



HB 0165

2003

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A bill to be entitled

An act relating to homeowners' associations; amending s. 702.09, F.S.; redefining the term "mortgage" to include liens created pursuant to a homeowners' association as defined in s. 712.01, F.S.; amending s. 718.111, F.S.; revising language with respect to official records of the condominium association authorizing the association to provide certain information to prospective purchasers or lienholders under certain circumstances; providing for immunity from liability; authorizing fees; amending s. 718.112, F.S.; revising language with respect to condominium bylaws to allow the use of limited proxies for votes taken to waive certain financial reporting requirements; prohibiting the requirement of retrofitting for enhanced fire protection systems under certain circumstances; amending s. 718.303, F.S.; providing that certain actions with respect to the obligation of condominium owners shall not be deemed actions for specific performance; amending s. 719.104, F.S.; revising language with respect to official records of the cooperative association authorizing the association to provide certain information to prospective purchasers or lienholders under certain circumstances; providing for immunity from liability; authorizing fees; amending s. 719.303, F.S.; providing that certain actions with respect to the obligation of cooperative owners shall not be deemed actions for specific performance; amending s. 720.302, F.S.; providing that corporations not for profit that operate residential homeowners' associations shall be



HB 0165

2003

30 governed by and subject to the provisions of ch. 617,
 31 F.S.; providing an effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Section 702.09, Florida Statutes, is amended to
 36 read:

37 702.09 Definitions.--For the purposes of ss. 702.07 and
 38 702.08 the words "decree of foreclosure" shall include a
 39 judgment or order rendered or passed in the foreclosure
 40 proceedings in which the decree of foreclosure shall be
 41 rescinded, vacated, and set aside; the word "mortgage" shall
 42 mean any written instrument securing the payment of money or
 43 advances and includes liens to secure payment of assessments
 44 arising under chapters 718 and 719 and liens created pursuant to
 45 the recorded covenants of a homeowners' association as defined
 46 in s. 712.01; the word "debt" shall include promissory notes,
 47 bonds, and all other written obligations given for the payment
 48 of money; the words "foreclosure proceedings" shall embrace
 49 every action in the circuit or county courts of this state
 50 wherein it is sought to foreclose a mortgage and sell the
 51 property covered by the same; and the word "property" shall mean
 52 and include both real and personal property.

53 Section 2. Subsection (12) of section 718.111, Florida
 54 Statutes, is amended to read:

55 718.111 The association.--

56 (12) OFFICIAL RECORDS.--

57 (a) From the inception of the association, the association
 58 shall maintain each of the following items, when applicable,
 59 which shall constitute the official records of the association:



HB 0165

2003

- 60 1. A copy of the plans, permits, warranties, and other
61 items provided by the developer pursuant to s. 718.301(4).
- 62 2. A photocopy of the recorded declaration of condominium
63 of each condominium operated by the association and of each
64 amendment to each declaration.
- 65 3. A photocopy of the recorded bylaws of the association
66 and of each amendment to the bylaws.
- 67 4. A certified copy of the articles of incorporation of
68 the association, or other documents creating the association,
69 and of each amendment thereto.
- 70 5. A copy of the current rules of the association.
- 71 6. A book or books which contain the minutes of all
72 meetings of the association, of the board of directors, and of
73 unit owners, which minutes shall be retained for a period of not
74 less than 7 years.
- 75 7. A current roster of all unit owners and their mailing
76 addresses, unit identifications, voting certifications, and, if
77 known, telephone numbers.
- 78 8. All current insurance policies of the association and
79 condominiums operated by the association.
- 80 9. A current copy of any management agreement, lease, or
81 other contract to which the association is a party or under
82 which the association or the unit owners have an obligation or
83 responsibility.
- 84 10. Bills of sale or transfer for all property owned by
85 the association.
- 86 11. Accounting records for the association and separate
87 accounting records for each condominium which the association
88 operates. All accounting records shall be maintained for a



HB 0165

2003

89 period of not less than 7 years. The accounting records shall
90 include, but are not limited to:

91 a. Accurate, itemized, and detailed records of all
92 receipts and expenditures.

93 b. A current account and a monthly, bimonthly, or
94 quarterly statement of the account for each unit designating the
95 name of the unit owner, the due date and amount of each
96 assessment, the amount paid upon the account, and the balance
97 due.

