

By the Committee on Commerce, Economic Opportunities, and Consumer Services; and Senator Fasano

310-2149-03

1 A bill to be entitled
2 An act relating to homeowners' associations;
3 amending s. 720.303, F.S.; providing powers for
4 associations controlled by unit owners other
5 than the developer; amending s. 720.306, F.S.;
6 prohibiting certain amendments to bylaws of the
7 associations; amending s. 712.05, F.S.;
8 providing for the board of directors of a
9 homeowners' association to preserve covenants
10 or restrictions through an extraordinary vote;
11 amending s. 712.06, F.S.; providing notice
12 requirements for homeowners' associations;
13 providing an effective date.

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

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17 Section 1. Subsection (1) of section 720.303, Florida
18 Statutes, is amended to read:

19 720.303 Association powers and duties; meetings of
20 board; official records; budgets; financial reporting.--

21 (1) POWERS AND DUTIES.--An association which operates
22 a community as defined in s. 720.301, must be operated by an
23 association that is a Florida corporation. After October 1,
24 1995, the association must be incorporated and the initial
25 governing documents must be recorded in the official records
26 of the county in which the community is located. An
27 association may operate more than one community. The officers
28 and directors of an association have a fiduciary relationship
29 to the members who are served by the association. The powers
30 and duties of an association include those set forth in this
31 chapter and, except as expressly limited or restricted in this

1 chapter, those set forth in the governing documents. After
2 control of the association is obtained by unit owners other
3 than the developer, the association may institute, maintain,
4 settle, or appeal actions or hearings in its name on behalf of
5 all members concerning matters of common interest to the
6 members, including, but not limited to, the common areas; roof
7 or structural components of a building, or other improvements
8 for which the association is responsible; mechanical,
9 electrical, or plumbing elements serving an improvement or
10 building for which the association is responsible;
11 representations of the developer pertaining to any existing or
12 proposed commonly used facility; and protesting ad valorem
13 taxes on commonly used facilities. The association may defend
14 actions in eminent domain or bring inverse condemnation
15 actions. Before commencing litigation against any party in the
16 name of the association involving amounts in excess of
17 \$100,000, the association must obtain the affirmative approval
18 of a majority of the voting interests at a meeting of the
19 membership at which a quorum has been attained. This
20 subsection does not limit any statutory or common-law right of
21 any individual member or class of members to bring any action
22 without participation by the association.A member does not
23 have authority to act for the association by virtue of being a
24 member. An association may have more than one class of
25 members and may issue membership certificates.

26 Section 2. Subsection (1) of section 720.306, Florida
27 Statutes, is amended to read:

28 720.306 Meetings of members; voting and election
29 procedures; amendments.--

30 (1) QUORUM; AMENDMENTS.--

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1 (a) Unless a lower number is provided in the bylaws,
2 the percentage of voting interests required to constitute a
3 quorum at a meeting of the members shall be 30 percent of the
4 total voting interests. Unless otherwise provided in this
5 chapter or in the articles of incorporation or bylaws,
6 decisions that require a vote of the members must be made by
7 the concurrence of at least a majority of the voting interests
8 present, in person or by proxy, at a meeting at which a quorum
9 has been attained.

10 (b) Unless otherwise provided in the governing
11 documents or required by law, and other than those matters set
12 forth in paragraph (c), any governing document of an
13 association may be amended by the affirmative vote of
14 two-thirds of the voting interests of the association.

15 (c) Unless otherwise provided in the governing
16 documents as originally recorded or permitted by this chapter
17 or ch. 617, an amendment may not materially and adversely
18 alter the proportionate voting interest appurtenant to a
19 parcel or increase the proportion or percentage by which a
20 parcel shares in the common expenses of the association affect
21 ~~vested rights~~ unless the record parcel owner ~~of the affected~~
22 ~~parcel~~ and all record owners of liens on the ~~affected~~ parcels
23 join in the execution of the amendment. For purposes of this
24 section, a change in quorum requirements is not an alteration
25 of voting interests.

