(b) "Primary condominium association" means any entity that operates a primary condominium.

(c) "Primary condominium declaration" means the instrument or instruments by which a primary condominium is created, as they are from time to time amended.

(d) "Secondary condominium" means one or more condominium parcels that have been submitted to condominium ownership pursuant to a secondary condominium declaration.

(e) "Secondary condominium association" means any entity responsible for the operation of a secondary condominium.

(f) "Secondary condominium declaration" means the instrument or instruments by which a secondary condominium is created, as they are from time to time amended.

(g) "Secondary unit" means a unit that is part of a secondary condominium.

(h) "Subdivided parcel" means a condominium parcel in a primary condominium that has been submitted to condominium ownership pursuant to a secondary condominium declaration.

(2) Unless otherwise provided in the primary condominium declaration, if a condominium parcel is a subdivided parcel, the secondary condominium association responsible for operating the secondary condominium upon the subdivided parcel shall act on behalf of all of the unit owners of secondary units in the secondary condominium and shall exercise all rights of the secondary unit owners in the primary condominium association, other than the right of possession of the secondary unit. The secondary condominium association shall designate a representative who shall cast the vote of the subdivided parcel in the primary condominium association and, if no person is designated by the secondary condominium association to cast such vote, the vote shall be cast by the president of the secondary condominium association or the designee of the president.

(3) Unless otherwise provided in the primary condominium declaration as originally recorded, no secondary condominium may be created upon any condominium parcel in the primary condominium, and no amendment to the primary condominium declaration may permit secondary condominiums to be created upon parcels in the primary condominium, unless the record owners of a majority of the condominium parcels join in the execution of the amendment.

(4) If the primary condominium declaration permits the creation of a secondary condominium and a condominium parcel in the primary condominium is being submitted for condominium ownership to create a secondary condominium upon the primary condominium parcel, the approval of the board of administration of the primary condominium association is required in order to create the secondary condominium on the primary condominium parcel. Unless otherwise provided in the primary condominium declaration, the owners of condominium parcels in the primary condominium that will not be part of the proposed secondary condominium and the holders of liens upon such primary condominium parcels shall not have approval rights regarding the creation of the secondary condominium or the contents of the secondary condominium declaration being submitted. Only the board of administration of the primary condominium association, the owner of the subdivided parcel, and the holders of liens upon the subdivided parcel shall have approval rights regarding the creation of the secondary condominium and the contents of the secondary condominium declaration. In order for the recording of the secondary condominium declaration to be effective to create the secondary condominium, the board of administration of the primary condominium association, the owner of the subdivided parcel, and all holders of liens

on the subdivided parcel must execute the secondary condominium declaration for the purpose of evidencing their approval.

(5) An owner of a secondary unit is subject to both the primary condominium declaration and the secondary condominium declaration.

(6) The primary condominium association may provide insurance required by s. 718.111(11) for common elements and other improvements within the secondary condominium if the primary condominium declaration permits the primary condominium association to provide such insurance for the benefit of the condominium property included in the subdivided parcel, in lieu of such insurance being provided by the secondary condominium association.

(7) Unless otherwise provided in the primary condominium declaration, the board of administration of the primary condominium association may adopt hurricane shutter or hurricane protection specifications for each building within which subdivided parcels are located and govern any subdivided parcels in the primary condominium.

(8) Any unit owner of, or holder of a first mortgage on, a secondary unit may register such unit owner's or mortgagee's interest in the secondary unit with the primary condominium association by delivering written notice to the primary condominium association. Once registered, the primary condominium association must provide written notice to such secondary unit owner and his, her, or its first mortgagee at least 30 days before instituting any foreclosure action against the subdivided parcel in which the secondary unit owner and his, her, or its first mortgagee hold an interest for failure of the subdivided parcel owner to pay any assessments or other amounts due to the primary condominium association. A foreclosure action against a subdivided parcel is not effective without an affidavit indicating that written notice of the foreclosure was timely sent to the names and addresses of secondary unit owners and first mortgagees registered with the primary condominium association pursuant to this subsection. The registered secondary unit owner or mortgagee has a right to pay the proportionate amount of the delinquent assessment attributable to the secondary unit in which the registered unit owner or mortgagee holds an interest. Upon such payment, the primary condominium association is obligated to promptly modify or partially release the record of lien on the primary condominium association so that the lien no longer encumbers such secondary unit. Alternatively, a registered secondary unit owner or mortgagee may pay the amount of all delinquent assessments attributed to the subdivided parcel and seek reimbursement for all such amounts paid and all costs incurred from the secondary condominium association, including, without limitation, the costs of collection other than the share allocable to the secondary unit on behalf of which such payment was made.

(9) In the event of a conflict between the primary condominium declaration and the secondary condominium declaration, the primary condominium declaration controls.

(10) All common expenses due to the primary condominium association with respect to a subdivided parcel are a common expense of the secondary condominium association and shall be collected by the secondary condominium association from its members and paid to the primary condominium association.

History.—s. 8, ch. 2013-188.

PART V
REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL CONDOMINIUMS

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.
718.5011 Ombudsman; appointment; administration.
718.5012 Ombudsman; powers and duties.
718.5014 Ombudsman location.
718.50152 Offices.
718.50153 Payment of per diem, mileage, and other expenses to division employees.
718.50154 Seal and authentication of records.
718.50155 Service of process.

