

CHAPTER 718

CONDOMINIUMS

PART I GENERAL PROVISIONS (ss. 718.101-718.1255)

PART II RIGHTS AND OBLIGATIONS OF DEVELOPERS
(ss. 718.201-718.203)PART III RIGHTS AND OBLIGATIONS OF ASSOCIATION
(ss. 718.301-718.303)PART IV SPECIAL TYPES OF CONDOMINIUMS
(ss. 718.401-718.403)PART V REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL
CONDOMINIUMS (ss. 718.501-718.509)

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

PART I		718.123	Right of owners to peaceably assemble.
GENERAL PROVISIONS		718.1232	Cable television service; resident's right to access without extra charge.
718.101	Short title.	718.124	Limitation on actions by association.
718.102	Purposes.	718.125	Attorney's fees.
718.103	Definitions.	718.1255	Voluntary arbitration of disputes.
718.104	Creation of condominiums; contents of declaration.	718.101 Short title. —This chapter shall be known and may be cited as the "Condominium Act." History. —s. 1, ch. 76-222.	
718.1045	Time-share estates; limitation on creation.	718.102 Purposes. —The purpose of this chapter is: (1) To give statutory recognition to the condominium form of ownership of real property. (2) To establish procedures for the creation, sale, and operation of condominiums.	
718.105	Recording of declaration.	Every condominium created and existing in this state shall be subject to the provisions of this chapter. History. —s. 1, ch. 76-222.	
718.106	Condominium parcels; appurtenances; possession and enjoyment.	718.103 Definitions. —As used in this chapter, the term: (1) "Assessment" means a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner. (2) "Association" means the corporate entity which is responsible for the operation of a condominium. (3) "Association property" includes that property, real and personal, in which title or ownership is vested in the association for the use and benefit of its members. (4) "Board of administration" means the board of directors or other representative body which is responsible for administration of the association. (5) "Bylaws" means the bylaws of the association as they exist from time to time. (6) "Common elements" means the portions of the condominium property which are not included in the units. (7) "Common expenses" means all expenses and assessments which are properly incurred by the association for the condominium.	
718.107	Restraint upon separation and partition of common elements.		
718.108	Common elements.		
718.109	Legal description of condominium parcels.		
718.110	Amendment of declaration; correction of error or omission in declaration by circuit court.		
718.111	The association.		
718.112	Bylaws.		
718.1124	Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.		
718.113	Maintenance; limitation upon improvement.		
718.114	Association powers.		
718.115	Common expenses and common surplus.		
718.116	Assessments; liability; lien and priority; interest; collection.		
718.117	Termination.		
718.118	Equitable relief.		
718.119	Limitation of liability.		
718.120	Separate taxation of condominium parcels; survival of declaration after tax sale; assessment of time-share estates.		
718.121	Liens.		
718.122	Unconscionability of certain leases; rebuttable presumption.		
718.1225	Federal Condominium and Cooperative Abuse Relief Act of 1980; applicability.		

(8) "Common surplus" means the excess of all receipts of the association collected on behalf of a condominium (including, but not limited to, assessments, rents, profits, and revenues on account of the common elements) over the common expenses.

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

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

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

(12) "Conspicuous type" means type in capital letters no smaller than the largest type on the page on which it appears.

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

(14) "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a condominium or cooperative unit who has acquired his unit for his own occupancy, nor does it include a cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(15) "Land" means, unless otherwise defined in the declaration as hereinafter provided, 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, air space 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 air space 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.

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

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

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

(19) "Residential condominium" means a condominium consisting of condominium units, any of which are intended for use as a private temporary or permanent residence, except that a condominium is not a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three units are intended to be used for private residence, and are intended to be used as housing for maintenance, managerial, janitorial, or other operational staff of the condominium. If a condominium is a residential condominium but contains units intended to be used for commercial or industrial purposes, then, with respect to those units which are not intended for or used as private residences, the condominium is not a residential condominium.

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

(21) "Time-share estate" means any interest in a unit under which the exclusive right of use, possession, or occupancy of the unit circulates among the various owners of time-share estates in such unit in accordance with a fixed time schedule on a periodically recurring basis for a period of time established by such schedule.

(22) "Time-share unit" means a unit in which time-share estates have been created.

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

(24) "Unit owner" or "owner of a unit" means the owner of a condominium parcel.

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

(26) "Voting interest" means the voting rights distributed to the association members pursuant to s. 718.104(4)(i).

History.—s. 1, ch. 76-222; s. 1, ch. 78-328; s. 2, ch. 80-3; s. 6, ch. 80-323; s. 1, ch. 84-368; s. 45, ch. 85-62.

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

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

(2) A condominium is created by recording a declaration in the public records of the county where the land is located, executed and acknowledged with the requirements for a deed. All persons who have record title to the interest in the land being submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the declaration.

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

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

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

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

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

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

(e) A survey of the land which shows all existing easements and a graphic description of the improvements in which units are located and a plot plan thereof that, together with the declaration, are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. The survey, graphic description, and plot plan may be in the form of exhibits consisting of building plans, floor plans, maps, surveys, or sketches. If the construction of the condominium is not substantially completed, there shall be a statement to that effect, and, upon substantial completion of construction, the developer or the association shall amend the declaration to include the certificate described below. The amendment may be accomplished by referring to the recording data of a survey of the condominium that complies with the certificate. A certificate of a surveyor authorized to practice in this state shall be included in or attached to the declaration or the survey or graphic description as recorded under s. 718.105 that the construction of the improvements is substantially complete so that the material, together with the provisions of the declaration describing the condominium property, is an accurate representation of the location and dimensions of the improvements and so that the identification, location, and dimensions of the common elements and of each unit can be determined from these materials. Completed units within each substantially completed building in a condominium development may be conveyed to purchasers, notwithstanding that other buildings in the condominium are not substantially completed, provided that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving such building, as set forth in the declaration, are first completed and the declaration of condominium is first recorded and provided that as to the units being conveyed there is a certificate of a surveyor as required above, including certification that all planned improvements, including, but not limited to, landscaping, utility services and access to the unit, and common-element facilities serving the building in which the units to be conveyed are located have been substantially completed, and such certificate is recorded with the original declaration or as an amendment to such declaration. This section shall not, however, operate to require development of improvements and amenities declared to be included in future phases pursuant to s. 718.403 prior to conveying a unit as provided herein. For the purposes of this section, a "certificate of a surveyor" means certification by a surveyor in the form provided herein

and may include, along with certification by a surveyor, when appropriate, certification by an architect or engineer authorized to practice in this state. Notwithstanding the requirements of substantial completion provided in this section, nothing contained herein shall prohibit or impair the validity of a mortgage encumbering units together with an undivided interest in the common elements as described in a declaration of condominium recorded prior to the recording of a certificate of a surveyor as provided herein.

(f) The undivided share in the common elements appurtenant to each unit stated as percentages or fractions, which, in the aggregate, must equal the whole.

(g) The proportions or percentages of and manner of sharing common expenses and owning common surplus, which, for a residential condominium, must be the same as the undivided shares in the common elements.

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

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

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

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

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

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

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

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

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

(5) The declaration may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property. However, the rule against perpetuities shall not defeat a right given any person or entity by the declaration

for the purpose of allowing unit owners to retain reasonable control over the use, occupancy, and transfer of units.

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

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

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 78-328; s. 7, ch. 78-340; s. 1, ch. 79-314; s. 3, ch. 82-199; s. 2, ch. 84-368. cf.—ch. 721 Real estate time-sharing plans.

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

History.—s. 3, ch. 78-328.

718.105 Recording of declaration.—

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

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

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

(4) If the declaration or the survey or graphic description of the improvements required under s. 718.104(4)(e) does not have the certificate required, the developer shall deliver to the clerk an estimate of the cost of a final survey or graphic description containing and complying with the certificate prescribed by s. 718.104(4)(e) and shall deposit with the clerk the sum of money specified in the estimate. The clerk shall hold the money until an amendment to the declaration is recorded that complies with the certificate requirements of s. 718.104(4)(e). At that time, the clerk shall pay to the developer or the association presenting the amendment to the declaration the sum of money deposited with him without making any charge for holding the sum, receiving it, or paying out, other than the fees required for recording the condominium documents.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-340.

718.106 Condominium parcels; appurtenances; possession and enjoyment.—

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

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

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

(b) The exclusive right to use such portion of the common elements as may be provided by the declaration.

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

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

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

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

History.—s. 1, ch. 76-222; s. 3, ch. 84-368.

718.107 Restraint upon separation and partition of common elements.—

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

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

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

History.—s. 1, ch. 76-222.

718.108 Common elements.—

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

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

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

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

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

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

History.—s. 1, ch. 76-222.

718.109 Legal description of condominium parcels.

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

History.—s. 1, ch. 76-222.

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

(1)(a) If the declaration fails to provide a method of amendment, the declaration may be amended as to all matters except those described in subsection (4) or subsection (8) if the amendment is approved by the owners of not less than two-thirds of the units.

(b) No provision of the declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of declaration. See provision _____ for present text."

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

(2) An amendment, other than amendments made by the developer pursuant to ss. 718.104 and 718.403 and any rights the developer may have in the declaration to amend without consent of the unit owners, shall be evidenced by a certificate of the association which shall include the recording data identifying the declaration and shall be executed in the form required for the execution of a deed. An amendment by the developer must be evidenced in writing, but a certificate of the association is not required.

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

(4) Unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any condominium unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless all the record owners of all other units approve the amendment.

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

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

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

(8) Unless otherwise provided in the declaration as originally recorded, no amendment to the declaration may permit time-share estates to be created in any unit of the condominium, unless the record owner of each unit of the condominium and the record owners of liens on each unit of the condominium join in the execution of the amendment.

(9) If there is an omission or error in a declaration of condominium, or in any other document required by law to establish the condominium, the association may correct the error or omission by an amendment to the declaration or to the other document required to create a condominium in the manner provided in the declaration to amend the declaration or, if none is provided, by vote of a majority of the voting interests. The amendment is effective when passed and approved and a certificate of the amendment is executed and recorded as provided in s. 718.104. This procedure for amendment cannot be used if such an amendment would materially or adversely affect property rights of unit owners, unless the affected unit owners consent in writing. This subsection does not restrict the powers of the association to otherwise amend the declaration, or other documentation, but authorizes a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors, or omissions when the property rights of unit owners are not materially or adversely affected.

(10) If there is an omission or error in a declaration of condominium, or any other document required to establish the condominium, which omission or error would affect the valid existence of the condominium and which may not be corrected by the amendment procedures in the declaration or this chapter, the circuit court has jurisdiction to entertain a petition of one or more of the unit owners in the condominium, or of the association, to correct the error or omission, and the action may be a class action. The court may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. All unit owners, the association, and the mortga-

gees of a first mortgage of record must be joined as parties to the action. Service of process on unit owners may be by publication, but the plaintiff must furnish every unit owner not personally served with process with a copy of the petition and final decree of the court by certified mail, return receipt requested, at the unit owner's last known residence address. If an action to determine whether the declaration or another condominium document complies with the mandatory requirements for the formation of a condominium which are contained in this chapter is not brought within 3 years of the filing of the declaration, the declaration and other documents shall be effective under this chapter to create a condominium, whether or not the documents substantially comply with the mandatory requirements of this chapter. However, both before and after the expiration of this 3-year period, the circuit court has jurisdiction to entertain a petition permitted under this subsection for the correction of the documentation, and other methods of amendment may be utilized to correct the errors or omissions at any time.

History.—s. 1, ch. 76-222; s. 8, ch. 77-221; s. 6, ch. 77-222; s. 5, ch. 78-328; s. 2, ch. 78-340; s. 4, ch. 84-368.

