

By Senator Dyer

14-498-98

See HB 3193

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:

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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  
 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 that  
19 are platted, have a site plan approved, are approved for land  
20 use, or are otherwise approved by the appropriate governmental  
21 authority, prior to the first unit sold,~~in all phases of the~~  
22 ~~community that will ultimately be operated by the homeowners'~~  
23 ~~association~~ have been conveyed to members; or

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

29  
30 ~~(c)~~ For purposes of this section, the term "members other  
31 than the developer" shall not include builders, contractors,

1 or others who purchase a parcel for the purpose of  
2 constructing improvements thereon for resale.

3 (3) At the time the members are entitled to elect at  
4 least a majority of the board of directors of the homeowners'  
5 association, the developer shall, at the developer's expense,  
6 immediately deliver the following documents to the board:

7 (a) All deeds to common property owned by the  
8 association.

9 (b) The original of the association's declarations of  
10 covenants and restrictions.

11 (c) A certified copy of the articles of incorporation  
12 of the association.

13 (d) A copy of the bylaws.

14 (e) The minute books, including all minutes.

15 (f) The books and records of the association.

16 (g) Policies, rules, and regulations, if any, which  
17 have been adopted.

18 (h) Resignations of directors who are required to  
19 resign because the developer is required to relinquish control  
20 of the association.

21 (i) The financial records of the association from the  
22 date of incorporation through the date of turnover.

23 (j) All association funds and control thereof.

24 (k) All tangible property of the association.

25 (l) A copy of all contracts which may be in force with  
26 the association as one of the parties.

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

30 (n) Any and all insurance policies.  
31

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

3           (p) Any and all warranties in effect.

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

6           (r) Employment and service contracts in effect.

7           (s) All other contracts to which the association is a  
8 party.

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

11           617.3075 Prohibited clauses in homeowners' association  
12 documents.--

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

20           (a) A developer has the right to veto any action taken  
21 by the homeowners' association after the transition of  
22 homeowners' association control in a community from the  
23 developer to the nondeveloper members, as set forth in s.  
24 617.307, has occurred.

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

30           (c) A homeowners' association is prohibited or  
31 restricted from filing a lawsuit against the developer, or the

1 homeowners' association is otherwise effectively prohibited or  
2 restricted from bringing a lawsuit against the developer.

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

8  
9 Such clauses are hereby declared null and void as against the  
10 public policy of this state.

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

14 Section 4. Section 689.26, Florida Statutes, is  
15 amended to read:

16 689.26 Prospective purchasers subject to association  
17 membership requirement; disclosure required.--

18 (1) A prospective parcel owner in a community must be  
19 presented a disclosure summary before executing the contract  
20 for sale. The disclosure summary must be in a form  
21 substantially similar to the following form:

22  
23 DISCLOSURE SUMMARY  
24 FOR  
25 (NAME OF COMMUNITY)

26  
27 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU  
28 WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

29 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE  
30 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN  
31 THIS COMMUNITY.

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

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

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

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

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

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

19 DATE:

PURCHASER:

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PURCHASER:

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

30          (2) The developer shall provide a specific written  
31 description of all planned amenities to each prospective

1 purchaser prior to the execution of a written contract.  
2 Failure to comply with this subsection shall result in the  
3 buyer having the right to cancel the proposed contract for  
4 sale and purchase of the parcel for up to 7 days following  
5 execution of a sales contract, without penalty or forfeiture  
6 of any deposit or good faith moneys advanced.

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

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

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18 HOUSE SUMMARY

19 Revises provisions of law relating to homeowners'  
20 associations to:

- 21 1. Prohibit commingling of association funds held  
by the developer.
- 22 2. Revise provisions relating to the transition of  
the homeowners' association control in a community.
- 23 3. Require the developer to provide the board with  
a list of documents at the time the members are entitled  
24 to elect at least a majority of the members of the board  
of directors of the homeowners' association.
- 25 4. Provide a list of prohibited clauses in  
homeowners' association documents as void for being  
against public policy.
- 26 5. Revise language with respect to disclosure to  
prospective purchasers.

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28 See bill for details.  
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