718.502 Filing prior to sale or lease.
718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.
718.504 Prospectus or offering circular.
718.505 Good faith effort to comply.
718.506 Publication of false and misleading information.
718.507 Zoning and building laws, ordinances, and regulations.
718.508 Regulation by Division of Hotels and Restaurants.
718.509 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.

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

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

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

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

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

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

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

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter.

If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer, fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

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

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought pursuant to subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed pursuant to subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of this chapter, adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term “willfully and knowingly” means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. By January 1, 1998, the division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts

collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

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

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

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

(f) The division may adopt rules to administer and enforce the provisions of this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

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

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

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

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

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

(o) The division may:

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

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

(q) The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

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

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

(2)(a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 77-221; s. 4, ch. 78-323; ss. 4, 12, ch. 78-340; s. 32, ch. 79-4; s. 15, ch. 79-314; s. 1, ch. 81-28; ss. 1, 2, 3, ch. 81-54; s. 4, ch. 81-172; s. 6, ch. 81-185; s. 477, ch. 81-259; ss. 1, 4, ch. 82-46; s. 2, ch. 82-113; ss. 5, 7, ch. 82-199; s. 154, ch. 83-216; s. 16, ch. 84-368; s. 5, ch. 85-60; s. 8, ch. 86-175; s. 18, ch. 87-102; s. 16, ch. 91-103; s. 5, ch. 91-426; s. 12, ch. 92-49; s. 233, ch. 94-218; s. 299, ch. 96-410; s. 1774, ch. 97-102; s. 3, ch. 97-301; s. 221, ch. 98-200; s. 62, ch. 2000-302; s. 1891, ch. 2003-261; s. 21, ch. 2008-28; s. 4, ch. 2008-134; s. 48, ch. 2008-240; s. 90, ch. 2009-21; s. 17, ch. 2010-174.

718.5011 Ombudsman; appointment; administration.—

(1) There is created an Office of the Condominium Ombudsman, to be located for administrative purposes within the Division of Florida Condominiums, Timeshares, and Mobile Homes. The functions of the office shall be funded by the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The ombudsman shall be a bureau chief of the division, and the office shall be set within the division in the same manner as any other bureau is staffed and funded.

(2) The Governor shall appoint the ombudsman. The ombudsman must be an attorney admitted to practice before the Florida Supreme Court and shall serve at the pleasure of the Governor. A vacancy in the office shall be filled in the same manner as the original appointment. An officer or full-time employee of the ombudsman's office may not actively engage in any other business or profession that directly or indirectly relates to or conflicts with his or her work in the ombudsman's office; serve as the representative of any political party, executive committee, or other governing body of a political party; serve as an executive, officer, or employee of a political party; receive remuneration for activities on behalf of any candidate for public office; or engage in soliciting votes or other activities on behalf of a candidate for public office. The ombudsman or any employee of his or her office may not become a candidate for election to public office unless he or she first resigns from his or her office or employment.

History.—s. 6, ch. 2004-345; s. 49, ch. 2008-240; s. 9, ch. 2013-188.

718.5012 Ombudsman; powers and duties.—The ombudsman shall have the powers that are necessary to carry out the duties of his or her office, including the following specific powers:

(1) To have access to and use of all files and records of the division.

(2) To employ professional and clerical staff as necessary for the efficient operation of the office.

(3) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions.

(4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred and reviewing secret ballots cast at a vote of the association.

(6) To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.

(7) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association.

(8) To encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members.

(9) To assist with the resolution of disputes between unit owners and the association or between unit owners when the dispute is not within the jurisdiction of the division to resolve.

(10) Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

History.—ss. 7, 36, ch. 2004-345; s. 22, ch. 2008-28; s. 8, ch. 2017-188.

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in Leon County on the premises of the division or, if suitable space cannot be provided there, at another place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

History.—s. 8, ch. 2004-345.

718.50152 Offices.—

(1) The executive offices of the division shall be established and maintained in Tallahassee.

(2) The division may establish and maintain branch offices.

History.—s. 6, ch. 63-129; s. 5, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; ss. 1, 7, ch. 76-262; s. 1, ch. 77-457; ss. 5, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 34, ch. 2008-240.

Note.—Former s. 478.061; s. 498.009.

718.50153 Payment of per diem, mileage, and other expenses to division employees.—The amount of per diem and mileage and expense money paid to employees shall be as provided in s. 112.061, except that the division shall establish by rule the standards for reimbursement of actual verified expenses incurred in connection with an onsite review or investigation.

History.—s. 8, ch. 63-129; s. 7, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 6, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 5, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 1, ch. 93-190; s. 3, ch. 97-192; s. 35, ch. 2008-240.

Note.—Former s. 478.081; s. 498.011.

718.50154 Seal and authentication of records.—The division shall adopt a seal by which it shall authenticate its records. Copies of the records of the division, and certificates purporting to relate the facts contained in those records, when authenticated by the seal, shall be prima facie evidence of the records in all the courts of this state.

History.—s. 9, ch. 63-129; s. 8, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 7, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 6, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 36, ch. 2008-240.

Note.—Former s. 478.091; s. 498.013.

718.50155 Service of process.—

(1) In addition to the methods of service provided for in the Florida Rules of Civil Procedure and the Florida Statutes, service may be made and shall be binding upon the defendant or respondent if:

(a) The division, which is acting as the petitioner or plaintiff, immediately sends a copy of the process and of the pleading by certified mail to the defendant or respondent at his or her last known address; and

(b) The division files an affidavit of compliance with this section on or before the return date of the process or within the time set by the court.

