

**SUPPLEMENT
TO
RPPTL EXECUTIVE COUNCIL AGENDA
(SARASOTA, NOVEMBER 23, 2013)
[Insert in page iv of Agenda]**

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XIII. Real Property Law Division — *Michael J. Gelfand, Real Property Law Division Director*

Action Items:

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4. **Condominium & Planned Development Committee** – *Steven H. Mezer, Chair*

Motion to adopt as a Section position to support identification of the rights and obligations of a purchaser and lender that acquire multiple condominium units, but who are not the creating developer of the condominium, and that the current Part VII of the Florida Condominium Act dealing with distressed condominiums will not be applicable after the adoption of new Part VIII to the Act, including amendments to the Florida Condominium Act, including creating the new Part VIII, to find that the position is in the Section's purview; and to expend funds in support of the position.. [RP S1 718 Rev Part VIII Leg Pos Req] [RP S2 718 Rev Part VIII Bill Text] [RP S3 718 Rev Part VIII White Paper] **pp. 2-33 attached**

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1 Section 718.103 of the Florida Statute is amended to read as
2 follows:

3
4 718.103 Definitions.—As used in this chapter, the term:

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

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

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

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

23 (5) "Bulk Unit purchaser" means a person or entity who
24 acquires the greater of (a) eight units or (b) 20% of the
25 units, that will be operated ultimately by the same
26 association. There may be multiple bulk unit purchasers
27 within an association simultaneously or successively. There
28 may be one or more bulk unit purchasers while the developer
29 still owns units operated by the association. An acquirer of
30 condominium units is not a bulk unit purchaser if any
31 transfer to such acquirer was made:

32 (a) Before October 1, 2014;

33 (b) With the intent to defraud or materially harm any
34 purchaser, unit owner, or the association;

35 (c) By a person or entity who would be an insider of
36 the bulk unit purchaser under s. 726.102; or

37 (d) As a fraudulent transfer under ch. 726.

38 ~~(65)~~ "Buyer" means a person who purchases a condominium
39 unit. The term "purchaser" may be used interchangeably with
40 the term "buyer."

41 ~~(76)~~ "Bylaws" means the bylaws of the association as they
42 are amended from time to time.

43 ~~(87)~~ "Committee" means a group of board members, unit
44 owners, or board members and unit owners appointed by the
45 board or a member of the board to make recommendations to the
46 board regarding the proposed annual budget or to take action
47 on behalf of the board.

48 ~~(98)~~ "Common elements" means the portions of the
49 condominium property not included in the units.

50 ~~(109)~~ "Common expenses" means all expenses properly incurred
51 by the association in the performance of its duties,
52 including expenses specified in s. 718.115.

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

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

61 ~~(132)~~ "Condominium parcel" means a unit, together with the
62 undivided share in the common elements appurtenant to the
63 unit.

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

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

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

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

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

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

94 (c) A bulk unit purchaser~~assignee or bulk buyer~~ as
95 defined in s. 718.1703(5);

96 (d) A lender unit purchaser as defined in s.
97 718.103(20);

98 (e) A person or entity which acquires seven or fewer
99 units operated by the same association consisting of 40
100 units or less or who acquires less than 20% of the units
101 operated by the same association consisting of more than
102 40 units, whether or not that person or entity offers any
103 of those units for sale; or

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

107 (187) "Division" means the Division of Florida Condominiums,
108 Timeshares, and Mobile Homes of the Department of Business
109 and Professional Regulation.

110 (198) "Land" means the surface of a legally described parcel
111 of real property and includes, unless otherwise specified in
112 the declaration and whether separate from or including such
113 surface, airspace lying above and subterranean space lying
114 below such surface. However, if so defined in the
115 declaration, the term "land" may mean all or any portion of
116 the airspace or subterranean space between two legally
117 identifiable elevations and may exclude the surface of a
118 parcel of real property and may mean any combination of the
119 foregoing, whether or not contiguous, or may mean a
120 condominium unit.

121 (20) "Lender unit purchaser" means any person or entity, or
122 its successors or assigns, which held a mortgage from a
123 developer or bulk unit purchaser on units that will be
124 operated ultimately by the same association and subsequently
125 obtained title to such units through foreclosure or deed in
126 lieu of foreclosure of such mortgage. Such mortgagee that
127 acquires units and sells units to one or more bulk unit
128 purchasers is not a developer, a bulk unit purchaser, or a
129 lender unit purchaser and no condition report as defined in

130 s. 718.805 is required to be delivered to the purchaser in
131 the bulk sale even if the mortgagee acquires and transfers
132 developer rights to such bulk unit purchaser. Such mortgagee
133 that acquires units may elect, by written notice to the
134 association, to become a lender unit purchaser within the
135 time period ending upon the earlier of (a) 180 days from the
136 recording of the certificate of title or deed in lieu of
137 foreclosure pursuant to which the mortgagee acquired the
138 units, or (b) such date as the mortgagee exercises, any
139 developer rights other than the developer rights described in
140 ss. 718.801(1)(a) and (b) before the sale of a unit by the
141 mortgagee.