98 c. All audits, reviews, accounting statements, and
99 financial reports of the association or condominium.

100 d. All contracts for work to be performed. Bids for work
101 to be performed shall also be considered official records and
102 shall be maintained for a period of 1 year.

103 12. Ballots, sign-in sheets, voting proxies, and all other
104 papers relating to voting by unit owners, which shall be
105 maintained for a period of 1 year from the date of the election,
106 vote, or meeting to which the document relates.

107 13. All rental records, when the association is acting as
108 agent for the rental of condominium units.

109 14. A copy of the current question and answer sheet as
110 described by s. 718.504.

111 15. All other records of the association not specifically
112 included in the foregoing which are related to the operation of
113 the association.

114 (b) The official records of the association shall be
115 maintained within the state. The records of the association
116 shall be made available to a unit owner within 5 working days
117 after receipt of written request by the board or its designee.

118 This paragraph may be complied with by having a copy of the



HB 0165

2003

119 official records of the association available for inspection or
 120 copying on the condominium property or association property.

121 (c) The official records of the association are open to
 122 inspection by any association member or the authorized
 123 representative of such member at all reasonable times. The right
 124 to inspect the records includes the right to make or obtain
 125 copies, at the reasonable expense, if any, of the association
 126 member. The association may adopt reasonable rules regarding the
 127 frequency, time, location, notice, and manner of record
 128 inspections and copying. The failure of an association to
 129 provide the records within 10 working days after receipt of a
 130 written request shall create a rebuttable presumption that the
 131 association willfully failed to comply with this paragraph. A
 132 unit owner who is denied access to official records is entitled
 133 to the actual damages or minimum damages for the association's
 134 willful failure to comply with this paragraph. The minimum
 135 damages shall be \$50 per calendar day up to 10 days, the
 136 calculation to begin on the 11th working day after receipt of
 137 the written request. The failure to permit inspection of the
 138 association records as provided herein entitles any person
 139 prevailing in an enforcement action to recover reasonable
 140 attorney's fees from the person in control of the records who,
 141 directly or indirectly, knowingly denied access to the records
 142 for inspection. The association shall maintain an adequate
 143 number of copies of the declaration, articles of incorporation,
 144 bylaws, and rules, and all amendments to each of the foregoing,
 145 as well as the question and answer sheet provided for in s.
 146 718.504 and year-end financial information required in this
 147 section on the condominium property to ensure their availability
 148 to unit owners and prospective purchasers, and may charge its



HB 0165

2003

149 actual costs for preparing and furnishing these documents to
 150 those requesting the same. Notwithstanding the provisions of
 151 this paragraph, the following records shall not be accessible to
 152 unit owners:

153 1. Any record protected by the lawyer-client privilege as
 154 described in s. 90.502; and any record protected by the work-
 155 product privilege, including any record prepared by an
 156 association attorney or prepared at the attorney's express
 157 direction; which reflects a mental impression, conclusion,
 158 litigation strategy, or legal theory of the attorney or the
 159 association, and which was prepared exclusively for civil or
 160 criminal litigation or for adversarial administrative
 161 proceedings, or which was prepared in anticipation of imminent
 162 civil or criminal litigation or imminent adversarial
 163 administrative proceedings until the conclusion of the
 164 litigation or adversarial administrative proceedings.

165 2. Information obtained by an association in connection
 166 with the approval of the lease, sale, or other transfer of a
 167 unit.

168 3. Medical records of unit owners.

169 (d) The association shall prepare a question and answer
 170 sheet as described in s. 718.504, and shall update it annually.

171 (e) The association or its authorized agent shall not be
 172 required to provide a prospective purchaser or lienholder with
 173 information about the condominium or the association other than
 174 information or documents required by this chapter to be made
 175 available or disclosed.

176 1. If, for the convenience of the members, the association
 177 elects to provide requested information not required by law to
 178 be made available or disclosed to prospective purchasers or



HB 0165

2003

179 lienholders, the association may do so, and the association and
180 its authorized agent shall be immune from suit by any person or
181 entity for information given in good faith if the association or
182 its authorized agent accompanies such information with a written
183 statement in substantially the following form:

184
185 The information contained herein, to the extent not
186 required to be provided by the Florida Condominium
187 Act, is provided without warranty or certification of
188 any sort. Reliance on the accuracy of this
189 information, if provided in good faith, is at the sole
190 risk of the person or entity choosing to rely thereon.