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a corporation for profit or a corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. An association may operate more than one condominium.

(b) A director of the association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

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

(2) POWERS AND DUTIES.—The powers and duties of the association include those set forth in this section and those set forth in the declaration and bylaws and chapters 607 and 617, as applicable, if not inconsistent with this chapter.

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED.—The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; represen-

tations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action which may otherwise be available.

(4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.—The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements; however, the association may not charge any fee against a unit owner for the use of common elements or association property unless such use is the subject of a lease between the association and the unit owner.

(5) RIGHT OF ACCESS TO UNITS.—The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units.

(6) OPERATION OF PHASE CONDOMINIUMS.—Notwithstanding any provision of this chapter, an association may operate residential condominiums in a phase project initially created pursuant to former s. 711.64 and may continue to so operate such project as though it were a single condominium for purposes of financial matters, including budgets, assessments, accounting, recordkeeping, and similar matters, if provision is made for such consolidated operation in the applicable declarations of each such condominium as initially recorded or in the bylaws as initially adopted. Notwithstanding any provision in this chapter, common expenses for residential condominiums in such a project being operated by a single association may be assessed against all unit owners in such project pursuant to the proportions or percentages established therefor in the declarations as initially recorded or in the bylaws as initially adopted, subject, however, to the limitations of ss. 718.116 and 718.302.

(7) TITLE TO PROPERTY.—The association has the power to acquire title to property or otherwise hold property for the use and benefit of its members.

(8) PURCHASE OF LEASES.—The association has the power to purchase any land or recreation lease upon the approval of such voting interest as is required by the declaration. If the declaration makes no provision for acquisition of the land or recreation lease, the vote required shall be that required to amend the declaration to permit the acquisition.

(9) PURCHASE OF UNITS.—The association has the power, unless prohibited by the declaration, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage, and convey them.

(10) EASEMENTS.—Unless prohibited by the declaration, the association has the authority, without the joinder of any unit owner, to grant, modify, or move any

easement if the easement constitutes part of or crosses the common elements. This subsection does not authorize the association to grant, modify, or move any easement created in whole or in part for the use or benefit of anyone other than the unit owners, or crossing the property of anyone other than the unit owners, without their consent or approval as required by law or the instrument creating the easement. Nothing in this subsection affects the minimum requirements of s. 718.104(4)(m).

(11) INSURANCE.—

(a) The association shall use its best efforts to obtain and maintain adequate insurance to protect the association, the association property, and the condominium property pursuant to paragraph (b). A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

(b) Every hazard policy which is issued to protect a condominium building shall provide that the word "building" wherever used in the policy include, but not necessarily be limited to, fixtures, installations, or additions comprising that part of the building within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of the individual units initially installed, or replacements thereof of like kind or quality, in accordance with the original plans and specifications, or as they existed at the time the unit was initially conveyed if the original plans and specifications are not available. However, the word "building" does not include floor coverings, wall coverings, or ceiling coverings. With respect to the coverage provided for by this paragraph, the unit owners shall be considered additional insureds under the policy.

(c) Every insurance policy issued 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 without rights of subrogation against the association.

(d) Within 30 days after October 1, 1984, the division shall notify each association of the changes in insurance obligations and coverage specified in this section. Such notice shall also specify the substance of a further notice that each association will forward to each member thereof. The notice to members shall be mailed by each association not less than 45 days prior to the effective date of any renewal of or amendment to the association's coverage which reflects the changes authorized herein and shall advise the members of any change in insurance coverage to be provided by the association, including a description of the property previously covered by insurance obtained by the association which will no longer be covered, and of the effective date of such change.

(12) OFFICIAL RECORDS.—

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

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

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

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

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

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

6. A book or books which contain the minutes of all meetings of the association, of the board of directors, and of unit owners, which minutes shall be retained for a period of not less than 7 years.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers.

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

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

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

11. Accounting records for the association and separate accounting records for each condominium which the association operates, according to good accounting practices. All accounting records shall be maintained for a period of not less than 7 years. The accounting records shall include, but are not limited to:

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

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

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

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

12. Voting proxies, which shall be maintained for a period of 1 year from the date of the meeting for which the proxy was given.

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

(b) The official records of the association shall be maintained in the county in which the condominium is located.

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The failure to permit inspection of the association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records for inspection.

(13) FINANCIAL REPORTS.—Within 60 days following the end of the fiscal or calendar year or annually on

such date as is otherwise provided in the bylaws of the association, the board of administration of the association shall mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following:

- (a) Costs for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Costs for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Costs for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses; and
- (j) General reserves, maintenance reserves, and depreciation reserves.

History.—s. 1, ch. 76-222; s. 2, ch. 78-340; ss. 2, 3, 5, ch. 79-314; s. 1, ch. 80-323; s. 1, ch. 81-225; s. 1, ch. 82-199; s. 5, ch. 84-368.

Note.—The words "by insurance obtained" were inserted by the editors.

718.112 Bylaws.—

(1) GENERALLY.—

(a) The operation of the association shall be governed by the bylaws of the association, which shall be included as an exhibit to the recorded declaration of each condominium operated by the association.

(b) No amendment to the bylaws is valid unless recorded, with identification on the first page thereof of the book and page of the public records where the declaration of each condominium operated by the association is recorded. The bylaws must be amended in accordance with the procedure and vote set forth in the bylaws or articles of incorporation. If the articles do not provide a procedure, the vote required shall be that required to amend the declaration of condominium.

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

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

(b) *Quorum; proxies.*—

1. Unless otherwise provided in the bylaws, the percentage of voting rights required to make decisions and to constitute a quorum shall be a majority of the voting interests, and decisions shall be made by owners of a majority of the voting interests represented at a meeting at which a quorum is present. Unit owners may vote by proxy.

2. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

(c) *Board of administration meetings.*—Meetings of the board of administration shall be open to all unit owners. Adequate notice of all meetings shall be posted conspicuously on the condominium property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.

(d) *Unit owner meetings.*—

1. There shall be an annual meeting of the unit owners. Unless the bylaws provide otherwise, a vacancy on the board of administration caused by the expiration of a director's term shall be filled by electing a new board member. If there is no provision in the bylaws for terms of the members of the board of administration, the terms of all members of the board of administration shall expire upon the election of their successors at the annual meeting. The bylaws shall not restrict any unit owner desiring to be a candidate for board membership from being nominated from the floor.

2. The bylaws shall provide the method of calling meetings of unit owners, including annual meetings. Written notice shall be given to each unit owner at least 14 days prior to the annual meeting and shall be posted in a conspicuous place on the condominium property at least 14 days prior to the annual meeting. Unless a unit owner waives in writing the right to receive notice of the annual meeting by mail, the notice of the annual meeting shall be sent by mail to each unit owner. An officer of the association shall provide an affidavit, to be included in the official records of the association, affirming that a notice of the association meeting was mailed or hand delivered, in accordance with this provision, to each unit owner at the address last furnished to the association.

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

4. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any statute.

(e) *Budget meeting.*—The board of administration shall mail a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 14 days prior to the meeting at which the budget will be considered. If the bylaws or declaration provides that the budget may be adopted by the board of administration, the unit owners shall be given written notice of the time and place of the meeting of the board of administration which will consider the budget. The meeting shall be open to the unit owners. If an adopted budget requires assessments against the unit owners in any fiscal or calendar year which exceed 115 percent of the assessments for the preceding year, the board, upon written application of 10 percent of the voting interests to the board, shall call a special meeting of the unit owners within 30 days, upon not less than 10 days' written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. Unless the bylaws require a larger vote, the adoption of the budget shall require a vote of not less than a majority vote of all the voting interests. The board of administration may propose a budget to the unit owners at a meeting of members or in writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all the voting interests in writing, the budget shall be adopted. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the board of directors shall go into effect as scheduled. In determining whether assessments exceed 115 percent of similar assessments in prior years, any authorized provisions for reasonable reserves for repair or replacement of the condominium property, anticipated expenses by the condominium association which are not anticipated to be incurred on a regular or annual basis, or assessments for betterments to the condominium property shall be excluded from the computation. However, as long as the developer is in control of the board of administration, the board shall not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all the voting interests.

(f) *Annual budget.*—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 718.504(20).

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost of each reserve item. This subsection does not apply to budgets in which the level of assessments has been guaranteed pursuant to s. 718.116(8) prior to October 1, 1979, provided that the absence of reserves is disclosed to purchasers, or to

budgets in which the members of an association have, by a vote of the majority of the members present at a duly called meeting of the association, determined for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. If a meeting of the unit owners has been called to determine to provide no reserves or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

(g) *Assessments.*—The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly, in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred.

(h) *Amendment of bylaws.*—

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

2. No bylaw shall be revised or amended by reference to its title or number only. Proposals to amend existing bylaws shall contain the full text of the bylaws to be amended; new words shall be inserted in the text underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of bylaw ____ for present text."

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

(i) *Transfer fees.*—No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed \$50. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made.

(j) *Bonding of officers and directors.*—There shall be a provision for the fidelity bonding of all officers or directors of any association in existence on or after October 1, 1978, who control or disburse funds of the association, in the principal sum of not less than \$10,000 for each such officer or director. The association shall bear the cost of bonding. This paragraph does not apply to any association operating a condominium which consists of 50 or fewer units; however, any condominium association may bond any officer of the association, and the association shall bear the cost of bonding.

(k) *Recall of board members.*—Subject to the provisions of s. 718.301, any member of the board of administration may be recalled and removed from office with or without cause by the vote or agreement in writing by a majority of all the voting interests. A special meeting of the unit owners to recall a member or members of the board of administration may be called by 10 percent of the voting interests giving notice of the meeting as required for a meeting of unit owners, and the notice shall state the purpose of the meeting.

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective immediately, and the recalled member or members of the board of administration shall turn over to the board any and all records of the association in their possession within 72 hours after the meeting.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing shall be served on the association by certified mail. The board of administration shall call a meeting of the board within 72 hours after receipt of the agreement in writing and shall either certify the written agreement to recall a member or members of the board, in which case such member or members shall be recalled effective immediately and shall turn over to the board within 72 hours any and all records of the association in their possession, or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall a member or members of the board, or if the recall by a vote at a meeting is disputed, the board shall, within 72 hours, file with the division a petition for binding arbitration pursuant to the procedures in s. 718.1255. For the purposes of this section, the unit owners who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any member or members of the board, the recall will be effective upon service of the final order of arbitration upon the association. If the association fails to comply with the order of the arbitrator, the division may take action pursuant to s. 718.501. Any member or members so recalled shall deliver to the board any and all records of the association in their possession within 72 hours of the effective date of the recall.

(l) *Arbitration.*—There shall be a provision for voluntary binding arbitration of internal disputes arising from the operation of the condominium among unit owners, associations, and their agents and assigns.

(3) **OPTIONAL PROVISIONS.**—The bylaws may provide for the following:

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

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

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

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 5, ch. 77-221; ss. 3, 4, ch. 77-222; s. 1, ch. 78-340; s. 6, ch. 79-314; s. 2, ch. 80-323; s. 2, ch. 81-225; s. 1, ch. 82-113; s. 4, ch. 82-199; s. 6, ch. 84-368.