(2) If any person, including any nonresident of this state, allegedly engages in conduct prohibited by this chapter, or any rule or order of the division, and has not filed a consent to service of process, and personal jurisdiction over him or her cannot otherwise be obtained in this state, the director shall be authorized to receive service of process in any noncriminal proceeding against that person or his or her successor which grows out of the conduct and which is brought by the division under this chapter or any rule or order of the division. The process shall have the same force and validity as if personally served. Notice shall be given as provided in subsection (1).

History.—s. 26, ch. 67-229; s. 2, ch. 71-98; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 26, 30, 32, ch. 79-347; ss. 2, 3, ch. 81-318; ss. 26, 33, 34, ch. 88-90; s. 4, ch. 91-429; s. 581, ch. 97-103; s. 37, ch. 2008-240.

Note.—Former s. 478.29; s. 498.057.

718.502 Filing prior to sale or lease.—

(1)(a) A developer of a residential condominium or mixed-use condominium shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 718.503 and 718.504, if applicable. Until the developer has so filed, a contract for sale of a unit or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his or her purchase or lease of a unit.

(b) A developer may not close on any contract for sale or contract for a lease period of more than 5 years until the developer prepares and files with the division documents complying with the requirements of this chapter and the rules adopted by the division and until the division notifies the developer that the filing is proper and the developer prepares and delivers all documents required by s. 718.503(1)(b) to the prospective buyer.

(c) The division by rule may develop filing, review, and examination requirements and relevant timetables to ensure compliance with the notice and disclosure provisions of this section.

(2)(a) Prior to filing as required by subsection (1), and prior to acquiring an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed, a developer shall not offer a contract for purchase of a unit or lease of a unit for more than 5 years. However, the developer may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida Condominiums, Timeshares, and Mobile Homes. Each filing of a proposed reservation program shall be accompanied by a filing fee of $250. Reservations shall not be taken on a proposed condominium unless the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(b) The executed escrow agreement signed by the developer and the escrow agent shall contain the following information:

1. A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit moneys upon written request either directly to the escrow agent or to the developer.

2. A statement that the escrow agent is responsible for not releasing moneys directly to the developer except as a down payment on the purchase price at the time a contract is signed by the purchaser if provided in the contract.

(c) The reservation agreement form shall include the following:

1. A statement of the obligation of the developer to file condominium documents with the division prior to entering into a binding purchase agreement or binding agreement for a lease of more than 5 years.

2. A statement of the right of the prospective purchaser to receive all condominium documents as required by this chapter.

3. The name and address of the escrow agent.

4. A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale or that the price represented may be exceeded within a stated amount or percentage or that no assurance is given as to the price in the contract for purchase or sale.

5. A statement that the deposit must be payable to the escrow agent and that the escrow agent must provide a receipt to the prospective purchaser.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of $20 for each residential unit to be sold by the developer which is described in the documents filed. If the condominium is to be

built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase. Every developer who holds a unit or units for sale in a condominium shall submit to the division any amendments to documents or items on file with the division and deliver to purchasers all amendments prior to closing, but in no event, later than 10 days after the amendment. Upon filing of amendments to documents currently on file with the division, the developer shall pay to the division a filing fee of up to $100 per filing, with the exact fee to be set by division rule.

(4) Any developer who complies with this section is not required to file with any other division or agency of this state for approval to sell the units in the condominium, the information for the condominium for which he or she filed.

(5) In addition to those disclosures described by ss. 718.503 and 718.504, the division is authorized to require such other disclosure as deemed necessary to fully or fairly disclose all aspects of the offering.

History.—s. 1, ch. 76-222; s. 8, ch. 79-314; s. 7, ch. 81-185; s. 17, ch. 84-368; s. 6, ch. 85-60; s. 19, ch. 87-102; s. 18, ch. 91-103; s. 5, ch. 91-426; s. 39, ch. 95-274; s. 868, ch. 97-102; s. 6, ch. 98-195; s. 50, ch. 2008-240.

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(a) *Contents of contracts.*—Any contract for the sale of a residential unit or a lease thereof for an unexpired term of more than 5 years shall:

1. Contain the following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. Contain the following caveat in conspicuous type on the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. State the name and address of the escrow agent required by s. 718.202 and state that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

8. If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, contain within the text in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES. The contract for the sale of a fee interest in a timeshare estate shall also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days following the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close prior to the expiration of the 15 days. The developer shall retain in his or her records a separate agreement signed by the buyer as proof of the buyer's agreement to close prior to the expiration of said voidability period. Said proof shall be retained for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.
2. The documents creating the association.
3. The bylaws.
4. The ground lease or other underlying lease of the condominium.
5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.
6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.
7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.
8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.
9. The form of unit lease if the offer is of a leasehold.
10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.
11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.
12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.
13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

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

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

(c) *Subsequent estimates; when provided.*—If the closing on a contract occurs more than 12 months after the filing of the offering circular with the division, the developer shall provide a copy of the current estimated operating budget of the association to the buyer at closing, which shall not be considered an amendment that modifies the offering provided any changes to the association's budget from the budget given to the buyer at the time of contract signing were the result of matters beyond the developer's control. Changes in budgets of any master association, recreation association, or club and similar budgets for entities other than the association shall likewise not be considered amendments that modify the offering. It is the intent of this paragraph to clarify existing law.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws and rules of the association, financial information required by s. 718.111, and the document entitled "Frequently Asked Questions and Answers" required by s. 718.504. On and after January 1, 2009, the prospective purchaser shall also be entitled to receive from the seller a copy of a governance form. Such form shall be provided by the division summarizing governance of condominium associations. In addition to such other information as the division considers helpful to a prospective purchaser in understanding association governance, the governance form shall address the following subjects:

1. The role of the board in conducting the day-to-day affairs of the association on behalf of, and in the best interests of, the owners.