142 (~~214~~) "Limited common elements" means those common elements
143 which are reserved for the use of a certain unit or units to
144 the exclusion of all other units, as specified in the
145 declaration.

146 (~~220~~) "Multicondominium" means a real estate development
147 containing two or more condominiums, all of which are
148 operated by the same association.

149 (~~234~~) "Operation" or "operation of the condominium" includes
150 the administration and management of the condominium
151 property.

152 (~~242~~) "Rental agreement" means any written agreement, or
153 oral agreement if for less duration than 1 year, providing
154 for use and occupancy of premises.

155 (~~253~~) "Residential condominium" means a condominium
156 consisting of two or more units, any of which are intended
157 for use as a private temporary or permanent residence, except
158 that a condominium is not a residential condominium if the
159 use for which the units are intended is primarily commercial
160 or industrial and not more than three units are intended to
161 be used for private residence, and are intended to be used as
162 housing for maintenance, managerial, janitorial, or other
163 operational staff of the condominium. With respect to a

164 condominium that is not a timeshare condominium, a
165 residential unit includes a unit intended as a private
166 temporary or permanent residence as well as a unit not
167 intended for commercial or industrial use. With respect to a
168 timeshare condominium, the timeshare instrument as defined in
169 s. 721.05(35) shall govern the intended use of each unit in
170 the condominium. If a condominium is a residential
171 condominium but contains units intended to be used for
172 commercial or industrial purposes, then, with respect to
173 those units which are not intended for or used as private
174 residences, the condominium is not a residential condominium.
175 A condominium which contains both commercial and residential
176 units is a mixed-use condominium and is subject to the
177 requirements of s. 718.404.

178 (~~264~~) "Special assessment" means any assessment levied
179 against a unit owner other than the assessment required by a
180 budget adopted annually.

181 (~~275~~) "Timeshare estate" means any interest in a unit under
182 which the exclusive right of use, possession, or occupancy of
183 the unit circulates among the various purchasers of a
184 timeshare plan pursuant to chapter 721 on a recurring basis
185 for a period of time.

186 (~~286~~) "Timeshare unit" means a unit in which timeshare
187 estates have been created.

188 (~~297~~) "Unit" means a part of the condominium property which
189 is subject to exclusive ownership. A unit may be in
190 improvements, land, or land and improvements together, as
191 specified in the declaration.

192 (~~3028~~) "Unit owner" or "owner of a unit" means a record owner
193 of legal title to a condominium parcel.

194 (~~3129~~) "Voting certificate" means a document which designates
195 one of the record title owners, or the corporate,
196 partnership, or entity representative, who is authorized to

197 | vote on behalf of a condominium unit that is owned by more
198 | than one owner or by any entity.

199 | (320) "Voting interests" means the voting rights distributed
200 | to the association members pursuant to s. 718.104(4). In a
201 | multicondominium association, the voting interests of the
202 | association are the voting rights distributed to the unit
203 | owners in all condominiums operated by the association. On
204 | matters related to a specific condominium in a
205 | multicondominium association, the voting interests of the
206 | condominium are the voting rights distributed to the unit
207 | owners in that condominium.

208 | Section 718.112(2)(f)(2) is amended to read as follows:

209 | (2) (a) In addition to annual operating expenses, the
210 | budget must include reserve accounts for capital expenditures
211 | and deferred maintenance. These accounts must include, but
212 | are not limited to, roof replacement, building painting, and
213 | pavement resurfacing, regardless of the amount of deferred
214 | maintenance expense or replacement cost, and for any other
215 | item that has a deferred maintenance expense or replacement
216 | cost that exceeds \$10,000. The amount to be reserved must be
217 | computed using a formula based upon estimated remaining
218 | useful life and estimated replacement cost or deferred
219 | maintenance expense of each reserve item. The association may
220 | adjust replacement reserve assessments annually to take into
221 | account any changes in estimates or extension of the useful
222 | life of a reserve item caused by deferred maintenance. This
223 | subsection does not apply to an adopted budget in which the
224 | members of an association have determined, by a majority vote
225 | at a duly called meeting of the association, to provide no
226 | reserves or less reserves than required by this subsection.
227 | ~~However, prior~~

228 | (b) Prior to turnover of control of an association by a
229 | developer to unit owners other than a developer pursuant to
230 | s. 718.301, the developer may vote the voting interests
231 | allocated to its units to waive the reserves or reduce the

232 funding of reserves through the period expiring at the end
233 of the second fiscal year after the fiscal year in which
234 the certificate of a surveyor and mapper is recorded
235 pursuant to s. 718.104(4)(e) or an instrument that
236 transfers title to a unit in the condominium which is not
237 accompanied by a recorded assignment of developer rights in
238 favor of the grantee of such unit is recorded, whichever
239 occurs first, after which time reserves may be waived or
240 reduced only upon the vote of a majority of all
241 nondeveloper voting interests voting in person or by
242 limited proxy at a duly called meeting of the association.
243 If a meeting of the unit owners has been called to
244 determine whether to waive or reduce the funding of
245 reserves, and no such result is achieved or a quorum is not
246 attained, the reserves included in the budget shall go into
247 effect. After the turnover, the developer may vote its
248 voting interest to waive or reduce the funding of reserves.

