

1                   A bill to be entitled  
2           An act relating to homeowners' associations; amending  
3           s. 720.303, F.S.; prohibiting an association from  
4           hiring an attorney who represents the management  
5           company of the association; requiring the association  
6           to maintain bids for materials, equipment, or services  
7           as part of the official records; providing that a  
8           renter of property in a community operated by an  
9           association has a right to inspect and copy the  
10          association's bylaws and rules; providing requirements  
11          relating to the posting of specified documents on an  
12          association's website; requiring an association to  
13          provide members with a copy of the most recent annual  
14          financial report or a written notice detailing how to  
15          obtain such report; prohibiting an association and its  
16          officers, directors, employees, and agents from using  
17          a debit card issued in the name of the association, or  
18          billed directly to the association, for the payment of  
19          any association expense; providing that the use of  
20          such debit card for any expense that is not a lawful  
21          obligation of the association may be prosecuted as  
22          credit card fraud; deleting a provision requiring the  
23          board to certify written ballots or agreements to  
24          recall a director or directors; requiring certain  
25          directors to turn over certain records and property of

26 | the association within a certain timeframe; conforming  
27 | provisions to changes made by the act; requiring a  
28 | director to turn all records and property of the  
29 | association over to the board within 10 business days  
30 | if a recall is deemed effective due to the failure to  
31 | duly notice and hold a board meeting within a  
32 | specified timeframe; amending s. 720.3033, F.S.;  
33 | prohibiting an officer, director, or manager from  
34 | soliciting, offering to accept, or accepting a  
35 | kickback for which consideration has not been  
36 | provided; providing criminal penalties; requiring that  
37 | an officer or director charged with certain crimes be  
38 | removed from office; providing requirements for  
39 | filling the vacancy left by such removal; prohibiting  
40 | such officer or director from being appointed or  
41 | elected to a position with any association or having  
42 | access to official association records while a  
43 | criminal charge is pending; providing an exception;  
44 | requiring an officer or director to be reinstated for  
45 | the remainder of his or her term if the charges are  
46 | resolved without a finding of guilt; amending s.  
47 | 720.305, F.S.; providing requirements relating to the  
48 | suspension of voting rights of parcel owners and  
49 | members; amending s. 720.306, F.S.; providing board  
50 | member term limits; conforming a cross-reference;

51 amending s. 720.3085, F.S.; prohibiting specified  
52 parties from purchasing a parcel at a foreclosure sale  
53 resulting from an association's foreclosure of  
54 association lien for unpaid assessments or from taking  
55 a title by deed in lieu of foreclosure; amending s.  
56 720.309, F.S.; prohibiting an association from  
57 employing or contracting with service providers owned  
58 or operated by specified persons; prohibiting certain  
59 parties from purchasing a parcel at a foreclosure sale  
60 resulting from the association's foreclosure of  
61 association lien for unpaid assessments or from taking  
62 a deed in lieu of a foreclosure; authorizing a  
63 contract with a specific party to be canceled by a  
64 majority vote of the parcel owners under certain  
65 circumstances; creating s. 720.3095, F.S.; providing  
66 requirements and procedures relating to conflicts of  
67 interest; defining the term "relative"; amending s.  
68 720.311, F.S.; conforming a cross-reference; providing  
69 an effective date.

70  
71 Be It Enacted by the Legislature of the State of Florida:

72  
73 Section 1. Subsections (9) through (12) of section  
74 720.303, Florida Statutes, are renumbered as subsections (10)  
75 through (13), respectively, subsections (1), (4), (5), and (7)

76 and present subsection (10) are amended, and a new subsection  
77 (9) is added to that section, to read:

78 720.303 Association powers and duties; meetings of board;  
79 official records; budgets; financial reporting; association  
80 funds; recalls.—

81 (1) POWERS AND DUTIES.—An association that ~~which~~ operates  
82 a community as defined in s. 720.301~~7~~, must be ~~operated by an~~  
83 ~~association that is~~ a Florida corporation. After October 1,  
84 1995, the association must be incorporated and the initial  
85 governing documents must be recorded in the official records of  
86 the county in which the community is located. An association may  
87 operate more than one community. The officers and directors of  
88 an association have a fiduciary relationship to the members who  
89 are served by the association. The powers and duties of an  
90 association include those set forth in this chapter and, except  
91 as expressly limited or restricted in this chapter, those set  
92 forth in the governing documents. After control of the  
93 association is obtained by members other than the developer, the  
94 association may institute, maintain, settle, or appeal actions  
95 or hearings in its name on behalf of all members concerning  
96 matters of common interest to the members, including, but not  
97 limited to, the common areas; roof or structural components of a  
98 building, or other improvements for which the association is  
99 responsible; mechanical, electrical, or plumbing elements  
100 serving an improvement or building for which the association is

101 responsible; representations of the developer pertaining to any  
102 existing or proposed commonly used facility; and protesting ad  
103 valorem taxes on commonly used facilities. The association may  
104 defend actions in eminent domain or bring inverse condemnation  
105 actions. Before commencing litigation against any party in the  
106 name of the association involving amounts in controversy in  
107 excess of \$100,000, the association must obtain the affirmative  
108 approval of a majority of the voting interests at a meeting of  
109 the membership at which a quorum has been attained. An  
110 association may not hire an attorney who represents the  
111 management company of the association. This subsection does not  
112 limit any statutory or common-law right of any individual member  
113 or class of members to bring any action without participation by  
114 the association. A member does not have authority to act for the  
115 association by virtue of being a member. An association may have  
116 more than one class of members and may issue membership  
117 certificates. An association of 15 or fewer parcel owners may  
118 enforce only the requirements of those deed restrictions  
119 established prior to the purchase of each parcel upon an  
120 affected parcel owner or owners.