2. The board's responsibility to provide advance notice of board and membership meetings.

3. The rights of owners to attend and speak at board and membership meetings.

4. The responsibility of the board and of owners with respect to maintenance of the condominium property.

5. The responsibility of the board and owners to abide by the condominium documents, this chapter, rules adopted by the division, and reasonable rules adopted by the board.

6. Owners' rights to inspect and copy association records and the limitations on such rights.

7. Remedies available to owners with respect to actions by the board which may be abusive or beyond the board's power and authority.

8. The right of the board to hire a property management firm, subject to its own primary responsibility for such management.

9. The responsibility of owners with regard to payment of regular or special assessments necessary for the operation of the property and the potential consequences of failure to pay such assessments.

10. The voting rights of owners.

11. Rights and obligations of the board in enforcement of rules in the condominium documents and rules adopted by the board.

The governance form shall also include the following statement in conspicuous type: "This publication is intended as an informal educational overview of condominium governance. In the event of a conflict, the provisions of chapter 718, Florida Statutes, rules adopted by the Division of Florida Condominiums, Timeshares, and Mobile

Homes of the Department of Business and Professional Regulation, the provisions of the condominium documents, and reasonable rules adopted by the condominium association's board of administration prevail over the contents of this publication."

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of a residential unit shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(3) OTHER DISCLOSURE.—

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his or her inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him or her and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE. If timeshare estates have been or may be created with respect to any unit in the condominium, the sales brochure shall contain the following statement in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-328; s. 16, ch. 79-314; s. 4, ch. 80-3; s. 2, ch. 82-199; s. 59, ch. 82-226; s. 18, ch. 84-368; s. 19, ch. 91-103; s. 5, ch. 91-426; s. 14, ch. 92-49; s. 869, ch. 97-102; s. 7, ch. 98-195; s. 5, ch. 98-322; s. 14, ch. 2002-27; s. 10, ch. 2004-345; s. 6, ch. 2004-353; s. 7, ch. 2007-80; s. 24, ch. 2008-28; s. 91, ch. 2009-21.

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and

shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

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

(a) The name of the condominium.

(b) The following statements in conspicuous type:

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

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

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

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

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

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

(a) Its name and location.

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

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the condominium, if the condominium is a phase condominium.

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

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

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

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location

of the lease in the disclosure materials shall be stated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative,

a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

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

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

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM. There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

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

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

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

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

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

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

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES. Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

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

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

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

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

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

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

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

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicuous type in substantially the following form shall appear, identifying the proposed or existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER). Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The information required by s. 718.616.

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

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

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

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

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

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

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

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than common expenses paid by all unit owners, payable by the unit owner to persons or entities other than the association, as well as to the association, including fees assessed pursuant to s. 718.113(1) for maintenance of limited common elements where such costs are shared only by those entitled to use the limited common element, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his or her unit; insurance premiums other than those incurred for policies obtained by the

condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

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

1. Expenses for the association and condominium:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves.

l. Fees payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The following statement in conspicuous type: THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT AND IS A GOOD FAITH ESTIMATE ONLY AND REPRESENTS AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF ITS PREPARATION. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

(e) Each budget for an association prepared by a developer consistent with this subsection shall be prepared in good faith and shall reflect accurate estimated amounts for the required items in paragraph (c) at the time of the filing of the offering circular with the division, and subsequent increased amounts of any item included in the association's estimated budget that are beyond the control of the developer shall not be considered an amendment that would give rise to rescission rights set forth in s. 718.503(1)(a) or (b), nor shall such increases modify, void, or otherwise affect any guarantee of the developer contained in the offering circular or any purchase contract. It is the intent of this paragraph to clarify existing law.

(f) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(22) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(23) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field.

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

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

(b) The articles of incorporation creating the association.

(c) The bylaws of the association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 78-328; s. 17, ch. 79-314; s. 5, ch. 80-3; s. 19, ch. 84-368; s. 7, ch. 85-60; s. 19, ch. 90-151; s. 20, ch. 91-103; s. 5, ch. 91-426; s. 15, ch. 92-49; s. 870, ch. 97-102; s. 6, ch. 98-322; s. 61, ch. 2000-302; s. 22, ch. 2001-64; s. 15, ch. 2002-27; s. 8, ch. 2007-80; s. 51, ch. 2008-240.

718.505 Good faith effort to comply.—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he or she has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

History.—s. 1, ch. 76-222; s. 871, ch. 97-102.

718.506 Publication of false and misleading information.—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the purchase of a condominium parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his or her loss prior to the closing of the transaction. After the closing of the transaction, the purchaser shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be

deemed to be given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 718.503, the prevailing party shall be entitled to recover reasonable attorney's fees.

History.—s. 1, ch. 76-222; s. 872, ch. 97-102.