718.1124 Failure to fill vacancies on board of administration sufficient to constitute a quorum; appointment of receiver upon petition of unit owner.—If an association fails to fill vacancies on the board of administration sufficient to constitute a quorum in accordance with the bylaws, any unit owner may apply to the circuit court within whose jurisdiction the condominium lies for the appointment of a receiver to manage the affairs of the association. At least 30 days prior to applying to the circuit court, the unit owner shall mail to the association and post in a conspicuous place on the condominium property a notice describing the intended action, giving the association the opportunity to fill the vacancies. If during such time the association fails to fill the vacancies, the unit owner may proceed with the petition. If a receiver is appointed, the association shall be responsible for the salary of the receiver, court costs, and attorney's fees. The receiver shall have all powers and duties of a duly constituted board of administration and shall serve until the association fills vacancies on the board sufficient to constitute a quorum.

History.—s. 1, ch. 81-185.

718.113 Maintenance; limitation upon improvement.—

(1) Maintenance of the common elements is the responsibility of the association. The declaration may provide that limited common elements shall be maintained by those entitled to use the limited common elements.

(2) There shall be no material alteration or substantial additions to the common elements except in a manner provided in the declaration.

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

History.—s. 1, ch. 76-222.

718.114 Association powers.—An association has the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possessory or use interests except as authorized by the declaration. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this chapter.

History.—s. 1, ch. 76-222; s. 4, ch. 79-314.

718.115 Common expenses and common surplus.

(1) Common expenses include the expenses of the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the association, and any other expense designated as common expense by this chapter, the declaration, the documents creating the condominium, or the bylaws.

(2) Funds for the payment of common expenses shall be collected by assessments against unit owners in the proportions or percentages provided in the declaration. In a residential condominium, unit owners' shares of common expenses shall be in the same proportions as their ownership interest in the common elements.

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

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 7, ch. 84-368.

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

(1)(a) A unit owner, regardless of how his title has been acquired, including a purchaser at a judicial sale, is liable for all assessments which come due while he is the unit owner. Except as provided for in subsection (6), the grantee is jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of transfer of title, without prejudice to any right the grantee may have to recover from the grantor the amounts paid by the grantee.

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

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

(3) Assessments and installments on them which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. This rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest shall accrue at the rate of 18 percent per year.

(4)(a) The association has a lien on each condominium parcel for any unpaid assessments with interest and for reasonable attorney's fees incurred by the association which are incident to the collection of the assessment or enforcement of the lien. The lien is effective from and after the recording of a claim of lien in the public records in the county in which the condominium parcel is located which states the description of the condominium parcel, the name of the record owner, the amount due, and the due dates. No such lien which is recorded after October 1, 1984, shall continue for a longer period than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced in a court of competent jurisdiction. The claim of lien shall secure all unpaid assessments, inter-

est, costs, and attorney's fees which are due and which may accrue subsequent to the recording of the claim of lien and prior to entry of a final judgment of foreclosure. A claim of lien must be signed and acknowledged by an officer or agent of the association. Upon payment, the person making the payment is entitled to a satisfaction of the lien. By recording a notice in substantially the following form, a unit owner or his agent or attorney may require the association to enforce a recorded claim of lien against his condominium parcel:

NOTICE OF CONTEST OF LIEN

TO: (Name and address of association)

You are notified that the undersigned contests the claim of lien filed by you on ____ 19____, and recorded in Official Records Book ____ at Page ____, of the public records of ____ County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice.

Executed this ____ day of ____, 19____.

Signed: (Owner or Attorney)

(b) The clerk of the circuit court shall mail a copy of the recorded notice of contest to the lien claimant at the address shown in the claim of lien or most recent amendment to it, shall certify to the service on the face of the notice, and shall record the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien is void.

(5)(a) The association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.

(b) No foreclosure judgment may be entered until at least 30 days after the association gives written notice to the unit owner of its intention to foreclose its lien to collect the unpaid assessments. If this notice is not given at least 30 days before the foreclosure action is filed, and if the unpaid assessments, including those coming due after the claim of lien is recorded, are paid before the entry of a final judgment of foreclosure, the association shall not recover attorney's fees or costs. The notice must be given by delivery of a copy of it to the unit owner or by certified or registered mail, return receipt requested, addressed to the unit owner at his last known address; and, upon such mailing, the notice shall be deemed to have been given, and the court shall proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. If, after diligent search and inquiry, the association cannot find the unit owner or a mailing address at which the unit owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The notice requirements of this subsection are satisfied if the unit owner records a Notice of Contest of Lien as provided in subsection (4). The notice requirements of this subsection do not apply if an action to foreclose a mortgage on the condominium unit is pending before any court; if the rights of the association would be affected by such foreclosure; and if actual,

constructive, or substitute service of process has been made on the unit owner.

(c) If the unit owner remains in possession of the unit and the claim of lien is foreclosed, the court, in its discretion, may require the unit owner to pay a reasonable rental for the unit, and the association is entitled to the appointment of a receiver to collect the rent.

(d) The association, unless prohibited by the declaration, the documents creating the association, or its by-laws, has the power to purchase the condominium parcel at the foreclosure sale and to hold, lease, mortgage, or convey it.

(6) When the mortgagee of a first mortgage of record, or other purchaser, of a condominium unit obtains title to the condominium parcel by a purchase at the public sale resulting from the first mortgagee's foreclosure judgment in a foreclosure suit in which the association has been properly named as a defendant junior lienholder, or, if the declaration so provides, as a result of a deed given in lieu of foreclosure, such acquirer of title and his successors and assigns is not liable for the share of common expenses or assessments attributable to the condominium parcel or chargeable to the former unit owner of the parcel which became due prior to acquisition of title as a result of the foreclosure, unless the share is secured by a claim of lien for assessments that was recorded prior to the recording of the foreclosed mortgage. The unpaid share of common expenses or assessments are common expenses collectible from all of the unit owners, including such acquirer and his successors and assigns. If the declaration so provides, the foregoing provision may apply to any mortgage of record and shall not be restricted to first mortgages of record. A first mortgagee acquiring title to a condominium parcel as a result of foreclosure, or a deed in lieu of foreclosure, may not, during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(7) Within 15 days after a request therefor by a unit owner or unit mortgagee, the association shall provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the condominium parcel. Any person other than the owner who relies upon such certificate shall be protected thereby.

(8)(a) No unit owner may be excused from the payment of his share of the common expense of a condominium unless all unit owners are likewise proportionately excused from payment, except as provided in subsection (6) and in the following cases:

1. If the declaration so provides, a developer or other person who owns condominium units offered for sale may be excused from the payment of the share of the common expenses and assessments related to those units for a stated period of time subsequent to the recording of the declaration of condominium. The period must terminate no later than the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first condominium unit occurs. However, the developer must pay the portion of

common expenses incurred during that period which exceed the amount assessed against other unit owners.

2. A developer or other person who owns condominium units or who has an obligation to pay condominium expenses may be excused from the payment of his share of the common expense which would have been assessed against those units during the period of time that he has guaranteed to each purchaser in the purchase contract, declaration, or prospectus, or by agreement between the developer and a majority of the unit owners other than the developer, that the assessment for common expenses of the condominium imposed upon the unit owners would not increase over a stated dollar amount and has obligated himself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

(b) If the purchase contract, declaration, prospectus, or agreement between the developer and a majority of unit owners other than the developer provides for the developer or another person to be excused from the payment of assessments pursuant to paragraph (a), no funds which are receivable from unit purchasers or owners and payable to the association or collected by the developer on behalf of the association, other than regular periodic assessments for common expenses as provided in the declaration and disclosed in the estimated operating budget pursuant to s. 718.503(2)(f) or s. 718.504(20)(b), shall be used for payment of common expenses prior to the expiration of the period during which the developer or other person is so excused. This restriction applies to funds including, but not limited to, capital contributions or start-up funds collected from unit purchasers at closing.

(9) The specific purpose or purposes of any special assessment 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 or shall be returned to the unit owners. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 77-221; s. 7, ch. 77-222; s. 6, ch. 78-328; s. 8, ch. 84-368.

718.117 Termination.—

(1) Unless otherwise provided in the declaration, the condominium property may be removed from the provisions of this chapter only by consent of all of the unit owners, evidenced by a recorded instrument to that effect, and upon the written consent by all of the holders of recorded liens affecting any of the condominium parcels.

(2) Unless otherwise provided in the declaration as originally recorded or as amended pursuant to s. 718.110(5), upon removal of the condominium property from the provisions of this chapter, the condominium property is owned in common by the unit owners in the same undivided shares as each owner previously owned in the common elements. All liens shall be transferred to the undivided share in the condominium property attrib-

utable to the unit originally encumbered by the lien in its same priority.

(3) The termination of a condominium does not bar the creation of another condominium affecting all or any portion of the same property.

History.—s. 1, ch. 76-222.

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

History.—s. 1, ch. 76-222.

718.119 Limitation of liability.—

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

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

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

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

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

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

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

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

History.—s. 1, ch. 76-222; s. 58, ch. 82-226; s. 1, ch. 84-261; s. 217, ch. 85-342.
Note.—As amended, effective December 31, 1985.

718.121 Liens.—

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

(2) Labor performed on or materials furnished to a unit shall not be the basis for the filing of a lien pursuant to the Mechanics' Lien Law against the unit or condominium parcel of any unit owner not expressly consenting to or requesting the labor or materials. Labor performed on or materials furnished to the common elements are not the basis for a lien on the common elements, but if authorized by the association, the labor or materials are deemed to be performed or furnished with the express consent of each unit owner and may be the basis for the filing of a lien against all condominium parcels in the proportions for which the owners are liable for common expenses.

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

History.—s. 1, ch. 76-222.

718.122 Unconscionability of certain leases; rebuttable presumption.—

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

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

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

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

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

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

(f) The lease provides that failure of the lessee to make payments of rents due under the lease either

creates, establishes, or permits establishment of a lien upon individual condominium units of the condominium to secure claims for rent;

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

(h) The lease provides for a periodic rental increase based upon reference to a price index; and

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

(2) The Legislature expressly finds that many leases involving use of recreational or other common facilities by residents of condominiums were entered into by parties wholly representative of the interests of a condominium developer at a time when the condominium unit owners not only did not control the administration of their condominium, but also had little or no voice in such administration. Such leases often contain numerous obligations on the part of either or both a condominium association and condominium unit owners with relatively few obligations on the part of the lessor. Such leases may or may not be unconscionable in any given case. Nevertheless, the Legislature finds that a combination of certain onerous obligations and circumstances warrants the establishment of a rebuttable presumption of unconscionability of certain leases, as specified in subsection (1). The presumption may be rebutted by a lessor upon the showing of additional facts and circumstances to justify and validate what otherwise appears to be an unconscionable lease under this section. Failure of a lease to contain all the enumerated elements shall neither preclude a determination of unconscionability of the lease nor raise a presumption as to its unconscionability. It is the intent of the Legislature that this section is remedial and does not create any new cause of action to invalidate any condominium lease, but shall operate as a statutory prescription on procedural matters in actions brought on one or more causes of action existing at the time of the execution of such lease.

History.—s. 3, ch. 77-221.

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

History.—s. 6, ch. 82-199.

718.123 Right of owners to peaceably assemble.—

(1) All common elements, common areas, and recreational facilities serving any condominium shall be available to unit owners in the condominium or condominiums served thereby and their invited guests for the use intended for such common elements, common areas, and recreational facilities. The entity or entities responsible for the operation of the common elements, common areas, and recreational facilities may adopt reasonable

rules and regulations pertaining to the use of such common elements, common areas, and recreational facilities. No entity or entities shall unreasonably restrict any unit owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common elements, common areas, and recreational facilities.

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

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

718.1232 Cable television service; resident's right to access without extra charge.—No resident of any condominium dwelling unit, whether tenant or owner,

shall be denied access to any available franchised or licensed cable television service, nor shall such resident or cable television service be required to pay anything of value in order to obtain or provide such service except those charges normally paid for like services by residents of, or providers of such services to, single-family homes within the same franchised or licensed area and except for installation charges as such charges may be agreed to between such resident and the provider of such services.