249 (c) A bulk unit purchaser or a lender unit purchaser may
250 vote the voting interests allocated to its units to waive
251 the reserves or reduce the funding of reserves for the
252 first two budget cycles following the first conveyance of a
253 unit to the bulk unit purchaser or lender unit purchaser.
254 Following such time period, a bulk unit purchaser or a
255 lender unit purchaser is not entitled to vote its voting
256 interests to waive reserves or reduce the funding of
257 reserves unless or until the bulk unit purchaser or lender
258 unit purchaser then owns less than a majority of the voting
259 interests in the association.

260 (d) A bulk unit purchaser or lender unit purchaser shall
261 not be permitted to transfer its right to vote to waive
262 reserves or reduce the funding of reserves to other bulk
263 unit purchasers or lender unit purchasers in an effort to
264 extend this time period.

265 Section 718.116(12) of the Florida Statute is added as
266 follows:

267 (12) Bulk Unit Purchaser and Lender Unit Purchaser
268 Assessment Liability

269 (A) A bulk unit purchaser is liable for all assessments on
270 its units which come due while the bulk unit purchaser holds
271 title to such units. Additionally, the bulk unit purchaser is
272 jointly and severally liable with the previous owner for all
273 unpaid regular periodic assessments and special assessments
274 which became due prior to the acquisition of title, all other
275 charges accrued which are secured by the association's lien,
276 and all costs advanced by the association for the maintenance
277 and repair of the units acquired by the bulk unit purchaser.

278 (B) The liability of a lender unit purchaser or its
279 successors or assignees for units it owns is limited to the
280 lesser of the unit's unpaid common expenses and regular
281 periodic assessments which accrued or came due during the 12
282 months immediately preceding the lender unit purchaser's
283 acquisition of title and for which payment in full has not
284 been received by the association or one percent of the
285 original mortgage debt.

286 (C) A director who has been elected or appointed by a bulk
287 unit purchaser shall be automatically suspended from board
288 service thirty days following the failure of the bulk unit
289 purchaser to timely pay any monetary obligations on any of
290 the units it owns. The remaining director or directors shall
291 be entitled to fill the vacancies created by the suspension
292 of directors. Once the bulk unit purchaser has cured all
293 outstanding delinquencies on any units it owns, the suspended
294 director(s) elected or appointed by the bulk unit purchaser
295 shall resume service on the board for the unexpired term(s).

296 Section 718.301 of the Florida Statute is amended to read as
297 follows:

298 718.301 Transfer of association control; claims of defect
299 by association.—

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

309 (a) Three years after 50 percent of the units that will be
310 operated ultimately by the association have been conveyed to
311 purchasers, including conveyances to bulk unit purchasers;

312 (b) Three months after 90 percent of the units that will
313 be operated ultimately by the association have been conveyed
314 to purchasers, including conveyances to bulk unit purchasers;

315 (c) When all the units that will be operated ultimately by
316 the association have been completed, some of them have been
317 conveyed to purchasers, including conveyances to bulk unit
318 purchasers, and none of the others are being offered for sale
319 by the developer and any bulk unit purchaser in the ordinary
320 course of business;

321 (d) When some of the units have been conveyed to
322 purchasers, including conveyances to bulk unit purchasers,
323 and none of the others are being constructed or offered for
324 sale by the developer in the ordinary course of business;

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

327 (f) When a bulk unit purchaser owning a majority of the
328 units that will be operated ultimately by the same
329 association files a petition seeking protection in
330 bankruptcy;

331 (g) When a receiver for the developer is appointed by a
332 circuit court and is not discharged within 30 days after such

333 appointment, unless the court determines within 30 days after
334 appointment of the receiver that transfer of control would be
335 detrimental to the association or its members; or

336 (h) When a receiver for a bulk unit purchaser owning a
337 majority of the units that will be operated ultimately by an
338 association is appointed by a circuit court and is not
339 discharged within 30 days after such appointment, unless the
340 court determines within 30 days after appointment of the
341 receiver that transfer of control would be detrimental to the
342 association or its members; or

343 (i) Five years after the date of recording of the first
344 conveyance to a bulk unit purchaser owning a majority of the
345 units that will be operated ultimately by an association.
346 Notwithstanding the transfer of association control and s.
347 718.112(2)(f)2, five years after the date of recording of the
348 first conveyance to a bulk unit purchaser, a bulk unit
349 purchaser may exercise the right to vote for any units owned
350 by the bulk unit purchaser in the same manner as any other
351 unit owner, except for the purposes of reacquiring control of
352 the association or electing or appointing a majority of
353 members of the board of administration.

