

By Senator Hays

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1 A bill to be entitled
2 An act relating to homeowners' associations; amending
3 s. 720.303, F.S.; providing for association members to
4 take photographs or images of association records
5 without charge in certain circumstances; decreasing
6 the amount of time an association has to comply with
7 access to the records; clarifying provisions relating
8 to fees that an association may charge for providing
9 copies of records; creating s. 720.3033, F.S.;
10 requiring association directors to file with the
11 association secretary certification that they have
12 read certain association documents, will uphold the
13 documents, and will uphold their fiduciary
14 responsibility to the members, or that they have
15 completed an educational course approved by the
16 department; providing that the certificate is valid
17 while the director is on the board; providing
18 penalties for failure to file a written certification
19 or educational certificate; requiring the secretary to
20 retain each written certification or educational
21 certificate for 5 years; providing procedures to be
22 followed which relate to contracts or transactions
23 between the association and a director or entity in
24 which a director or officer is financially interested;
25 providing for disclosure of the contract or other
26 transaction to members; providing for the cancellation
27 of such contract or transaction under certain
28 circumstances; prohibiting any officer, director, or
29 association manager from soliciting or receiving

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30 certain personal benefits from any person providing or
31 offering to provide goods or services to the
32 association; providing a penalty; providing an
33 exception; providing for the removal of any director
34 or officer charged with a felony theft or embezzlement
35 offense involving association funds or property;
36 providing for the reinstatement of such person under
37 certain circumstances; requiring the association to
38 maintain insurance or a bond to cover funds that will
39 be in the custody of the association or its management
40 agent; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Subsection (5) of section 720.303, Florida
45 Statutes, is amended to read:

46 720.303 Association powers and duties; meetings of board;
47 official records; budgets; financial reporting; association
48 funds; recalls.—

49 (5) INSPECTION AND COPYING OF RECORDS.—The official records
50 shall be maintained within the state and must be open to
51 inspection and available for photocopying by members or their
52 authorized agents at reasonable times and places within 5 ~~10~~
53 business days after receipt of a written request for access.
54 This subsection may be complied with by having a copy of the
55 official records available for inspection or copying in the
56 community. If the association has a photocopy machine available
57 where the records are maintained, it must provide parcel owners
58 with copies on request during the inspection if the entire

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59 request is limited to no more than 25 pages. The association
60 must also permit a member to take photographic images of such
61 records with a camera or other electronic device at no charge.

62 (a) The failure of an association to provide access to the
63 records within 5 ~~10~~ business days after receipt of a written
64 request submitted by certified mail, return receipt requested,
65 creates a rebuttable presumption that the association willfully
66 failed to comply with this subsection.

67 (b) A member who is denied access to official records is
68 entitled to the actual damages or minimum damages for the
69 association's willful failure to comply with this subsection.
70 The minimum damages are to be \$50 per calendar day up to 10
71 days, the calculation to begin on the 11th business day after
72 receipt of the written request.

73 (c) The association may adopt reasonable written rules
74 governing the frequency, time, location, notice, records to be
75 inspected, and manner of inspections, but may not require a
76 parcel owner to demonstrate any proper purpose for the
77 inspection, state any reason for the inspection, or limit a
78 parcel owner's right to inspect records to less than one 8-hour
79 business day per month. ~~The association may impose fees to cover~~
80 ~~the costs of providing copies of the official records,~~
81 ~~including, without limitation, the costs of copying.~~ The
82 association may charge up to 50 cents per page for copies made
83 on the association's photocopier. If the association does not
84 have a photocopy machine available where the records are kept,
85 or if the records requested to be copied exceed 25 pages in
86 length, the association may have copies made by an outside
87 vendor or association management company personnel and may

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88 charge the actual cost of copying, ~~including any reasonable~~
89 ~~costs involving personnel fees and charges at an hourly rate for~~
90 ~~vendor or employee time to cover administrative costs to the~~
91 ~~vendor or association.~~ The association shall maintain an
92 adequate number of copies of the recorded governing documents,
93 to ensure their availability to members and prospective members.
94 Notwithstanding this paragraph, the following records are not
95 accessible to members or parcel owners:

96 1. Any record protected by the lawyer-client privilege as
97 described in s. 90.502 and any record protected by the work-
98 product privilege, including, but not limited to, a record
99 prepared by an association attorney or prepared at the
100 attorney's express direction which reflects a mental impression,
101 conclusion, litigation strategy, or legal theory of the attorney
102 or the association and which was prepared exclusively for civil
103 or criminal litigation or for adversarial administrative
104 proceedings or which was prepared in anticipation of such
105 litigation or proceedings until the conclusion of the litigation
106 or proceedings.

107 2. Information obtained by an association in connection
108 with the approval of the lease, sale, or other transfer of a
109 parcel.

110 3. Personnel records of the association's employees,
111 including, but not limited to, disciplinary, payroll, health,
112 and insurance records. For purposes of this subparagraph, the
113 term "personnel records" does not include written employment
114 agreements with an association employee or budgetary or
115 financial records that indicate the compensation paid to an
116 association employee.

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117 4. Medical records of parcel owners or community residents.

