

By the Committee on Real Property & Probate and Representative Starks

1 A bill to be entitled
2 An act relating to homeowners' associations;
3 amending s. 617.303, F.S.; prohibiting the
4 commingling of certain funds; amending s.
5 617.307, F.S.; revising language with respect
6 to the transition of homeowners' association
7 control in a community; providing a list of
8 required documents which must be provided to
9 the board by the developer; creating s.
10 617.3075, F.S.; providing for prohibited
11 clauses in homeowners' association documents;
12 amending s. 689.26, F.S.; revising language
13 with respect to disclosure to prospective
14 purchasers; providing for the cancellation of
15 certain contracts; providing for the inclusion
16 of information on certain amenities; providing
17 an effective date.

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

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21 Section 1. Subsection (8) of section 617.303, Florida
22 Statutes, is renumbered as subsection (9), and a new
23 subsection (8) is added to said section to read:

24 617.303 Association powers and duties; meetings of
25 board; official records; budgets; financial reporting.--

26 (8) ASSOCIATION FUNDS; COMMINGLING.--

27 (a) All association funds held by a developer shall be
28 maintained separately in the association's name. Reserve and
29 operating funds of the association shall not be commingled
30 prior to turnover except the association may jointly invest
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1 reserve funds and operating funds; however, such jointly
2 invested funds must be accounted for separately.

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

7 Section 2. Subsection (1) of section 617.307, Florida
8 Statutes, is amended, subsection (3) of said section is
9 renumbered as subsection (4), and a new subsection (3) is
10 added to said section, 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 For purposes of determining when 90 percent of the parcels
22 have been conveyed, only such parcels as have been platted,
23 had a site plan approved, were approved for land use, or were
24 otherwise approved by the appropriate governmental authority,
25 prior to the sale of the first parcel shall be considered; or

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

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- 1 ~~(e)~~ For purposes of this section, the term "members other
2 than the developer" shall not include builders, contractors,
3 or others who purchase a parcel for the purpose of
4 constructing improvements thereon for resale.
- 5 (3) At the time the members are entitled to elect at
6 least a majority of the board of directors of the homeowners'
7 association, the developer shall, at the developer's expense,
8 immediately deliver the following documents to the board:
- 9 (a) All deeds to common property owned by the
10 association.
- 11 (b) The original of the association's declarations of
12 covenants and restrictions.
- 13 (c) A certified copy of the articles of incorporation
14 of the association.
- 15 (d) A copy of the bylaws.
- 16 (e) The minute books, including all minutes.
- 17 (f) The books and records of the association.
- 18 (g) Policies, rules, and regulations, if any, which
19 have been adopted.
- 20 (h) Resignations of directors who are required to
21 resign because the developer is required to relinquish control
22 of the association.
- 23 (i) The financial records of the association from the
24 date of incorporation through the date of turnover.
- 25 (j) All association funds and control thereof.
- 26 (k) All tangible property of the association.
- 27 (l) A copy of all contracts which may be in force with
28 the association as one of the parties.
- 29 (m) A list of the names and addresses and telephone
30 numbers of all contractors, subcontractors, or others in the
31 employ of the association.

1 (n) Any and all insurance policies.

2 (o) Any permits issued to the association by
3 governmental entities.

4 (p) Any and all warranties in effect.

5 (q) A roster of homeowners and their addresses and
6 telephone numbers and section and lot numbers.

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

9 617.3075 Prohibited clauses in homeowners' association
10 documents.--

11 (1) It is hereby declared that the public policy of
12 this state prohibits the inclusion or enforcement of certain
13 types of clauses in homeowners' association documents,
14 including declaration of covenants, articles of incorporation,
15 bylaws, or any other document of the association which binds
16 members of the association, which either have the effect of or
17 provide that:

18 (a) A developer has the right to veto any action taken
19 by the homeowners' association after the transition of
20 homeowners' association control in a community from the
21 developer to the nondeveloper members, as set forth in s.
22 617.307, has occurred.

23 (b) A developer has the unilateral ability and right
24 to make changes to the homeowners' association documents after
25 the transition of homeowners' association control in a
26 community from the developer to the nondeveloper members, as
27 set forth in s. 617.307, has occurred.

28 (c) A homeowners' association is prohibited or
29 restricted from filing a lawsuit against the developer, or the
30 homeowners' association is otherwise effectively prohibited or
31 restricted from bringing a lawsuit against the developer.

1 (d) After the transition of homeowners' association
2 control in a community from the developer to the nondeveloper
3 members, as set forth in s. 617.307, has occurred, a developer
4 is entitled to cast votes in an amount that exceeds one vote
5 per lot.

6 (2) The public policy described in subsection (1)
7 prohibits the inclusion or enforcement of such clauses created
8 on or after the effective date of this section.

9 Section 4. Section 689.26, Florida Statutes, is
10 amended to read:

11 689.26 Prospective purchasers subject to association
12 membership requirement; disclosure required.--

13 (1) A prospective parcel owner in a community must be
14 presented a disclosure summary before executing the contract
15 for sale. The disclosure summary must be in a form
16 substantially similar to the following form:

17
18 DISCLOSURE SUMMARY
19 FOR
20 (NAME OF COMMUNITY)

21
22 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU
23 WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

24 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
25 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN
26 THIS COMMUNITY.

27 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
28 ASSOCIATION, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

29 4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT
30 IN A LIEN ON YOUR PROPERTY.

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

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

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

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

15 DATE:

PURCHASER:

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PURCHASER:

18 The disclosure must be supplied by the developer, or by the
19 parcel owner if the sale is by an owner that is not the
20 developer. In the event that the seller fails to comply with
21 this subsection, the buyer shall have the right to cancel the
22 proposed contract for sale and purchase of the parcel for up
23 to 7 days following execution of a sales contract, without
24 penalty or forfeiture of any deposit or good faith moneys
25 advanced. The buyer's right to cancel this agreement shall
26 terminate at closing.

27 (2) The developer shall provide a specific written
28 description of all planned amenities to each prospective
29 purchaser prior to the execution of a written contract.
30 Failure to comply with this subsection shall result in the
31 buyer having the right to cancel the proposed contract for

1 sale and purchase of the parcel for up to 7 days following
2 execution of a sales contract, without penalty or forfeiture
3 of any deposit or good faith moneys advanced. The buyer's
4 right to cancel this agreement shall terminate at closing.

5 (3)~~(2)~~ This section does not apply to any association
6 regulated under chapter 718, chapter 719, chapter 721, or
7 chapter 723 or to a subdivider registered under chapter 498;
8 and also does not apply if disclosure regarding the
9 association is otherwise made in connection with the
10 requirements of chapter 718, chapter 719, chapter 721, or
11 chapter 723.

12 Section 5. This act shall take effect October 1 of the
13 year in which enacted.

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