354 (jg) Seven years after the date of the recording of the
355 certificate of a surveyor and mapper pursuant to s.
356 718.104(4)(e) or the recording of an instrument that
357 transfers title to a unit in the condominium which is not
358 accompanied by a recorded assignment of developer rights in
359 favor of the grantee of such unit, whichever occurs first;
360 or, in the case of an association that may ultimately operate
361 more than one condominium, 7 years after the date of the
362 recording of the certificate of a surveyor and mapper
363 pursuant to s. 718.104(4)(e) or the recording of an
364 instrument that transfers title to a unit which is not
365 accompanied by a recorded assignment of developer rights in
366 favor of the grantee of such unit, whichever occurs first,
367 for the first condominium it operates; or, in the case of an

368 association operating a phase condominium created pursuant to
369 s. 718.403, 7 years after the date of the recording of the
370 certificate of a surveyor and mapper pursuant to s.
371 718.104(4)(e) or the recording of an instrument that
372 transfers title to a unit which is not accompanied by a
373 recorded assignment of developer rights in favor of the
374 grantee of such unit, whichever occurs first.

375 ¹The developer is entitled to elect at least one member of the
376 board of administration of an association as long as the
377 developer holds for sale in the ordinary course of business
378 at least 5 percent, in condominiums with fewer than 500
379 units, and 2 percent, in condominiums with more than 500
380 units, of the units in a condominium operated by the
381 association. After the developer relinquishes control of the
382 association, the developer may exercise the right to vote any
383 developer-owned units in the same manner as any other unit
384 owner except for purposes of reacquiring control of the
385 association or selecting the majority members of the board of
386 administration.

387 (2) If a bulk unit purchaser exercising control of the
388 association and thereafter relinquishes control of the board
389 of administration as set forth in this section, the bulk unit
390 purchaser must deliver to the association all of the items
391 required by s. 718.301(4). However, the bulk unit purchaser
392 is not required to deliver items and documents that were
393 never in the possession of the bulk unit purchaser. In
394 conjunction with the acquisition of units, a bulk unit
395 purchaser shall undertake a good faith effort to obtain the
396 documents and materials that must be provided to the
397 association pursuant to s. 718.301(4). If the bulk unit
398 purchaser is not able to obtain such documents and materials,
399 the bulk unit purchaser must certify in writing to the
400 association the names or descriptions of the documents and
401 materials that were not obtainable by the bulk unit purchaser
402 and the good faith efforts that were undertaken to obtain
403 them. The responsibility of the bulk unit purchaser for an

404 audit required by s. 718.301(4)(c) commences as of the date
405 on which the bulk unit purchaser elected or appointed a
406 majority of the members of the board of administration.
407 Delivery of the certificate relieves the bulk unit purchaser
408 of responsibility for delivering the documents and materials
409 referenced in the certificate as otherwise required by ss.
410 718.112 and 718.301.

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

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

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

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

432 (54) At the time that unit owners other than the developer
433 elect a majority of the members of the board of
434 administration of an association, the developer shall
435 relinquish control of the association, and the unit owners
436 shall accept control. Simultaneously, or for the purposes of
437 paragraph (c) not more than 90 days thereafter, the developer

438 shall deliver to the association, at the developer's expense,
439 all property of the unit owners and of the association which
440 is held or controlled by the developer, including, but not
441 limited to, the following items, if applicable, as to each
442 condominium operated by the association:

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

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

453 3. A copy of the bylaws.

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

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

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

462 (c) The financial records, including financial statements
463 of the association, and source documents from the
464 incorporation of the association through the date of
465 turnover. The records must be audited for the period from
466 the incorporation of the association or from the period
467 covered by the last audit, if an audit has been performed
468 for each fiscal year since incorporation, by an independent
469 certified public accountant. All financial statements must
470 be prepared in accordance with generally accepted

471 accounting principles and must be audited in accordance
472 with generally accepted auditing standards, as prescribed
473 by the Florida Board of Accountancy, pursuant to chapter
474 473. The accountant performing the audit shall examine to
475 the extent necessary supporting documents and records,
476 including the cash disbursements and related paid invoices
477 to determine if expenditures were for association purposes
478 and the billings, cash receipts, and related records to
479 determine that the developer was charged and paid the
480 proper amounts of assessments.

481 (d) Association funds or control thereof.

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

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

503 (g) A list of the names and addresses of all contractors,
504 subcontractors, and suppliers utilized in the construction
505 or remodeling of the improvements and in the landscaping of

506 | the condominium or association property which the developer
507 | had knowledge of at any time in the development of the
508 | condominium.

509 | (h) Insurance policies.

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

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

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

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

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

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

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

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

- 538 1. Roof.
- 539 2. Structure.
- 540 3. Fireproofing and fire protection systems.
- 541 4. Elevators.
- 542 5. Heating and cooling systems.
- 543 6. Plumbing.
- 544 7. Electrical systems.
- 545 8. Swimming pool or spa and equipment.
- 546 9. Seawalls.
- 547 10. Pavement and parking areas.
- 548 11. Drainage systems.
- 549 12. Painting.
- 550 13. Irrigation systems.

