CHAPTER 2007-80

House Bill No. 7031

An act relating to real property; amending s. 215.555, F.S.; redefining the term "covered policy" for purposes of the Florida Hurricane Catastrophe Fund to include commercial self-insurance funds; amending s. 624.462, F.S.; providing that any applicant or fund participant may select an agent of choice without restriction by the fund; providing that a commercial self-insurance fund shall be an insurer for the purpose of assessments levied by the Florida Hurricane Catastrophe Fund or Citizens Property Insurance Group; requiring the office to establish the method for determining the inputted premium that is subject to assessment; amending s. 718.103, F.S.; redefining the term "land"; amending s. 718.111, F.S.; specifying that requirements relating to the acquisition and maintenance of adequate insurance apply to all residential condominiums; amending s. 718.115, F.S.; providing that common expenses include the costs of certain insurance or self-insurance; amending s. 718.116, F.S.; requiring notice of special assessments for certain insurance; amending s. 718.503, F.S.; requiring additional disclosures in contracts for sale or lease of residential units; requiring copies of budgets to be furnished to buyers when a closing occurs more than 12 months after an offering circular is filed with the state; amending s. 718.504, F.S.; requiring certain information relating to the budget to be included in the offering circular; requiring that an association budget be prepared in good faith; amending s. 718.616, F.S.; requiring that certain disclosures be compiled in a report; revising the items required to be disclosed; requiring supplemental reports in certain situations; amending s. 718.618, F.S.; revising certain requirements for reserve accounts; revising the method of computing the amounts required to fund additional converter reserve accounts; deleting references to specific items that are covered by an implied warranty of fitness in the absence of reserve accounts; requiring that a developer disclose in a contract of sale compliance with certain obligations regarding the maintenance of improvements; amending s. 719.104, F.S.; providing for cooperative associations and similar organizations to acquire and maintain windstorm insurance; amending s. 719.107, F.S.; providing that common expenses include costs of certain insurance; amending s. 719.108, F.S.; providing for notice of special assessments levied in conjunction with certain insurance; amending s. 719.503, F.S.; requiring additional disclosures in contracts for sale or lease of residential units; requiring copies of budgets to be furnished to buyers when a closing occurs more than 12 months after an offering circular is filed with the state; amending s. 719.504, F.S.; requiring certain information relating to the budget to be included in the offering circular; requiring that an association budget be prepared in good faith; amending s. 720.303, F.S.; providing for homeowners' associations to acquire and maintain windstorm insurance; amending s. 720.308, F.S.; providing for homeowners' associations to levy assessments for insurance; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 215.555, Florida Statutes, as amended by section 2 of chapter 2007-1, Laws of Florida, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(2) DEFINITIONS.—As used in this section:

(c) "Covered policy" means any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including a commercial self-insurance fund holding a certificate of authority issued by the Office of Insurance Regulation under s. 624.462, the Citizens Property Insurance Corporation, and any joint underwriting association or similar entity created under ~~pursuant to~~ law. The term "covered policy" includes any collateral protection insurance policy covering personal residences which protects both the borrower's and the lender's financial interests, in an amount at least equal to the coverage for the dwelling in place under the lapsed homeowner's policy, if such policy can be accurately reported as required in subsection (5). Additionally, covered policies include policies covering the peril of wind removed from the Florida Residential Property and Casualty Joint Underwriting Association or from the Citizens Property Insurance Corporation, created under ~~pursuant to~~ s. 627.351(6), or from the Florida Windstorm Underwriting Association, created under ~~pursuant to~~ s. 627.351(2), by an authorized insurer under the terms and conditions of an executed assumption agreement between the authorized insurer and such association or Citizens Property Insurance Corporation. Each assumption agreement between the association and such authorized insurer or Citizens Property Insurance Corporation must be approved by the Office of Insurance Regulation before ~~prior to~~ the effective date of the assumption, and the Office of Insurance Regulation must provide written notification to the board within 15 working days after such approval. "Covered policy" does not include any policy that excludes wind coverage or hurricane coverage or any reinsurance agreement and does not include any policy otherwise meeting this definition which is issued by a surplus lines insurer or a reinsurer. All commercial residential excess policies and all deductible buy-back policies that, based on sound actuarial principles, require individual ratemaking shall be excluded by rule if the actuarial soundness of the fund is not jeopardized. For this purpose, the term "excess policy" means a policy that provides insurance protection for large commercial property risks and that provides a layer of coverage above a primary layer insured by another insurer.