History.—s. 16, ch. 81-185.

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

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

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

History.—s. 9, ch. 78-340.

718.1255 Voluntary arbitration of disputes.—The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation shall employ full-time arbitrators to conduct the binding arbitration hearings provided by this chapter. No person may be employed by the department as a full-time arbitrator unless he is a member in good standing of The Florida Bar. The department shall promulgate rules of procedure to govern such binding arbitration hearings. The decision of an arbitrator shall be final; however, such a decision shall not be deemed final agency action. Nothing in this provision shall be construed to foreclose parties from proceeding in a trial de novo; if such judicial proceedings are initiated, the final decision of the arbit-

trator shall be admissible in evidence. Any party may seek enforcement of the final decision of an arbitrator in a court of competent jurisdiction.

History.—s. 4, ch. 82-199; s. 4, ch. 85-60.

PART II

RIGHTS AND OBLIGATIONS OF DEVELOPERS

- 718.201 Taxes; bond for payment of liability during construction.
718.202 Sales or reservation deposits prior to closing.
718.203 Warranties.

718.201 Taxes; bond for payment of liability during construction.—

(1) Prior to the commencement of any construction activity with respect to a proposed condominium apartment development, the developer thereof shall post a bond or place an amount of money in escrow as provided in this section, conditioned for payment to the tax collector in the county in which the property or parcel lies, or his successor, upon default in payment of property taxes or special assessments assessed against the property or parcel prior to time of closing with a unit owner. The developer may select whether to post a bond or place an amount of money in escrow, but, if such selection is not made and bond posted or amount of money placed in escrow prior to the beginning of construction, the tax collector or his successor shall make the selection and require compliance with the provisions of this section. However, the developer shall be exempt from the provisions of this section upon furnishing to the clerk of the circuit court evidence of payment of all taxes and assessments due on the property or parcel.

(2) The bond required to be posted or the amount of money required to be placed in escrow under the provisions of this section shall be in the amount equal to 110 percent of the total ad valorem tax liability against the property or parcel in the year immediately preceding the year in which construction is proposed to be commenced. Such bond or account in escrow shall be posted or placed, as appropriate, with the clerk of the circuit court in the county in which the property or parcel lies.

(3) No interest shall be paid upon any bond posted or sum of money placed in escrow under the provisions of this section.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174.

718.202 Sales or reservation deposits prior to closing.—

(1) If a developer contracts to sell a condominium parcel and the construction, furnishing, and landscaping of the property submitted or proposed to be submitted to condominium ownership has not been substantially completed in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, the developer shall pay into an escrow account all payments up to 10 percent of the sale price received by the developer from the buyer towards the sale price. The escrow agent shall give to the purchaser a receipt for the deposit, upon request. In lieu of the foregoing, the division director has

the discretion to accept other assurances, including, but not limited to, a surety bond or an irrevocable letter of credit in an amount equal to the escrow requirements of this section. Default determinations and refund of deposits shall be governed by the escrow release provision of this subsection. Funds shall be released from escrow as follows:

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

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

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

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

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

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

(4) The term "completion of construction" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and, in a jurisdiction where no certificate of occupancy or

equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvements according to the plans and specifications.

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

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

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

(8) Every escrow account required by this section shall be established with a bank, a savings and loan association, an attorney who is a member of The Florida Bar, a real estate broker registered under chapter 475, or any financial lending institution having a net worth in excess of \$5 million. The escrow agent shall not be located outside the state unless, pursuant to the escrow agreement, the escrow agent submits to the jurisdiction of the division and the courts of this state for any cause of action arising from the escrow. Every escrow agent shall be independent of the developer, and no developer or any officer, director, affiliate, subsidiary, or employee of a developer may serve as escrow agent. Escrow funds may be invested only in securities of the United

States or an agency thereof or in accounts in institutions the deposits of which are insured by an agency of the United States.

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

History.—s. 1, ch. 76-222; s. 7, ch. 79-314; s. 3, ch. 80-323; s. 3, ch. 81-185; s. 9, ch. 84-368.

718.203 Warranties.—

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

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

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

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

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

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

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

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

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

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

(3) "Completion of a building or improvement" means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equip-

ping of the building or improvement according to the plans and specifications.

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

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

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

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

History.—s. 1, ch. 76-222; s. 1, ch. 77-221; s. 8, ch. 77-222; s. 3, ch. 78-340; s. 9, ch. 79-314.

PART III

RIGHTS AND OBLIGATIONS OF ASSOCIATION

- 718.301 Transfer of association control.
718.302 Agreements entered into by the association.
718.3025 Agreements for operation, maintenance, or management of condominiums; specific requirements.
718.303 Obligations of owners; waiver; levy of fine against unit by association.

718.301 Transfer of association control.—

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

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

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

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

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

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association.

(2) Within 60 days after the unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association shall call, and give not less than 30 days' or more than 40 days' notice of, a meeting of the unit owners to elect the members of the board of administration. The meeting may be called and the notice given by any unit owner if the association fails to do so. Upon election of the first unit owner other than the developer to the board of administration, the developer shall forward to the division the name and mailing address of the unit owner board member.

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

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

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

(4) Prior to, or not more than 60 days after, the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

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

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

3. A copy of the bylaws.

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

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

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

(c) The financial records, including financial statements of the association, and source documents since the incorporation of the association through the date of turnover. The records shall be reviewed by an indepen-

dent certified public accountant. The minimum report required shall be a review in accordance with generally accepted accounting standards as defined by rule by the Board of Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

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

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

(g) Insurance policies.

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

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

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

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

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

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

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

(5) If, during the period prior to the time that the developer relinquishes control of the association pursuant to subsection (4), any provision of the Condominium Act or any rule promulgated thereunder is violated by the association, the developer is responsible for such violation

and is subject to the administrative action provided in this chapter for such violation or violations and is liable for such violation or violations to third parties. This subsection is intended to clarify existing law.

History.—s. 1, ch. 76-222; s. 7, ch. 77-221; s. 10, ch. 79-314; s. 264, ch. 79-400; s. 4, ch. 81-185; s. 10, ch. 84-368.

718.302 Agreements entered into by the association.—

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

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

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

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

(d) If the owners of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, no grant, reservation, or contract for maintenance, management, or oper-

ation of the property serving more than one condominium may be canceled until unit owners other than the developer have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of voting interests in those condominiums other than voting interests owned by the developer.

(e)1. Notwithstanding the provisions of this subsection, a developer may obligate an association under a lease agreement or other contractual agreement for laundry-related vending equipment to be used in common by unit owners or for space at the condominium property whereupon such vending equipment will be used in common by unit owners, and such lease or agreement shall not be subject to cancellation as provided herein, provided that:

a. The agreement is with an entity which is duly licensed to transact business in the state and independent of the developer. As used in this paragraph, the phrase "independent of the developer" means that the developer has no direct or indirect financial interest in the entity and is not related by blood or marriage to any person who does have a direct or indirect interest in the entity;

b. The terms and conditions of the agreement, including but not limited to the amount of rental fees and other costs, are fair and reasonable and in substantial conformity with those prevailing in agreements for similar purposes in the locality;

c. The agreement is for an initial term not exceeding 7 years or, if for a longer term, is enforceable for no longer than 7 years from the date the equipment is completely installed, but in no event more than 6 months after delivery to the condominium property, and no renewal or extension of the agreement beyond the first 7 years is enforceable against the association after unit owners other than the developer obtain control of the association;

d. The vending equipment contemplated by the agreement is new and unused when originally installed on the condominium property and meets applicable nationally recognized standards for fitness and safety;

e. The association has no obligation under the agreement to maintain or repair the vending equipment, and the owner of the vending equipment is obligated to make periodic inspections (not less frequently than monthly) and to ensure that all of the same remain in good working order; and

f. The agreement contains the entire understanding of the parties with respect to the subject matters covered thereby, without the necessity of reference to, or dependence upon, any other oral or written understanding.

2. When a vending machine is reported as inoperable to the party responsible for maintaining the machine, that responsible party shall have a service call made within 3 days of the report. The vending machine shall be repaired, or replaced with an operable machine, within 7 days of the vending machine's being reported as inoperable. The failure of the party responsible for maintaining the machine to comply with the provisions of this

subparagraph constitutes a breach of the contract, and the condominium association, at its option, may cancel the contract.

3. As used in this paragraph, the term "vending equipment" means any machine by which a service or product is dispensed, whether such machine is operated by coin, electronic ticket, or token.

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

(3) Any grant or reservation made by a declaration, lease, or other document, and any contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium shall not be in conflict with the powers and duties of the association or the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

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

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

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

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 11, ch. 79-314; s. 11, ch. 84-368.

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

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

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

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

(c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof.

(d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services for the purpose of providing service to the association.

(e) Discloses any financial or ownership interest which the developer, if the developer is in control of the association, holds with regard to the party contracting to provide maintenance or management services.

(2) In any case in which the party contracting to provide maintenance or management services fails to provide such services in accordance with the contract, the association is authorized to procure such services from some other party and shall be entitled to collect any fees or charges paid for service performed by another party from the party contracting to provide maintenance or management services.

(3) Any services or obligations not stated on the face of the contract shall be unenforceable.

History.—s. 5, ch. 78-340; s. 12, ch. 79-314.

718.303 Obligations of owners; waiver; levy of fine against unit by association.—

(1) Each unit owner and each association shall be governed by, and shall comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

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

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

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1) (a) is entitled to recover reasonable attorney's fees. This relief does not exclude other remedies provided by law.

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

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

(3) If the declaration or bylaws so provide, the association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. No fine will become a lien against a unit. No fine may exceed \$50 nor may any fine be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, its licensee or invitee. The provisions of this subsection do not apply to unoccupied units.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 12, ch. 84-368.

PART IV

SPECIAL TYPES OF CONDOMINIUMS

718.401 Leaseholds.

718.402 Conversion of existing improvements to condominium.

718.403 Phase condominiums.

718.401 Leaseholds.—A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(1) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(2) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any

provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(3) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. The provisions of this subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(4)(a) In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

(b) When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments, nor may the lessor file liens or initiate

foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

(c) Nothing in this subsection affects litigation commenced prior to October 1, 1979.

(5) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration.

(b) If the lessor wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

(c) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

(d) The provisions of this subsection do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(7) The lease or a subordination agreement executed by the lessor must provide either:

(a) That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

(b) That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in

lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(8)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(b) The provisions of this subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(9) Subsections (1) through (7) do not apply to residential cooperatives created prior to January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(10) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable:

(a) Disclosures contemplated by subsection (2), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay

the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of subsections (4) and (5) apply but are not required to be stated in the lease.

(d) The provisions of subsection (7) do not apply.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; ss. 6, 13, ch. 78-340; s. 1, ch. 79-166; s. 13, ch. 79-314; ss. 4, 7, ch. 80-323; s. 5, ch. 81-185; s. 13, ch. 84-368; s. 46, ch. 85-62.

718.402 Conversion of existing improvements to condominium.—A developer may create a condominium by converting existing, previously occupied improvements to such ownership by complying with part I of this chapter. A developer of a residential condominium must also comply with part VI of this chapter, but the failure to comply will not affect the validity of the condominium.

History.—s. 1, ch. 76-222; s. 14, ch. 79-314; s. 3, ch. 80-3; s. 14, ch. 84-368.