121 (4) OFFICIAL RECORDS.—The association shall maintain each  
122 of the following items, when applicable, which constitute the  
123 official records of the association:

124 (a) Copies of any plans, specifications, permits, and  
125 warranties related to improvements constructed on the common

126 areas or other property that the association is obligated to  
 127 maintain, repair, or replace.

128 (b) A copy of the bylaws of the association and of each  
 129 amendment to the bylaws.

130 (c) A copy of the articles of incorporation of the  
 131 association and of each amendment thereto.

132 (d) A copy of the declaration of covenants and a copy of  
 133 each amendment thereto.

134 (e) A copy of the current rules of the homeowners'  
 135 association.

136 (f) The minutes of all meetings of the board of directors  
 137 and of the members, which minutes must be retained for at least  
 138 7 years.

139 (g) A current roster of all members and their mailing  
 140 addresses and parcel identifications. The association shall also  
 141 maintain the e-mail ~~electronic mailing~~ addresses and the numbers  
 142 designated by members for receiving notice sent by electronic  
 143 transmission of those members consenting to receive notice by  
 144 electronic transmission. The e-mail ~~electronic mailing~~ addresses  
 145 and numbers provided by parcel ~~unit~~ owners to receive notice by  
 146 electronic transmission shall be removed from association  
 147 records when consent to receive notice by electronic  
 148 transmission is revoked. However, the association is not liable  
 149 for an erroneous disclosure of the e-mail ~~electronic mail~~  
 150 address or the number for receiving electronic transmission of

151 notices.

152 (h) All of the association's insurance policies or a copy  
153 thereof, which policies must be retained for at least 7 years.

154 (i) A current copy of all contracts to which the  
155 association is a party, including, without limitation, any  
156 management agreement, lease, or other contract under which the  
157 association has any obligation or responsibility. Bids received  
158 by the association for work to be performed must also be  
159 considered official records and must be kept for a period of 1  
160 year.

161 (j) The financial and accounting records of the  
162 association, kept according to good accounting practices. All  
163 financial and accounting records must be maintained for a period  
164 of at least 7 years. The financial and accounting records must  
165 include:

166 1. Accurate, itemized, and detailed records of all  
167 receipts and expenditures.

168 2. A current account and a periodic statement of the  
169 account for each member, designating the name and current  
170 address of each member who is obligated to pay assessments, the  
171 due date and amount of each assessment or other charge against  
172 the member, the date and amount of each payment on the account,  
173 and the balance due.

174 3. All tax returns, financial statements, and financial  
175 reports of the association.

176 4. Any other records that identify, measure, record, or  
 177 communicate financial information.

178 (k) A copy of the disclosure summary described in s.  
 179 720.401(1).

180 (l) Bids for materials, equipment, or services.

181 (m)~~(l)~~ All other written records of the association not  
 182 specifically included in the foregoing which are related to the  
 183 operation of the association.

184 (5) INSPECTION AND COPYING OF RECORDS.—The official  
 185 records shall be maintained within the state for at least 7  
 186 years and shall be made available to a parcel owner for  
 187 inspection or photocopying within 45 miles of the community or  
 188 within the county in which the association is located within 10  
 189 business days after receipt by the board or its designee of a  
 190 written request. This subsection may be complied with by having  
 191 a copy of the official records available for inspection or  
 192 copying in the community or, at the option of the association,  
 193 by making the records available to a parcel owner electronically  
 194 via the Internet or by allowing the records to be viewed in  
 195 electronic format on a computer screen and printed upon request.  
 196 If the association has a photocopy machine available where the  
 197 records are maintained, it must provide parcel owners with  
 198 copies on request during the inspection if the entire request is  
 199 limited to no more than 25 pages. An association shall allow a  
 200 member or his or her authorized representative to use a portable



201 device, including a smartphone, tablet, portable scanner, or any  
202 other technology capable of scanning or taking photographs, to  
203 make an electronic copy of the official records in lieu of the  
204 association's providing the member or his or her authorized  
205 representative with a copy of such records. The association may  
206 not charge a fee to a member or his or her authorized  
207 representative for the use of a portable device.

208 (a) The failure of an association to provide access to the  
209 records within 10 business days after receipt of a written  
210 request submitted by certified mail, return receipt requested,  
211 creates a rebuttable presumption that the association willfully  
212 failed to comply with this subsection.

