

By the Committee on Community Affairs and Senator Forman

316-2106-98

1 A bill to be entitled
 2 An act relating to homeowners' associations;
 3 amending s. 617.303, F.S.; specifying the
 4 location of board meetings; prohibiting
 5 commingling of association funds; amending s.
 6 617.307, F.S.; requiring the developer to
 7 deliver specific documents to the newly elected
 8 board; creating s. 617.3075, F.S.; prohibiting
 9 certain clauses in homeowners' association
 10 documents; creating s. 617.3077, F.S.;
 11 providing for the establishment of reserve and
 12 operating accounts; amending s. 617.311, F.S.;
 13 defining the term "dispute"; providing for
 14 voluntary binding arbitration of disputes;
 15 amending s. 689.26, F.S.; modifying disclosure
 16 summary form; providing for reference to the
 17 disclosure summary in any contract or agreement
 18 for sale; providing an effective date.

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 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Subsection (2) of section 617.303, Florida
 23 Statutes, is amended, present subsection (8) of that section
 24 is redesignated as subsection (9), and a new subsection (8) is
 25 added to that section to read:

26 617.303 Association powers and duties; meetings of
 27 board; official records; budgets; financial reporting.--

28 (2) BOARD MEETINGS.--A meeting of the board of
 29 directors of an association occurs whenever a quorum of the
 30 board gathers to conduct association business at a location
 31 within the county in which the community is located. All

1 meetings of the board must be open to all members except for
2 meetings between the board and its attorney with respect to
3 proposed or pending litigation where the contents of the
4 discussion would otherwise be governed by the attorney-client
5 privilege. Notices of all board meetings must be posted in a
6 conspicuous place in the community at least 48 hours in
7 advance of a meeting, except in an emergency. In the
8 alternative, if notice is not posted in a conspicuous place in
9 the community, notice of each board meeting must be mailed or
10 delivered to each member at least 7 days before the meeting,
11 except in an emergency. Notwithstanding this general notice
12 requirement, for communities with more than 100 members, the
13 bylaws may provide for a reasonable alternative to posting or
14 mailing of notice for each board meeting, including
15 publication of notice or provision of a schedule of board
16 meetings. An assessment may not be levied at a board meeting
17 unless the notice of the meeting includes a statement that
18 assessments will be considered and the nature of the
19 assessments. Directors may not vote by proxy or by secret
20 ballot at board meetings, except that secret ballots may be
21 used in the election of officers. This subsection also
22 applies to the meetings of any committee or other similar
23 body, when a final decision will be made regarding the
24 expenditure of association funds, and to any body vested with
25 the power to approve or disapprove architectural decisions
26 with respect to a specific parcel of residential property
27 owned by a member of the community.

28 (8) ASSOCIATION FUNDS; COMMINGLING.--

29 (a) All association funds held by a developer must be
30 maintained separately in the association's name. Reserve and
31 operating funds of the association may not be commingled prior

1 to turnover, except that the association may jointly invest
2 reserve funds in mutual bond funds rated BBB or higher.
3 However, such jointly invested funds must be accounted for
4 separately.

5 (b) No developer in control of a homeowners'
6 association may commingle any association funds with his or
7 her funds or with the funds of any other homeowners'
8 association or community association.

9 Section 2. Section 617.307, Florida Statutes, is
10 amended to read:

11 617.307 Transition of homeowners' association control
12 in a community.--With respect to homeowners' associations as
13 defined in s. 617.301:

14 (1) Members other than the developer are entitled to
15 elect at least a majority of the members of the board of
16 directors of the homeowners' association when the earlier of
17 the following events occurs:

18 (a) Three months after 90 percent of the parcels in
19 all phases of the community that will ultimately be operated
20 by the homeowners' association have been conveyed to members;
21 or

22 (b) Such other percentage of the parcels has been
23 conveyed to members, or such other date or event has occurred,
24 as is set forth in the governing documents in order to comply
25 with the requirements of any governmentally chartered entity
26 with regard to the mortgage financing of parcels.

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28 ~~(c)~~ For purposes of this section, the term "members other
29 than the developer" shall not include builders, contractors,
30 or others who purchase a parcel for the purpose of
31 constructing improvements thereon for resale.