118 5. Social security numbers, driver's license numbers,
119 credit card numbers, electronic mailing addresses, telephone
120 numbers, facsimile numbers, emergency contact information, any
121 addresses for a parcel owner other than as provided for
122 association notice requirements, and other personal identifying
123 information of any person, excluding the person's name, parcel
124 designation, mailing address, and property address. However, an
125 owner may consent in writing to the disclosure of protected
126 information described in this subparagraph. The association is
127 not liable for the disclosure of information that is protected
128 under this subparagraph if the information is included in an
129 official record of the association and is voluntarily provided
130 by an owner and not requested by the association.

131 6. Any electronic security measure that is used by the
132 association to safeguard data, including passwords.

133 7. The software and operating system used by the
134 association which allows the manipulation of data, even if the
135 owner owns a copy of the same software used by the association.
136 The data is part of the official records of the association.

137 (d) The association or its authorized agent is not required
138 to provide a prospective purchaser or lienholder with
139 information about the residential subdivision or the association
140 other than information or documents required by this chapter to
141 be made available or disclosed. The association or its
142 authorized agent may charge a reasonable fee to the prospective
143 purchaser or lienholder or the current parcel owner or member
144 for providing good faith responses to requests for information
145 by or on behalf of a prospective purchaser or lienholder, other

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146 than that required by law, if the fee does not exceed \$150 plus
147 the reasonable cost of photocopying and any attorney's fees
148 incurred by the association in connection with the response.

149 Section 2. Section 720.3033, Florida Statutes, is created
150 to read:

151 720.3033 Officers and directors.—

152 (1) (a) Within 90 days after being elected or appointed to
153 the board, each director shall certify in writing to the
154 secretary of the association that he or she has read the
155 association's declaration of covenants, articles of
156 incorporation, bylaws, and current written rules and policies;
157 that he or she will work to uphold such documents and policies
158 to the best of his or her ability; and that he or she will
159 faithfully discharge his or her fiduciary responsibility to the
160 association's members.

161 (b) In lieu of the written certification, a director may
162 submit a certificate showing that he or she has satisfactorily
163 completed the educational curriculum administered by an
164 education provider approved by the division within 1 year before
165 or 90 days after the date of his or her election or appointment
166 to the board.

167 (c) The written certification or educational certificate is
168 valid for the uninterrupted tenure of the director on the board.
169 A director who does not timely file the written certification or
170 educational certificate shall be suspended from the board until
171 he or she complies with the requirement. The board may
172 temporarily fill the vacancy during the period of suspension.

173 (d) The secretary shall retain each director's written
174 certification or educational certificate for inspection by the

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175 members for 5 years after the director's election. However, the
176 failure to have the written certification or educational
177 certificate on file does not affect the validity of any board
178 action.

179 (2) If the association enters into a contract or other
180 transaction with any of its directors or a corporation, firm,
181 association, or other entity in which an association director is
182 also a director or officer or is financially interested, the
183 board must:

184 (a) Comply with the requirements of s. 617.0832.

185 (b) Enter the disclosures required by s. 617.0832 into the
186 written minutes of the meeting.

187 (c) Approve the contract or other transaction by an
188 affirmative vote of two-thirds of the directors present.

189 (d) At the next regular or special meeting of the members,
190 disclose the existence of the contract or other transaction to
191 the members. Upon motion of any member, the contract or
192 transaction shall be brought up for a vote and may be canceled
193 by a majority vote of the members present. If the members cancel
194 the contract, the association is only liable for the reasonable
195 value of goods and services provided up to the time of
196 cancellation and is not liable for any termination fee,
197 liquidated damages, or other penalty for such cancellation.

198 (3) An officer, director, or manager may not solicit, offer
199 to accept, or accept any thing or service of value for which
200 consideration has not been provided for his or her benefit or
201 for the benefit of a member of his or her immediate family, from
202 any person providing or proposing to provide goods or services
203 to the association. Any officer, director, or manager who

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204 knowingly solicits, offers to accept, or accepts any thing or
205 service of value is subject to a civil penalty as provided in s.
206 718.501(1)(d). However, this paragraph does not prohibit an
207 officer, director, or manager from accepting services or items
208 received in connection with trade fairs or education programs.

209 (4) A director or officer charged by information or
210 indictment with a felony theft or embezzlement offense involving
211 the association's funds or property must be removed from office.
212 The vacancy shall be filled according to law until the end of
213 the period of the suspension or the end of the director's term
214 of office, whichever occurs first. A director or officer who has
215 criminal charges pending may not be appointed or elected to a
216 position as a director or officer. However, if the charges are
217 resolved without a finding of guilt, the director or officer
218 shall be reinstated for any remainder of his or her term of
219 office.

220 (5) The association shall maintain insurance or a fidelity
221 bond for all persons who control or disburse funds of the
222 association. The insurance policy or fidelity bond must cover
223 the maximum funds that will be in the custody of the association
224 or its management agent at any one time. As used in this
225 subsection, the term "persons who control or disburse funds of
226 the association" includes, but is not limited to, persons
227 authorized to sign checks on behalf of the association, and the
228 president, secretary, and treasurer of the association. The
229 association shall bear the cost of any insurance or bond.

230 Section 3. This act shall take effect July 1, 2013.