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

219 (c) The association may adopt reasonable written rules  
220 governing the frequency, time, location, notice, records to be  
221 inspected, and manner of inspections, but may not require a  
222 parcel owner to demonstrate any proper purpose for the  
223 inspection, state any reason for the inspection, or limit a  
224 parcel owner's right to inspect records to less than one 8-hour  
225 business day per month. The association may impose fees to cover

226 the costs of providing copies of the official records, including  
227 the costs of copying and the costs required for personnel to  
228 retrieve and copy the records if the time spent retrieving and  
229 copying the records exceeds one-half hour and if the personnel  
230 costs do not exceed \$20 per hour. Personnel costs may not be  
231 charged for records requests that result in the copying of 25 or  
232 fewer pages. The association may charge up to 25 cents per page  
233 for copies made on the association's photocopier. If the  
234 association does not have a photocopy machine available where  
235 the records are kept, or if the records requested to be copied  
236 exceed 25 pages in length, the association may have copies made  
237 by an outside duplicating service and may charge the actual cost  
238 of copying, as supported by the vendor invoice. The association  
239 shall maintain an adequate number of copies of the recorded  
240 governing documents, to ensure their availability to members and  
241 prospective members. Notwithstanding this paragraph, the  
242 following records are not accessible to members or parcel  
243 owners:

244 1. Any record protected by the lawyer-client privilege as  
245 described in s. 90.502 and any record protected by the work-  
246 product privilege, including, but not limited to, a record  
247 prepared by an association attorney or prepared at the  
248 attorney's express direction which reflects a mental impression,  
249 conclusion, litigation strategy, or legal theory of the attorney  
250 or the association and which was prepared exclusively for civil

251 or criminal litigation or for adversarial administrative  
 252 proceedings or which was prepared in anticipation of such  
 253 litigation or proceedings until the conclusion of the litigation  
 254 or proceedings.

255 2. Information obtained by an association in connection  
 256 with the approval of the lease, sale, or other transfer of a  
 257 parcel.

258 3. Personnel records of association or management company  
 259 employees, including, but not limited to, disciplinary, payroll,  
 260 health, and insurance records. For purposes of this  
 261 subparagraph, the term "personnel records" does not include  
 262 written employment agreements with an association or management  
 263 company employee or budgetary or financial records that indicate  
 264 the compensation paid to an association or management company  
 265 employee.

266 4. Medical records of parcel owners or community  
 267 residents.

268 5. Social security numbers, driver license numbers, credit  
 269 card numbers, e-mail ~~electronic mailing~~ addresses, telephone  
 270 numbers, facsimile numbers, emergency contact information, any  
 271 addresses for a parcel owner other than as provided for  
 272 association notice requirements, and other personal identifying  
 273 information of any person, excluding the person's name, parcel  
 274 designation, mailing address, and property address.

275 Notwithstanding the restrictions in this subparagraph, an

276 association may print and distribute to parcel owners a  
277 directory containing the name, parcel address, and all telephone  
278 numbers of each parcel owner. However, an owner may exclude his  
279 or her telephone numbers from the directory by so requesting in  
280 writing to the association. An owner may consent in writing to  
281 the disclosure of other contact information described in this  
282 subparagraph. The association is not liable for the disclosure  
283 of information that is protected under this subparagraph if the  
284 information is included in an official record of the association  
285 and is voluntarily provided by an owner and not requested by the  
286 association.

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

289         7. The software and operating system used by the  
290 association which allows the manipulation of data, even if the  
291 owner owns a copy of the same software used by the association.  
292 The data is part of the official records of the association.

293         (d) The association or its authorized agent is not  
294 required to provide a prospective purchaser or lienholder with  
295 information about the residential subdivision or the association  
296 other than information or documents required by this chapter to  
297 be made available or disclosed. The association or its  
298 authorized agent may charge a reasonable fee to the prospective  
299 purchaser or lienholder or the current parcel owner or member  
300 for providing good faith responses to requests for information

301 by or on behalf of a prospective purchaser or lienholder, other  
302 than that required by law, if the fee does not exceed \$150 plus  
303 the reasonable cost of photocopying and any attorney fees  
304 incurred by the association in connection with the response.

305 (e) A renter of property in a community operated by the  
306 association has a right to inspect and copy the association's  
307 bylaws and rules.(f)1. By July 1, 2019, an association with 150  
308 or more parcels shall post digital copies of the documents  
309 specified in subparagraph 2. on its website.

310 a. The association's website must be:

311 (I) An independent website or web portal wholly owned and  
312 operated by the association; or

313 (II) A website or web portal operated by a third-party  
314 provider with whom the association owns, leases, rents, or  
315 otherwise obtains the right to operate a web page, subpage, web  
316 portal, or collection of subpages or web portals dedicated to  
317 the association's activities and on which required notices,  
318 records, and documents may be posted by the association.

319 b. The association's website must be accessible through  
320 the Internet and must contain a subpage, web portal, or other  
321 protected electronic location that is inaccessible to the  
322 general public and accessible only to parcel owners and  
323 employees of the association.

324 c. Upon a parcel owner's written request, the association  
325 must provide the parcel owner with a username and password and

326 access to the protected sections of the association's website  
327 which contain any notices, records, or documents that must be  
328 electronically provided.

329 2. Current copies of the following documents must be  
330 posted in digital format on the association's website:

331 a. The recorded declaration of covenants and each  
332 amendment to each declaration.

333 b. The recorded bylaws of the association and each  
334 amendment to the bylaws.

335 c. The articles of incorporation of the association, or  
336 other documents creating the association, and each amendment  
337 thereto. The copy posted pursuant to this sub-subparagraph must  
338 be a copy of the articles of incorporation filed with the  
339 Department of State.

340 d. The rules of the association.

341 e. Any management agreement, lease, or other contract to  
342 which the association is a party or under which the association  
343 or the parcel owners have an obligation or responsibility.  
344 Summaries of bids for materials, equipment, or services must be  
345 maintained on the website for at least 1 year.

346 f. The annual budget required by paragraph (6) (a) and any  
347 proposed budget to be considered at the annual meeting.

348 g. The financial report required by subsection (7) and any  
349 proposed financial report to be considered at a meeting.

