

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

10

11 Section 1. Subsections (1) and (2) of section 718.703, F.S., are amended to
12 read as follows:

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

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

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

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

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

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

24

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

29 (2) "Bulk buyer" means a person who acquires more than seven condominium
30 parcels in any one condominium as set forth in s. 718.707, but who does not receive an
31 assignment of any developer rights other than or receives only some or all of the
32 following rights:

33 (a) the right to conduct sales, leasing, and marketing activities within the
34 condominium;

35 (b) the right to be exempt from the payment of working capital contributions to
36 the condominium association arising out of, or in connection with, the bulk buyer's
37 acquisition of ~~a bulk number of~~ the units; and

38 (c) the right to be exempt from any rights of first refusal which may be held by
39 the condominium association and would otherwise be applicable to subsequent
40 transfers of title from the bulk buyer to a third party purchaser concerning one or more
41 units.

42 Section 2. Section 718.704, F.S., are amended to read as follows:

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

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

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

49 2. for any design, construction, development, or repair work performed by or
50 on behalf of such bulk assignee;

51 (b) The obligation to:

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

54 2. Provide ~~converter~~ implied warranties on any portion of the condominium
55 property except:

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

58 ~~to~~, or

59 b. for any design, construction, development, or repair work performed by or
60 on behalf of the bulk assignee;

61 (c) The requirement to provide the association with a cumulative audit of the
62 association's finances from the date of formation of the condominium association as
63 required by s. 718.301(4)(c). However, the bulk assignee must provide an audit for the
64 period during which the bulk assignee elects or appoints a majority of the members of
65 the board of administration;

66 (d) Any liability arising out of or in connection with actions taken by the board
67 of administration or the developer-appointed directors before the bulk assignee elects or
68 appoints a majority of the members of the board of administration; and

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

72

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

76 (2) A bulk assignee receiving the assignment of the ~~rights~~ right of the
77 developer to guarantee the level of assessments and fund budgetary deficits pursuant
78 to s. 718.116 assumes and is liable for all obligations of the developer with respect to
79 such guarantee, applicable to the period following its acquisition of title to its units,
80 including any applicable funding of reserves to the extent required by law, for as long as
81 the guarantee remains in effect. A bulk assignee not receiving such assignment, or a
82 bulk buyer, does not assume and is not liable for the obligations of the developer with
83 respect to such guarantee, but is responsible for payment of assessments following its
84 acquisition of its units in the same manner as all other owners of condominium parcels.

85 (3) A bulk buyer is liable for the duties and responsibilities of ~~the~~ a developer
86 under the declaration and this chapter only to the extent ~~provided in this part, together~~
87 ~~with~~ if any, other that such duties or responsibilities of ~~the~~ a developer are expressly
88 assumed in writing by the bulk buyer.

89 (4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer
90 if the transfer to such acquirer was made:

91 (a) before the effective date of this part;

92 **(b)** ~~was made~~ with the intent to hinder, delay, or defraud any purchaser, unit
93 owner, or the association; or

94 **(c)** ~~if the acquirer is~~ by a person who would be considered an insider under s.
95 726.102(7).

96 **(5)** An assignment of developer rights to a bulk assignee may be made by ~~the~~
97 a developer, a previous bulk assignee, a first mortgagee or its assignee having acquired
98 title to the units, or a court acting on behalf of the developer or the previous bulk
99 assignee, provided that such developer rights are held by the predecessor in title to
100 such bulk assignee. At any particular time, there may be no more than one bulk
101 assignee within a condominium; ~~but~~ however, there may be more than one bulk buyer.
102 If more than one acquirer of condominium parcels in the same condominium receives
103 an assignment of developer rights ~~from the same person,~~ in addition to those rights
104 described in s. 718.703(2), then the bulk assignee is the acquirer whose instrument of
105 assignment is recorded first in the public records of the county in which the
106 condominium is located, and any subsequent purported bulk assignee may still qualify
107 as a bulk buyer.