191 You are encouraged to review original documentation
192 that may be available rather than relying on
193 summaries, compilations, statements of opinion, or
194 anecdotal information which may be the source of our
195 information. Florida law provides immunity from suit
196 for good faith information, even if it is later
197 determined to be inaccurate.

198
199 2. The association or its authorized agent shall be
200 entitled to charge a reasonable fee to the prospective
201 purchaser, lienholder, or the current unit owner for its time in
202 providing good faith responses to requests for information by or
203 on behalf of a prospective purchaser or lienholder, other than
204 that required by law, provided that such fee shall not exceed
205 \$150 plus the reasonable cost of photocopying and any attorney's
206 fees incurred by the association.

207 Section 3. Paragraphs (b) and (1) of subsection (2) of
208 section 718.112, Florida Statutes, are amended to read:



HB 0165

2003

209 718.112 Bylaws.--

210 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the
 211 following and, if they do not do so, shall be deemed to include
 212 the following:

213 (b) *Quorum; voting requirements; proxies.--*

214 1. Unless a lower number is provided in the bylaws, the
 215 percentage of voting interests required to constitute a quorum
 216 at a meeting of the members shall be a majority of the voting
 217 interests. Unless otherwise provided in this chapter or in the
 218 declaration, articles of incorporation, or bylaws, and except as
 219 provided in subparagraph (d)3., decisions shall be made by
 220 owners of a majority of the voting interests represented at a
 221 meeting at which a quorum is present.

222 2. Except as specifically otherwise provided herein, after
 223 January 1, 1992, unit owners may not vote by general proxy, but
 224 may vote by limited proxies substantially conforming to a
 225 limited proxy form adopted by the division. Limited proxies and
 226 general proxies may be used to establish a quorum. Limited
 227 proxies shall be used for votes taken to waive or reduce
 228 reserves in accordance with subparagraph (f)2.; for votes taken
 229 to waive the financial reporting requirements of s. 718.111(13);
 230 for votes taken to amend the declaration pursuant to s. 718.110;
 231 for votes taken to amend the articles of incorporation or bylaws
 232 pursuant to this section; and for any other matter for which
 233 this chapter requires or permits a vote of the unit owners.
 234 Except as provided in paragraph (d), after January 1, 1992, no
 235 proxy, limited or general, shall be used in the election of
 236 board members. General proxies may be used for other matters for
 237 which limited proxies are not required, and may also be used in
 238 voting for nonsubstantive changes to items for which a limited



HB 0165

2003

239 proxy is required and given. Notwithstanding the provisions of
240 this subparagraph, unit owners may vote in person at unit owner
241 meetings. Nothing contained herein shall limit the use of
242 general proxies or require the use of limited proxies for any
243 agenda item or election at any meeting of a timeshare
244 condominium association.

245 3. Any proxy given shall be effective only for the
246 specific meeting for which originally given and any lawfully
247 adjourned meetings thereof. In no event shall any proxy be valid
248 for a period longer than 90 days after the date of the first
249 meeting for which it was given. Every proxy is revocable at any
250 time at the pleasure of the unit owner executing it.

251 4. A member of the board of administration or a committee
252 may submit in writing his or her agreement or disagreement with
253 any action taken at a meeting that the member did not attend.
254 This agreement or disagreement may not be used as a vote for or
255 against the action taken and may not be used for the purposes of
256 creating a quorum.

257 5. When any of the board or committee members meet by
258 telephone conference, those board or committee members attending
259 by telephone conference may be counted toward obtaining a quorum
260 and may vote by telephone. A telephone speaker must be used so
261 that the conversation of those board or committee members
262 attending by telephone may be heard by the board or committee
263 members attending in person as well as by any unit owners
264 present at a meeting.