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

557 (65) If, during the period prior to the time that the
558 developer relinquishes control of the association pursuant to
559 subsection (6), any provision of the Condominium Act or any
560 rule promulgated thereunder is violated by the association,
561 the developer is responsible for such violation and is
562 subject to the administrative action provided in this chapter
563 for such violation or violations and is liable for such
564 violation or violations to third parties. This subsection is
565 intended to clarify existing law.

566 | (~~76~~) Prior to the developer relinquishing control of the
567 | association pursuant to subsection (6), actions taken by
568 | members of the board of administration designated by the
569 | developer are considered actions taken by the developer, and
570 | the developer is responsible to the association and its
571 | members for all such actions.

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

581 | (98) The division has authority to adopt rules pursuant to
582 | the Administrative Procedure Act to ensure the efficient and
583 | effective transition of an Association from developer or bulk
584 | unit purchaser to the establishment of a unit owner
585 | controlled association.

586 | Section 718.302 is amended to read as follows:

587 | 718.302 Agreements entered into by the association.-

588 | (1) Any grant or reservation made by a declaration, lease,
589 | or other document, and any contract made by an association
590 | prior to assumption of control of the association by unit
591 | owners other than the developer, a bulk unit purchaser, or a
592 | lender unit purchaser, that provides for operation,
593 | maintenance, or management of a condominium association or
594 | property serving the unit owners of a condominium shall be
595 | fair and reasonable, and such grant, reservation, or contract
596 | may be canceled by unit owners other than the developer, or a
597 | bulk unit purchaser;

598 (a) If the association operates only one condominium and
599 the unit owners other than the developer, a bulk unit
600 purchaser, or a lender unit purchaser, have assumed control
601 of the association, or if unit owners other than the
602 developer, a bulk unit purchaser, or a lender unit
603 purchaser, own not less than 75 percent of the voting
604 interests in the condominium, the cancellation shall be by
605 concurrence of the owners of not less than 75 percent of
606 the voting interests other than the voting interests owned
607 by the developer, a bulk unit purchaser, and a lender unit
608 purchaser. If a grant, reservation, or contract is so
609 canceled and the unit owners other than the developer or a
610 bulk unit purchaser have not assumed control of the
611 association, the association shall make a new contract or
612 otherwise provide for maintenance, management, or operation
613 in lieu of the canceled obligation, at the direction of the
614 owners of not less than a majority of the voting interests
615 in the condominium other than the voting interests owned by
616 the developer, a bulk unit purchaser, and a lender unit
617 purchaser.

618 (b) If the association operates more than one condominium
619 and the unit owners other than the developer, a bulk unit
620 purchaser, or a lender unit purchaser have not assumed
621 control of the association, and if unit owners other than
622 the developer or a bulk unit purchaser own at least 75
623 percent of the voting interests in a condominium operated
624 by the association, any grant, reservation, or contract for
625 maintenance, management, or operation of buildings
626 containing the units in that condominium or of improvements
627 used only by unit owners of that condominium may be
628 canceled by concurrence of the owners of at least 75
629 percent of the voting interests in the condominium other
630 than the voting interests owned by the developer, a bulk
631 unit purchaser, and a lender unit purchaser. No grant,
632 reservation, or contract for maintenance, management, or
633 operation of recreational areas or any other property
634 serving more than one condominium, and operated by more

635 than one association, may be canceled except pursuant to
636 paragraph (d).

637 (c) If the association operates more than one condominium
638 and the unit owners other than the developer, a bulk unit
639 purchaser, or a lender unit purchaser, have assumed control
640 of the association, the cancellation shall be by
641 concurrence of the owners of not less than 75 percent of
642 the total number of voting interests in all condominiums
643 operated by the association other than the voting interests
644 owned by the developer and any bulk unit purchaser.

645 (d) If the owners of units in a condominium have the right
646 to use property in common with owners of units in other
647 condominiums and those condominiums are operated by more
648 than one association, no grant, reservation, or contract
649 for maintenance, management, or operation of the property
650 serving more than one condominium may be canceled until
651 unit owners other than the developer, a bulk unit
652 purchaser, or a lender unit purchaser, have assumed control
653 of all of the associations operating the condominiums that
654 are to be served by the recreational area or other
655 property, after which cancellation may be effected by
656 concurrence of the owners of not less than 75 percent of
657 the total number of voting interests in those condominiums
658 other than voting interests owned by the developer, any
659 bulk unit purchaser, or a lender unit purchaser.

660 (2) Any grant or reservation made by a declaration, lease,
661 or other document, or any contract made by the developer or
662 association prior to the time when unit owners other than the
663 developer, a bulk unit purchaser, or a lender unit purchaser,
664 elect a majority of the board of administration, which grant,
665 reservation, or contract requires the association to purchase
666 condominium property or to lease condominium property to
667 another party, shall be deemed ratified unless rejected by a
668 majority of the voting interests of unit owners other than
669 the developer within 18 months after unit owners other than

670 the developer elect a majority of the board of
671 administration. This subsection does not apply to any grant
672 or reservation made by a declaration whereby persons other
673 than the developer or the developer's heirs, assigns,
674 affiliates, directors, officers, or employees are granted the
675 right to use the condominium property, so long as such
676 persons are obligated to pay, at a minimum, a proportionate
677 share of the cost associated with such property.