108 Section 3. Subsections (1) and (3) of section 718.705, F.S., are amended to
109 read as follows:

110

111 **(1)** ~~For~~ If, at the time the bulk assignee acquires title to its units and receives
112 an assignment of developer's rights, the association has not yet been transitioned to
113 unit owners other than the developer pursuant to s. 718.301(1), then for purposes of
114 determining the timing for transfer of control of the board of administration of the

115 association ~~to unit owners other than the developer under s. 718.301(1)(a) and (b)~~, if a
116 bulk assignee is ~~entitled to elect a majority of the members of the board~~, a condominium
117 parcel acquired by the bulk assignee is shall not be deemed to be conveyed to a
118 purchaser, or owned by an owner other than the developer, until the condominium
119 parcel is conveyed to an owner who is not a bulk assignee.

120 (3) ~~If~~ When a bulk assignee relinquishes control of the board of administration
121 as set forth in s. 718.301, the bulk assignee must deliver all of those items required by
122 s. 718.301(4). However, the bulk assignee is not required to deliver items and
123 documents not in the possession of the bulk assignee ~~during the period during which~~
124 ~~the bulk assignee was entitled to elect a majority of the members of the board of~~
125 ~~administration~~ if some were or should have been in existence or created with respect to
126 the time period before the bulk assignee's acquisition of the units. In conjunction with its
127 acquisition of ~~condominium parcels~~ units, a bulk assignee shall undertake a good faith
128 effort to obtain the documents and materials that must be provided to the association
129 pursuant to s. 718.301(4). ~~If~~ To the extent the bulk assignee is not able to obtain any or
130 all of such documents and materials, the bulk assignee must certify in writing to the
131 association the names or descriptions of the documents and materials that were not
132 obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of
133 responsibility for delivering the documents and materials referenced in the certificate as
134 otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of
135 the bulk assignee for the audit required by s. 718.301(4) commences as of the date on
136 which the bulk assignee elected or appointed a majority of the members of the board of
137 administration.

138 Section 3. Subsections (1), (2) and (4) of section 718.706, F.S., are amended,
139 and subsection (5) of section 718.706, F.S., is created to read as follows:

140 (1) Before offering ~~any~~ more than 7 units in any one condominium for sale or
141 for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file the
142 following documents with the division and provide such documents to a prospective
143 purchaser or tenant:

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

148 (b) ~~The~~ An updated Frequently Asked Questions and Answers sheet;

149 (c) An executed escrow agreement if required under s. 718.202; and

150 (d) The financial information required by s. 718.111(13). However, if a
151 financial information report does not exist for the ~~fiscal year~~ time period before
152 acquisition of title by the bulk assignee or bulk buyer, ~~or and~~ and accounting records ~~cannot~~
153 ~~be obtained in good faith by the bulk assignee or the bulk buyer,~~ which would permit
154 preparation of the required financial information report for such period, cannot be
155 obtained despite good faith efforts by the bulk assignee or the bulk buyer, the bulk
156 assignee or bulk buyer is excused from the requirement of this paragraph. However, the
157 bulk assignee or bulk buyer must include in the purchase contract the following
158 statement in conspicuous type:

159 ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT REQUIRED
160 UNDER S. 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF

161 THE ASSOCIATION FOR THE TIME PERIOD PRIOR TO THE SELLER'S
162 ACQUISITION OF THE UNIT IS NOT AVAILABLE OR CANNOT BE CREATED
163 OBTAINED DESPITE GOOD FAITH EFFORTS BY THE SELLER ~~DUE TO THE~~
164 ~~INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION.~~

165 (2) Before offering ~~any~~ more than 7 units in any one condominium for sale or
166 for lease for a term exceeding 5 years, a bulk assignee or bulk buyer must file with the
167 division and provide to a any prospective purchaser, or tenant under a lease for a term
168 exceeding 5 years, a disclosure statement that includes, but is not limited to:

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

171 (b) The following statement in conspicuous type:

172 THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER
173 UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR ANY DESIGN,
174 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
175 BEHALF OF SELLER; and

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

178 THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO
179 PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF
180 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF
181 THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
182 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,

183 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
184 BEHALF OF THE SELLER.