718.403 Phase condominiums.—

(1) Notwithstanding the provisions of s. 718.110, a developer may develop a condominium in phases, if the original declaration of condominium submitting the initial phase to condominium ownership or an amendment to the declaration which has been approved by all of the unit owners and unit mortgagees provides for and describes in detail all anticipated phases; the impact, if any, which the completion of subsequent phases would have upon the initial phase; and the time period (which may not exceed 7 years from the date of recording the declaration of condominium) within which all phases must be added to the condominium and comply with the requirements of this section and at the end of which the right to add additional phases expires.

(2) The original declaration of condominium, or an amendment to the declaration, which amendment has been approved by all unit owners and unit mortgagees and the developer, shall describe:

(a) The land which may become part of the condominium and the land on which each phase is to be built. The descriptions shall include metes and bounds or other legal descriptions of the land for each phase, plot plans, and surveys. Plot plans, attached as an exhibit, must show the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the condominium. The plot plan may be modified by the developer as to unit or building types to the extent that such changes are described in the declaration. If provided in the declaration, the developer may make nonmaterial changes in the legal description of a phase.

(b) The minimum and maximum numbers and general size of units to be included in each phase. The general size may be expressed in terms of minimum and maximum square feet. In stating the minimum and maximum numbers of units, the difference between the minimum and maximum numbers shall not be greater than 20 percent of the maximum.

(c) Each unit's percentage of ownership in the common elements as each phase is added. In lieu of describing specific percentages, the declaration or amendment may describe a formula for reallocating each unit's proportion or percentage of ownership in the common elements and manner of sharing common expenses and

owning common surplus as additional units are added to the condominium by the addition of any land. The basis for allocating percentage of ownership among units in added phases shall be consistent with the basis for allocation made among the units originally in the condominium.

(d) The recreational areas and facilities which will be owned as common elements by all unit owners and all personal property to be provided as each phase is added to the condominium and those facilities or areas which may not be built or provided if any phase or phases are not developed and added as a part of the condominium. The developer may reserve the right to add additional common-element recreational facilities if the original declaration contains a description of each type of facility and its proposed location. The declaration shall set forth the circumstances under which such facilities will be added.

(e) The membership vote and ownership in the association attributable to each unit in each phase and the results if any phase or phases are not developed and added as a part of the condominium.

(f) Whether or not time-share estates will or may be created with respect to units in any phase and, if so, the degree, quantity, nature, and extent of such estates, specifying the minimum duration of the recurring periods of rights of use, possession, or occupancy that may be established with respect to any unit.

(3) The developer shall notify owners of existing units of the commencement of, or the decision not to add, one or more additional phases. Notice shall be by certified mail addressed to each owner at the address of his unit or at his last known address.

(4) If one or more phases are not built, the units which are built are entitled to 100 percent ownership of all common elements within the phases actually developed and added as a part of the condominium.

(5) If the declaration requires the developer to convey any additional lands or facilities to the condominium after the completion of the first phase and he fails to do so within the time specified, or within a reasonable time if none is specified, then any owner of a unit or the association may enforce such obligations against the developer or bring an action against the developer for damages caused by the developer's failure to convey to the association such additional lands or facilities.

(6) Notwithstanding other provisions of this chapter, any amendment by the developer which adds any land to the condominium shall be consistent with the provisions of the declaration granting such right and shall contain or provide for the following matters:

(a) A statement submitting the additional land to condominium ownership as an addition to the condominium.

(b) The legal description of the land being added to the condominium.

(c) An identification by letter, name, or number, or a combination thereof, of each unit within the land added to the condominium, to ensure that no unit in the condominium, including the additional land, will bear the same designation as any other unit.

(d) A survey of the additional land and a graphic description of the improvements in which any units are lo-

cated and a plot plan thereof and a certificate of a surveyor, in conformance with s. 718.104(4)(e).

(e) The undivided share in the common elements appurtenant to each unit in the condominium, stated as a percentage or fraction which, in the aggregate, must equal the whole and must be determined in conformance with the manner of allocation set forth in the original declaration of condominium.

(f) The proportion or percentage of, and the manner of sharing, common expenses and owning common surplus, which for a residential unit must be the same as the undivided share in the common elements.

An amendment which adds phases to a condominium does not require the execution of such amendment or consent thereto by unit owners other than the developer, unless the amendment permits the creation of time-share estates in any unit of the additional phase of the condominium and such creation is not authorized by the original declaration.

(7) An amendment to the declaration of condominium which adds land to the condominium shall be recorded in the public records of the county where the land is located and shall be executed and acknowledged in compliance with the same requirements as for a deed. All persons who have record title to the interest in the land submitted to condominium ownership, or their lawfully authorized agents, must join in the execution of the amendment. Every such amendment shall comply with the provisions of s. 718.104(3).

History.—s. 1, ch. 76-222; s. 7, ch. 78-328; s. 15, ch. 84-368.

1Note.—The words "and at the end of which" were substituted by the editors for the word "or."

2Note.—The words "in compliance with the same" were substituted by the editors for the words "with the."

PART V

REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL CONDOMINIUMS

- 718.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.
- 718.502 Filing prior to sale or lease.
- 718.503 Disclosure prior to sale.
- 718.504 Prospectus or offering circular.
- 718.505 Good faith effort to comply.
- 718.506 Publication of false and misleading information.
- 718.507 Zoning and building laws, ordinances, and regulations.
- 718.508 Regulation by Division of Hotels and Restaurants.
- 718.509 Florida Condominiums Trust Fund.

718.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes.—

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, con-

struction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties:

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

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

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

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer or association, or its assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer or association, or its assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter.

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

4. The division may impose a civil penalty against a developer or association, or its assignee or agent, for any violation of this chapter or a rule promulgated pursuant hereto. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed \$5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Florida Condominiums Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penal-

ty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

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

(f) The division is authorized to promulgate rules, pursuant to chapter 120, necessary to implement, enforce, and interpret this chapter.

(g) The division shall establish procedures for providing notice to an association when the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing in such condominium community.

(h) The division shall furnish each association which pays the fees required by paragraph (2)(a) a copy of this act and the rules promulgated pursuant thereto.

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

(2)(a) Each condominium association which operates more than two units shall pay to the division, on or before January 1 of each year, an annual fee in the amount of 50 cents for each residential unit in condominiums operated by the association. If the fee is not paid by June 1, then the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due; plus any penalty, is paid.

(b) All fees shall be deposited in the Florida Condominiums Trust Fund as provided by law.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 2, ch. 77-221; s. 4, ch. 78-323; ss. 4, 12, ch. 78-340; s. 32, ch. 79-4; s. 15, ch. 79-314; s. 1, ch. 81-28; ss. 1, 2, 3, ch. 81-54; s. 4, ch. 81-172; s. 6, ch. 81-185; s. 477, ch. 81-259; ss. 1, 4, ch. 82-46; s. 2, ch. 82-113; ss. 5, 7, ch. 82-199; s. 154, ch. 83-216; s. 16, ch. 84-368; s. 5, ch. 85-60.

718.502 Filing prior to sale or lease.—

(1) A developer of a residential condominium shall file with the division one copy of each of the documents and items required to be furnished to a buyer or lessee by ss. 718.503 and 718.504, if applicable. Until the developer has so filed, a contract for sale of a unit or lease of a unit for more than 5 years shall be voidable by the purchaser or lessee prior to the closing of his purchase or lease of a unit.

(2)(a) Prior to filing as required by subsection (1), a developer shall not offer a contract for purchase of a unit or lease of a unit for more than 5 years but may accept deposits for reservations upon the approval of a fully executed escrow agreement and reservation agreement form properly filed with the Division of Florida Land Sales, Condominiums, and Mobile Homes. Reservations shall not be taken on a proposed condominium unless

the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed. The division shall notify the developer within 20 days of receipt of the reservation filing of any deficiencies contained therein. Such notification shall not preclude the determination of reservation filing deficiencies at a later date, nor shall it relieve the developer of any responsibility under the law. The escrow agreement and the reservation agreement form shall include a statement of the right of the prospective purchaser to an immediate unqualified refund of the reservation deposit moneys upon written request to the escrow agent by the prospective purchaser or the developer.

(b) The executed escrow agreement signed by the developer and the escrow agent shall contain the following information:

1. A statement that the escrow agent will grant a prospective purchaser an immediate, unqualified refund of the reservation deposit moneys upon written request either directly to the escrow agent or to the developer.

2. A statement that the escrow agent is responsible for not releasing moneys directly to the developer except as a downpayment on the purchase price at the time a contract is signed by the purchaser if provided in the contract.

(c) The reservation agreement form shall include the following:

1. A statement of the obligation of the developer to file condominium documents with the division prior to entering into a binding purchase agreement or binding agreement for a lease of more than 5 years.

2. A statement of the right of the prospective purchaser to receive all condominium documents as required by this chapter.

3. The name and address of the escrow agent.

4. A statement as to whether the developer assures that the purchase price represented in or pursuant to the reservation agreement will be the price in the contract for purchase and sale or that the price represented may be exceeded within a stated amount or percentage or that no assurance is given as to the price in the contract for purchase or sale.

5. A statement that the deposit must be payable to the escrow agent and that the escrow agent must provide a receipt to the prospective purchaser.

(3) Upon filing as required by subsection (1), the developer shall pay to the division a filing fee of \$10 for each residential unit to be sold by the developer which is described in the documents filed. If the condominium is to be built or sold in phases, the fee shall be paid prior to offering for sale units in any subsequent phase.

(4) Any developer who complies with this section is not required to file with any other division or agency of this state for approval to sell the units in the condominium, the information for the condominium for which he filed.

History.—s. 1, ch. 76-222; s. 8, ch. 79-314; s. 7, ch. 81-185; s. 17, ch. 84-368; s. 6, ch. 85-60.

718.503 Disclosure prior to sale.—

(1) **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:

(a) 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 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.

(b) 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.

(c) If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

(d) 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).

(e) 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.

(f) 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.

(g) 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 deposit from the escrow agent upon request.

(h) If the contract is for the sale or transfer of a unit in a condominium in which time-share estates have been or may be created, contain within the text in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIME-SHARE ESTATES. The contract for the sale of a fee interest in a time-share 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 IN-

TEREST IN A TIME-SHARE 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 TIME-SHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

(2) COPIES OF DOCUMENTS TO BE FURNISHED TO PROSPECTIVE BUYER OR LESSEE.—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to the provisions of s. 718.504, or, if not, then copies of the following which are applicable:

(a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

(b) The documents creating the association.

(c) The bylaws.

(d) The ground lease or other underlying lease of the condominium.

(e) The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

(f) The estimated operating budget for the condominium and a schedule of expenses for each type of unit.

(g) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

(h) The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

(i) The form of unit lease if the offer is of a leasehold.

(j) Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

(k) If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

(l) If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

(m) The form of agreement for sale or lease of units.

(n) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(o) A copy of all covenants and restrictions which will affect the use of the property and which are not contained in the foregoing.

(3) OTHER DISCLOSURE.—

(a) If residential condominium parcels are offered for sale or lease prior to completion of construction of the units and of improvements to the common elements, or prior to completion of remodeling of previously occupied buildings, the developer shall make available to each prospective purchaser or lessee, for his inspection at a place convenient to the site, a copy of the complete plans and specifications for the construction or remodeling of the unit offered to him and of the improvements to the common elements appurtenant to the unit.

(b) Sales brochures, if any, shall be provided to each purchaser, and the following caveat in conspicuous type shall be placed on the inside front cover or on the first page containing text material of the sales brochure, or otherwise conspicuously displayed: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, MAKE REFERENCE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE. If time-share estates have been or may be created with respect to any unit in the condominium, the sales brochure shall contain the following statement in conspicuous type: UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIME-SHARE ESTATES.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 8, ch. 78-328; s. 16, ch. 79-314; s. 4, ch. 80-3; s. 2, ch. 82-199; s. 59, ch. 82-226; s. 18, ch. 84-368.

