

By Senator Atwater

25-1330A-04

1 A bill to be entitled
2 An act relating to homeowners' associations;
3 amending s. 720.301, F.S.; defining the term
4 "division"; amending s. 720.302, F.S.;
5 prescribing a legislative purpose of providing
6 alternative dispute resolution procedures for
7 disputes involving elections and recalls;
8 amending s. 720.303, F.S.; prescribing rights
9 of members and parcel owners to attend and
10 address association board meetings and to have
11 items placed on an agenda; prescribing
12 additional requirements for notice of meetings;
13 providing for additional materials to be
14 maintained as records; providing additional
15 requirements and limitations with respect to
16 inspecting and copying records; providing
17 requirements with respect to financial
18 statements; providing procedures for recall of
19 directors; amending s. 720.304, F.S.;
20 prescribing owners' rights with respect to flag
21 display; prohibiting certain lawsuits against
22 parcel owners; providing penalties; amending s.
23 720.305, F.S.; providing that a fine by an
24 association cannot become a lien against a
25 parcel; providing for attorney's fees in
26 actions to recover fines; creating s. 720.3055,
27 F.S.; prescribing requirements for contracts
28 for products and services; amending s. 720.306,
29 F.S.; providing for notice of and right to
30 speak at member meetings; requiring election
31 disputes between a member and an association to

1 be submitted to mandatory binding arbitration;
2 amending s. 720.311, F.S.; expanding
3 requirements and guidelines with respect to
4 alternative dispute resolution; providing
5 requirements for mediation and arbitration;
6 providing for training and education programs;
7 transferring, renumbering, and amending s.
8 689.26, F.S.; prescribing standards for a
9 disclosure summary of association membership
10 requirements; creating s. 720.402, F.S.;
11 providing remedies for publication of false and
12 misleading information; creating s. 720.501,
13 F.S.; providing implied warranties relating to
14 real and personal property; amending s. 34.01,
15 F.S.; providing jurisdiction of disputes
16 involving homeowners' associations; amending
17 ss. 316.00825, 558.002, F.S.; conforming
18 cross-references; providing for internal
19 organization of ch. 720, F.S.; providing an
20 effective date.

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

Section 1. Present subsections (6) through (11) of section 720.301, Florida Statutes, are renumbered as subsections (7) through (12), respectively, and a new subsection (6) is added to that section, to read:

720.301 Definitions.--As used in ss. 720.301-720.312, the term:

1 (6) "Division" means the Division of Florida Land
2 Sales, Condominiums, and Mobile Homes in the Department of
3 Business and Professional Regulation.

4 Section 2. Subsection (2) of section 720.302, Florida
5 Statutes, is amended to read:

6 720.302 Purposes, scope, and application.--

7 (2) The Legislature recognizes that it is not in the
8 best interest of homeowners' associations or the individual
9 association members thereof to create or impose a bureau or
10 other agency of state government to regulate the affairs of
11 homeowners' associations. However, in accordance with s.
12 720.311, the Legislature finds that homeowners' associations
13 and their individual members will benefit from an expedited
14 alternative process for resolution of election and recall
15 disputes and presuit mediation of other disputes involving
16 covenant enforcement and authorizes the division to hear,
17 administer, and determine these disputes as more fully set
18 forth in this chapter. Further, the Legislature recognizes
19 that certain contract rights have been created for the benefit
20 of homeowners' associations and members thereof before the
21 effective date of this act and that ~~ss. 720.301-720.501 ss.~~
22 ~~720.301-720.312~~ are not intended to impair such contract
23 rights, including, but not limited to, the rights of the
24 developer to complete the community as initially contemplated.