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

192 (5) Notwithstanding anything to the contrary in this part, neither a bulk buyer
193 nor a bulk assignee need comply with the filing or disclosure obligations of subsections
194 (1) or (2) of this section, to the extent otherwise applicable, where all of the units owned
195 by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a
196 single transaction.

197 Section 4. Section 718.707, F.S., is amended to read as follows:

198 718.707 Time limitation for classification as bulk assignee or bulk buyer. A
199 person acquiring condominium parcels may not be classified as a bulk assignee or bulk
200 buyer under this part unless the condominium parcels were acquired on or after July 1,
201 2010 and before July 1, 2012. The date of such acquisition shall be determined by the
202 date of recording of a deed or other instrument of conveyance for such parcels in the
203 public records of the county in which the condominium is located, or by the date of
204 issuance of a certificate of title in a foreclosure proceeding with respect to such
205 condominium parcels.

Section 5. This Act shall take effect upon becoming a law.

WHITE PAPER

PROPOSED REVISIONS TO PART VII OF CHAPTER 718

I. SUMMARY

The purpose of the proposed changes to Part VII of Chapter 718, the Distressed Condominium Relief Act ("Relief Act"), is to clarify existing ambiguities and inconsistencies in the Relief Act. The proposed changes would clarify the distinction between the two classes of bulk purchasers created by the Relief Act, more fully protect foreclosing lenders, and more clearly address association-related obligations.

II. SITUATION

Effective July 1, 2010, Part VII, the Relief Act, was added to the Florida Condominium Act. The expressed purpose of the Relief Act was to encourage absorption of the large inventory of unsold condominium units resulting from the collapse of the real estate market.

The Relief Act is, in essence, a shield law to protect bulk purchasers or other acquirers of large numbers of condominium units against potential liability for warranty claims and other financial exposure which might be incurred by being denominated a "developer" under the Condominium Act.

The Relief Act creates two protected classes of buyers: a "bulk assignee," one acquiring an assignment of "some or all" of the developer rights in a condominium project and a "bulk buyer," one who may acquire only certain specified rights. In either case, the purchaser must obtain more than 7 units. Such acquirers may be bulk purchasers of unsold units or lenders acquiring units through foreclosure or by deed in lieu of foreclosure. As part of the legislation establishing the Relief Act, both bulk assignees and bulk buyers were specifically exempted from the definition of "developer" under the Condominium Act.

A bulk assignee will incur certain limited developer obligations but the bulk buyer is treated as any other purchaser of condominium units in almost all respects. In both cases, these acquirers are generally insulated from warranty claims and other liability of the original developer, including obligations owing to the condominium association.

Neither the bulk assignee, nor bulk buyer is exempted from the requirements to file offering materials with the state agency responsible for administering the sale of residential condominiums, the Division of Florida Condominiums, Timeshares and Mobile Homes, in the event they market their units for sale. The offering materials must contain certain specified disclosures indicating the lack of warranties and financial information otherwise available in the sale by the original developer.

The Relief Act contains a sunset provision requiring a bulk assignee or bulk buyer to record its deed for acquired condominium units on or before July 1, 2012 in order to be entitled to its benefits.

III. EFFECT OF PROPOSED CHANGES

The proposed amendments would better distinguish and define the attributes, rights and obligations of a bulk assignee and a bulk buyer and clarify that the Distressed Act is prospective only, applying to acquisition of condominium units occurring only after its effective date. The effect will render more certainty to the application and operation of the Relief Act.

IV. ANALYSIS

The proposed amendments would clarify important issues and be beneficial both for condominium unit owners and business interests by more effectively promoting absorption of the large inventory of unsold condominium units.