265 (1) *Certificate of compliance*.--There shall be a provision
266 that a certificate of compliance from a licensed electrical
267 contractor or electrician may be accepted by the association's
268 board as evidence of compliance of the condominium units to the



HB 0165

2003

269 applicable fire and life safety code. Notwithstanding the
270 provisions of chapter 633 or of any other statute, ordinance,
271 administrative rule or regulation, nor any interpretation of the
272 foregoing, no association, condominium, or unit owner shall be
273 obligated to retrofit the common elements or units of a
274 residential condominium with a fire sprinkler system or other
275 enhanced fire protection system in a building that has been
276 certified for occupancy by the applicable governmental entity,
277 provided that the unit owners have voted to forego such
278 retrofitting by the affirmative vote of two-thirds of all voting
279 interests. Such vote may be taken at a duly noticed meeting or
280 by written consent without a meeting, and shall be effective
281 upon the recording of a duly executed certificate attesting to
282 such vote in the public records for the county where the
283 condominium is located. As part of the information collected
284 annually from condominiums by the division, it shall require
285 condominium associations to report the membership vote and
286 recording of a certificate under this subsection and, if
287 retrofitting has been undertaken, the per-unit cost of such
288 work. The division shall annually report to the Department of
289 Insurance, State Fire Marshal's Office, the number of
290 condominiums that have elected to forego retrofitting.

291 Section 4. Subsection (1) of section 718.303, Florida
292 Statutes, is amended to read:

293 718.303 Obligations of owners; waiver; levy of fine
294 against unit by association.--

295 (1) Each unit owner, each tenant and other invitee, and
296 each association shall be governed by, and shall comply with the
297 provisions of, this chapter, the declaration, the documents
298 creating the association, and the association bylaws and the



HB 0165

2003

299 provisions thereof shall be deemed expressly incorporated into
 300 any lease of a unit. Actions for damages or for injunctive
 301 relief, or both, for failure to comply with these provisions may
 302 be brought by the association or by a unit owner against:

303 (a) The association.

304 (b) A unit owner.

305 (c) Directors designated by the developer, for actions
 306 taken by them prior to the time control of the association is
 307 assumed by unit owners other than the developer.

308 (d) Any director who willfully and knowingly fails to
 309 comply with these provisions.

310 (e) Any tenant leasing a unit, and any other invitee
 311 occupying a unit.

312
 313 The prevailing party in any such action or in any action in
 314 which the purchaser claims a right of voidability based upon
 315 contractual provisions as required in s. 718.503(1)(a) is
 316 entitled to recover reasonable attorney's fees. A unit owner
 317 prevailing in an action between the association and the unit
 318 owner under this section, in addition to recovering his or her
 319 reasonable attorney's fees, may recover additional amounts as
 320 determined by the court to be necessary to reimburse the unit
 321 owner for his or her share of assessments levied by the
 322 association to fund its expenses of the litigation. This relief
 323 does not exclude other remedies provided by law. Actions
 324 arising under this subsection shall not be deemed to be actions
 325 for specific performance.

326 Section 5. Subsection (2) of section 719.104, Florida
 327 Statutes, is amended to read:



HB 0165

2003

328 719.104 Cooperatives; access to units; records; financial
 329 reports; assessments; purchase of leases.--

330 (2) OFFICIAL RECORDS.--

331 (a) From the inception of the association, the association
 332 shall maintain a copy of each of the following, where
 333 applicable, which shall constitute the official records of the
 334 association:

335 1. The plans, permits, warranties, and other items
 336 provided by the developer pursuant to s. 719.301(4).

337 2. A photocopy of the cooperative documents.

338 3. A copy of the current rules of the association.

339 4. A book or books containing the minutes of all meetings
 340 of the association, of the board of directors, and of the unit
 341 owners, which minutes shall be retained for a period of not less
 342 than 7 years.

343 5. A current roster of all unit owners and their mailing
 344 addresses, unit identifications, voting certifications, and, if
 345 known, telephone numbers.

346 6. All current insurance policies of the association.

347 7. A current copy of any management agreement, lease, or
 348 other contract to which the association is a party or under
 349 which the association or the unit owners have an obligation or
 350 responsibility.

351 8. Bills of sale or transfer for all property owned by the
 352 association.

353 9. Accounting records for the association and separate
 354 accounting records for each unit it operates, according to good
 355 accounting practices. All accounting records shall be maintained
 356 for a period of not less than 7 years. The accounting records
 357 shall include, but not be limited to:



HB 0165

2003

358 a. Accurate, itemized, and detailed records of all
 359 receipts and expenditures.

