

1 A bill to be entitled

2 An act related to condominiums; amending s. 718.703, F.S.; to clarify the
3 definitions of bulk assignee and bulk buyer; amending s. 718.704, F.S.; to
4 clarify the liabilities of a bulk assignee and bulk buyer; amending s.
5 718.705, F.S.; to clarify provisions pertaining to appointment of directors
6 and transition of control; amending s. 718.706, F.S.; to clarify bulk
7 assignee responsibilities for financial information and disclosures to be
8 provided to purchasers and to create an exemption from disclosures if all
9 units are being conveyed in bulk to a single purchaser; amending s.
10 718.707, F.S.; to clarify the application of the part to acquisitions occurring
11 on or after July 1, 2010; providing an effective date.

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

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15 Section 1. Subsections (1) and (2) of section 718.703, Florida Statutes, are
16 amended to read:

17 (1) "Bulk assignee" means a person who is not a bulk buyer and who:

18 (a) Acquires more than seven condominium parcels in any one condominium
19 as set forth in s.718.707; and

20 (b) Receives an assignment of ~~some or all of the~~ any rights of the developer
21 as set forth in the declaration of condominium or this chapter, other than, or in addition
22 to, those rights of a developer described in subsection (2) below, by:

23 1. _____ a written instrument recorded as part of or as an exhibit to the deed ~~or as,~~

2. a separate instrument in the public records of the county in which the condominium is located; or

3. pursuant to the final judgment or certificate of title issued in favor of any purchaser at a foreclosure sale.

A mortgagee or its assignee shall not be deemed a bulk assignee or a developer by reason of its acquisition of condominium units and receipt of an assignment of some or all of a developer's rights unless such mortgagee or its assignee exercises any rights of a developer other than those described in s. 718.703(2).

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels in any one condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights ~~other than~~ 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 ~~a bulk number 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.

Section 2. Section 718.704, Florida Statutes, is amended to read:

(1) A bulk assignee ~~assumes~~ is deemed to have assumed and is liable for all duties and responsibilities of the developer under the declaration and this chapter for the period following its acquisition of title to its units, except:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except:

1. as expressly provided by the bulk assignee in any prospectus or offering circular, or the contract for purchase and sale executed with a purchaser; or

2. for any design, construction, development, or repair work performed by or on behalf of such 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 ~~converter~~ implied warranties on any portion of the condominium property except:

a. as expressly provided by the bulk assignee in any prospectus or offering circular, or the contract for purchase and sale executed with a purchaser and pertaining to, or

b. for any 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; and

(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 ~~also~~ only responsible for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may, at its option, expressly assume some or all of the obligations of the developer described in paragraphs (a)-(e).

(2) A bulk assignee receiving the assignment of the ~~rights~~ right of the developer 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, applicable to the period following its acquisition of title to its units, 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 following its acquisition of its units in the same manner as all other owners of condominium parcels.

(3) A bulk buyer is liable for the duties and responsibilities of ~~the a~~ a developer under the declaration and this chapter only to the extent ~~provided in this part, together with if any, other~~ that such duties or responsibilities of ~~the a~~ a developer 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) ~~was made~~ with the intent to hinder, delay, or defraud any purchaser, unit owner, or the association; or

(c) ~~if the acquirer is~~ by a person who would be considered an insider under s. 726.102(7).

(5) An assignment of developer rights to a bulk assignee may be made by the a developer, a previous bulk assignee, a first mortgagee or its assignee having acquired title to the units, or a court acting on behalf of the developer or the previous bulk assignee, provided that such developer rights are held by the predecessor in title to such bulk assignee. At any particular time, there may be no more than one bulk assignee within a condominium; ~~but~~ 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 ~~from the same person~~, in addition to those rights described in s. 718.703(2), then 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.