SPECIFIC COMMENTS:

1. Changes to the definitions of bulk assignee and bulk buyer in 718.703 clarify that the units being acquired have to be included within the same condominium. In addition, the ambiguity between a bulk assignee being an acquirer of "some" developer rights and the bulk buyer having the right to acquire "some" developer rights has been resolved. The redrafted language clarifies that a bulk buyer need not acquire any developer rights, aside from certain statutory rights which are automatically conferred with such status. Furthermore a foreclosing lender's status as a bulk assignee or bulk buyer has been added, and ensures that lender's rights obtained in collateral assignment of developer rights are available to lenders to the extent that such benefits are expressed in a final judgment of foreclosure or within the certificate of title issued thereafter.
2. In 718.704, clarification has been added indicating that a bulk assignee assumes obligations of a developer only on a prospective basis and needs to specify these obligations in any offering materials. A bulk buyer need not assume any obligations of a developer but if it chooses to do so it must do so in writing.
3. 718.704(4) is intended to clarify that the Relief Act does not apply to transactions before its effective date or to transfers after its effective date to certain related parties.
4. Changes in 718.705 clarifies the triggering event for when turnover occurs when a bulk assignee acquires its units in associations not turned over at the time of the bulk acquisition.

5. In 718.706 changes have been made to clarify the offering materials apply to sales of more than 7 units in a single condominium and that the sales by a bulk assignee or bulk purchaser are not sales by the initial developer. In addition, disclosures are clarified to account for information that may not be available to the bulk assignee or bulk purchaser. In 718.706(5) language inconsistent with certain rights granted to bulk buyers has been removed and replaced with a provision to exempt a subsequent bulk sale from the disclosure requirements.

V. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a fiscal impact on state or local governments.

VI. DIRECT IMPACT ON PRIVATE SECTOR

The proposal will provide better clarity for bulk assignees and bulk buyers in connection with the acquisition of distressed condominium units, thereby enabling the distressed projects and property values to stabilize and eventually increase.

VII. CONSTITUTIONAL ISSUES

There are no constitutional issues raised by this proposal.

VIII. OTHER INTERESTED PARTIES

None are known at this time.

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By Robert S. Freedman, Co-Chair, Condominium and Planned Development Committee of the Real Property Probate & Trust Law Section

Address c/o Carlton Fields, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607
Telephone: (813) 223-7000

Position Type Condominium and Planned Development Committee, RPPTL Section, The Florida Bar

CONTACTS

**Board & Legislation
Committee Appearance**

Robert S. Freedman, Carlton Fields, P.A., 4221 W. Boy Scout Blvd., Suite 1000, Tampa, FL 33607, Telephone (813) 223-7000
Michael J. Gelfand, Gelfand & Arpe, P.A. 1555 Palm Beach Lakes Blvd., Suite 1220, West Palm Beach, FL 33401-2323, Telephone (561) 655-6224
Peter M. Dunbar, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee, Florida 32302-2095, Telephone (850) 222-3533
Martha J. Edenfield, Pennington, Moore, Wilkinson, Bell & Dunbar, P.O. Box 10095, Tallahassee FL 32302-2095, Telephone (850) 222-3533
 (List name, address and phone number)

Appearances

Before Legislators (SAME) _____
 (List name and phone # of those having face to face contact with Legislators)

**Meetings with
Legislators/staff** (SAME) _____
 (List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A _____
 (Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position **Support** Oppose Technical Assistance Other _____

Proposed Wording of Position for Official Publication:

"Support amendments to the Florida Condominium Act; to clarify the definitions of bulk assignee and bulk buyer; to clarify the liabilities of a bulk assignee and bulk buyer; to clarify provisions pertaining to appointment of directors and transition of control; to clarify bulk assignee responsibilities for financial information and disclosures to be provided to purchasers; to create an exemption from disclosures if all units are being conveyed in bulk to a single purchaser; to clarify the application of the part to acquisitions occurring on or after July 1, 2010; to provide an effective date."

Reasons For Proposed Advocacy:

The Distressed Condominium Relief Act became law on July 1, 2010, and certain revisions are needed to its various provisions to clarify the intent of the statutes and the liabilities of and obligations imposed upon bulk assignees and bulk buyers..

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position _____ None _____
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) _____ None _____
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.