360 b. A current account and a monthly, bimonthly, or
 361 quarterly statement of the account for each unit designating the
 362 name of the unit owner, the due date and amount of each
 363 assessment, the amount paid upon the account, and the balance
 364 due.

365 c. All audits, reviews, accounting statements, and
 366 financial reports of the association.

367 d. All contracts for work to be performed. Bids for work
 368 to be performed shall also be considered official records and
 369 shall be maintained for a period of 1 year.

370 10. Ballots, sign-in sheets, voting proxies, and all other
 371 papers relating to voting by unit owners, which shall be
 372 maintained for a period of 1 year after the date of the
 373 election, vote, or meeting to which the document relates.

374 11. All rental records where the association is acting as
 375 agent for the rental of units.

376 12. A copy of the current question and answer sheet as
 377 described in s. 719.504.

378 13. All other records of the association not specifically
 379 included in the foregoing which are related to the operation of
 380 the association.

381 (b) The official records of the association shall be
 382 maintained within the state. The records of the association
 383 shall be made available to a unit owner within 5 working days
 384 after receipt of written request by the board or its designee.
 385 This paragraph may be complied with by having a copy of the
 386 official records available for inspection or copying on the
 387 cooperative property.



HB 0165

2003

388 (c) The official records of the association shall be open
389 to inspection by any association member or the authorized
390 representative of such member at all reasonable times. Failure
391 to permit inspection of the association records as provided
392 herein entitles any person prevailing in an enforcement action
393 to recover reasonable attorney's fees from the person in control
394 of the records who, directly or indirectly, knowingly denies
395 access to the records for inspection. The right to inspect the
396 records includes the right to make or obtain copies, at the
397 reasonable expense, if any, of the association member. The
398 association may adopt reasonable rules regarding the frequency,
399 time, location, notice, and manner of record inspections and
400 copying. The failure of an association to provide the records
401 within 10 working days after receipt of a written request
402 creates a rebuttable presumption that the association willfully
403 failed to comply with this paragraph. A unit owner who is denied
404 access to official records is entitled to the actual damages or
405 minimum damages for the association's willful failure to comply
406 with this paragraph. The minimum damages shall be \$50 per
407 calendar day up to 10 days, the calculation to begin on the 11th
408 day after receipt of the written request. The association shall
409 maintain an adequate number of copies of the declaration,
410 articles of incorporation, bylaws, and rules, and all amendments
411 to each of the foregoing, as well as the question and answer
412 sheet provided for in s. 719.504, on the cooperative property to
413 ensure their availability to unit owners and prospective
414 purchasers, and may charge its actual costs for preparing and
415 furnishing these documents to those requesting the same.
416 Notwithstanding the provisions of this paragraph, the following
417 records shall not be accessible to unit owners:



HB 0165

2003

418 1. A record that was prepared by an association attorney
 419 or prepared at the attorney's express direction; that reflects a
 420 mental impression, conclusion, litigation strategy, or legal
 421 theory of the attorney or the association; or that was prepared
 422 exclusively for civil or criminal litigation or for adversarial
 423 administrative proceedings or in anticipation of imminent civil
 424 or criminal litigation or imminent adversarial administrative
 425 proceedings, until the conclusion of the litigation or
 426 adversarial administrative proceedings.

427 2. Information obtained by an association in connection
 428 with the approval of the lease, sale, or other transfer of a
 429 unit.

430 3. Medical records of unit owners.

431 (d) The association or its authorized agent shall not be
 432 required to provide a prospective purchaser or lienholder with
 433 information about the cooperative or association other than the
 434 information or documents required by this chapter to be made
 435 available or disclosed.

436 1. If, for the convenience of the members, the association
 437 elects to provide requested information not required by law to
 438 be made available or disclosed to prospective purchasers or
 439 lienholders, the association may do so, and the association and
 440 its authorized agent shall be immune from suit by any person or
 441 entity for information given in good faith if the association or
 442 its authorized agent accompanies such information with a written
 443 statement in substantially the following form:

444
 445 The information contained herein, to the extent not
 446 required to be provided by the Florida Cooperative
 447 Act, is provided without warranty or certification of



HB 0165

2003

448 any sort. Reliance on the accuracy of this
 449 information, if provided in good faith, is at the sole
 450 risk of the person or entity choosing to rely thereon.
 451 You are encouraged to review original documentation
 452 that may be available rather than relying on
 453 summaries, compilations, statements of opinion, or
 454 anecdotal information which may be the source of our
 455 information. Florida law provides immunity from suit
 456 for good faith information, even if it is later
 457 determined to be inaccurate.