350 h. The written certification or educational certificate of

351 each director required by s. 720.3033(1)(a).

352 i. All contracts or transactions between the association  
353 and any director, officer, corporation, firm, or association  
354 that is not an affiliated homeowners' association or any other  
355 entity in which an association director is also a director or  
356 officer and financially interested.

357 j. Any contract or document regarding a conflict of  
358 interest or possible conflict of interest as provided in ss.  
359 468.436(2) and 720.3033(2).

360 k. The notice of any member meeting and the agenda for the  
361 meeting, as required by subparagraph (2)(c)1., at least 7 days  
362 before the meeting. The notice must be posted in plain view on  
363 the front page of the website or on a separate subpage of the  
364 website labeled "Notices" which is conspicuously visible and  
365 linked from the front page. The association must also post on  
366 its website any document to be considered and voted on by the  
367 owners during the meeting or any document listed on the agenda  
368 at least 7 days before the meeting at which the document or the  
369 information in the document will be considered.

370 1. Notice of any board meeting, the agenda, and any other  
371 document required for the meeting as required by paragraph  
372 (2)(c), which must be posted by the date required for notice  
373 pursuant to paragraph (2)(c).

374 3. The association shall ensure that the information and  
375 records described in this subsection, which are not permitted to

376 be accessible to parcel owners, are not posted on the  
377 association's website. If protected information or information  
378 restricted from being accessible to parcel owners is included in  
379 documents that are required to be posted on the association's  
380 website, the association must ensure the information is redacted  
381 before posting the documents online.

382 (7) FINANCIAL REPORTING.—Within 90 days after the end of  
383 the fiscal year, or annually on the date provided in the bylaws,  
384 the association shall prepare and complete, or contract with a  
385 third party for the preparation and completion of, a financial  
386 report for the preceding fiscal year. Within 21 days after the  
387 final financial report is completed by the association or  
388 received from the third party, but not later than 120 days after  
389 the end of the fiscal year or other date as provided in the  
390 bylaws, the association shall, within the time limits set forth  
391 in subsection (5), provide each member with a copy of the most  
392 recent annual financial report or a written notice that a copy  
393 of the most recent financial report will be mailed or hand  
394 delivered to a member without charge and within 5 business days  
395 after receipt of a written request from the member ~~is available~~  
396 ~~upon request at no charge to the member~~. Financial reports shall  
397 be prepared as follows:

398 (a) An association that meets the criteria of this  
399 paragraph shall prepare or cause to be prepared a complete set  
400 of financial statements in accordance with generally accepted



401 accounting principles as adopted by the Board of Accountancy.  
402 The financial statements shall be based upon the association's  
403 total annual revenues, as follows:

404 1. An association with total annual revenues of \$150,000  
405 or more, but less than \$300,000, shall prepare compiled  
406 financial statements.

407 2. An association with total annual revenues of at least  
408 \$300,000, but less than \$500,000, shall prepare reviewed  
409 financial statements.

410 3. An association with total annual revenues of \$500,000  
411 or more shall prepare audited financial statements.

412 (b)1. An association with total annual revenues of less  
413 than \$150,000 shall prepare a report of cash receipts and  
414 expenditures.

415 2. A report of cash receipts and disbursement must  
416 disclose the amount of receipts by accounts and receipt  
417 classifications and the amount of expenses by accounts and  
418 expense classifications, including, but not limited to, the  
419 following, as applicable: costs for security, professional, and  
420 management fees and expenses; taxes; costs for recreation  
421 facilities; expenses for refuse collection and utility services;  
422 expenses for lawn care; costs for building maintenance and  
423 repair; insurance costs; administration and salary expenses; and  
424 reserves if maintained by the association.

425 (c) If 20 percent of the parcel owners petition the board

426 for a level of financial reporting higher than that required by  
427 this section, the association shall duly notice and hold a  
428 meeting of members within 30 days of receipt of the petition for  
429 the purpose of voting on raising the level of reporting for that  
430 fiscal year. Upon approval of a majority of the total voting  
431 interests of the parcel owners, the association shall prepare or  
432 cause to be prepared, shall amend the budget or adopt a special  
433 assessment to pay for the financial report regardless of any  
434 provision to the contrary in the governing documents, and shall  
435 provide within 90 days of the meeting or the end of the fiscal  
436 year, whichever occurs later:

437 1. Compiled, reviewed, or audited financial statements, if  
438 the association is otherwise required to prepare a report of  
439 cash receipts and expenditures;

440 2. Reviewed or audited financial statements, if the  
441 association is otherwise required to prepare compiled financial  
442 statements; or

443 3. Audited financial statements if the association is  
444 otherwise required to prepare reviewed financial statements.

445 (d) If approved by a majority of the voting interests  
446 present at a properly called meeting of the association, an  
447 association may prepare or cause to be prepared:

448 1. A report of cash receipts and expenditures in lieu of a  
449 compiled, reviewed, or audited financial statement;

450 2. A report of cash receipts and expenditures or a

451 compiled financial statement in lieu of a reviewed or audited  
452 financial statement; or

453 3. A report of cash receipts and expenditures, a compiled  
454 financial statement, or a reviewed financial statement in lieu  
455 of an audited financial statement.

456 (9) DEBIT CARDS.—

457 (a) An association and its officers, directors, employees,  
458 and agents may not use a debit card issued in the name of the  
459 association, or billed directly to the association, for the  
460 payment of any association expense.