Section 2. Subsections (2) and (5) of section 624.462, Florida Statutes, as amended, by section 12 of chapter 2007-1, Laws of Florida, are amended to read:

624.462 Commercial self-insurance funds.—

(2) As used in ss. 624.460-624.488, "commercial self-insurance fund" or "fund" means a group of members, operating individually and collectively through a trust or corporation, that must be:

(a) Established by:

1. A not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated under the laws of this state, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year;

2. A self-insurance trust fund organized pursuant to s. 627.357 and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance pursuant to this section. Each member of a commercial self-insurance trust fund established pursuant to this subsection must maintain membership in the self-insurance trust fund organized pursuant to s. 627.357;

3. A group of 10 or more health care providers, as defined in s. 627.351(4)(h), for purposes of providing medical malpractice coverage; or

4. A not-for-profit group comprised of one or more community associations responsible for operating at least 50 residential parcels or units created and operating under chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 which restricts its membership to community associations only and which has been organized and maintained in good faith for the purpose of pooling and spreading the liabilities of its group members relating to property or casualty risk or surety insurance <u>which, in accordance with applicable provisions of part I of chapter 626, appoints resident general lines agents only, and which does not prevent, impede, or restrict any applicant or fund participant from maintaining or selecting an agent of choice</u>. <u>The fund may not refuse to appoint the agent of record for any fund applicant or fund member and may not favor one or more such appointed agents over other appointed agents.</u>

(b)1. In the case of funds established pursuant to subparagraph (a)2. or subparagraph (a)4., operated pursuant to a trust agreement by a board of trustees which shall have complete fiscal control over the fund and which shall be responsible for all operations of the fund. The majority of the trustees shall be owners, partners, officers, directors, or employees of one or more members of the fund. The trustees shall have the authority to approve applications of members for participation in the fund and to contract with an authorized administrator or servicing company to administer the day-to-day affairs of the fund.

2. In the case of funds established pursuant to subparagraph (a)1. or subparagraph (a)3., operated pursuant to a trust agreement by a board of trustees or as a corporation by a board of directors which board shall:

a. Be responsible to members of the fund or beneficiaries of the trust or policyholders of the corporation;

b. Appoint independent certified public accountants, legal counsel, actuaries, and investment advisers as needed;

c. Approve payment of dividends to members;

d. Approve changes in corporate structure; and

e. Have the authority to contract with an administrator authorized under s. 626.88 to administer the day-to-day affairs of the fund including, but not limited to, marketing, underwriting, billing, collection, claims administration, safety and loss prevention, reinsurance, policy issuance, accounting, regulatory reporting, and general administration. The fees or compensation for services under such contract shall be comparable to the costs for similar services incurred by insurers writing the same lines of insurance, or where available such expenses as filed by boards, bureaus, and associations designated by insurers to file such data. A majority of the trustees or directors shall be owners, partners, officers, directors, or employees of one or more members of the fund.

(5) A commercial self-insurance fund created under subparagraph (2)(a)4. shall be an insurer for the purpose of any assessments levied by the Florida Hurricane Catastrophe Fund as provided under s. 215.555 or by the Citizens Property Insurance Corporation as provided under s. 627.351(6)(b)3. The office shall establish the method for determining the imputed premium that is subject to any such assessment. ~~must participate in the Florida Self-Insurance Fund Guaranty Association.~~

Section 3. Subsection (18) of section 718.103, Florida Statutes, is amended to read:

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

(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.

Section 4. Subsection (11) of section 718.111, Florida Statutes, as amended by section 37 of chapter 2007-1, Laws of Florida, is amended to read:

718.111 The association.—

(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, paragraphs (a), (b), and (c) are deemed to apply 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 section. Therefore, the Legislature

requires a report to be prepared by the Office of Insurance Regulation of the Department of Financial Services for publication 18 months from the effective date of this act, evaluating premium increases or decreases for associations, unit owner premium increases or decreases, recommended changes to better define common areas, or any other information the Office of Insurance Regulation deems appropriate.

(a) A unit-owner controlled association operating a residential condominium shall use its best efforts to obtain and maintain adequate insurance to protect the association, the association property, the common elements, and the condominium property required to be insured by the association pursuant to paragraph (b). If the association is developer controlled, the association shall exercise due diligence to obtain and maintain such insurance. Failure to obtain and maintain adequate insurance during any period of developer control shall constitute a breach of fiduciary responsibility by the developer-appointed members of the board of directors of the association, unless said members can show that despite such failure, they have exercised due diligence. The declaration of condominium as originally recorded, or amended pursuant to procedures provided therein, may require that condominium property consisting of freestanding buildings where there is 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. Adequate insurance, regardless of any requirement in the declaration of condominium for coverage by the association for "full insurable value," "replacement cost," or the like, may include reasonable deductibles as determined by the board based upon available funds or predetermined assessment authority at the time that the insurance is obtained.

1. Windstorm insurance coverage for a group of no fewer than three communities created and operating under this chapter, chapter 719, chapter 720, or chapter 721 may be obtained and maintained for the communities if the insurance coverage is 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. Such insurance coverage is deemed adequate windstorm insurance for the purposes of this section.

2. An association or group of associations may self-insure against claims against the association, the association property, and the condominium property required to be insured by an association, upon compliance with the applicable provisions of ss. 624.460-624.488, which shall be considered adequate insurance for the purposes of this section. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(b) Every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:

1. All portions of the condominium property located outside the units;

2. The condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and

3. All portions of the condominium property for which the declaration of condominium requires coverage by the association.

Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, 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 a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries. The foregoing is intended to establish the property or casualty insuring responsibilities of the association and those of the individual unit owner and do not serve to broaden or extend the perils of coverage afforded by any insurance contract provided to the individual unit owner. Beginning January 1, 2004, the association shall have the authority to amend the declaration of condominium, without regard to any requirement for mortgagee approval of amendments affecting insurance requirements, to conform the declaration of condominium to the coverage requirements of this section.