25 Section 3. Section 720.303, Florida Statutes, is
26 amended to read:

27 720.303 Association powers and duties; meetings of
28 board; official records; budgets; financial reporting;
29 association funds; recalls.--

30 (1) POWERS AND DUTIES.--An association which operates
31 a community as defined in s. 720.301, must be operated by an

1 association that is a Florida corporation. After October 1,
2 1995, the association must be incorporated and the initial
3 governing documents must be recorded in the official records
4 of the county in which the community is located. An
5 association may operate more than one community. The officers
6 and directors of an association have a fiduciary relationship
7 to the members who are served by the association. It is the
8 intent of the Legislature that nothing in this subsection be
9 construed as providing for or removing a requirement of a
10 fiduciary relationship between any manager employed by the
11 association and the parcel owners. An officer, director, or
12 manager may not solicit, offer to accept, or accept any thing
13 or service of value for which consideration has not been
14 provided for his or her own benefit, or that of his or her
15 immediate family, from any person providing or proposing to
16 provide goods or services to the association. Any such
17 officer, director, or manager who knowingly so solicits,
18 offers to accept, or accepts any thing or service of value
19 commits a felony of the third degree, punishable as provided
20 in s. 775.082 or s. 775.084, and shall thereafter be
21 permanently disqualified from serving on the board of
22 directors of the association or serving as an officer of the
23 association. However, this subsection does not prohibit an
24 officer, director, or manager from accepting customary
25 amenities provided in business relationships, such as food and
26 drinks at meetings or conferences, business lunches not
27 exceeding \$20 per person, or marketing trinkets, which
28 include, but are not limited to, pens, key chains, scribble
29 pads, and calendars, provided that the value of each item does
30 not exceed \$20.The powers and duties of an association
31 include those set forth in this chapter and, except as

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

27 (2) BOARD MEETINGS.--

28 (a) A meeting of the board of directors of an
29 association occurs whenever a quorum of the board gathers to
30 conduct association business. All meetings of the board must
31 be open to all members except for meetings between the board

1 and its attorney with respect to proposed or pending
2 litigation where the contents of the discussion would
3 otherwise be governed by the attorney-client privilege.

4 (b) Parcel owners and members have the right to attend
5 all meetings and to speak at any meeting with reference to all
6 items opened for discussion or included on the agenda.

7 Notwithstanding any provision to the contrary in the governing
8 documents or any rules adopted by the board or by the

9 membership, a parcel owner and member has the right to speak

10 for at least 3 minutes on any item, provided that the parcel

11 owner and member submits a request to speak prior to the

12 commencement of the meeting. The association may adopt written

13 reasonable rules governing the frequency, duration, and other

14 manner of parcel owner or member statements, which rules must

15 be consistent with this paragraph. Notwithstanding any other

16 law, the requirement that board meetings and committee

17 meetings be open to the parcel owners and members is

18 inapplicable to meetings between the board or a committee and

19 the association's attorney, with respect to proposed or

20 pending litigation, when the meeting is held for the purpose

21 of seeking or rendering legal advice, and to meetings of the

22 board held for the purpose of discussing personnel matters.

23 (c) The bylaws shall provide for giving notice to

24 parcel owners and members of all board meetings and, if they

25 do not do so, shall be deemed to provide the following:

26 1. Notices of all board meetings must be posted in a

27 conspicuous place in the community at least 48 hours in

28 advance of a meeting, except in an emergency. In the

29 alternative, if notice is not posted in a conspicuous place in

30 the community, notice of each board meeting must be mailed or

31 delivered to each member at least 7 days before the meeting,

1 except in an emergency. Notwithstanding this general notice
2 requirement, for communities with more than 100 members, the
3 bylaws may provide for a reasonable alternative to posting or
4 mailing of notice for each board meeting, including
5 publication of notice, provision of a schedule of board
6 meetings, or the conspicuous posting and repeated broadcasting
7 of the notice on a closed-circuit cable television system
8 serving the homeowners' association. However, if broadcast
9 notice is used in lieu of a notice posted physically in the
10 community, the notice must be broadcast at least four times
11 every broadcast hour of each day that a posted notice is
12 otherwise required. When broadcast notice is provided, the
13 notice and agenda must be broadcast in a manner and for a
14 sufficient continuous length of time so as to allow an average
15 reader to observe the notice and read and comprehend the
16 entire content of the notice and the agenda. The bylaws or
17 amended bylaws may provide for giving notice by electronic
18 transmission in a manner authorized by law for meetings of the
19 board of directors, committee meetings requiring notice under
20 this section, and annual and special meetings of the members;
21 however, a member must consent in writing to receiving notice
22 by electronic transmission.