718.507 Zoning and building laws, ordinances, and regulations.—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the condominium form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the condominium form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the condominium form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

History.—s. 1, ch. 76-222; s. 6, ch. 80-3.

718.508 Regulation by Division of Hotels and Restaurants.—In addition to the authority, regulation, or control exercised by the Division of Florida Condominiums, Timeshares, and Mobile Homes pursuant to this act with respect to condominiums, buildings included in a condominium property are subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, to the extent provided in chapter 399.

History.—s. 1, ch. 76-222; s. 8, ch. 85-60; s. 235, ch. 94-218; s. 52, ch. 2008-240.

718.509 Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund.—

(1) There is created within the State Treasury the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund to be used for the administration and operation of this chapter and chapters 718, 719, 721, and 723 by the division.

(2) All moneys collected by the division from fees, fines, or penalties or from costs awarded to the division by a court or administrative final order shall be paid into the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. The Legislature shall appropriate funds from this trust fund sufficient to carry out the provisions of this chapter and the provisions of law with respect to each category of business covered by the trust fund. The division shall maintain separate revenue accounts in the trust fund for each of the businesses regulated by the division. The division shall provide for the proportionate allocation among the accounts of expenses incurred by the division in the performance of its duties with respect to each of these businesses. As part of its normal budgetary process, the division shall prepare an annual report of revenue and allocated expenses related to the operation of

each of these businesses which may be used to determine fees charged by the division. This subsection shall operate pursuant to the provisions of s. 215.20.

History.—ss. 10, 32, ch. 79-347; ss. 2, 5, 7, ch. 81-172; ss. 2, 3, ch. 81-318; s. 3, ch. 83-265; ss. 20, 21, ch. 83-339; ss. 16, 20, ch. 87-102; ss. 8, 33, 34, ch. 88-90; s. 83, ch. 90-132; s. 4, ch. 91-429; s. 53, ch. 2008-240.

Note.—Former s. 498.019.

PART VI
CONVERSIONS TO CONDOMINIUM

718.604 Short title.
718.606 Conversion of existing improvements to condominium; rental agreements.
718.608 Notice of intended conversion; time of delivery; content.
718.61 Notices.
718.612 Right of first refusal.
718.614 Economic information to be provided.
718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.
718.618 Converter reserve accounts; warranties.
718.62 Prohibition of discrimination against nonpurchasing tenants.
718.621 Rulemaking authority.
718.622 Saving clause.

718.604 Short title.—This part shall be known and may be cited as the "Roth Act" in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.

History.—s. 1, ch. 80-3.

718.606 Conversion of existing improvements to condominium; rental agreements.—When existing improvements are converted to ownership as a residential condominium:

(1)(a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2)(a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days' written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days' written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion the option of receiving in cash a

tenant relocation payment at least equal to 1 month's rent in consideration for extending the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days' written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. 718.402(3), Florida Statutes 1979.

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an ordinance or other measure extending the 270-day extension period described in paragraph (1)(a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipalities, unless a municipality votes not to have it apply within its boundaries.

History.—s. 1, ch. 80-3; s. 20, ch. 84-368.

718.608 Notice of intended conversion; time of delivery; content.—

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential condominium. All such notices shall be given within a 72-hour period.

(2)(a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to condominium by _(name of developer)_, the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 180 days, you may extend your rental agreement for up to 180 days after the date of this notice.

c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE DATE OF THIS NOTICE.

2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS, you may extend your rental agreement for up to 45 days after the date of this notice while you decide whether to extend your rental agreement as explained above. To do so, you must notify the developer in writing. You will then have the full 45 days to decide whether to extend your rental agreement as explained above.

3. During the extension of your rental agreement you will be charged the same rent that you are now paying.

4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION OF THE RENTAL AGREEMENT AS FOLLOWS:

a. If your rental agreement began or was extended or renewed after May 1, 1980, and your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may cancel your rental agreement upon 30 days' written notice and move. Also, upon 30 days' written notice, you may cancel any extension of the rental agreement.

b. If your rental agreement was not begun or was not extended or renewed after May 1, 1980, you may not cancel the rental agreement without the consent of the developer. If your rental agreement, including extensions and renewals, has an unexpired term of 180 days or less, you may, however, upon 30 days' written notice cancel any extension of the rental agreement.

5. All notices must be given in writing and sent by mail, return receipt requested, or delivered in person to the developer at this address: _(name and address of developer)_.

6. If you have continuously been a resident of these apartments during the last 180 days:

a. You have the right to purchase your apartment and will have 45 days to decide whether to purchase. If you do not buy the unit at that price and the unit is later offered at a lower price, you will have the opportunity to buy the unit at the lower price. However, in all events your right to purchase the unit ends when the rental agreement or any extension of the rental agreement ends or when you waive this right in writing.

b. Within 90 days you will be provided purchase information relating to your apartment, including the price of your unit and the condition of the building. If you do not receive this information within 90 days, your rental agreement and any extension will be extended 1 day for each day over 90 days until you are given the purchase information. If you do not want this rental agreement extension, you must notify the developer in writing.

7. If you have any questions regarding this conversion or the Condominium Act, you may contact the developer or the state agency which regulates condominiums: The Division of Florida Condominiums, Timeshares, and Mobile Homes, _(Tallahassee address and telephone number of division)_.