458
 459 2. The association or its authorized agent shall be
 460 entitled to charge a reasonable fee to the prospective
 461 purchaser, lienholder, or the current unit owner for its time in
 462 providing good faith responses to requests for information by or
 463 on behalf of a prospective purchaser or lienholder, other than
 464 that required by law, provided that such fee shall not exceed
 465 \$150 plus the reasonable cost of photocopying and any attorney's
 466 fees incurred by the association.

467 Section 6. Subsection (1) of section 719.303, Florida
 468 Statutes, is amended to read:

469 719.303 Obligations of owners.--

470 (1) Each unit owner, each tenant and other invitee, and
 471 each association shall be governed by, and shall comply with the
 472 provisions of, this chapter, the cooperative documents, the
 473 documents creating the association, and the association bylaws,
 474 and the provisions thereof shall be deemed expressly
 475 incorporated into any lease of a unit. Actions for damages or
 476 for injunctive relief, or both, for failure to comply with these



HB 0165

2003

477 provisions may be brought by the association or by a unit owner
478 against:

479 (a) The association.

480 (b) A unit owner.

481 (c) Directors designated by the developer, for actions
482 taken by them prior to the time control of the association is
483 assumed by unit owners other than the developer.

484 (d) Any director who willfully and knowingly fails to
485 comply with these provisions.

486 (e) Any tenant leasing a unit, and any other invitee
487 occupying a unit.

488

489 The prevailing party in any such action or in any action in
490 which the purchaser claims a right of voidability based upon
491 contractual provisions as required in s. 719.503(1)(a) is
492 entitled to recover reasonable attorney's fees. A unit owner
493 prevailing in an action between the association and the unit
494 owner under this section, in addition to recovering his or her
495 reasonable attorney's fees, may recover additional amounts as
496 determined by the court to be necessary to reimburse the unit
497 owner for his or her share of assessments levied by the
498 association to fund its expenses of the litigation. This relief
499 does not exclude other remedies provided by law. Actions
500 arising under this subsection shall not be deemed to be actions
501 for specific performance.

502 Section 7. Section 720.302, Florida Statutes, is amended
503 to read:

504 720.302 Purposes, scope, and application.--

505 (1) The purposes of ss. 720.301-720.312 are to give
506 statutory recognition to corporations not for profit that



HB 0165

2003

507 operate residential communities in this state, to provide
 508 procedures for operating homeowners' associations, and to
 509 protect the rights of association members without unduly
 510 impairing the ability of such associations to perform their
 511 functions.

512 (2) The Legislature recognizes that it is not in the best
 513 interest of homeowners' associations or the individual
 514 association members thereof to create or impose a bureau or
 515 other agency of state government to regulate the affairs of
 516 homeowners' associations. Further, the Legislature recognizes
 517 that certain contract rights have been created for the benefit
 518 of homeowners' associations and members thereof before the
 519 effective date of this act and that ss. 720.301-720.312 are not
 520 intended to impair such contract rights, including, but not
 521 limited to, the rights of the developer to complete the
 522 community as initially contemplated.

523 (3) Sections 720.301-720.312 do not apply to:

524 (a) A community that is composed of property primarily
 525 intended for commercial, industrial, or other nonresidential
 526 use; or

527 (b) The commercial or industrial parcels in a community
 528 that contains both residential parcels and parcels intended for
 529 commercial or industrial use.

530 (4) Sections 720.301-720.312 do not apply to any
 531 association that is subject to regulation under chapter 718,
 532 chapter 719, or chapter 721; or to any nonmandatory association
 533 formed under chapter 723.

534 (5) Unless expressly stated to the contrary, corporations
 535 not for profit that operate residential homeowners' associations
 536 in this state shall be governed by and subject to the provisions



HB 0165

2003

537 of chapter 617. This provision is intended to clarify existing
538 law.

539 Section 8. This act shall take effect upon becoming a law.