23 2. An assessment may not be levied at a board meeting
24 unless the notice of the meeting includes a statement that
25 assessments will be considered and the nature of the
26 assessments. Written notice of any meeting at which special
27 assessments will be considered or at which amendments to rules
28 regarding parcel use will be considered must be mailed,
29 delivered, or electronically transmitted to the members and
30 parcel owners and posted conspicuously on the property or
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1 broadcast on closed-circuit cable television not less than 14
2 days before the meeting.

3 3. Directors may not vote by proxy or by secret ballot
4 at board meetings, except that secret ballots may be used in
5 the election of officers. This subsection also applies to the
6 meetings of any committee or other similar body, when a final
7 decision will be made regarding the expenditure of association
8 funds, and to any body vested with the power to approve or
9 disapprove architectural decisions with respect to a specific
10 parcel of residential property owned by a member of the
11 community.

12 (d) If 20 percent of the total voting interests
13 petition the board to address an item of business, the board
14 shall at its next board meeting or special meeting, but not
15 later than 60 days after the receipt of the petition, take the
16 petitioned item up on its agenda. The board shall give all
17 members notice of the meeting at which the petitioned item
18 shall be addressed in accordance with the 14-day notice
19 requirement pursuant to subsection (2). Other than addressing
20 the item at the meeting, the board is not obligated to take
21 any other action requested by the petition.

22 (3) MINUTES.--Minutes of all meetings of the members
23 of an association and of the board of directors of an
24 association must be maintained in written form or in another
25 form that can be converted into written form within a
26 reasonable time. A vote or abstention from voting on each
27 matter voted upon for each director present at a board meeting
28 must be recorded in the minutes.

29 (4) OFFICIAL RECORDS.--The association shall maintain
30 each of the following items, when applicable, which constitute
31 the official records of the association:

1 (a) Copies of any plans, specifications, permits, and
2 warranties related to improvements constructed on the common
3 areas or other property that the association is obligated to
4 maintain, repair, or replace.

5 (b) A copy of the bylaws of the association and of
6 each amendment to the bylaws.

7 (c) A copy of the articles of incorporation of the
8 association and of each amendment thereto.

9 (d) A copy of the declaration of covenants and a copy
10 of each amendment thereto.

11 (e) A copy of the current rules of the homeowners'
12 association.

13 (f) The minutes of all meetings of the board of
14 directors and of the members, which minutes must be retained
15 for at least 7 years.

16 (g) A current roster of all members and their mailing
17 addresses and parcel identifications. The association shall
18 also maintain the electronic mailing addresses and the numbers
19 designated by members for receiving notice sent by electronic
20 transmission of those members consenting to receive notice by
21 electronic transmission. The electronic mailing addresses and
22 numbers provided by unit owners to receive notice by
23 electronic transmission shall be removed from association
24 records when consent to receive notice by electronic
25 transmission is revoked. However, the association is not
26 liable for an erroneous disclosure of the electronic mail
27 address or the number for receiving electronic transmission of
28 notices.

29 (h) All of the association's insurance policies or a
30 copy thereof, which policies must be retained for at least 7
31 years.

1 (i) A current copy of all contracts to which the
2 association is a party, including, without limitation, any
3 management agreement, lease, or other contract under which the
4 association has any obligation or responsibility. Bids
5 received by the association for work to be performed must also
6 be considered official records and must be kept for a period
7 of 1 year.

8 (j) The financial and accounting records of the
9 association, kept according to good accounting practices. All
10 financial and accounting records must be maintained for a
11 period of at least 7 years. The financial and accounting
12 records must include:

13 1. Accurate, itemized, and detailed records of all
14 receipts and expenditures.

15 2. A current account and a periodic statement of the
16 account for each member, designating the name and current
17 address of each member who is obligated to pay assessments,
18 the due date and amount of each assessment or other charge
19 against the member, the date and amount of each payment on the
20 account, and the balance due.

21 3. All tax returns, financial statements, and
22 financial reports of the association.

23 4. Any other records that identify, measure, record,
24 or communicate financial information.

25 (k) A copy of the disclosure summary described in s.
26 720.401(2).

27 (l) All other written records of the association not
28 specifically included in the foregoing which are related to
29 the operation of the association.