(b) When a developer offers tenants an optional tenant relocation payment pursuant to s. 718.606(4), the notice of intended conversion shall contain a statement substantially as follows:

If you have been a continuous resident of these apartments for the last 180 days and your lease expires during the next 180 days, you may extend your rental agreement for up to 270 days, or you may extend your rental agreement for up to 180 days and receive a cash payment at least equal to 1 month's rent. You must make your decision and inform the developer in writing within 45 days after the date of this notice.

(c) When the rental agreement extension provisions of s. 718.606(6) are applicable to a conversion, subparagraphs 1.a. and b. of the notice of intended conversion shall read as follows:

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 360 days, you may extend your rental agreement for up to 360 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

(3) Notice of intended conversion may not be waived by a tenant unless the tenant's lease conspicuously states that the building is to be converted and the other tenants residing in the building have previously received a notice of intended conversion.

(4) Upon the request of a developer and payment of a fee prescribed by the rules of the division, not to exceed $50, the division may verify to a developer that a notice complies with this section.

(5) Prior to delivering a notice of intended conversion to tenants of existing improvements being converted to a residential condominium, each developer shall file with the division and receive approval of a copy of the notice of intended conversion. Upon filing, each developer shall pay to the division a filing fee of $100.

History.—s. 1, ch. 80-3; s. 9, ch. 85-60; s. 9, ch. 86-175; s. 21, ch. 91-103; s. 5, ch. 91-426; s. 54, ch. 2008-240.

718.61 Notices.—

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

History.—s. 1, ch. 80-3.

718.612 Right of first refusal.—

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he or she resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 718.614, and the disclosure documents required by ss. 718.503 and 718.504. The failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion will automatically extend the rental agreement, any extension of the rental agreement provided for in s. 718.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no additional right of first refusal. As used in this paragraph, the term "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but does not include a transaction involving the sale of more than one unit to one purchaser.

(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation will be damages. In addition to any damages otherwise recoverable by law, the tenant is entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney's fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof;

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period provided for by paragraph (1)(c), if applicable.

History.—s. 1, ch. 80-3; s. 478, ch. 81-259; s. 21, ch. 84-368; s. 873, ch. 97-102.

718.614 Economic information to be provided.—The developer shall distribute to tenants having a right of first refusal, if any:

(1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.

(2) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

History.—s. 1, ch. 80-3; s. 10, ch. 85-60; s. 13, ch. 94-350.

718.616 Disclosure of condition of building and estimated replacement costs and notification of municipalities.—

(1) Each developer of a residential condominium created by converting existing, previously occupied improvements to such form of ownership shall prepare a report that discloses the condition of the improvements and the condition of certain components and their current estimated replacement costs as of the date of the report.

(2) The following information shall be stated concerning the improvements:

(a) The date and type of construction.

(b) The prior use.

(c) Whether there is termite damage or infestation and whether the termite damage or infestation, if any, has been properly treated. The statement shall be substantiated by including, as an exhibit, an inspection report by a certified pest control operator.

(3)(a) Disclosure of condition shall be made for each of the following components that the existing improvements may include:

1. Roof.
2. Structure.
3. Fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool.
9. Seawalls, pilings, and docks.
10. Pavement and concrete, including roadways, walkways, and parking areas.
11. Drainage systems.
12. Irrigation systems.

(b) For each component, the following information shall be disclosed and substantiated by attaching a copy of a certificate under seal of an architect or engineer authorized to practice in this state:

1. The age of the component as of the date of the report.
2. The estimated remaining useful life of the component as of the date of the report.
3. The estimated current replacement cost of the component as of the date of the report, expressed:

a. As a total amount; and

b. As a per-unit amount, based upon each unit's proportional share of the common expenses.

4. The structural and functional soundness of the component.

(c) Each unit owner and the association are third-party beneficiaries of the report.

(d) A supplemental report shall be prepared for any structure or component that is renovated or repaired after completion of the original report and prior to the recording of the declaration of condominium. If the declaration is not recorded within 1 year after the date of the original report, the developer shall update the report annually prior to recording the declaration of condominium.

(e) The report may not contain representations on behalf of the development concerning future improvements or repairs and must be limited to the current condition of the improvements.

(4) If the proposed condominium is situated within a municipality, the disclosure shall include a letter from the municipality acknowledging that the municipality has been notified of the proposed creation of a residential condominium by conversion of existing, previously occupied improvements and, in any county, as defined in s. 125.011(1), acknowledging compliance with applicable zoning requirements as determined by the municipality.

History.—s. 1, ch. 80-3; s. 22, ch. 84-368; s. 14, ch. 94-350; s. 40, ch. 95-274; s. 5, ch. 96-396; s. 7, ch. 97-301; s. 9, ch. 2007-80.

718.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish converter reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the converter reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof without insulation	4	5
b.	Built-up roof with insulation	4	5
c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years, rounded to the nearest whole year. The amount of converter reserves to be funded by the developer for each structure or component shall be based on the age of the structure or component as disclosed in the inspection report. The architect or engineer shall determine the age of the component from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to

practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(d) In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein. The vote to waive or reduce the funding or reserves required by s. 718.112(2)(f) does not affect or negate the obligations arising under this section.

(2)(a) The developer shall fund the reserve account required by subsection (1), on a pro rata basis upon the sale of each unit. The developer shall deposit in the reserve account not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership of the common elements allocable to the unit sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding. For the purposes of this subsection, a unit is considered sold when a fee interest in the unit is transferred to a third party or the unit is leased for a period in excess of 5 years.