1 (2) At the time the members are entitled to elect at
2 least a majority of the members of the board of directors of
3 the homeowners' association, the developer shall at the
4 developer's expense within no more than 90 days deliver the
5 following documents to the board:

6 (a) All deeds to common property owned by the
7 association;

8 (b) The association's original declarations of
9 covenants and restrictions;

10 (c) A certified copy of the articles of incorporation
11 of the association;

12 (d) A copy of the bylaws;

13 (e) The minute books including all minutes;

14 (f) The books and records of the association;

15 (g) All policies, rules, and regulations that have
16 been adopted;

17 (h) Evidence of resignations of directors who are
18 required to resign because the developer is required to
19 relinquish control of the association;

20 (i) The financial records of the association from the
21 date of incorporation through the date of turnover;

22 (j) An accounting of association funds and the control
23 thereof;

24 (k) A description of all tangible property of the
25 association;

26 (l) A copy of all contracts that are in force with the
27 association as one of the parties;

28 (m) A list of the names, addresses, and telephone
29 numbers of all contractors, subcontractors, or others in the
30 employ of the association;

31 (n) All insurance policies;

1 (o) Any permits issued to the association by
2 governmental bodies;

3 (p) All warranties in effect; and

4 (q) A complete roster of the homeowners and their
5 mailing addresses, telephone numbers, and section and lot
6 numbers.

7 (3) Within 12 months after takeover, financial
8 statements for the last 5 years through the date of turnover
9 must be given to the board of directors. The financial
10 statements must be:

11 (a) Compiled if the annual budget of the homeowners'
12 association is under \$400,000; or

13 (b) Reviewed if the annual budget is \$400,000 or
14 greater.

15 (4)(2) The developer is entitled to elect at least one
16 member of the board of directors of the homeowners'
17 association as long as the developer holds for sale in the
18 ordinary course of business at least 5 percent of the parcels
19 in all phases of the community. After the developer
20 relinquishes control of the homeowners' association, the
21 developer may exercise the right to vote any developer-owned
22 voting interests in the same manner as any other member,
23 except for purposes of reacquiring control of the homeowners'
24 association or selecting the majority of the members of the
25 board of directors.

26 (5)(3) This section does not apply to a homeowners'
27 association in existence on the effective date of this act, or
28 to a homeowners' association, no matter when created, if such
29 association is created in a community that is included in an
30 effective development-of-regional-impact development order as
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1 of the effective date of this act, together with any approved
2 modifications thereof.

3 Section 3. Section 617.3075, Florida Statutes, is
4 created to read:

5 617.3075 Prohibited clauses in homeowners' association
6 documents.--

7 (1) The inclusion or enforcement of any of the
8 following clauses in a homeowners' association document,
9 including declaration of covenants, articles of incorporation,
10 by-laws, or any other documents of the association which bind
11 members of the association, is contrary to the public policy
12 of this state and is prohibited:

13 (a) A clause that provides a developer with the
14 unilateral ability and right to make changes to the
15 homeowners' association's documents after the transition of
16 homeowners' association's control in a community from the
17 developer to the nondeveloper members, as set forth in s.
18 617.307, has occurred.

19 (b) A clause that prohibits a homeowners' association
20 from filing a lawsuit against the developer.

21 (c) After the transition of homeowners' association
22 control in a community from the developer to the nondeveloper
23 members, as set forth in s. 617.307, has occurred, a clause
24 whereby the developer is entitled to cast votes in an amount
25 that exceeds one vote per lot.

26 (2) The provisions of subsection (1) apply to clauses
27 created on or after the effective date of this section.

28 Section 4. Section 617.3077, Florida Statutes, is
29 created to read:

30 617.3077 Reserve and operating accounts.--At the time
31 the association is created, the association shall establish

1 reserve accounts for all expected expenditures of deferred
2 maintenance, repairs, or replacement of common property for
3 which the association will ultimately be responsible under the
4 terms of the purchase agreement or the association's governing
5 documents.

6 Section 5. Section 617.311, Florida Statutes, is
7 amended to read:

8 617.311 Alternative dispute resolution; voluntary
9 mediation; voluntary binding arbitration; legislative
10 findings.--

11 (1) LEGISLATIVE FINDINGS.--The Legislature finds that:

12 (a) Parcel owners are frequently at a disadvantage
13 when litigating against an association.

14 (b) Alternative dispute resolution has been making
15 progress in reducing court dockets and trials and in offering
16 a more efficient, cost-effective option to court litigation.
17 However, the Legislature also finds that alternative dispute
18 resolution should not be used to encourage the filing of
19 frivolous or nuisance suits.