461 (b) Use of a debit card issued in the name of the  
462 association, or billed directly to the association, for any  
463 expense that is not a lawful obligation of the association may  
464 be prosecuted as credit card fraud pursuant to s. 817.61.

465 ~~(11)-(10)~~ RECALL OF DIRECTORS.—

466 (a)1. Regardless of any provision to the contrary  
467 contained in the governing documents, subject to the provisions  
468 of s. 720.307 regarding transition of association control, any  
469 member of the board of directors may be recalled and removed  
470 from office with or without cause by a majority of the total  
471 voting interests.

472 2. When the governing documents, including the  
473 declaration, articles of incorporation, or bylaws, provide that  
474 only a specific class of members is entitled to elect a board  
475 director or directors, only that class of members may vote to

476 recall those board directors so elected.

477 (b)1. A board director ~~directors~~ may be recalled by an  
478 agreement in writing or by written ballot without a membership  
479 meeting. The agreement in writing or the written ballots, or a  
480 copy thereof, shall be served on the association by certified  
481 mail or by personal service in the manner authorized by chapter  
482 48 and the Florida Rules of Civil Procedure.

483 2. The board shall duly notice and hold a meeting of the  
484 board within 5 full business days after receipt of the agreement  
485 in writing or written ballots. A ~~At the meeting, the board shall~~  
486 ~~either certify the written ballots or written agreement to~~  
487 ~~recall a director or directors of the board, in which case Such~~  
488 ~~director or directors~~ shall be recalled effective immediately  
489 and shall turn over to the board within 10 ~~5~~ full business days  
490 after the vote ~~any and~~ all records and property of the  
491 association in his or her ~~their~~ possession, ~~or proceed as~~  
492 ~~described in paragraph (d).~~

493 3. When it is determined by the department pursuant to  
494 binding arbitration proceedings that an initial recall effort  
495 was defective, written recall agreements or written ballots used  
496 in the first recall effort and not found to be defective may be  
497 reused in one subsequent recall effort. However, in no event is  
498 a written agreement or written ballot valid for more than 120  
499 days after it has been signed by the member.

500 4. Any rescission or revocation of a member's written

501 recall ballot or agreement must be in writing and, in order to  
502 be effective, must be delivered to the association before the  
503 association is served with the written recall agreements or  
504 ballots.

505         5. The agreement in writing or ballot must ~~shall~~ list at  
506 least as many possible replacement directors as there are  
507 directors subject to the recall, when at least a majority of the  
508 board is sought to be recalled; the person executing the recall  
509 instrument may vote for as many replacement candidates as there  
510 are directors subject to the recall.

511         (c)1. If the declaration, articles of incorporation, or  
512 bylaws specifically provide, the members may also recall and  
513 remove a board director or directors by a vote taken at a  
514 meeting. If so provided in the governing documents, a special  
515 meeting of the members to recall a director or directors of the  
516 board of administration may be called by 10 percent of the  
517 voting interests giving notice of the meeting as required for a  
518 meeting of members, and the notice shall state the purpose of  
519 the meeting. Electronic transmission may not be used as a method  
520 of giving notice of a meeting called in whole or in part for  
521 this purpose.

522         2. The board shall duly notice and hold a board meeting  
523 within 5 full business days after the adjournment of the member  
524 meeting to recall one or more directors. ~~At the meeting, the~~  
525 ~~board shall certify the recall, in which case~~ Such member or

526 members shall be recalled effective immediately and shall turn  
527 over to the board within 10 ~~5~~ full business days after the vote  
528 ~~any and~~ all records and property of the association in their  
529 possession, ~~or shall proceed as set forth in paragraph (d).~~

530 ~~(d) If the board determines not to certify the written~~  
531 ~~agreement or written ballots to recall a director or directors~~  
532 ~~of the board or does not certify the recall by a vote at a~~  
533 ~~meeting, the board shall, within 5 full business days after the~~  
534 ~~meeting, file with the department a petition for binding~~  
535 ~~arbitration pursuant to the applicable procedures in ss.~~  
536 ~~718.112(2) (j) and 718.1255 and the rules adopted thereunder. For~~  
537 ~~the purposes of this section, the members who voted at the~~  
538 ~~meeting or who executed the agreement in writing shall~~  
539 ~~constitute one party under the petition for arbitration. If the~~  
540 ~~arbitrator certifies the recall as to any director or directors~~  
541 ~~of the board, the recall will be effective upon mailing of the~~  
542 ~~final order of arbitration to the association. The director or~~  
543 ~~directors so recalled shall deliver to the board any and all~~  
544 ~~records of the association in their possession within 5 full~~  
545 ~~business days after the effective date of the recall.~~

546 ~~(d)(e)~~ If a vacancy occurs on the board as a result of a  
547 recall and less than a majority of the board directors are  
548 removed, the vacancy may be filled by the affirmative vote of a  
549 majority of the remaining directors, notwithstanding any  
550 provision to the contrary contained in this subsection or in the

551 association documents. If vacancies occur on the board as a  
552 result of a recall and a majority or more of the board directors  
553 are removed, the vacancies shall be filled by members voting in  
554 favor of the recall; if removal is at a meeting, any vacancies  
555 shall be filled by the members at the meeting. If the recall  
556 occurred by agreement in writing or by written ballot, members  
557 may vote for replacement directors in the same instrument in  
558 accordance with procedural rules adopted by the division, which  
559 rules need not be consistent with this subsection.