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

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

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

703 (6) Any action to compel compliance with the provisions of
704 this section or of s. 718.301 may be brought pursuant to the

705 summary procedure provided for in s. 51.011. In any such
706 action brought to compel compliance with the provisions of s.
707 718.301, the prevailing party is entitled to recover
708 reasonable attorney's fees.

709 Part VIII of Chapter 718 of the Florida Statutes is created
710 as follows:

711 718.801(1) Exercise of Rights. A bulk unit purchaser may only
712 exercise the following developer rights, provided such rights
713 are contained in the declaration:

714 (a) The right to conduct sales, leasing, and marketing
715 activities within the condominium, including utilizing the
716 sales and leasing office;

717 (b) The right to assign limited common elements and use
718 rights to common elements and association property as
719 provided in the declaration which were not assigned prior
720 to the bulk unit purchaser acquiring title to the units.
721 Such rights may include, without limitation, garages,
722 parking spaces, storage areas and cabanas. In the event
723 there are multiple bulk unit purchasers, this right must be
724 set forth in a written assignment from the developer which
725 specifies which bulk unit purchaser has such right and as
726 to which limited common elements, common elements and
727 association property; and

728 (c) The right to add phases to the condominium in a phase
729 condominium.

730 (2) A bulk unit purchaser may not exercise any other
731 developer rights; however in the event the initial purchasers
732 from the developer are required to make a working capital
733 contribution to the association, a bulk unit purchaser is
734 obligated to pay a working capital contribution for each unit
735 acquired upon the earlier of (a) sale of such unit by the
736 bulk unit purchaser to a third party purchaser other than a

737 bulk unit purchaser, or (b) five years from the date of
738 acquisition of title to the units by a bulk unit purchaser.

739 (3) In the event a bulk unit purchaser exercises any
740 developer rights other than those described in subsection
741 (1), the bulk unit purchaser shall no longer qualify as a
742 bulk unit purchaser.

743 718.802 Filing. A bulk unit purchaser and a lender unit
744 purchaser shall comply with all applicable requirements of s.
745 718.202 and Part V of the Condominium Act in connection with
746 units it owns and sells.

747 718.803(1) Amendments and Material Alterations. A majority of
748 the unit owners who are not the developer, a bulk unit
749 purchaser or a lender unit purchaser must approve any
750 amendment described in s. 718.110(4) or (8), any amendment to
751 existing leasing restrictions, any amendment creating,
752 terminating or otherwise changing the provisions of the
753 declaration pertaining to the condominium's status as housing
754 for older persons, or any amendment pursuant to s.
755 718.110(14) or otherwise reclassifying any portion of the
756 common elements as a limited common element or authorizing
757 the association to change the limited common elements
758 assigned to any unit, or (b) material alterations and
759 substantial additions to the common elements and association
760 property, any time the percentage of voting interests
761 otherwise required to approve such amendments is owned by:

762 (a) A bulk unit purchaser;

763 (b) A lender unit purchaser;

764 (c) The developer and the bulk unit purchaser combined;

765 (d) The developer and the lender unit purchaser combined;

766 or

767 (e) The bulk unit purchaser and the lender unit purchaser
768 combined.

769 (2) Notwithstanding paragraph (1) of this section, consent
770 of the bulk unit purchaser, lender unit purchaser or
771 developer is required to any amendment which would otherwise
772 require the approval of such voting interests based upon the
773 requirements of the declaration, articles of incorporation or
774 by-laws, s. 718.110 or s. 718.113.

775 718.805 Warranties and Disclosures.

776 (1) A bulk unit purchaser shall be deemed to have granted
777 to its purchasers an implied warranty of fitness and
778 merchantability for a period of three years commencing with
779 the completion of any repairs or improvements which the bulk
780 unit purchaser made to the unit, common elements or limited
781 common elements. The bulk unit purchaser is deemed to have
782 granted no warranties on improvements, repairs or alterations
783 to the units, common elements or limited elements which it
784 did not undertake.

785 (2) While the bulk unit purchaser appoints or elects a
786 majority of the board of administration, the statutes of
787 limitations provided in ss. 718.203 or 718.616 shall be
788 tolled.

789 (3) A bulk unit purchaser must include the following
790 disclosure in conspicuous type on the first page of the sales
791 contract to its purchaser:

792 SELLER IS A BULK UNIT PURCHASER UNDER THE FLORIDA
793 CONDOMINIUM ACT AND IS NOT AND SHALL NOT BE CONSIDERED TO BE
794 THE DEVELOPER OF THE CONDOMINIUM FOR ALL PURPOSES UNDER THE
795 FLORIDA CONDOMINIUM ACT.