Section 3. Subsections (1) and (3) of section 718.705, Florida Statutes, are amended to read:

(1) ~~For~~ If, at the time the bulk assignee acquires title to its units and receives an assignment of developer's rights, the association has not yet been transitioned to

unit owners other than the developer pursuant to s. 718.301(1), then for purposes of
determining the timing for transfer of control of the board of administration of the
association ~~to unit owners other than the developer under s. 718.301(1)(a) and (b), if a~~
~~bulk assignee is entitled to elect a majority of the members of the board,~~ a condominium
parcel acquired by the bulk assignee ~~is~~ shall not be 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.

(3) If When 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 ~~during the period during which~~
~~the bulk assignee was entitled to elect a majority of the members of the board of~~
~~administration~~ if some were or should have been in existence or created with respect to
the time period before the bulk assignee's acquisition of the units. In conjunction with its
acquisition of ~~condominium parcels~~ 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 To the extent the bulk assignee is not able to obtain any or
all of 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.

Section 4. Subsections (1), (2) and (4) of section 718.706, Florida Statutes, are amended, and subsection (5) of section 718.706, F.S., is created to read:

(1) Before offering ~~any~~ more than 7 units in any one 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) ~~The~~ An updated Frequently Asked Questions and Answers sheet;

(c) An 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 does not exist for the ~~fiscal year~~ time period before acquisition of title by the bulk assignee or bulk buyer, ~~or and~~ and accounting records ~~cannot be obtained in good faith by the bulk assignee or the bulk buyer,~~ which would permit preparation of the required financial information report for such 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 IMMEDIATELY PRECEDING FISCAL YEAR OF
THE ASSOCIATION FOR THE TIME PERIOD PRIOR TO THE SELLER'S
ACQUISITION OF THE UNIT IS NOT AVAILABLE OR CANNOT BE CREATED
OBTAINED DESPITE GOOD FAITH EFFORTS BY THE SELLER ~~DUE TO THE~~
~~INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION.~~

(2) Before offering any more than 7 units in any one condominium for sale or
for lease for a term exceeding 5 years, a bulk assignee or bulk buyer must file with the
division and provide to a any 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 rights of the developer which 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 ANY DESIGN,
CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
BEHALF OF 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 MAY BE EXPRESSLY REQUIRED OF
THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE

185 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,
186 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
187 BEHALF OF THE SELLER.

188 (4) A bulk assignee or a bulk buyer must comply with all the requirements of
189 s. 718.302 regarding any contracts entered into by the association during the period the
190 bulk assignee or bulk buyer maintains control of the board of administration. Unit
191 owners shall be afforded all of the rights and protections contained in s. 718.302
192 regarding agreements entered into by the association ~~before unit owners other than~~
193 under control of the developer, bulk assignee, or bulk buyer ~~elected a majority of the~~
194 ~~board of administration.~~

195 (5) Notwithstanding anything to the contrary in this part, neither a bulk buyer
196 nor a bulk assignee need comply with the filing or disclosure obligations of subsections
197 (1) or (2) of this section, to the extent otherwise applicable, where all of the units owned
198 by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a
199 single transaction. ~~A bulk buyer must comply with the requirements contained in the~~
200 ~~declaration regarding any transfer of a unit, including sales, leases, and subleases. A~~
201 ~~bulk buyer is not entitled to any exemptions afforded a developer or successor~~
202 ~~developer under this chapter regarding the transfer of a unit, including sales, leases, or~~
203 ~~subleases.~~

204 Section 5. Section 718.707, Florida Statutes, is amended to read:

205 718.707 Time limitation for classification as bulk assignee or bulk buyer. A
206 person acquiring condominium parcels may not be classified as a bulk assignee or bulk
207 buyer under this part unless the condominium parcels were acquired on or after July 1,

208 2010 and before July 1, 2012. The date of such acquisition shall be determined by the
209 date of recording of a deed or other instrument of conveyance for such parcels in the
210 public records of the county in which the condominium is located, or by the date of
211 issuance of a certificate of title in a foreclosure proceeding with respect to such
212 condominium parcels.

213 Section 6. This Act shall take effect upon becoming a law.