26 Section 3. Subsection (1) of section 712.05, Florida
27 Statutes, is amended to read:

28 712.05 Effect of filing notice.--

29 (1) Any person claiming an interest in land or a
30 homeowners' association desiring to preserve any covenant or
31 restriction or any portion of a covenant or restriction may

1 preserve and protect the same from extinguishment by the
2 operation of this act by filing for record, during the 30-year
3 period immediately following the effective date of the root of
4 title, a notice, in writing, in accordance with the provisions
5 hereof, which notice shall have the effect of so preserving
6 such claim of right or such covenant or restriction or portion
7 of such covenant or restriction for a period of not longer
8 than 30 years after filing the same unless again filed as
9 required herein. No disability or lack of knowledge of any
10 kind on the part of anyone shall delay the commencement of or
11 suspend the running of said 30-year period. Such notice may be
12 filed for record by the claimant or by any other person acting
13 on behalf of any claimant who is:

- 14 (a) Under a disability,
15 (b) Unable to assert a claim on his or her behalf, or
16 (c) One of a class, but whose identity cannot be
17 established or is uncertain at the time of filing such notice
18 of claim for record.

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20 Such notice may be filed by a homeowners' association only if
21 the preservation of such covenant or restriction or portion of
22 such covenant or restriction is approved by at least
23 two-thirds of the members of the board of directors of an
24 incorporated homeowners' association at a meeting for which a
25 notice, stating the time and place of the meeting and
26 containing the Statement of Marketable Record Title Action
27 described in s. 712.06(1)(b), was mailed or hand-delivered to
28 members of the homeowners' association not less than 7 days
29 before the meeting ~~a majority vote at a meeting of the~~
30 ~~membership where a quorum is present.~~

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1 Section 4. Paragraphs (b) and (e) of subsection (1) of
2 section 712.06, Florida Statutes, are amended to read:

3 712.06 Contents of notice; recording and indexing.--

4 (1) To be effective, the notice above referred to
5 shall contain:

6 (b) The name and post office address of an owner, or
7 the name and post office address of the person in whose name
8 said property is assessed on the last completed tax assessment
9 roll of the county at the time of filing, who, for the purpose
10 of such notice, shall be deemed to be an owner; however, if a
11 homeowners' association is filing the notice, the requirements
12 of this paragraph may be satisfied by attaching to and
13 recording with the notice an affidavit executed by the
14 appropriate member of the homeowners' association board of
15 directors affirming that the board of directors of the
16 homeowners' association caused a statement in substantially
17 the following form to be mailed or hand-delivered to the
18 homeowners' association's members.

19 STATEMENT OF MARKETABLE TITLE ACTION

20 The (name of homeowners' association) (the
21 "Association") has taken action to ensure that the (name of
22 declaration, covenant, or restriction) recorded in Official
23 Records Book, Page of the public records
24 of County, Florida, as may be amended from time
25 to time, currently burdening the property of each and every
26 member of the Association, retains its status as the source of
27 marketable title with regard to the transfer of a member's
28 residence. To this end, the Association shall cause the notice
29 required by chapter 712, Florida Statutes, to be recorded in
30 the public records of County, Florida. Copies of
31 this notice and its attachments are available through the

1 Association pursuant to the Association's governing documents
2 regarding official records of the Association.

3 (e) If such claim is based upon an instrument of
4 record or a recorded covenant or restriction, such instrument
5 of record or recorded covenant or restriction is considered to
6 ~~shall~~ be sufficiently described to identify the same if the
7 notice includes a, including reference to the book and page in
8 which the same is recorded.

9 Section 5. This act shall take effect July 1, 2003.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 1410

14 The committee substitute differs from the original bill by:

- 15 -- Removing language relating to the ability of a
16 homeowners' association to maintain class action
litigation.
- 17 -- Specifying that, if proposed litigation involves more
18 than \$100,000, the association must obtain the approval
19 of a majority of the voting interests at a meeting of the
20 members in which a quorum is present before the
association can proceed with litigation in the
association's name.
- 21 -- Authorizing, under specified conditions, the board of
22 directors of a homeowners' association, rather than the
members, to approve the filing of a notice in order to
preserve a covenant or restriction.
- 23 -- Prescribing the content of a statement that the board of
24 the homeowners' association must send to the members
25 demonstrating the association's intention to preserve a
covenant or restriction.
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