30 (5) INSPECTION AND COPYING OF RECORDS.--The official
31 records shall be maintained within the state and must be open

1 to inspection and available for photocopying by members or
2 their authorized agents at reasonable times and places within
3 10 business days after receipt of a written request for
4 access. This subsection may be complied with by having a copy
5 of the official records available for inspection or copying in
6 the community. If the association has a photocopy machine
7 available where the records are maintained, it must provide
8 parcel owners with copies on request during the inspection if
9 the entire request is limited to no more than 25 pages.

10 (a) The failure of an association to provide access to
11 the records within 10 business days after receipt of a written
12 request creates a rebuttable presumption that the association
13 willfully failed to comply with this subsection.

14 (b) A member who is denied access to official records
15 is entitled to the actual damages or minimum damages for the
16 association's willful failure to comply with this subsection.
17 The minimum damages are to be \$50 per calendar day up to 10
18 days, the calculation to begin on the 11th business day after
19 receipt of the written request.

20 (c) The association may adopt reasonable written rules
21 governing the frequency, time, location, notice, records to be
22 inspected, and manner of inspections, but may not impose a
23 requirement that a parcel owner demonstrate any proper purpose
24 for the inspection, state any reason for the inspection, or
25 limit a parcel owner's right to inspect records to less than
26 one 8-hour business day per month. The association ~~and~~ may
27 impose fees to cover the costs of providing copies of the
28 official records, including, without limitation, the costs of
29 copying. The association may charge up to 50 cents per page
30 for copies made on the association's photocopier. If the
31 association does not have a photocopy machine available where

1 the records are kept, or if the records requested to be copied
2 exceed 25 pages in length, the association may have copies
3 made by an outside vendor and may charge the actual cost of
4 copying.The association shall maintain an adequate number of
5 copies of the recorded governing documents, to ensure their
6 availability to members and prospective members, ~~and may~~
7 ~~charge only its actual costs for reproducing and furnishing~~
8 ~~these documents to those persons who are entitled to receive~~
9 ~~them.~~ Notwithstanding the provisions of this paragraph, the
10 following records shall not be accessible to members or parcel
11 owners:

12 1. Any record protected by the lawyer-client privilege
13 as described in s. 90.502 and any record protected by the
14 work-product privilege, including, but not limited to, any
15 record prepared by an association attorney or prepared at the
16 attorney's express direction which reflects a mental
17 impression, conclusion, litigation strategy, or legal theory
18 of the attorney or the association and was prepared
19 exclusively for civil or criminal litigation or for
20 adversarial administrative proceedings or which was prepared
21 in anticipation of imminent civil or criminal litigation or
22 imminent adversarial administrative proceedings until the
23 conclusion of the litigation or adversarial administrative
24 proceedings.

25 2. Information obtained by an association in
26 connection with the approval of the lease, sale, or other
27 transfer of a parcel.

28 3. Disciplinary, health, insurance, and personnel
29 records of the association's employees.

30 4. Medical records of parcel owners or community
31 residents.

1 (6) BUDGETS.--The association shall prepare an annual
2 budget. The budget must reflect the estimated revenues and
3 expenses for that year and the estimated surplus or deficit as
4 of the end of the current year. The budget must set out
5 separately all fees or charges for recreational amenities,
6 whether owned by the association, the developer, or another
7 person. The association shall provide each member with a copy
8 of the annual budget or a written notice that a copy of the
9 budget is available upon request at no charge to the member.
10 The copy must be provided to the member within the time limits
11 set forth in subsection (5).

12 (7) FINANCIAL REPORTING.--The association shall
13 prepare an annual financial report within 60 days after the
14 close of the fiscal year. The association shall, within the
15 time limits set forth in subsection (5), provide each member
16 with a copy of the annual financial report or a written notice
17 that a copy of the financial report is available upon request
18 at no charge to the member. Financial reports shall be
19 prepared as follows ~~The financial report must consist of~~
20 ~~either:~~

21 (a) An association that meets the criteria of this
22 paragraph shall prepare or cause to be prepared a complete set
23 of financial statements in accordance with generally accepted
24 accounting principles. The financial statements shall be based
25 upon the association's total annual revenues, as follows:

26 1. An association with total annual revenues of
27 \$100,000 or more, but less than \$200,000, shall prepare
28 compiled financial statements.