(b) When an association makes an expenditure of converter reserve account funds before the developer has sold all units, the developer shall make a deposit in the reserve account. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such unit had the unit been sold. Such deposit may be reduced to the extent the developer has funded the reserve account in excess of the minimum reserve account funding required by this subsection. This paragraph applies only when the developer has funded reserve accounts as provided by paragraph (a).

(3) The use of reserve account funds, as provided in this section, is limited as follows:

(a) Reserve account funds may be spent prior to the assumption of control of the association by unit owners other than the developer; and

(b) Reserve account funds may be expended only for repair or replacement of the specific components for which the funds were deposited, unless, after assumption of control of the association by unit owners other than the developer, it is determined by three-fourths of the voting interests in the condominium to expend the funds for other purposes.

(4) The developer shall establish the reserve account, as provided in this section, in the name of the association at a bank, savings and loan association, or trust company located in this state.

(5) A developer may establish and fund additional converter reserve accounts. The amount of funding shall be the product of the estimated current replacement cost of a component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which is the age of the component in years and the denominator of which is the total estimated life of the component in years.

(6) A developer makes no implied warranties when existing improvements are converted to ownership as a residential condominium and reserve accounts are funded in accordance with this section. As an alternative to establishing such reserve accounts, or when a developer fails to establish the reserve accounts in accordance with this section, the developer shall be deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended. The warranty shall be for a period beginning with the notice of intended conversion and continuing for 3 years thereafter, or the recording of the declaration to condominium and continuing for 3 years thereafter, or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(a) The warranty provided for in this section is conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(b) The warranty shall inure to the benefit of each owner and successor owner.

(c) Existing improvements converted to residential condominium may be covered by an insured warranty program underwritten by an insurance company authorized to do business in this state, if such warranty program meets the minimum requirements of this chapter. To the degree that the warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

(7) When a developer desires to post a surety bond, the developer shall, after notification to the buyer, acquire a surety bond issued by a company licensed to do business in this state, if such a bond is readily available in the open market, in an amount which would be equal to the total amount of all reserve accounts required under subsection (1), payable to the association.

(8) The amended provisions of this section do not affect a conversion of existing improvements when a developer has filed a notice of intended conversion and the documents required by s. 718.503 or s. 718.504, as applicable, with the division prior to the effective date of this law, provided:

(a) The documents are proper for filing purposes.

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I.

2. Gives a notice of intended conversion.

(9) This section applies only to the conversion of existing improvements where construction of the improvement was commenced prior to its designation by the developer as a condominium. In such circumstances, s. 718.203 does not apply.

(10) A developer who sells a condominium parcel that is subject to this part shall disclose in conspicuous type in the contract of sale whether the developer has established converter reserve accounts, provided a warranty of fitness and merchantability, or posted a surety bond for purposes of complying with this section.

History.—s. 1, ch. 80-3; s. 23, ch. 84-368; s. 20, ch. 90-151; s. 22, ch. 91-103; s. 5, ch. 91-426; s. 15, ch. 94-350; s. 2, ch. 2006-145; s. 10, ch. 2007-80.

718.62 Prohibition of discrimination against nonpurchasing tenants.—When existing improvements are converted to condominium, tenants who have not purchased a unit in the condominium being created shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

History.—s. 1, ch. 80-3.

718.621 Rulemaking authority.—The division is authorized to adopt rules pursuant to the Administrative Procedure Act to administer and ensure compliance with developers' obligations with respect to condominium conversions concerning the filing and noticing of intended conversion, rental agreement extensions, rights of first refusal, and disclosure and postpurchase protections.

History.—s. 8, ch. 98-195.

718.622 Saving clause.—

(1) All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. 718.606, 718.608, and 718.61. Tenants given such notices shall have a right of first refusal as provided by s. 718.612.

(2) The disclosure provided by s. 718.616 and required by ss. 718.503 and 718.504 to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. 718.503 and 718.504.

(3) The provisions of s. 718.618 do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

(a) The documents are proper for filing purposes; and

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I of this chapter, and

2. Gives a notice of intended conversion.

History.—s. 13, ch. 80-3.

PART VII
DISTRESSED CONDOMINIUM RELIEF

718.701 Short title.
718.702 Legislative intent.
718.703 Definitions.
718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.
718.705 Board of administration; transfer of control.
718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.
718.707 Time limitation for classification as bulk assignee or bulk buyer.
718.708 Liability of developers and others.
718.71 Financial reporting.

718.701 Short title.—This part may be cited as the "Distressed Condominium Relief Act."
History.—s. 18, ch. 2010-174.

718.702 Legislative intent.—

(1) The Legislature acknowledges the massive downturn in the condominium market which has occurred throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have failed or are in the process of failing such that the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a result of the inability to find purchasers for this inventory of units, which results in part from the devaluing of real estate in this state, developers are unable to satisfy the requirements of their lenders, leading to defaults on mortgages. Consequently, lenders are faced with the task of finding a solution to the problem in order to receive payment for their investments.

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

(3) The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to distressed condominiums, and that there is a need for relief from certain provisions of the Florida Condominium Act geared toward enabling economic opportunities for successor purchasers, including foreclosing mortgagees. Such relief would benefit existing unit owners and condominium associations. The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period.
History.—s. 18, ch. 2010-174.