796 (4) A lender unit purchaser must include the following
797 disclosure in conspicuous type on the first page of the sales
798 contract to its purchaser:

799 SELLER (1) IS A LENDER UNIT PURCHASER UNDER THE FLORIDA
800 CONDOMINIUM ACT, (2) IS NOT AND SHALL NOT BE CONSIDERED TO BE
801 THE DEVELOPER OF THE CONDOMINIUM FOR ALL PURPOSES UNDER THE

802 FLORIDA CONDOMINIUM ACT, AND (3) WAS THE LENDER AND TOOK
803 TITLE TO THE UNIT(S) BEING SOLD TO PURCHASER BY FORECLOSURE
804 OR DEED IN LIEU OF FORECLOSURE.

805 (5) (a) At or prior to the signing of a contract to sell
806 a unit, both a bulk unit purchaser and a lender unit
807 purchaser must provide a condition report which complies with
808 the requirements set forth in s. 718.616 in addition to the
809 requirements set forth in this section to its prospective
810 purchaser and it shall be the responsibility of the bulk unit
811 purchaser or the lender unit purchaser to obtain verification
812 of delivery of such condition report. A condition report is
813 not required in connection with sale to a bulk unit
814 purchaser. or, if at or following such sale, developer
815 delivers the report described in 718.301(4)(p). Every
816 purchaser from a bulk unit purchaser or a lender unit
817 purchaser together with the association is an intended third
818 party beneficiary of the condition report.

819 (b) The condition report. must contain the disclosures
820 required by ss. 718.616(2) and 718.616 (3). The report
821 also shall include a description of the repairs or
822 replacements necessary to cure all defective construction
823 identified in the condition report in reasonable detail.

824 (c) During the course of preparing the condition report,
825 if the architect or engineer becomes aware of a component
826 which violates applicable building code, federal or state
827 law or which deviates from the building plans approved by
828 the permitting authority, the architect or engineer shall
829 disclose such information in the condition report. As part
830 of its preparation of the condition report, the architect
831 or engineer shall make written inquiry of the local
832 permitting authority of any building code violations.

833 (d) The condition report must be prepared prior to the
834 bulk unit purchaser or the lender unit purchaser entering
835 into its first contract for sale but in no event shall a
836 condition report be prepared 6 months earlier than the

837 first sales transaction entered into by a bulk unit
838 purchaser or a lender unit purchaser.

839 (e) A bulk unit purchaser or lender unit purchaser who
840 fails to provide the condition report in accordance with
841 the requirements of this section to its purchaser shall not
842 be entitled to limit its liability for implied warranties
843 only to construction, improvements or repairs it undertakes
844 to the units, common elements or limited common elements.

845 718.806 Joint and Several Liability. For purposes of the
846 Condominium Act, if there are multiple bulk unit purchasers
847 within the same association, the units owned by the multiple
848 bulk unit purchasers and the rights of the bulk purchaser
849 shall be aggregated as if there were only one bulk unit
850 purchaser. Each bulk unit purchaser is jointly and severally
851 liable with its predecessor and successor bulk unit purchaser
852 for compliance with the Condominium Act. Each lender unit
853 purchaser is jointly and severally liable with its
854 predecessor and successor lender unit purchaser for
855 compliance with the Condominium Act.

856 718.807 Construction Disputes. A board of administration
857 comprised of a majority of directors elected or appointed by
858 a bulk unit purchaser shall not be entitled to resolve any
859 construction disputes which are subject to ch. 558 unless
860 such resolution is approved by a majority of the non-
861 developer and non-bulk unit purchaser voting interests.

862 718.808 Noncompliance. Failure of a bulk unit purchaser or a
863 lender unit purchaser to substantially comply with all
864 requirements of the Condominium Act pertaining to the
865 obligations and rights of bulk unit purchasers and lender
866 unit purchasers results in the loss of any and all
867 protections or exemptions provided under the Condominium Act
868 for such bulk unit purchasers or lender unit purchasers.

869 This Act shall take effect on July 1, 2015.

WHITE PAPER

PROPOSAL TO AMEND FLORIDA CONDOMINIUM LAW TO CREATE A PART VIII AND AMEND OTHER APPLICABLE SECTIONS BECAUSE OF THE "SUNSET" PROVISION WHICH WOULD MAKE ALL OF PART VII INAPPLICABLE BEGINNING JULY 1, 2015.

I. SUMMARY

This proposed legislation creates a "bulk unit purchaser" and "lender unit purchaser" concept to facilitate the acquisition of condominium units by one who can restore them to marketable condition. Such owners are obligated to pay assessments and may either sell or lease such units subject to specific rights and obligations. This proposed legislation is intended to replace Part VII of the Condominium Act when it is scheduled to "sunset" on July 1, 2015.