29 2. An association with total annual revenues of at
30 least \$200,000, but less than \$400,000, shall prepare reviewed
31 financial statements.

1 3. An association with total annual revenues of
2 \$400,000 or more shall prepare audited financial statements.
3 ~~Financial statements presented in conformity with generally~~
4 ~~accepted accounting principles; or~~
5 ~~(b) A financial report of actual receipts and~~
6 ~~expenditures, cash basis, which report must show:~~
7 1. An association with total annual revenues of less
8 than \$100,000 shall prepare a report of cash receipts and
9 expenditures. The amount of receipts and expenditures by
10 classification; and
11 2. An association in a community of fewer than 50
12 parcels, regardless of the association's annual revenues, may
13 prepare a report of cash receipts and expenditures in lieu of
14 financial statements required by paragraph (a) unless the
15 governing documents provide otherwise. The beginning and
16 ending cash balances of the association.
17 3. A report of cash receipts and disbursement must
18 disclose the amount of receipts by accounts and receipt
19 classifications and the amount of expenses by accounts and
20 expense classifications, including, but not limited to, the
21 following, as applicable: costs for security, professional,
22 and management fees and expenses; taxes; costs for recreation
23 facilities; expenses for refuse collection and utility
24 services; expenses for lawn care; costs for building
25 maintenance and repair; insurance costs; administration and
26 salary expenses; and reserves if maintained by the
27 association.
28 (c) If 20 percent of the parcel owners petition the
29 board for a level of financial reporting higher than that
30 required by this section, the association shall duly notice
31 and hold a meeting of members within 30 days of receipt of the

1 petition for the purpose of voting on raising the level of
2 reporting for that fiscal year. Upon approval of a majority of
3 the total voting interests of the parcel owners, the
4 association shall prepare or cause to be prepared, shall amend
5 the budget or adopt a special assessment to pay for the
6 financial report regardless of any provision to the contrary
7 in the governing documents, and shall provide within 90 days
8 of the meeting or the end of the fiscal year, whichever occurs
9 later:

10 1. Compiled, reviewed, or audited financial
11 statements, if the association is otherwise required to
12 prepare a report of cash receipts and expenditures;

13 2. Reviewed or audited financial statements, if the
14 association is otherwise required to prepare compiled
15 financial statements; or

16 3. Audited financial statements if the association is
17 otherwise required to prepare reviewed financial statements.

18 (d) If approved by a majority of the voting interests
19 present at a properly called meeting of the association, an
20 association may prepare or cause to be prepared:

21 1. A report of cash receipts and expenditures in lieu
22 of a compiled, reviewed, or audited financial statement;

23 2. A report of cash receipts and expenditures or a
24 compiled financial statement in lieu of a reviewed or audited
25 financial statement; or

26 3. A report of cash receipts and expenditures, a
27 compiled financial statement, or a reviewed financial
28 statement in lieu of an audited financial statement.

29 (8) ASSOCIATION FUNDS; COMMINGLING.--

30 (a) All association funds held by a developer shall be
31 maintained separately in the association's name. Reserve and

1 operating funds of the association shall not be commingled
2 prior to turnover except the association may jointly invest
3 reserve funds; however, such jointly invested funds must be
4 accounted for separately.

5 (b) No developer in control of a homeowners'
6 association shall commingle any association funds with his or
7 her funds or with the funds of any other homeowners'
8 association or community association.

9 (c) Association funds may not be used by a developer
10 to defend a civil or criminal action, administrative
11 proceeding, or arbitration proceeding that has been filed
12 against the developer or directors appointed to the
13 association board by the developer, even when the subject of
14 the action or proceeding concerns the operation of the
15 developer-controlled association.

16 (9) APPLICABILITY.--Sections 617.1601-617.1604 do not
17 apply to a homeowners' association in which the members have
18 the inspection and copying rights set forth in this section.

19 (10) RECALL OF DIRECTORS.--

20 (a)1. Regardless of any provision to the contrary
21 contained in the governing documents, subject to the
22 provisions of s. 720.307 regarding transition of association
23 control, any member of the board or directors may be recalled
24 and removed from office with or without cause by a majority of
25 the total voting interests.