20 (c) There exists a need to develop a flexible means of
21 alternative dispute resolution that directs disputes to the
22 most efficient means of resolution.

23 (d) The high cost and significant delay of circuit
24 court litigation faced by parcel owners in the state can be
25 alleviated by requiring nonbinding arbitration and mediation
26 in appropriate cases, thereby reducing delay and attorney's
27 fees while preserving the right of either party to have its
28 case heard by a jury, if applicable, in a court of law.

29 (2) DEFINITIONS.--As used in this section:

30 (a) "Arbitration" means a process whereby a neutral
31 third person or panel, called an arbitrator or arbitration

1 panel, considers the facts and arguments presented by the
2 parties as provided by this section.

3 (b) "Dispute" means any disagreement between two or
4 more parties after transition of control of the homeowners'
5 association pursuant to s. 617.307 which involves:

6 1. The authority of the board of directors, under this
7 chapter or association document, to:

8 a. Require any owner to take any action or not to take
9 any action involving that owner's parcel or the appurtenances
10 thereto.

11 b. Alter or add to a common area or element.

12 2. The failure of a governing body, when required by
13 this chapter or an association document, to:

14 a. Properly conduct elections.

15 b. Give adequate notice meetings or other actions.

16 c. Properly conduct meetings.

17 d. Allow inspection of books and records.

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19 The term "dispute" does not include any disagreement that
20 primarily involves title to any parcel or common element; the
21 interpretation or enforcement of any warranty; the levy of a
22 fee or assessment, or the collection of an assessment levied
23 against a party; the eviction or other removal of a tenant
24 from a parcel; alleged breaches of fiduciary duty by one or
25 more directors; or claims for damages to a parcel based upon
26 the alleged failure of the association to maintain the common
27 elements or association property.

28 (3) VOLUNTARY MEDIATION.--Voluntary mediation through
29 Citizen Dispute Settlement Centers as provided in s. 44.201 is
30 encouraged.

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1 4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT
2 IN A LIEN ON YOUR PROPERTY.

3 5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR
4 LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED
5 FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS'
6 ASSOCIATION. (If such obligation exists, then the amount of
7 the current obligation shall be set forth.)

8 6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED
9 WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.

10 7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM
11 ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER,
12 YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION
13 GOVERNING DOCUMENTS.

14 8. THESE DOCUMENTS ARE MATTERS OF PUBLIC RECORD AND
15 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE
16 PROPERTY IS LOCATED.

17 DATE:

PURCHASER:

18 PURCHASER:
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20 The disclosure must be supplied by the developer, or by the
21 parcel owner if the sale is by an owner that is not the
22 developer. Any contract or agreement for sale must refer to
23 and incorporate the disclosure summary and must include, in
24 prominent language, a statement that the potential buyer
25 should not execute the contract or agreement until he or she
26 has received and read the disclosure summary required by s.
27 689.26.

28 (2) This section does not apply to any association
29 regulated under chapter 718, chapter 719, chapter 721, or
30 chapter 723 or to a subdivider registered under chapter 498;
31 and also does not apply if disclosure regarding the

1 association is otherwise made in connection with the
2 requirements of chapter 718, chapter 719, chapter 721, or
3 chapter 723.

4 Section 7. This act shall take effect October 1, 1998.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 2068

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9 Deletes a provision which would require written notice to a
10 homeowner prior to levying any additional penalty, excluding a
late fee, for a delinquent assessment.

11 Deletes provisions which would accelerate the timing of
12 transition from developer to owner control for phased
communities.

13 Deletes provisions which require that current copies of
14 governing documents be made available to prospective
purchasers, and that the association compile all of its
15 updated governing documents at least once every 3 years.

16 Deletes the requirement that homeowners' associations be
incorporated under ch. 617.

17 Deletes detailed requirements and funding formulas for an
18 association's reserve and operating accounts. Retains the
requirement that an association establish reserve accounts for
19 all expected expenditures associated with maintenance, repairs
or replacement of common property for which the association
20 will ultimately be responsible.

21 Replaces detailed requirements and procedures for voluntary
binding arbitration of disputes with a cross-reference to the
22 procedures established in s. 44.104, F.S.

23 Extends the effective date from July 1 to October 1, 1998.

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