560 (e)~~(f)~~ If the board fails to duly notice and hold a board  
561 meeting within 5 full business days after service of an  
562 agreement in writing or within 5 full business days after the  
563 adjournment of the member recall meeting, the recall shall be  
564 deemed effective and the board directors so recalled shall  
565 ~~immediately~~ turn over to the board within 10 full business days  
566 after the vote all records and property of the association.

567 (f)~~(g)~~ If the board fails to duly notice and hold the  
568 required meeting or fails to file the required petition, the  
569 parcel unit owner representative may file a petition pursuant to  
570 s. 718.1255 challenging the board's failure to act. The petition  
571 must be filed within 60 days after the expiration of the  
572 applicable 5-full-business-day period. The review of a petition  
573 under this paragraph is limited to the sufficiency of service on  
574 the board and the facial validity of the written agreement or  
575 ballots filed.

576        (g)~~(h)~~ If a director who is removed fails to relinquish  
577 his or her office or turn over records as required under this  
578 section, the circuit court in the county where the association  
579 maintains its principal office may, upon the petition of the  
580 association, summarily order the director to relinquish his or  
581 her office and turn over all association records upon  
582 application of the association.

583        (h)~~(i)~~ The minutes of the board meeting at which the board  
584 decides whether to certify the recall are an official  
585 association record. The minutes must record the date and time of  
586 the meeting, the decision of the board, and the vote count taken  
587 on each board member subject to the recall. In addition, when  
588 the board decides not to certify the recall, as to each vote  
589 rejected, the minutes must identify the parcel number and the  
590 specific reason for each such rejection.

591        (i)~~(j)~~ When the recall of more than one board director is  
592 sought, the written agreement, ballot, or vote at a meeting  
593 shall provide for a separate vote for each board director sought  
594 to be recalled.

595        (j)~~(k)~~ A board member who has been recalled may file a  
596 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the  
597 rules adopted challenging the validity of the recall. The  
598 petition must be filed within 60 days after the recall is deemed  
599 certified. The association and the parcel ~~unit~~ owner  
600 representative shall be named as respondents.



601        ~~(k)-(l)~~ The division may not accept for filing a recall  
602 petition, whether filed pursuant to paragraph (b), paragraph  
603 (c), paragraph ~~(f)-(g)~~, or paragraph ~~(j)-(k)~~ and regardless of  
604 whether the recall was certified, when there are 60 or fewer  
605 days until the scheduled reelection of the board member sought  
606 to be recalled or when 60 or fewer days have not elapsed since  
607 the election of the board member sought to be recalled.

608        Section 2. Subsections (4) and (5) of section 720.3033,  
609 Florida Statutes, are renumbered as subsections (5) and (6),  
610 respectively, subsection (3) is amended, and a new subsection  
611 (4) is added to that section, to read:

612        720.3033 Officers, and directors, and agents.—

613        (3) An officer, director, or manager may not solicit,  
614 offer to accept, or accept any good or service of value or  
615 kickback for which consideration has not been provided for his  
616 or her benefit or for the benefit of a member of his or her  
617 immediate family from any person providing or proposing to  
618 provide goods or services to the association. An officer,  
619 director, or manager who knowingly so solicits, offers to  
620 accept, or accepts any good or service of value or a kickback is  
621 subject a criminal penalty as provided in subsection (4), if  
622 applicable. For the purpose of this subsection a "kickback"  
623 means remuneration in cash or in kind, paid by or on behalf of a  
624 person providing or proposing to provide goods or services to  
625 the association, to influence the performance of any act or

626 omission, when the payment is not tax deductible as an ordinary  
627 and necessary expense. If the board finds that an officer or  
628 director has violated this subsection, the board shall  
629 immediately remove the officer or director from office. The  
630 vacancy shall be filled according to law until the end of the  
631 director's term of office. However, an officer, director, or  
632 manager may accept food to be consumed at a business meeting  
633 with a value of less than \$25 per individual or a service or  
634 good received in connection with trade fairs or education  
635 programs.

636 (4) (a) Pursuant to s. 617.0830, an officer, director, or  
637 agent shall discharge his or her duties in good faith, with the  
638 care an ordinarily prudent person in a like position would  
639 exercise under similar circumstances, and in a manner he or she  
640 reasonably believes to be in the interests of the association.  
641 An officer, director, or agent is liable for monetary damages as  
642 provided in s. 617.0834 if he or she breached or failed to  
643 perform his or her duties and such breach or failure  
644 constitutes:

- 645 1. A violation of criminal law as provided in s. 617.0834;  
646 2. A transaction from which the officer, director, or  
647 agent derived an improper personal benefit, either directly or  
648 indirectly; or  
649 3. Recklessness or an act or omission that was in bad  
650 faith, with malicious purpose, or in a manner exhibiting wanton

651 and willful disregard of human rights, safety, or property.

652 (b) Forgery of a ballot envelope or voting certificate  
653 used in any election of the homeowners' association is  
654 punishable as provided in s. 831.01.

655 (c) Theft or embezzlement of funds of a homeowners'  
656 association is punishable as provided in s. 812.014.

657 (d) Destruction of or refusal to allow inspection or  
658 copying of an official record of a homeowners' association which  
659 is required to be accessible to parcel owners within the periods  
660 required by general law in furtherance of any crime is  
661 punishable as tampering with physical evidence as provided in s.  
662 918.13 or as obstruction of justice as provided in chapter 843.