26 2. When the governing documents, including the
27 declaration, articles of incorporation, or bylaws, provide
28 that only a specific class of members is entitled to elect a
29 board director or directors, only that class of members may
30 vote to recall those board directors so elected.

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1 (b)1. Board directors may be recalled by an agreement
2 in writing or by written ballot without a membership meeting.
3 The agreement in writing or the written ballots, or a copy
4 thereof, shall be served on the association by certified mail
5 or by personal service in the manner authorized by chapter 48
6 and the Florida Rules of Civil Procedure.

7 2. The board shall duly notice and hold a meeting of
8 the board within 5 full business days after receipt of the
9 agreement in writing or written ballots. At the meeting, the
10 board shall either certify the written ballots or written
11 agreement to recall a director or directors of the board, in
12 which case such director or directors shall be recalled
13 effective immediately and shall turn over to the board within
14 5 full business days any and all records and property of the
15 association in their possession, or proceed as described in
16 paragraph (d).

17 3. When it is determined by the division pursuant to
18 binding arbitration proceedings that an initial recall effort
19 was defective, written recall agreements or written ballots
20 used in the first recall effort and not found to be defective
21 may be reused in one subsequent recall effort. However, in no
22 event is a written agreement or written ballot valid for more
23 than 120 days after it has been signed by the member.

24 4. Any rescission or revocation of a member's written
25 recall ballot or agreement must be in writing and, in order to
26 be effective, must be delivered to the association before the
27 association is served with the written recall agreements or
28 ballots.

29 5. The agreement in writing or ballot shall list at
30 least as many possible replacement directors as there are
31 directors subject to the recall, when at least a majority of

1 the board is sought to be recalled; the person executing the
2 recall instrument may vote for as many replacement candidates
3 as there are directors subject to the recall.

4 (c)1. If the declaration, articles of incorporation,
5 or bylaws specifically provide, the members may also recall
6 and remove a board director or directors by a vote taken at a
7 meeting. If so provided in the governing documents, a special
8 meeting of the members to recall a director or directors of
9 the board of administration may be called by 10 percent of the
10 voting interests giving notice of the meeting as required for
11 a meeting of members, and the notice shall state the purpose
12 of the meeting. Electronic transmission may not be used as a
13 method of giving notice of a meeting called in whole or in
14 part for this purpose.

15 2. The board shall duly notice and hold a board
16 meeting within 5 full business days after the adjournment of
17 the member meeting to recall one or more directors. At the
18 meeting, the board shall certify the recall, in which case
19 such member or members shall be recalled effective immediately
20 and shall turn over to the board within 5 full business days
21 any and all records and property of the association in their
22 possession, or shall proceed as set forth in subparagraph (d).

23 (d) If the board determines not to certify the written
24 agreement or written ballots to recall a director or directors
25 of the board or does not certify the recall by a vote at a
26 meeting, the board shall, within 5 full business days after
27 the meeting, file with the division a petition for binding
28 arbitration pursuant to the applicable procedures in ss.
29 718.1255 and 718.112(2)(j) and the rules adopted thereunder.
30 For the purposes of this section, the members who voted at the
31 meeting or who executed the agreement in writing shall

1 constitute one party under the petition for arbitration. If
2 the arbitrator certifies the recall as to any director or
3 directors of the board, the recall will be effective upon
4 mailing of the final order of arbitration to the association.
5 The director or directors so recalled shall deliver to the
6 board any and all records of the association in their
7 possession within 5 full business days after the effective
8 date of the recall.

9 (e) If a vacancy occurs on the board as a result of a
10 recall and less than a majority of the board directors are
11 removed, the vacancy may be filled by the affirmative vote of
12 a majority of the remaining directors, notwithstanding any
13 provision to the contrary contained in this subsection or in
14 the association documents. If vacancies occur on the board as
15 a result of a recall and a majority or more of the board
16 directors are removed, the vacancies shall be filled by
17 members voting in favor of the recall; if removal is at a
18 meeting, any vacancies shall be filled by the members at the
19 meeting. If the recall occurred by agreement in writing or by
20 written ballot, members may vote for replacement directors in
21 the same instrument in accordance with procedural rules
22 adopted by the division, which rules need not be consistent
23 with this subsection.