II. CURRENT SITUATION.

Chapter 718, the Condominium Act, was amended in 2010 to create Part VII, referred to as the Distressed Condominium Relief Act. Part VII was designed to encourage bulk purchasers (including mortgage lenders), to acquire unsold bulks of condominium units and thus save "distressed condominiums" from failure. Part VII has been extremely successful and has been one of the main reasons that the distressed condominiums have been saved in rapid fashion. Part VII has had a very favorable impact on the condominium market, on the finances of formerly distressed condominium associations and has encouraged new entrants into the condominium market in Florida.

No unintended consequences have been discovered from the use of Part VII and there have been no reports of any negative effect resulting from Part VII. On the contrary, all reports regarding the consequences of Part VII have been extremely positive.

Since the adoption of the Part VII of the Condominium Act bulk buyers and bulk assignees have played a major part in revitalizing the residential condominium market. Part VII is scheduled to "sunset" on July 1, 2015. Although Part VII has worked very well and no unintended or adverse consequences have been discovered, there is a growing desire to ensure that the concept of assisting distressed communities has a longer lifespan than originally provided by Part VII. The changes to Chapter 718 described below accomplishes this by creating a more balanced approach which incentivizes purchasers while also protecting Florida real property consumers both in distressed and non-distressed market cycles.

III. ANALYSIS

A. 718.103. The terms "bulk unit purchaser" and "lender unit purchaser" have been added to this definition Section of the Act. The definition of "developer" has been modified to take into account the new terms "bulk unit purchaser" and "lender unit purchaser". A person who leases condominium units has also been excluded from the definition of "developer".

B. Section 718.112(2)(f)(2). This Section has been amended to place a limitation on the time a bulk unit purchaser or a lender unit purchaser may vote to waive reserves.

C. Section 718.116(12). A new subsection 12 has been added to 718.116 to make a bulk unit purchaser liable for all assessments on its units like any other unit owner. A lender unit purchaser will be liable for assessments on units it owns and which accrued or came due

during the 12 months immediately preceding its acquisition of title or 1% of the original mortgage debt, whichever is less. A director elected or appointed by a bulk unit purchaser will be automatically suspended from the Board thirty (30) days following the failure of the bulk unit purchaser to timely pay all monetary obligations to the association.

D. Section 718.301. This Section has been amended to address turnover of control of the board of directors when a bulk unit purchaser owns a majority of the units operated by the same association and limits to five years the time a bulk unit purchaser can control the board of directors. This Section as amended also protects a bulk unit purchaser with respect to the documentation it is required to deliver to the association.

E. Section 718.302. This Section has been amended to include a bulk unit purchaser along with the developer with respect to actions that a developer or a bulk unit purchaser is permitted to take while either is in control of the association.

F. Part VIII of Chapter 718. This new part is being created to deal with the developer rights which a bulk unit purchaser is entitled to receive and still be considered to be a bulk unit purchaser, thereby having the protections as provided for in these changes to 718.

1. 718.802 requires a bulk unit purchaser and a lender unit purchaser to comply with 718.202 and Part V of the Condominium Act in connection with units such entity is offering for sale.

2. 718.803 has been created to limit the types of amendments which a bulk unit purchaser or a lender unit purchaser may make to the condominium documents.

3. 718.804 has been created to limit the types of alterations and additions which a bulk unit purchaser or a lender unit purchaser may make without the approval of other unit owners.

4. 718.805 has been created to establish warranties that are to be given by a bulk unit purchaser; creates a tolling period on the statute of limitations in 718.203 or 718.616 for construction warranties; requires a bulk unit purchaser to make certain disclosures in conspicuous type; and requires that a bulk unit purchaser and a lender unit purchaser provide a condition report which complies with and exceeds the requirements of 718.616 and deliver such report to its prospective purchasers.

5. 718.805 provides that each bulk unit purchaser is jointly and severally responsible with its predecessor and successor bulk unit purchaser for compliance with the Condominium Act and provides the same for lender unit purchasers.

6. 718.806 prohibits a bulk unit purchaser controlled board from resolving construction disputes unless the resolution is approved by a majority of the other non-developer and non-bulk unit purchaser voting interests.

7. 718.807 provides that a bulk unit purchaser or a lender unit purchaser that fails to substantially comply with the requirements of the Act results in a loss of any and all protections or exemptions provided to them under the Act.

IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

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

V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR

This proposal has a positive economic impact on the private sector since new owners of distressed condominium units will be restoring them to marketable condition and restoring lawful operation of condominium associations in situations where those operations have been compromised due to prevailing economic conditions in that condominium, thereby improving property values. The new owners will be contributing to and lessening the assessment burden, thus benefiting the other unit owners.

VI. CONSTITUTIONAL ISSUES

It is not anticipated that any constitutional issues will arise as a result of this proposal.

VII. OTHER INTERESTED PARTIES

The other group of individuals who may have an interest in this proposal or are believed to be interested in this proposal is the Florida Bar's Condominium and Planned Unit Development Committee which voted in favor of this proposal, real estate agents, the Department of Business Regulation, title underwriters, title insurance agents and lending institution. The only group of individuals that assisted in the development of this proposal and were contacted regarding this proposal is the Florida Bar's Condominium and Planned Unit Development Committee.