663 (e) An officer or director charged by information or  
664 indictment with a crime referenced in this subsection shall be  
665 removed from office, and the vacancy shall be filled according  
666 to law until the end of the officer's or director's term of  
667 office. If a criminal charge is pending against the officer or  
668 director, he or she may not be appointed or elected to a  
669 position as an officer or a director of any association and may  
670 not have access to the official records of any association,  
671 except pursuant to a court order. However, if the charges are  
672 resolved without a finding of guilt, the officer or director  
673 must be reinstated for the remainder of his or her term of  
674 office, if any.

675 Section 3. Subsection (4) of section 720.305, Florida

676 Statutes, is amended to read:

677       720.305 Obligations of members; remedies at law or in  
678 equity; levy of fines and suspension of use rights.-

679       (4) An association may suspend the voting rights of a  
680 parcel owner or member for the nonpayment of any fee, fine, or  
681 other monetary obligation due to the association that is more  
682 than \$1,000 and at least 90 days delinquent. Proof of such  
683 obligation must be provided to the parcel owner or member at  
684 least 30 days before such suspension takes effect. A voting  
685 interest or consent right allocated to a parcel owner or member  
686 which has been suspended by the association shall be subtracted  
687 from the total number of voting interests in the association,  
688 which shall be reduced by the number of suspended voting  
689 interests when calculating the total percentage or number of all  
690 voting interests available to take or approve any action, and  
691 the suspended voting interests may ~~shall~~ not be considered for  
692 any purpose, including, but not limited to, the percentage or  
693 number of voting interests necessary to constitute a quorum, the  
694 percentage or number of voting interests required to conduct an  
695 election, or the percentage or number of voting interests  
696 required to approve an action under this chapter or pursuant to  
697 the governing documents. The notice and hearing requirements  
698 under subsection (2) do not apply to a suspension imposed under  
699 this subsection. The suspension ends upon full payment of all  
700 obligations currently due or overdue to the association.

701 Section 4. Paragraphs (a) and (c) of subsection (9) of  
702 section 720.306, Florida Statutes, are amended to read:

703 720.306 Meetings of members; voting and election  
704 procedures; amendments.—

705 (9) ELECTIONS AND BOARD VACANCIES.—

706 (a)1. Elections of directors must be conducted in  
707 accordance with the procedures set forth in the governing  
708 documents of the association. Except as provided in paragraph  
709 (b), all members of the association are eligible to serve on the  
710 board of directors, and a member may nominate himself or herself  
711 as a candidate for the board at a meeting where the election is  
712 to be held; provided, however, that if the election process  
713 allows candidates to be nominated in advance of the meeting, the  
714 association is not required to allow nominations at the meeting.  
715 An election is not required unless more candidates are nominated  
716 than vacancies exist. Except as otherwise provided in the  
717 governing documents, boards of directors must be elected by a  
718 plurality of the votes cast by eligible voters. Any challenge to  
719 the election process must be commenced within 60 days after the  
720 election results are announced.

721 2. A board member may not serve more than 8 consecutive  
722 years unless approved by an affirmative vote of two-thirds of  
723 the total voting interests of the association or unless there  
724 are not enough eligible candidates to fill the vacancies on the  
725 board at the time of the vacancy.

726 (c) Any election dispute between a member and an  
727 association must be submitted to mandatory binding arbitration  
728 with the division. Such proceedings must be conducted in the  
729 manner provided by s. 718.1255 and the procedural rules adopted  
730 by the division. Unless otherwise provided in the bylaws, any  
731 vacancy occurring on the board before the expiration of a term  
732 may be filled by an affirmative vote of the majority of the  
733 remaining directors, even if the remaining directors constitute  
734 less than a quorum, or by the sole remaining director. In the  
735 alternative, a board may hold an election to fill the vacancy,  
736 in which case the election procedures must conform to the  
737 requirements of the governing documents. Unless otherwise  
738 provided in the bylaws, a board member appointed or elected  
739 under this section is appointed for the unexpired term of the  
740 seat being filled. Filling vacancies created by recall is  
741 governed by s. 720.303(11) ~~s. 720.303(10)~~ and rules adopted by  
742 the division.

743 Section 5. Paragraph (f) of subsection (1) of section  
744 720.3085, Florida Statutes, is amended to read:

745 720.3085 Payment for assessments; lien claims.—

746 (1) When authorized by the governing documents, the  
747 association has a lien on each parcel to secure the payment of  
748 assessments and other amounts provided for by this section.  
749 Except as otherwise set forth in this section, the lien is  
750 effective from and shall relate back to the date on which the

751 original declaration of the community was recorded. However, as  
752 to first mortgages of record, the lien is effective from and  
753 after recording of a claim of lien in the public records of the  
754 county in which the parcel is located. This subsection does not  
755 bestow upon any lien, mortgage, or certified judgment of record  
756 on July 1, 2008, including the lien for unpaid assessments  
757 created in this section, a priority that, by law, the lien,  
758 mortgage, or judgment did not have before July 1, 2008.

759 (f) The association may purchase the parcel at the  
760 foreclosure sale and hold, lease, mortgage, or convey the  
761 parcel. However, a board member, manager, or management company  
762 may not purchase a parcel at a foreclosure sale resulting from  
763 the association's foreclosure of its lien for unpaid assessments  
764 or take title by deed in lieu of foreclosure.