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. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(1) The front cover or the first page must contain only:

(a) The name of the condominium.

(b) The following statements in conspicuous type:

1. THIS PROSPECTUS (OFFERING CIRCULAR) CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.

2. THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.

3. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTA-

TIONS OF THE DEVELOPER. REFER TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.

(2) Summary: The next page must contain all statements required to be in conspicuous type in the prospectus or offering circular.

(3) A separate index of the contents and exhibits of the prospectus.

(4) Beginning on the first page of the text (not including the summary and index), a description of the condominium, including, but not limited to, the following information:

(a) Its name and location.

(b) A description of the condominium property, including, without limitation:

1. The number of buildings, the number of units in each building, the number of bathrooms and bedrooms in each unit, and the total number of units, if the condominium is not a phase condominium, or the maximum number of buildings that may be contained within the condominium, the minimum and maximum numbers of units in each building, the minimum and maximum numbers of bathrooms and bedrooms that may be contained in each unit, and the maximum number of units that may be contained within the condominium, if the condominium is a phase condominium.

2. The page in the condominium documents where a copy of the plot plan and survey of the condominium is located.

3. The estimated latest date of completion of constructing, finishing, and equipping. In lieu of a date, the description shall include a statement that the estimated date of completion of the condominium is in the purchase agreement and a reference to the article or paragraph containing that information.

(c) The maximum number of units that will use facilities in common with the condominium. If the maximum number of units will vary, a description of the basis for variation and the minimum amount of dollars per unit to be spent for additional recreational facilities or enlargement of such facilities. If the addition or enlargement of facilities will result in a material increase of a unit owner's maintenance expense or rental expense, if any, the maximum increase and limitations thereon shall be stated.

(5)(a) A statement in conspicuous type describing whether the condominium is created and being sold as fee simple interests or as leasehold interests. If the condominium is created or being sold on a leasehold, the location of the lease in the disclosure materials shall be stated.

(b) If time-share estates are or may be created with respect to any unit in the condominium, a statement in conspicuous type stating that time-share estates are created and being sold in units in the condominium.

(6) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium, including, but not limited to, the following:

(a) Each room and its intended purposes, location, approximate floor area, and capacity in numbers of people.

(b) Each swimming pool, as to its general location, approximate size and depths, approximate deck size and capacity, and whether heated.

(c) Additional facilities, as to the number of each facility, its approximate location, approximate size, and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The estimated date when each room or other facility will be available for use by the unit owners.

(f)1. An identification of each room or other facility to be used by unit owners that will not be owned by the unit owners or the association;

2. A reference to the location in the disclosure materials of the lease or other agreements providing for the use of those facilities; and

3. A description of the terms of the lease or other agreements, including the length of the term; the rent payable, directly or indirectly, by each unit owner, and the total rent payable to the lessor, stated in monthly and annual amounts for the entire term of the lease; and a description of any option to purchase the property leased under any such lease, including the time the option may be exercised, the purchase price or how it is to be determined, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(g) A statement as to whether the developer may provide additional facilities not described above; their general locations and types; improvements or changes that may be made; the approximate dollar amount to be expended; and the maximum additional common expense or cost to the individual unit owners that may be charged during the first annual period of operation of the modified or added facilities.

Descriptions as to locations, areas, capacities, numbers, volumes, or sizes may be stated as approximations or minimums.

(7) A description of the recreational and other facilities that will be used in common with other condominiums, which require the payment of the maintenance and expenses of such facilities, either directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built.

(b) Facilities not committed to be built except under certain conditions, and a statement of those conditions or contingencies.

(c) As to each facility committed to be built, or which will be committed to be built upon the happening of one of the conditions in paragraph (b), a statement of whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others, and the location in the exhibits of the lease or other document providing for use of those facilities.

(d) The year in which each facility will be available for use by the unit owners or, in the alternative, the maximum number of unit owners in the project at the time each of all of the facilities is committed to be completed.

(e) A general description of the items of personal property, and the approximate number of each item of personal property, that the developer is committing to furnish for each room or other facility or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(f) If there are leases, a description thereof, including the length of the term, the rent payable, and a description of any option to purchase.

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(8) Recreation lease or associated club membership:

(a) If any recreational facilities or other facilities offered by the developer and available to, or to be used by, unit owners are to be leased or have club membership associated, the following statement in conspicuous type shall be included: THERE IS A RECREATIONAL FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM; or, THERE IS A CLUB MEMBERSHIP ASSOCIATED WITH THIS CONDOMINIUM. There shall be a reference to the location in the disclosure materials where the recreation lease or club membership is described in detail.

(b) If it is mandatory that unit owners pay a fee, rent, dues, or other charges under a recreational facilities lease or club membership for the use of facilities, there shall be in conspicuous type the applicable statement:

1. MEMBERSHIP IN THE RECREATIONAL FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or

2. UNIT OWNERS ARE REQUIRED, AS A CONDITION OF OWNERSHIP, TO BE LESSEES UNDER THE RECREATIONAL FACILITIES LEASE; or

3. UNIT OWNERS ARE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT, AND FEES UNDER THE RECREATIONAL FACILITIES LEASE (OR THE OTHER INSTRUMENTS PROVIDING THE FACILITIES); or

4. A similar statement of the nature of the organization or the manner in which the use rights are created, and that unit owners are required to pay.

Immediately following the applicable statement, the location in the disclosure materials where the development is described in detail shall be stated.

(c) If the developer, or any other person other than the unit owners and other persons having use rights in the facilities, reserves, or is entitled to receive, any rent, fee, or other payment for the use of the facilities, then there shall be the following statement in conspicuous type: THE UNIT OWNERS OR THE ASSOCIATION(S) MUST PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES. Immediately following this statement, the location in the disclosure materials where the rent or land use fees are described in detail shall be stated.

(d) If, in any recreation format, whether leasehold, club, or other, any person other than the association has the right to a lien on the units to secure the payment of assessments, rent, or other exactions, there shall appear a statement in conspicuous type in substantially the following form:

1. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or

2. THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP, OR REPAIR OF THE RECREATIONAL OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN.

Immediately following the applicable statement, the location in the disclosure materials where the lien or lien right is described in detail shall be stated.

(9) If the developer or any other person has the right to increase or add to the recreational facilities at any time after the establishment of the condominium whose unit owners have use rights therein, without the consent of the unit owners or associations being required, there shall appear a statement in conspicuous type in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this statement, the location in the disclosure materials where such reserved rights are described shall be stated.

(10) A statement of whether the developer's plan includes a program of leasing units rather than selling them, or leasing units and selling them subject to such leases. If so, there shall be a description of the plan, including the number and identification of the units and the provisions and term of the proposed leases, and a statement in boldfaced type that: THE UNITS MAY BE TRANSFERRED SUBJECT TO A LEASE.

(11) The arrangements for management of the association and maintenance and operation of the condominium property and of other property that will serve the unit owners of the condominium property, and a description of the management contract and all other contracts for these purposes having a term in excess of 1 year, including the following:

(a) The names of contracting parties.

(b) The term of the contract.

(c) The nature of the services included.

(d) The compensation, stated on a monthly and annual basis, and provisions for increases in the compensation.

(e) A reference to the volumes and pages of the condominium documents and of the exhibits containing copies of such contracts.

Copies of all described contracts shall be attached as exhibits. If there is a contract for the management of the condominium property, then a statement in conspicu-

ous type in substantially the following form shall appear, identifying the proposed or existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM PROPERTY WITH (NAME OF THE CONTRACT MANAGER). Immediately following this statement, the location in the disclosure materials of the contract for management of the condominium property shall be stated.

(12) If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed 1 year after the closing of the sale of a majority of the units in that condominium to persons other than successors or alternate developers, then a statement in conspicuous type in substantially the following form shall be included: THE DEVELOPER (OR OTHER PERSON) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD. Immediately following this statement, the location in the disclosure materials where this right to control is described in detail shall be stated.

(13) If there are any restrictions upon the sale, transfer, conveyance, or leasing of a unit, then a statement in conspicuous type in substantially the following form shall be included: THE SALE, LEASE, OR TRANSFER OF UNITS IS RESTRICTED OR CONTROLLED. Immediately following this statement, the location in the disclosure materials where the restriction, limitation, or control on the sale, lease, or transfer of units is described in detail shall be stated.

(14) If the condominium is part of a phase project, the following information shall be stated:

(a) A statement in conspicuous type in substantially the following form: THIS IS A PHASE CONDOMINIUM. ADDITIONAL LAND AND UNITS MAY BE ADDED TO THIS CONDOMINIUM. Immediately following this statement, the location in the disclosure materials where the phasing is described shall be stated.

(b) A summary of the provisions of the declaration which provide for the phasing.

(c) A statement as to whether or not residential buildings and units which are added to the condominium may be substantially different from the residential buildings and units originally in the condominium. If the added residential buildings and units may be substantially different, there shall be a general description of the extent to which such added residential buildings and units may differ, and a statement in conspicuous type in substantially the following form shall be included: BUILDINGS AND UNITS WHICH ARE ADDED TO THE CONDOMINIUM MAY BE SUBSTANTIALLY DIFFERENT FROM THE OTHER BUILDINGS AND UNITS IN THE CONDOMINIUM. Immediately following this statement, the location in the disclosure materials where the extent to which added residential buildings and units may substantially differ is described shall be stated.

(d) A statement of the maximum number of buildings containing units, the maximum and minimum numbers of units in each building, the maximum number of units, and the minimum and maximum square footage of the units that may be contained within each parcel of land which may be added to the condominium.

(15) If the condominium is created by conversion of existing improvements, the following information shall be stated:

(a) The information required by s. 718.616.

(b) A caveat that there are no express warranties unless they are stated in writing by the developer.

(16) A summary of the restrictions, if any, to be imposed on units concerning the use of any of the condominium property, including statements as to whether there are restrictions upon children and pets, and reference to the volumes and pages of the condominium documents where such restrictions are found, or if such restrictions are contained elsewhere, then a copy of the documents containing the restrictions shall be attached as an exhibit.

(17) If there is any land that is offered by the developer for use by the unit owners and that is neither owned by them nor leased to them, the association, or any entity controlled by unit owners and other persons having the use rights to such land, a statement shall be made as to how such land will serve the condominium. If any part of such land will serve the condominium, the statement shall describe the land and the nature and term of service, and the declaration or other instrument creating such servitude shall be included as an exhibit.

(18) The manner in which utility and other services, including, but not limited to, sewage and waste disposal, water supply, and storm drainage, will be provided and the person or entity furnishing them.

(19) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements has been determined.

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

(a) The estimated monthly and annual expenses of the condominium and the association that are collected from unit owners by assessments.

(b) The estimated monthly and annual expenses of each unit owner for a unit, other than assessments payable to the association, payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate expenses that are personal to unit owners, which are not uniformly incurred by all unit owners or which are not provided for or contemplated by the condominium documents, including, but not limited to, the costs of private telephone; maintenance of the interior of condominium units, which is not the obligation of the association; maid or janitorial services privately contracted for by the unit owners; utility bills billed directly to each unit owner for utility services to his unit; insurance premiums other than those incurred for policies obtained by the condominium; and similar personal expenses of the unit owner. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated either as an association ex-

pense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:
 - a. Administration of the association.
 - b. Management fees.
 - c. Maintenance.
 - d. Rent for recreational and other commonly used facilities.
 - e. Taxes upon association property.
 - f. Taxes upon leased areas.
 - g. Insurance.
 - h. Security provisions.
 - i. Other expenses.
 - j. Operating capital.
 - k. Reserves.
 - l. Fees payable to the division.
2. Expenses for a unit owner:
 - a. Rent for the unit, if subject to a lease.
 - b. Rent payable by the unit owner directly to the

lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The estimated amounts shall be stated for a period of at least 12 months and may distinguish between the period prior to the time unit owners other than the developer elect a majority of the board of administration and the period after that date.