24 (f) If the board fails to duly notice and hold a board
25 meeting within 5 full business days after service of an
26 agreement in writing or within 5 full business days after the
27 adjournment of the member recall meeting, the recall shall be
28 deemed effective and the board directors so recalled shall
29 immediately turn over to the board all records and property of
30 the association.

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1 (g) If a director who is removed fails to relinquish
2 his or her office or turn over records as required under this
3 section, the circuit court in the county where the association
4 maintains its principal office may, upon the petition of the
5 association, summarily order the director to relinquish his or
6 her office and turn over all association records upon
7 application of the association.

8 (h) The minutes of the board meeting at which the
9 board decides whether to certify the recall are an official
10 association record. The minutes must record the date and time
11 of the meeting, the decision of the board, and the vote count
12 taken on each board member subject to the recall. In addition,
13 when the board decides not to certify the recall, as to each
14 vote rejected, the minutes must identify the parcel number and
15 the specific reason for each such rejection.

16 (i) When the recall of more than one board director is
17 sought, the written agreement, ballot, or vote at a meeting
18 shall provide for a separate vote for each board director
19 sought to be recalled.

20 Section 4. Section 720.304, Florida Statutes, is
21 amended to read:

22 720.304 Right of owners to peaceably assemble; display
23 of flag; SLAPP suits prohibited.--

24 (1) All common areas and recreational facilities
25 serving any homeowners' association shall be available to
26 parcel owners in the homeowners' association served thereby
27 and their invited guests for the use intended for such common
28 areas and recreational facilities. The entity or entities
29 responsible for the operation of the common areas and
30 recreational facilities may adopt reasonable rules and
31 regulations pertaining to the use of such common areas and

1 recreational facilities. No entity or entities shall
2 unreasonably restrict any parcel owner's right to peaceably
3 assemble or right to invite public officers or candidates for
4 public office to appear and speak in common areas and
5 recreational facilities.

6 (2) Any homeowner may display one portable, removable
7 United States flag or official flag of the State of Florida in
8 a respectful manner, and on Armed Forces Day, Memorial Day,
9 Flag Day, Independence Day, and Veterans Day may display in a
10 respectful manner portable, removable official flags, not
11 larger than 4 1/2 feet by 6 feet, which represents the United
12 States Army, Navy, Air Force, Marine Corps, or Coast Guard,
13 regardless of any declaration rules or requirements dealing
14 with flags or decorations.

15 (3) Any owner prevented from exercising rights
16 guaranteed by subsection (1) or subsection (2) may bring an
17 action in the appropriate court of the county in which the
18 alleged infringement occurred, and, upon favorable
19 adjudication, the court shall enjoin the enforcement of any
20 provision contained in any homeowners' association document or
21 rule that operates to deprive the owner of such rights.

22 (4) It is the intent of the Legislature to protect the
23 right of parcel owners to exercise their rights to instruct
24 their representatives and petition for redress of grievances
25 before the various governmental entities of this state as
26 protected by the First Amendment to the United States
27 Constitution and s. 5, Art. I of the State Constitution. The
28 Legislature recognizes that "Strategic Lawsuits Against Public
29 Participation" or "SLAPP" suits, as they are typically called,
30 have occurred when members are sued by individuals, business
31 entities, or governmental entities arising out of a parcel

1 owner's appearance and presentation before a governmental
2 entity on matters related to the homeowners' association.
3 However, it is the public policy of this state that government
4 entities, business organizations, and individuals not engage
5 in SLAPP suits because such actions are inconsistent with the
6 right of parcel owner to participate in the state's
7 institutions of government. Therefore, the Legislature finds
8 and declares that prohibiting such lawsuits by governmental
9 entities, business entities, and individuals against parcel
10 owners who address matters concerning their homeowners'
11 association will preserve this fundamental state policy,
12 preserve the constitutional rights of parcel owners, and
13 assure the continuation of representative government in this
14 state. It is the intent of the Legislature that such lawsuits
15 be expeditiously disposed of by the courts.

