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PART IV

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718.401 Leaseholds.—

(1)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. However, if the condominium constitutes a nonresidential condominium or commercial condominium, or a timeshare condominium created pursuant to chapter 721, the lease shall have an unexpired term of at least 30 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a)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.

(b)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.

(c)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 paragraph 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.

(d)1. 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 she 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.

2. 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

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attorney's fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

3.Nothing in this paragraph affects litigation commenced prior to October 1, 1979.

(e)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.

(f)1.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 conducted pursuant to chapter 44 or chapter 682. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977, regardless of the duration of the lease.

2.If the lessor wishes to sell his or her 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.

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

4.The provisions of this paragraph 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.

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

1.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

2.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.

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The provisions of this paragraph 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.

(2) Subsection (1) does 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.

(3) 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 paragraph (1)(b), 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 paragraphs (1)(d) and (e) apply but are not required to be stated in the lease.

(d) The provisions of paragraph (1)(g) 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; s. 6, ch. 88-148; s. 1, ch. 88-225; s. 17, ch. 90-151; s. 15, ch. 91-103; s. 1, ch. 91-236; s. 5, ch. 91-426; s. 865, ch. 97-102.

718.4015 Condominium leases; escalation clauses.—

(1) 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.

(2) This public policy prohibits the inclusion or enforcement of such escalation clauses in leases related to condominiums for which the declaration of condominium was recorded on or after June 4, 1975; it prohibits the enforcement of escalation clauses in leases related to condominiums for which the declaration of condominium was recorded prior to June 4, 1975, but which have been refused enforcement on the grounds that the parties agreed to be bound by subsequent amendments to the Florida Statutes or which have been found to be void because of a finding that such lease is unconscionable or which have been refused enforcement on the basis of the application of former s. 711.231 or former s. 718.401(8); and it prohibits any further escalation of rental fees after October 1, 1988, pursuant to escalation clauses in leases related to condominiums for which the declaration was recorded prior to June 4, 1975.

(3)The provisions of this section 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. History.—s. 7, ch. 88-148; s. 2, ch. 88-225; s. 1, ch. 89-164.

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.

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(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 timeshare 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 decision not to add one or more additional phases. Notice shall be by first-class mail addressed to each owner at the address of his or her unit or at his or her 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 or she 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 located 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 timeshare 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).

(8) Upon recording the declaration of condominium or amendments adding phases pursuant to this section, the developer shall file the recording information with the division within 120 calendar days on a form prescribed by the division.

History.—s. 1, ch. 76-222; s. 7, ch. 78-328; s. 15, ch. 84-368; s. 64, ch. 87-226; s. 18, ch. 90-151; s. 866, ch. 97-102; s. 5, ch. 98-195; s. 58, ch. 2000-302.

718.404 Mixed-use condominiums.—When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

(3) In the declaration of condominium for mixed-use condominiums created after January 1, 1996, the ownership share of the common elements assigned to each unit shall be based either on the total square footage of each unit in uniform relationship to the total square footage of each other unit in the condominium or on an equal fractional basis.

(4) The provisions of this section shall not apply to timeshare condominiums.

History.—s. 38, ch. 95-274; s. 4, ch. 96-396; s. 5, ch. 2007-173.

718.405 Multicondominiums; multicondominium associations.—

(1) An association may operate more than one condominium. For multicondominiums created on or after July 1, 2000, the declaration for each condominium to be operated by that association must provide for participation in a multicondominium, in conformity with this section, and disclose or describe:

(a) The manner or formula by which the assets, liabilities, common surplus, and common expenses of the association will be apportioned among the units within the condominiums operated by the association, in accordance with s. 718.104(4)(g) or (h), as applicable.

(b) Whether unit owners in any other condominium, or any other persons, will or may have the right to use recreational areas or any other facilities or amenities that are common elements of the condominium, and, if so, the specific formula by which the other users will share the common expenses related to those facilities or amenities.

(c) Recreational and other commonly used facilities or amenities which the developer has committed to provide that will be owned, leased by, or dedicated by a recorded plat to the association but which are not included within any condominium operated by the association. The developer may reserve the right to add additional facilities or amenities if the declaration and prospectus for each condominium to be operated by the association contains the following statement in conspicuous type and in substantially the following form: RECREATIONAL FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION.

(d) The voting rights of the unit owners in the election of directors and in other multicondominium association affairs when a vote of the owners is taken, including, but not limited to, a statement as to whether each unit owner will have a right to personally cast his or her own vote in all matters voted upon.

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(2) If any declaration requires a developer to convey additional lands or facilities to a multicondominium association and the developer fails to do so within the time specified, or within a reasonable time if none is specified in the declaration, any unit owner or the association may enforce that obligation against the developer or bring an action against the developer for specific performance or for damages that result from the developer's failure or refusal to convey the additional lands or facilities.

(3) The declaration for each condominium to be operated by a multicondominium association may not, at the time of the initial recording of the declaration, contain any provision with respect to allocation of the association's assets, liabilities, common surplus, or common expenses which is inconsistent with this chapter or the provisions of a declaration for any other condominium then being operated by the multicondominium association.

(4) This section does not prevent or restrict the formation of a multicondominium by the merger or consolidation of two or more condominium associations. Mergers or consolidations of associations shall be accomplished in accordance with this chapter, the declarations of the condominiums being merged or consolidated, and chapter 617. Section 718.110(4) does not apply to amendments to declarations necessary to effect a merger or consolidation. This section is intended to clarify existing law and applies to associations existing on the effective date of this act.

History.—s. 59, ch. 2000-302; s. 13, ch. 2002-27.