

By the Committee on Judiciary and Senator Dyer

308-1998-98

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 provisions with respect
6 to the transition of homeowners' association
7 control in a community; providing a list of
8 required documents that must be provided to the
9 board by the developer; creating s. 617.3075,
10 F.S.; providing for prohibited clauses in
11 homeowners' association documents; amending s.
12 689.26, F.S.; revising provisions with respect
13 to disclosure to prospective purchasers;
14 requiring certain information to be included in
15 disclosures; providing an effective date.

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

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

22 617.303 Association powers and duties; meetings of
23 board; official records; budgets; financial reporting.--

24 (8) ASSOCIATION FUNDS; COMMINGLING.--

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

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

5 Section 2. Subsection (1) of section 617.307, Florida
6 Statutes, is amended, present subsection (3) of that section
7 is renumbered as subsection (4), and a new subsection (3) is
8 added to that section to read:

9 617.307 Transition of homeowners' association control
10 in a community.--With respect to homeowners' associations as
11 defined in s. 617.301:

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

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

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

25
26 ~~(c)~~ For purposes of this section, the term "members other
27 than the developer" shall not include builders, contractors,
28 or others who purchase a parcel for the purpose of
29 constructing improvements thereon for resale.

30 (3) At the time the members are entitled to elect at
31 least a majority of the board of directors of the homeowners'

- 1 association, the developer shall, at the developer's expense,
2 within no more than 90 days, deliver the following documents
3 to the board:
- 4 (a) All deeds to common property owned by the
5 association.
- 6 (b) The original of the association's declarations of
7 covenants and restrictions.
- 8 (c) A certified copy of the articles of incorporation
9 of the association.
- 10 (d) A copy of the bylaws.
- 11 (e) The minute books, including all minutes.
- 12 (f) The books and records of the association.
- 13 (g) Policies, rules, and regulations, if any, which
14 have been adopted.
- 15 (h) Resignations of directors who are required to
16 resign because the developer is required to relinquish control
17 of the association.
- 18 (i) The financial records of the association from the
19 date of incorporation through the date of turnover.
- 20 (j) All association funds and control thereof.
- 21 (k) All tangible property of the association.
- 22 (l) A copy of all contracts which may be in force with
23 the association as one of the parties.
- 24 (m) A list of the names and addresses and telephone
25 numbers of all contractors, subcontractors, or others in the
26 current employ of the association.
- 27 (n) Any and all insurance policies in effect.
- 28 (o) Any permits issued to the association by
29 governmental entities.
- 30 (p) Any and all warranties in effect.
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1 (q) A roster of current homeowners and their addresses
2 and telephone numbers and section and lot numbers.

3 (r) Employment and service contracts in effect.

4 (s) All other contracts in effect to which the
5 association is a party.

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

8 617.3075 Prohibited clauses in homeowners' association
9 documents.--

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

17 (a) A developer has the unilateral ability and right
18 to make changes to the homeowners' association documents after
19 the transition of homeowners' association control in a
20 community from the developer to the nondeveloper members, as
21 set forth in s. 617.307, has occurred.

22 (b) A homeowners' association is prohibited or
23 restricted from filing a lawsuit against the developer, or the
24 homeowners' association is otherwise effectively prohibited or
25 restricted from bringing a lawsuit against the developer.

26 (c) After the transition of homeowners' association
27 control in a community from the developer to the nondeveloper
28 members, as set forth in s. 617.307, has occurred, a developer
29 is entitled to cast votes in an amount that exceeds one vote
30 per residential lot.

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

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

6 Section 4. Section 689.26, Florida Statutes, is
7 amended to read:

8 689.26 Prospective purchasers subject to association
9 membership requirement; disclosure required.--

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

14
15 DISCLOSURE SUMMARY

16 FOR

17 (NAME OF COMMUNITY)
18

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

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

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

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

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

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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 he or she
21 has received and read the disclosure summary required by this
22 section.

23 (2) This section does not apply to any association
24 regulated under chapter 718, chapter 719, chapter 721, or
25 chapter 723 or to a subdivider registered under chapter 498;
26 and also does not apply if disclosure regarding the
27 association is otherwise made in connection with the
28 requirements of chapter 718, chapter 719, chapter 721, or
29 chapter 723.

30 Section 5. This act shall take effect October 1, 1998.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 544

4 The Committee Substitute for Senate Bill 544:

- 5 - Removes the portion of the bill which would provide for
6 transition of control over homeowners' associations three
7 months after 90 percent of the parcels that are platted
8 have a site approved, are approved for land use, or are
9 otherwise approved by the governmental authority, prior
10 to the first unit sold, have been conveyed to members;
11 and restores language of the present statute;
- 12 - Provides that on the day that members are entitled to
13 elect a majority of the board of directors, the developer
14 must deliver the following documents to the board of
15 directors within days rather than immediately:
- 16 - Names and addresses of current employees;
 - 17 - Insurance policies in effect;
 - 18 - A roster of current homeowners; and
 - 19 - Association contracts which are in effect;
- 20 - Removes language which would have prohibited contract
21 clauses providing for developer vetoes after transition
22 to the association;
- 23 - Prohibits contractual provisions which would entitle a
24 developer to cast votes which exceed one vote per
25 residential lot after transition of control to
26 homeowner's association;
- 27 - Deletes language which would have allowed purchasers to
28 cancel contracts for up to seven days if developer fails
29 to comply with disclosure requirements and instead
30 requires all contracts and agreements of sale to include
31 and incorporate a disclosure summary and a statement that
buyers should not execute the contract until they have
received and read the disclosure summary; and
- Deletes language which would have allowed purchasers to
cancel contracts for up to seven days if the developer
fails to provide a written description of planned
amenities.