765 Section 6. Subsections (3) and (4) are added to section  
766 720.309, Florida Statutes, to read:

767 720.309 Agreements entered into by the association;  
768 conflicts of interest.-

769 (3) An association may not employ or contract with a  
770 service provider that is owned or operated by a board member or  
771 with a person who has a financial relationship with a board  
772 member or an officer or who has a relative within the third  
773 degree of consanguinity or affinity of a board member or  
774 officer. This subsection does not apply to a service provider in  
775 which a board member or an officer, or a relative within the

776 third degree of consanguinity or affinity of a board member or  
777 an officer, owns less than 1 percent of the equity shares.

778 (4) A party contracting to provide maintenance or  
779 management services to an association managing a community after  
780 transfer of control of the association, as provided in s.  
781 720.307, may not take a deed in lieu of a foreclosure or  
782 purchase a parcel at a foreclosure sale resulting from the  
783 association's foreclosure of an association lien for unpaid  
784 assessment. If 50 percent or more of the parcels in the  
785 community are owned by such party, or by an officer or board  
786 member of such party, the contract with the party providing  
787 maintenance or management services may be canceled by a majority  
788 vote of the parcel owners other than the contracting party or an  
789 officer or board member of such party.

790 Section 7. Section 720.3095, Florida Statutes, is created  
791 to read:

792 720.3095 Conflicts of interest.-

793 (1) Directors and officers of a board of an association  
794 and the relatives of such directors and officers must disclose  
795 to the board any activity that may reasonably be construed to be  
796 a conflict of interest. A rebuttable presumption of a conflict  
797 of interest exists if any of the following occurs without prior  
798 notice pursuant to subsection (4):

799 (a) A director or an officer, or a relative of a director  
800 or an officer, enters into a contract for goods or services with



801 the association.

802 (b) A director or an officer, or a relative of a director  
803 or an officer, holds an interest in a corporation, limited  
804 liability corporation, partnership, limited liability  
805 partnership, or other business entity that conducts business  
806 with the association or proposes to enter into a contract or  
807 other transaction with the association.

808 (2) If a director or an officer of a board of an  
809 association, or a relative of a director or an officer, proposes  
810 to engage in an activity that is a conflict of interest under  
811 subsection (1), the proposed activity must be listed on, and all  
812 contracts and transactional documents related to the proposed  
813 activity must be attached to, the meeting agenda of the next  
814 meeting. If the board votes against the proposed activity, the  
815 director or officer, or the relative of the director or officer,  
816 must notify the board in writing of his or her intention not to  
817 pursue the proposed activity or to withdraw from office. If the  
818 board finds that a director or an officer has violated this  
819 subsection, he or she shall be removed from office and the  
820 resulting vacancy shall be filled according to general law.

821 (3) A director or an officer of a board of an association,  
822 or a relative of a director or an officer, who is a party to, or  
823 has an interest in, an activity that is a possible conflict of  
824 interest under subsection (1) may attend the meeting at which  
825 the activity is considered by the board and may make a

826 presentation to the board regarding the activity. After the  
 827 presentation, the director or officer, or the relative of the  
 828 director or officer, must leave the meeting during the  
 829 discussion of, and the vote on, the activity. A director or an  
 830 officer who is a party to, or has an interest in, the activity  
 831 must recuse himself or herself from the vote.

832 (4) A contract entered into between a director or an  
 833 officer, or a relative of a director or an officer, and the  
 834 association which has not been properly disclosed as a conflict  
 835 of interest or potential conflict of interest is voidable and  
 836 terminates upon the filing of a written notice terminating the  
 837 contract with the board of directors which contains the consent  
 838 of at least 20 percent of the voting interests of the  
 839 association.

840 (5) As used in this section, the term "relative" means a  
 841 relative within the third degree of consanguinity or affinity.

842 Section 8. Subsection (1) of section 720.311, Florida  
 843 Statutes, is amended to read:

844 720.311 Dispute resolution.—

845 (1) The Legislature finds that alternative dispute  
 846 resolution has made progress in reducing court dockets and  
 847 trials and in offering a more efficient, cost-effective option  
 848 to litigation. The filing of any petition for arbitration or the  
 849 serving of a demand for presuit mediation as provided for in  
 850 this section shall toll the applicable statute of limitations.

851 Any recall dispute filed with the department pursuant to s.  
852 720.303(11) ~~s. 720.303(10)~~ shall be conducted by the department  
853 in accordance with the provisions of ss. 718.112(2)(j) and  
854 718.1255 and the rules adopted by the division. In addition, the  
855 department shall conduct mandatory binding arbitration of  
856 election disputes between a member and an association pursuant  
857 to s. 718.1255 and rules adopted by the division. Neither  
858 election disputes nor recall disputes are eligible for presuit  
859 mediation; these disputes shall be arbitrated by the department.  
860 At the conclusion of the proceeding, the department shall charge  
861 the parties a fee in an amount adequate to cover all costs and  
862 expenses incurred by the department in conducting the  
863 proceeding. Initially, the petitioner shall remit a filing fee  
864 of at least \$200 to the department. The fees paid to the  
865 department shall become a recoverable cost in the arbitration  
866 proceeding, and the prevailing party in an arbitration  
867 proceeding shall recover its reasonable costs and attorney  
868 ~~attorney's~~ fees in an amount found reasonable by the arbitrator.  
869 The department shall adopt rules to effectuate the purposes of  
870 this section.

871 Section 9. This act shall take effect July 1, 2018.

872