(21) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit and a statement of whether title opinion or title insurance policy is available to the buyer and, if so, at whose expense.

(22) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his experience in this field.

(23) Copies of the following, to the extent they are applicable, shall be included as exhibits:

- (a) The declaration of condominium, or the proposed declaration if the declaration has not been recorded.
- (b) The articles of incorporation creating the association.
- (c) The bylaws of the association.
- (d) The ground lease or other underlying lease of the condominium.
- (e) The management agreement and all maintenance and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year.

(f) The estimated operating budget for the condominium and the required schedule of unit owners' expenses.

(g) A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

(h) The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

- (i) The lease of facilities used by owners and others.
- (j) The form of unit lease, if the offer is of a leasehold.
- (k) A declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.
- (l) The statement of condition of the existing building or buildings, if the offering is of units in an operation being converted to condominium ownership.
- (m) The statement of inspection for termite damage and treatment of the existing improvements, if the condominium is a conversion.
- (n) The form of agreement for sale or lease of units.
- (o) A copy of the agreement for escrow of payments made to the developer prior to closing.
- (p) A copy of the documents containing any restrictions on use of the property required by subsection (16).

(24) Any prospectus or offering circular complying, prior to the effective date of this act, with the provisions of former ss. 711.69 and 711.802 may continue to be used without amendment or may be amended to comply with the provisions of this chapter.

(25) A brief narrative description of the location and effect of all existing and intended easements located or to be located on the condominium property other than those described in the declaration.

History.—s. 1, ch. 76-222; s. 1, ch. 77-174; s. 9, ch. 78-328; s. 17, ch. 79-314; s. 5, ch. 80-3; s. 19, ch. 84-368; s. 7, ch. 85-60.

718.505 Good faith effort to comply.—If a developer, in good faith, has attempted to comply with the requirements of this part, and if, in fact, he has substantially complied with the disclosure requirements of this chapter, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

History.—s. 1, ch. 76-222.

718.506 Publication of false and misleading information.—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a prospectus, the items required as exhibits to a prospectus, brochures, and newspaper advertising, pays anything of value toward the purchase of a condominium parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his loss prior to the closing of the transaction. After the closing of the transaction, the purchaser shall have a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

- (a) The closing of the transaction;
- (b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued

upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer is obligated to complete or provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements and such recreational facilities, whether or not the same are common elements, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section or under s. 718.503, the prevailing party shall be entitled to recover reasonable attorney's fees.

History.—s. 1, ch. 76-222.

718.507 Zoning and building laws, ordinances, and regulations.—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the condominium form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the condominium form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the condominium form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

History.—s. 1, ch. 76-222; s. 6, ch. 80-3.

718.508 Regulation by Division of Hotels and Restaurants.—In addition to the authority, regulation, or control exercised by the Division of Florida Land Sales, Condominiums, and Mobile Homes pursuant to this act with respect to condominiums, buildings included in a condominium property shall be subject to the authority, regulation, or control of the Division of Hotels and Restaurants of the Department of Business Regulation, to the extent provided for in chapter 399.

History.—s. 1, ch. 76-222; s. 8, ch. 85-60.

718.509 Florida Condominiums Trust Fund.—There is created within the State Treasury the Florida Condominiums Trust Fund to be used for the administration

and operation by the division of this chapter and chapter 719. All funds collected by the division and any amount paid for a fee or penalty under this chapter shall be deposited in the State Treasury to the credit of the trust fund created by this section. The Florida Condominiums Trust Fund shall be subject to the service charge imposed pursuant to chapter 215.

History.—s. 5, ch. 81-172; s. 20, ch. 83-339.

cf.—ss. 215.20, 215.22 Service charge deduction for cost of general government paid from General Revenue Fund.

PART VI

CONVERSIONS TO CONDOMINIUM

- 718.604 Short title.
- 718.606 Conversion of existing improvements to condominium; rental agreements.
- 718.608 Notice of intended conversion; time of delivery; content.
- 718.61 Notices.
- 718.612 Right of first refusal.
- 718.614 Economic information to be provided.
- 718.616 Disclosure of condition of building and estimated replacement costs.
- 718.618 Converter reserve accounts; warranties.
- 718.62 Prohibition of discrimination against nonpurchasing tenants.
- 718.622 Saving clause.

718.604 Short title.—This part shall be known and may be cited as the "Roth Act" in memory of Mr. James S. Roth, Director, Division of Florida Land Sales and Condominiums, 1979-1980.

History.—s. 1, ch. 80-3.

718.606 Conversion of existing improvements to condominium; rental agreements.—When existing improvements are converted to ownership as a residential condominium:

(1)(a) Each residential tenant who has resided in the existing improvements for at least the 180 days preceding the date of the written notice of intended conversion shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 270 days after the date of the notice. If the rental agreement expires more than 270 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(b) Each other residential tenant shall have the right to extend an expiring rental agreement upon the same terms for a period that will expire no later than 180 days after the date of the written notice of intended conversion. If the rental agreement expires more than 180 days after the date of the notice, the tenant may not unilaterally extend the rental agreement.

(2)(a) In order to extend the rental agreement as provided in subsection (1), a tenant shall, within 45 days after the date of the written notice of intended conversion, give written notice to the developer of the intention to extend the rental agreement.

(b) If the rental agreement will expire within 45 days following the date of the notice, the tenant may remain in occupancy for the 45-day decision period upon the same terms by giving the developer written notice and

paying rent on a pro rata basis from the expiration date of the rental agreement to the end of the 45-day period.

(c) The tenant may extend the rental agreement for the full extension period or a part of the period.

(3) After the date of a notice of intended conversion, a tenant may terminate any rental agreement, or any extension period having an unexpired term of 180 days or less, upon 30 days' written notice to the developer. However, unless the rental agreement was entered into, extended, or renewed after the effective date of this part, the tenant may not unilaterally terminate the rental agreement but may unilaterally terminate any extension period having an unexpired term of 180 days or less upon 30 days' written notice.

(4) A developer may elect to provide tenants who have been continuous residents of the existing improvements for at least 180 days preceding the date of the written notice of intended conversion and whose rental agreements expire within 180 days of the date of the written notice of intended conversion the option of receiving in cash a tenant relocation payment at least equal to 1 month's rent in consideration for extending the rental agreement for not more than 180 days, rather than extending the rental agreement for up to 270 days.

(5) A rental agreement may provide for termination by the developer upon 60 days' written notice if the rental agreement is entered into subsequent to the delivery of the written notice of intended conversion to all tenants and conspicuously states that the existing improvements are to be converted. No other provision in a rental agreement shall be enforceable to the extent that it purports to reduce the extension period provided by this section or otherwise would permit a developer to terminate a rental agreement in the event of a conversion. This subsection applies to rental agreements entered into, extended, or renewed after the effective date of this part; the termination provisions of all other rental agreements are governed by the provisions of s. 718.402(3) [F.S. 1979].

(6) Any provision of this section or of the rental agreement or other contract or agreement to the contrary notwithstanding, whenever a county, including a charter county, determines that there exists within the county a vacancy rate in rental housing of 3 percent or less, the county may adopt an ordinance or other measure extending the 270-day extension period described in paragraph (1)(a) and the 180-day extension described in paragraph (1)(b) for an additional 90 days, if:

(a) Such measure was duly adopted, after notice and public hearing, in accordance with all applicable provisions of the charter governing the county and any other applicable laws; and

(b) The governing body has made and recited in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.

A county ordinance or other measure adopting an additional 90-day extension under the provisions of this section is controlling throughout the entire county, including a charter county, where adopted, including all municipi-

palities, unless a municipality votes not to have it apply within its boundaries.

History.—s. 1, ch. 80-3; s. 20, ch. 84-368.

718.608 Notice of intended conversion; time of delivery; content.—

(1) Prior to or simultaneous with the first offering of individual units to any person, each developer shall deliver a notice of intended conversion to all tenants of the existing improvements being converted to residential condominium. All such notices shall be given within a 72-hour period.

(2)(a) Each notice of intended conversion shall be dated and in writing. The notice shall contain the following statement, with the phrases of the following statement which appear in upper case printed in conspicuous type:

These apartments are being converted to condominium by (name of developer), the developer.

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 180 days, you may extend your rental agreement for up to 180 days after the date of this notice.

c. IN ORDER FOR YOU TO EXTEND YOUR RENTAL AGREEMENT, YOU MUST GIVE THE DEVELOPER WRITTEN NOTICE WITHIN 45 DAYS AFTER THE DATE OF THIS NOTICE.

2. IF YOUR RENTAL AGREEMENT EXPIRES IN THE NEXT 45 DAYS, you may extend your rental agreement for up to 45 days after the date of this notice while you decide whether to extend your rental agreement as explained above. To do so, you must notify the developer in writing. You will then have the full 45 days to decide whether to extend your rental agreement as explained above.

3. During the extension of your rental agreement you will be charged the same rent that you are now paying.

4. YOU MAY CANCEL YOUR RENTAL AGREEMENT AND ANY EXTENSION OF THE RENTAL AGREEMENT AS FOLLOWS:

a. If your rental agreement began or was extended or renewed after (effective date of part), you may cancel your rental agreement upon 30 days' written notice and move. Also, upon 30 days' written notice, you may cancel any extension of the rental agreement.

b. If your rental agreement was not begun or was not extended or renewed after (effective date of part), you may not cancel the rental agreement without the consent of the developer. You may, however, upon 30 days' written notice cancel any extension of the rental agreement.

5. All notices must be given in writing and sent by mail, return receipt requested, or delivered in person to the developer at this address: (name and address of developer).

6. If you have continuously been a resident of these apartments during the last 180 days:

a. You have the right to purchase your apartment and will have 45 days to decide whether to purchase. If you do not buy the unit at that price and the unit is later offered at a lower price, you will have the opportunity to buy the unit at the lower price. However, in all events your right to purchase the unit ends when the rental agreement or any extension of the rental agreement ends or when you waive this right in writing.

b. Within 90 days you will be provided purchase information relating to your apartment, including the price of your unit and the condition of the building. If you do not receive this information within 90 days, your rental agreement and any extension will be extended 1 day for each day over 90 days until you are given the purchase information. If you do not want this rental agreement extension, you must notify the developer in writing.

7. If you have any questions regarding this conversion or the Condominium Act, you may contact the developer or the state agency which regulates condominiums: The Division of Florida Land Sales, Condominiums, and Mobile Homes, (Tallahassee address and telephone number of division).

(b) When a developer offers tenants an optional tenant relocation payment pursuant to s. 718.606(4), the notice of intended conversion shall contain a statement substantially as follows:

If you have been a continuous resident of these apartments for the last 180 days and your lease expires during the next 180 days, you may extend your rental agreement for up to 270 days, or you may extend your rental agreement for up to 180 days and receive a cash payment at least equal to 1 month's rent. You must make your decision and inform the developer in writing within 45 days after the date of this notice.