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

(1) "Bulk assignee" means a person who is not a bulk buyer and who:

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

(b) Receives an assignment of any of the developer rights, other than or in addition to those rights described in subsection (2), as set forth in the declaration of condominium or this chapter:

1. By a written instrument recorded as part of or as an exhibit to the deed;

2. By a separate instrument recorded in the public records of the county in which the condominium is located; or

3. Pursuant to a final judgment or certificate of title issued in favor of a purchaser at a foreclosure sale.

A mortgagee or its assignee may not be deemed a bulk assignee or a developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer's rights unless the mortgagee or its assignee exercises any of the developer rights other than those described in subsection (2).

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights, or receives only some or all of the following rights:

(a) The right to conduct sales, leasing, and marketing activities within the condominium;

(b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of the units; and

(c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third party purchaser concerning one or more units.

History.—s. 18, ch. 2010-174; s. 9, ch. 2011-196.

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

(1) A bulk assignee is deemed to have assumed and is liable for all duties and responsibilities of the developer under the declaration and this chapter upon its acquisition of title to units and continuously thereafter, except that it is not liable for:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the bulk assignee.

(b) The obligation to:

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

2. Provide implied warranties on any portion of the condominium property except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the bulk assignee.

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

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

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

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

(2) A bulk assignee assigned the developer right to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 assumes and is liable for all obligations of the developer with respect to such guarantee upon its acquisition of title to the units and continuously thereafter, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving such assignment, or a bulk buyer, does not assume and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments due on or after acquisition of the units in the same manner as all other owners of condominium parcels or as otherwise provided in s. 718.116.

(3) A bulk buyer is liable for the duties and responsibilities of a developer under the declaration and this chapter only to the extent that such duties or responsibilities are expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

(a) Before the effective date of this part;

(b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association; or

(c) By a person who would be considered an insider under s. 726.102.

(5) An assignment of developer rights to a bulk assignee may be made by a developer, a previous bulk assignee, a mortgagee or assignee who has acquired title to the units and received an assignment of rights, or a court acting on behalf of the developer or the previous bulk assignee if such developer rights are held by the predecessor in title to the bulk assignee. At any particular time, there may not be more than one bulk assignee within a condominium; however, there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium receives an assignment of developer rights in addition to those rights described in s. 718.703(2), the bulk assignee is the acquirer whose instrument of assignment is recorded first in the public records of the county in which the condominium is located, and any subsequent purported bulk assignee may still qualify as a bulk buyer.

History.—s. 18, ch. 2010-174; s. 10, ch. 2011-196; s. 4, ch. 2013-189.

718.705 Board of administration; transfer of control.—

(1) If, at the time the bulk assignee acquires title to the units and receives an assignment of developer rights, the developer has not relinquished control of the board of administration, for purposes of determining the timing for transfer of control of the board of administration of the association, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

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

(3) If a bulk assignee relinquishes control of the board of administration as set forth in s. 718.301, the bulk assignee must deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee if some items were or should have been in existence before the bulk assignee's acquisition of the units. In conjunction with the acquisition of units, a bulk assignee shall undertake a good faith effort to obtain the documents and materials that must be provided to the association pursuant to s. 718.301(4). If the bulk assignee is not able to obtain such documents and materials, the bulk assignee must certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for delivering the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) commences as of the date on which the bulk assignee elected or appointed a majority of the members of the board of administration.

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

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

History.—s. 18, ch. 2010-174; s. 11, ch. 2011-196.

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

(1) Before offering more than seven units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser or tenant:

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

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

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

(d) The financial information required by s. 718.111(13). However, if a financial information report did not exist before the acquisition of title by the bulk assignee or bulk buyer, and if accounting records that permit preparation of the required financial information report for that period cannot be obtained despite good faith efforts by the bulk assignee or the bulk buyer, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S. 718.111(13) FOR THE TIME PERIOD BEFORE THE SELLER'S ACQUISITION OF THE UNIT IS NOT AVAILABLE OR CANNOT BE OBTAINED DESPITE THE GOOD FAITH EFFORTS OF THE SELLER.

(2) Before offering more than seven units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file with the division and provide to a prospective purchaser or tenant under a lease for a term exceeding 5 years a disclosure statement that includes, but is not limited to:

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

(b) The following statement in conspicuous type:

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

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

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

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

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

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

(4) A bulk assignee or a bulk buyer must comply with s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be provided all of the rights and protections contained in s. 718.302 regarding agreements entered into by the association which are under the control of the developer, bulk assignee, or bulk buyer.

(5) Notwithstanding any other provision of this part, a bulk assignee or a bulk buyer is not required to comply with the filing or disclosure requirements of subsections (1) and (2) if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction.

History.—s. 18, ch. 2010-174; s. 12, ch. 2011-196.

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

History.—s. 18, ch. 2010-174; s. 13, ch. 2011-196; s. 36, ch. 2012-61; s. 5, ch. 2014-74; s. 13, ch. 2014-133; s. 11, ch. 2015-97; s. 8, ch. 2018-96.

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

History.—s. 18, ch. 2010-174.

718.71 Financial reporting.—An association shall provide an annual report to the department containing the names of all of the financial institutions with which it maintains accounts, and a copy of such report may be obtained from the department upon written request of any association member.

History.—s. 9, ch. 2017-188.

Copyright © 1995-2018 The Florida Legislature • Privacy Statement • Contact Us