(c) Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the condominium association that operates the condominium in which such unit owner's unit is located. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage to be provided by the association as set forth in paragraph (b) shall be insured by the individual unit owner.

(d) The association shall obtain and maintain adequate 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 and the president, secretary, and treasurer of the association. The association shall bear the cost of bonding.

Section 5. Present paragraph (f) of subsection (1) of section 718.115, Florida Statutes, is redesignated as paragraph (g), and a new paragraph (f) is added to that subsection, to read:

718.115 Common expenses and common surplus.—

(1)

(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.

Section 6. Subsection (10) of section 718.116, Florida Statutes, is amended to read:

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

(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.

Section 7. Paragraph (a) of subsection (1) of section 718.503, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

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.

(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.

Section 8. Present paragraph (d) of subsection (21) of section 718.504, Florida Statutes, is redesignated as paragraph (f), and new paragraphs (d) and (e) are added to that subsection, to read:

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 Land Sales, Condominiums, 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:

(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:

(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.

Section 9. Section 718.616, Florida Statutes, is amended to read:

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 ~~disclose~~ 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. ~~Fireproofing and~~ 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.

Section 10. Section 718.618, Florida Statutes, is amended to read:

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

Roof Type	Numerator	Denominator
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~~, as to the roof and structural components of the improvements; as to fireproofing and fire protection systems; and as to mechanical, electrical, and plumbing elements serving the improvements, except mechanical elements serving only one unit~~. 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.

Section 11. Subsection (3) of section 719.104, Florida Statutes, is amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(3) INSURANCE.—The association shall use its best efforts to obtain and maintain adequate insurance to protect the association property. The association may also obtain and maintain liability insurance for directors and officers, insurance for the benefit of association employees, and flood insurance. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(a) Windstorm insurance coverage for a group of no fewer than three communities created and operating under chapter 718, this chapter, chapter 720, or chapter 721 may be obtained and maintained for the communities if the insurance coverage is 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. Such insurance coverage is deemed adequate windstorm insurance for the purposes of this section.

(b) An association or group of associations may self-insure against claims against the association, the association property, and the cooperative property required to be insured by an association, upon compliance with the applicable provisions of ss. 624.460-624.488, which shall be considered adequate insurance for purposes of this section.

Section 12. Paragraph (e) is added to subsection (1) of section 719.107, Florida Statutes, to read:

719.107 Common expenses; assessment.—

(1)

(e) Common expenses include the costs of insurance acquired by the association under the authority of s. 719.104(3), including costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to s. 624.462.

Section 13. Subsection (9) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(9) The specific purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 719.104(3), approved in accordance with the cooperative 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 or returned to the unit owners. However, upon completion of such specific purposes, any excess funds shall 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.

Section 14. Paragraph (a) of subsection (1) of section 719.503, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(a) Contents of contracts.—Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

1. 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 719.503, 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 COOPERATIVE 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. The following caveat in conspicuous type shall be placed upon 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 719.503, 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, 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, the contract shall 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, the contract shall 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 common areas, the contract shall 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 COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. The contract shall state the name and address of the escrow agent required by s. 719.202 and shall 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 cooperative in which timeshare estates have been or may be created, the following text in conspicuous type: UNITS IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES. The contract for the sale of a timeshare estate must also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST 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.

(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.

Section 15. Present paragraph (d) of subsection (20) of section 719.504, Florida Statutes, is redesignated as paragraph (f), and new paragraphs (d) and (e) are added to that subsection, to read:

719.504 Prospectus or offering circular.—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives 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 Land Sales, Condominiums, 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 must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; 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; 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 identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; 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 state whether membership in a recreational facilities association is mandatory and, if so, 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 cooperative, 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:

(20) An estimated operating budget for the cooperative and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(d) The following statement in conspicuous type: THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE COOPERATIVE 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. 719.503(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.

Section 16. Subsection (11) is added to section 720.303, Florida Statutes, to read:

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

(11) WINDSTORM INSURANCE.—Windstorm insurance coverage for a group of no fewer than three communities created and operating under chapter 718, chapter 719, this chapter, or chapter 721 may be obtained and maintained for the communities if the insurance coverage is 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. Such insurance coverage is deemed adequate windstorm coverage for purposes of this chapter.

Section 17. Section 720.308, Florida Statutes, is amended to read:

720.308 Assessments and charges.—For any community created after October 1, 1995, the governing documents must describe the manner in

which expenses are shared and specify the member's proportional share thereof.

(1) Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors.

(2) While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association.

(3) Assessments or contingent assessments may be levied by the board of directors of the association to secure the obligation of the homeowners' association for insurance acquired from a self-insurance fund authorized and operating pursuant to s. 624.462.

(4) This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of October 1, 1995 ~~the effective date of this act~~, together with any approved modifications thereto.

Section 18. This act shall take effect upon becoming a law.

Approved by the Governor May 24, 2007.

Filed in Office Secretary of State May 24, 2007.