(c) When the rental agreement extension provisions of s. 718.606(6) are applicable to a conversion, subparagraphs 1.a. and b. of the notice of intended conversion shall read as follows:

1. YOU MAY REMAIN AS A RESIDENT UNTIL THE EXPIRATION OF YOUR RENTAL AGREEMENT. FURTHER, YOU MAY EXTEND YOUR RENTAL AGREEMENT AS FOLLOWS:

a. If you have continuously been a resident of these apartments during the last 180 days and your rental agreement expires during the next 360 days, you may extend your rental agreement for up to 360 days after the date of this notice.

b. If you have not been a continuous resident of these apartments for the last 180 days and your rental agreement expires during the next 270 days, you may extend your rental agreement for up to 270 days after the date of this notice.

(3) Notice of intended conversion may not be waived by a tenant unless the tenant's lease conspicu-

ously states that the building is to be converted and the other tenants residing in the building have previously received a notice of intended conversion.

(4) Upon the request of a developer and payment of a fee prescribed by the rules of the division, not to exceed \$50, the division may verify to a developer that a notice complies with this section.

(5) Each developer shall file with the division a copy of the notice of intended conversion. The copy of the notice shall be filed with the division no later than the time when the notice is given to the tenants.

History.—s. 1, ch. 80-3; s. 9, ch. 85-60.

718.61 Notices.—

(1) All notices from tenants to a developer shall be deemed given when deposited in the United States mail, addressed to the developer's address as stated in the notice of conversion, and sent postage prepaid, return receipt requested, or when personally delivered in writing by the tenant to the developer at such address. The date of a notice is the date when it is mailed or personally delivered by the tenant.

(2) All notices from developers to tenants shall be deemed given when deposited in the United States mail, addressed to the tenant's last known residence, which may be the address of the property subject to the rental agreement, and sent by certified or registered mail, postage prepaid. The date of a notice is the date when it is mailed to the tenant.

History.—s. 1, ch. 80-3.

718.612 Right of first refusal.—

(1) Each tenant, who for the 180 days preceding a notice of intended conversion has been a residential tenant of the existing improvements, shall have the right of first refusal to purchase the unit in which he resides on the date of the notice, under the following terms and conditions:

(a) Within 90 days following the written notice of the intended conversion, the developer shall deliver to the tenant the following purchase materials: an offer to sell stating the price and terms of purchase, the economic information required by s. 718.614, and the disclosure documents required by ss. 718.503 and 718.504. The failure by the developer to deliver such purchase materials within 90 days following the written notice of the intended conversion will automatically extend the rental agreement, any extension of the rental agreement provided for in s. 718.606, or any other extension of the rental agreement. The extension shall be for that number of days in excess of 90 days that has elapsed from the date of the written notice of the intended conversion to the date when the purchase materials are delivered.

(b) The tenant shall have the right of first refusal to purchase the unit for a period of not less than 45 days after mailing or personal delivery of the purchase materials.

(c) If, after any right of first refusal has expired, the developer offers the unit at a price lower than that offered to the tenant, the developer shall in writing notify the tenant prior to the publication of the offer. The tenant shall have the right of first refusal at the lower price for a period of not less than an additional 10 days after the date of the notice. Thereafter, the tenant shall have no

additional right of first refusal. As used in this paragraph, the term "offer" includes any solicitation to the general public by means of newspaper advertisement, radio, television, or written or printed sales literature or price list but does not include a transaction involving the sale of more than one unit to one purchaser.

(2) Prior to closing on the sale of the unit, a tenant alleging a developer's violation of paragraph (1)(c) may bring an action for equitable or other relief, including specific performance. Subsequent to closing, the tenant's sole remedy for such a violation will be damages. In addition to any damages otherwise recoverable by law, the tenant is entitled to an amount equal to the difference between the price last offered in writing to the tenant pursuant to this section and the price at which the unit was sold to a third party, plus court costs and attorney's fees.

(3) It is against the public policy of this state for any developer to seek to enforce any provision of any contract which purports to waive the right of a purchasing tenant to bring an action for specific performance.

(4) A tenant's right of first refusal terminates upon:

(a) The termination of the rental agreement and all extensions thereof;

(b) Waiver of the right in writing by the tenant, if the waiver is executed subsequent to the date of the notice of intended conversion. A tenant who waives the right of first refusal waives the right to receive the purchase materials; or

(c) The running of the tenant's 45-day right of first refusal and the additional 10-day period provided for by paragraph (1)(c), if applicable.

History.—s. 1, ch. 80-3; s. 478, ch. 81-259; s. 21, ch. 84-368.

718.614 Economic information to be provided.—

The developer shall distribute to tenants having a right of first refusal, if any:

(1) Information in summary form regarding mortgage financing; estimated down payment; alternative financing and down payments; monthly payments of principal, interest, and real estate taxes; and federal income tax benefits.

(2) Market information, if any, compiled from developers on a voluntary basis and prepared by the division, describing condominium units which have been offered for sale within the last 12 months in the county in which the tenant resides. The market information shall include a statement substantially as follows: This information is from the files of the Division of Florida Land Sales, Condominiums, and Mobile Homes. It is believed correct but is not warranted by the Division of Florida Land Sales, Condominiums, and Mobile Homes or the condominium developers. If you desire additional information, you may contact the developer or a real estate agent.

(3) Any other information which the division publishes and by rule determines will assist tenants in making a decision and which the division makes available to the developer.

History.—s. 1, ch. 80-3; s. 10, ch. 85-60.

718.616 Disclosure of condition of building and estimated replacement costs.—

(1) Each developer creating a residential condominium by converting existing, previously occupied improve-

ments to such form of ownership shall disclose the condition of the improvements and the condition of certain components and their current estimated replacement costs.

(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.

10. Pavement and parking areas.

11. Drainage 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.

2. The estimated remaining useful life of the component.

3. The estimated current replacement cost of the component, 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.

History.—s. 1, ch. 80-3; s. 22, ch. 84-368.

718.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential condominium, the developer shall establish reserve accounts for capital expenditures and deferred maintenance, or give warranties as provided by subsection (7), or post a surety bond as provided by subsection (8). The developer shall fund the 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. When such air conditioning system includes a central air or water cooling system, the amount of the reserve account shall be not less than \$1 for each square foot of floor area served by the air conditioning system, 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 not less than 30 cents for each square foot of floor area in the existing improvements, 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 not less than the unit amount for each square foot of roof, 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 unit amount and the denominator of the fraction shall be determined based on the roof type, as follows:

Roof Type	Unit Amount	Numerator	Denominator
a. Built-up roof without insulation	\$0.90	4	5
b. Built-up roof with insulation	1.40	4	5
c. Cement tile roof	1.80	45	50
d. Asphalt shingle roof	1.80	14	15
e. Copper roof	0.00		
f. Wood shingle roof	1.70	9	10
g. All other types	1.00	18	20

The amount required for the roof reserve account shall be increased by 20 percent if the roof pitch is greater than 6 to 12.

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years 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, in affidavit form, of the developer, its agent, or an 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.

(2)(a) The developer shall fund the reserve account 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 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 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 a three-fourths vote of all unit owners to expend the funds for other purposes.

(4) The developer shall establish the reserve account 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 reserve accounts.

(6) The division shall annually review the funding amounts established by paragraph (1)(a). In reviewing the funding amounts, the division shall consider changes in the cost and availability of labor and materials; advances in construction techniques; technological changes; interest rates; inflation; published construction cost estimating tables; and the comments of members of the public, including representatives of the construction industry and apartment industry, particularly general contractors, air conditioning contractors, plumbing contractors, roofing contractors, architects, and engineers. When the division determines that the funding amounts require adjustment, the division shall conduct public hearings and make recommendations to the Legislature regarding the adjustment and revision of any funding amounts.

(7) 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 warran-

ty 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.

(8) 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.

History.—s. 1, ch. 80-3; s. 23, ch. 84-368.

718.62 Prohibition of discrimination against non-purchasing tenants.—When existing improvements are converted to condominium, tenants who have not pur-

chased a unit in the condominium being created shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges, and services that were enjoyed by all tenants prior to the date of the written notice of conversion and that are granted, offered, or provided to purchasers.

History.—s. 1, ch. 80-3.

718.622 Saving clause.—

(1) All notices of intended conversion given subsequent to the effective date of this part shall be subject to the requirements of ss. 718.606, 718.608, and 718.61. Tenants given such notices shall have a right of first refusal as provided by s. 718.612.

(2) The disclosure provided by s. 718.616 and required by ss. 718.503 and 718.504 to be furnished to each prospective buyer or lessee for a period of more than 5 years shall be provided to any such person who has not, prior to May 1, 1980, been furnished the documents, prospectus, or offering circular required by ss. 718.503 and 718.504.

(3) The provisions of s. 718.618 do not affect a conversion of existing improvements when a developer has filed with the division prior to May 1, 1980, provided:

(a) The documents are proper for filing purposes; and

(b) The developer, not later than 6 months after such filing:

1. Records a declaration for such filing in accordance with part I of this chapter, and

2. Gives a notice of intended conversion.

History.—s. 13, ch. 80-3.

CHAPTER 719

COOPERATIVES

PART I GENERAL PROVISIONS (ss. 719.101-719.112)

PART II RIGHTS AND OBLIGATIONS OF DEVELOPERS
(ss. 719.201-719.203)PART III RIGHTS AND OBLIGATIONS OF ASSOCIATION
(ss. 719.301-719.304)PART IV SPECIAL TYPES OF COOPERATIVES
(ss. 719.401-719.403)PART V REGULATION AND DISCLOSURE PRIOR TO SALE OF RESIDENTIAL
COOPERATIVES (ss. 719.501-719.508)

PART VI CONVERSIONS TO COOPERATIVE (ss. 719.604-719.622)

PART I

GENERAL PROVISIONS

- 719.101 Short title.
 719.102 Purpose.
 719.103 Definitions.
 719.104 Cooperatives; access to units; records; financial reports.
 719.105 Cooperative parcels; appurtenances; possession and enjoyment.
 719.106 Bylaws; cooperative ownership.
 719.1064 Failure to fill vacancies on board of administration; appointment of receiver upon petition of unit owner.
 719.107 Common expenses; assessment.
 719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.
 719.109 Right of owners to peaceably assemble.
 719.110 Limitation on actions by association.
 719.111 Attorney's fees.
 719.112 Unconscionability of certain leases; rebuttable presumption.

719.101 Short title.—This chapter shall be known and may be cited as the "Cooperative Act."

History.—s. 2, ch. 76-222.

719.102 Purpose.—The purpose of this chapter is to give statutory recognition to the cooperative form of ownership of real property. It shall not be construed as repealing or amending any law now in effect, except those in conflict herewith, and any such conflicting laws shall be affected only insofar as they apply to cooperatives.

History.—s. 2, ch. 76-222.

719.103 Definitions.—As used in this chapter:

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

(2) "Association" means the corporation for profit or not for profit that owns the record interest in the cooperative property or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative.

(3) "Board of administration" means the board of directors or other body responsible for administration of the association.

(4) "Bylaws" means the bylaws for the government of the cooperative, as they exist from time to time.

(5) "Common areas" means the portions of the cooperative property not included in the units.

(6) "Common expenses" means the expenses for which the unit owners are liable to the association.

(7) "Common surplus" means the excess of all receipts of the association—including, but not limited to, assessments, rents, profits, and revenues on account of the common areas—over the amount of common expenses.

(8) "Cooperative" means that form of ownership of improved real property under which there are units subject to ownership by one or more owners, and the ownership is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

(9) "Cooperative documents" means:

(a) The documents that create a cooperative, including, but not limited to, articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any.

(b) The document evidencing a unit owner's membership or share in the association.

(c) The document recognizing a unit owner's title or right of possession to his unit.

(10) "Cooperative parcel" means a unit, together with the undivided share in the assets of the association which is appurtenant to the unit.

(11) "Cooperative property" means the lands, leaseholds, and personal property subject to cooperative ownership and all other property owned by the association.