

By the Committees on Community Affairs, 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.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 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

31

1 reserve funds; however, such jointly invested funds must be  
2 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 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.

27  
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       (3) At the time the members are entitled to elect at  
2 least a majority of the board of directors of the homeowners'  
3 association, the developer shall, at the developer's expense,  
4 within no more than 90 days deliver the following documents to  
5 the board:
- 6           (a) All deeds to common property owned by the  
7 association.
- 8           (b) The original of the association's 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) Policies, rules, and regulations, if any, which  
16 have been adopted.
- 17          (h) Resignations of directors who are required to  
18 resign because the developer is required to relinquish control  
19 of the association.
- 20          (i) The financial records of the association from the  
21 date of incorporation through the date of turnover.
- 22          (j) All association funds and control thereof.
- 23          (k) All tangible property of the association.
- 24          (l) A copy of all contracts which may be in force with  
25 the association as one of the parties.
- 26          (m) A list of the names and addresses and telephone  
27 numbers of all contractors, subcontractors, or others in the  
28 current employ of the association.
- 29          (n) Any and all insurance policies in effect.
- 30          (o) Any permits issued to the association by  
31 governmental entities.

1       (p) Any and all warranties in effect.  
2       (q) A roster of current homeowners and their addresses  
3 and telephone numbers and section and lot numbers.  
4       (r) Employment and service contracts in effect.  
5       (s) All other contracts in effect to which the  
6 association is a party.  
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 unilateral ability and right  
19 to make changes to the homeowners' association documents after  
20 the transition of homeowners' association control in a  
21 community from the developer to the nondeveloper members, as  
22 set forth in s. 617.307, has occurred.  
23       (b) A homeowners' association is prohibited or  
24 restricted from filing a lawsuit against the developer, or the  
25 homeowners' association is otherwise effectively prohibited or  
26 restricted from bringing a lawsuit against the developer.  
27       (c) After the transition of homeowners' association  
28 control in a community from the developer to the nondeveloper  
29 members, as set forth in s. 617.307, has occurred, a developer  
30 is entitled to cast votes in an amount that exceeds one vote  
31 per residential lot.

1  
2 Such clauses are hereby declared null and void as against the  
3 public policy of this state.

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

7 Section 4. Subsection (1) of section 689.26, Florida  
8 Statutes, is amended to read:

9 689.26 Prospective purchasers subject to association  
10 membership requirement; disclosure required.--

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

15  
16 DISCLOSURE SUMMARY  
17 FOR  
18 (NAME OF COMMUNITY)  
19

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

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

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

27 4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT  
28 IN A LIEN ON YOUR PROPERTY.

29 5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR  
30 LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED  
31 FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS'

1 ASSOCIATION. (If such obligation exists, then the amount of  
2 the current obligation shall be set forth.)

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

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

9 8. THESE DOCUMENTS ARE MATTERS OF PUBLIC RECORD AND  
10 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE  
11 PROPERTY IS LOCATED.

12 DATE:

PURCHASER:

13

PURCHASER:

14

15 The disclosure must be supplied by the developer, or by the  
16 parcel owner if the sale is by an owner that is not the  
17 developer. Any contract or agreement for sale shall refer to  
18 and incorporate the disclosure summary and shall include, in  
19 prominent language, a statement that the potential buyer  
20 should not execute the contract or agreement until they have  
21 received and read the disclosure summary required by s.  
22 689.26.

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

25

26

27

28

29

30

31