16 (a) As used in this subsection, the term "governmental
17 entity" means the state, including the executive, legislative,
18 and judicial branches of government, the independent
19 establishments of the state, counties, municipalities,
20 districts, authorities, boards, or commissions, or any
21 agencies of these branches which are subject to chapter 286.

22 (b) A governmental entity, business organization, or
23 individual in this state may not file or cause to be filed
24 through its employees or agents any lawsuit, cause of action,
25 claim, cross-claim, or counterclaim against a parcel owner
26 without merit and solely because such parcel owner has
27 exercised the right to instruct his or her representatives or
28 the right to petition for redress of grievances before the
29 various governmental entities of this state, as protected by
30 the First Amendment to the United States Constitution and s.
31 5, Art. I of the State Constitution.

1 (c) A parcel owner sued by a governmental entity,
2 business organization, or individual in violation of this
3 section has a right to an expeditious resolution of a claim
4 that the suit is in violation of this section. A parcel owner
5 may petition the court for an order dismissing the action or
6 granting final judgment in favor of that parcel owner. The
7 petitioner may file a motion for summary judgment, together
8 with supplemental affidavits, seeking a determination that the
9 governmental entity's, business organization's, or
10 individual's lawsuit has been brought in violation of this
11 section. The governmental entity, business organization, or
12 individual shall thereafter file its response and any
13 supplemental affidavits. As soon as practicable, the court
14 shall set a hearing on the petitioner's motion, which shall be
15 held at the earliest possible time after the filing of the
16 governmental entity's, business organization's or individual's
17 response. The court may award the parcel owner sued by the
18 governmental entity, business organization, or individual
19 actual damages arising from the governmental entity's,
20 individual's, or business organization's violation of this
21 section. A court may treble the damages awarded to a
22 prevailing parcel owner and shall state the basis for the
23 treble damages award in its judgment. The court shall award
24 the prevailing party reasonable attorney's fees and costs
25 incurred in connection with a claim that an action was filed
26 in violation of this section.

27 (d) Homeowners' associations may not expend
28 association funds in prosecuting a SLAPP suit against a parcel
29 owner.

30 Section 5. Subsection (2) of section 720.305, Florida
31 Statutes, is amended to read:

1 720.305 Obligations of members; remedies at law or in
2 equity; levy of fines and suspension of use rights; failure to
3 fill sufficient number of vacancies on board of directors to
4 constitute a quorum; appointment of receiver upon petition of
5 any member.--

6 (2) If the governing documents so provide, an
7 association may suspend, for a reasonable period of time, the
8 rights of a member or a member's tenants, guests, or invitees,
9 or both, to use common areas and facilities and may levy
10 reasonable fines, not to exceed \$100 per violation, against
11 any member or any tenant, guest, or invitee. A fine may be
12 levied on the basis of each day of a continuing violation,
13 with a single notice and opportunity for hearing, except that
14 no such fine shall exceed \$1,000 in the aggregate unless
15 otherwise provided in the governing documents. A fine shall
16 not become a lien against a parcel. In any action to recover a
17 fine, the prevailing party is entitled to collect its
18 reasonable attorney's fees and costs from the nonprevailing
19 party as determined by the court.

20 (a) A fine or suspension may not be imposed without
21 notice of at least 14 days to the person sought to be fined or
22 suspended and an opportunity for a hearing before a committee
23 of at least three members appointed by the board who are not
24 officers, directors, or employees of the association, or the
25 spouse, parent, child, brother, or sister of an officer,
26 director, or employee. If the committee, by majority vote,
27 does not approve a proposed fine or suspension, it may not be
28 imposed.

29 (b) The requirements of this subsection do not apply
30 to the imposition of suspensions or fines upon any member
31 because of the failure of the member to pay assessments or

1 other charges when due if such action is authorized by the
2 governing documents.

3 (c) Suspension of common-area-use rights shall not
4 impair the right of an owner or tenant of a parcel to have
5 vehicular and pedestrian ingress to and egress from the
6 parcel, including, but not limited to, the right to park.

7 Section 6. Section 720.3055, Florida Statutes, is
8 created to read:

9 720.3055 Contracts for products and services; in
10 writing; bids; exceptions.--

11 (1) All contracts as further described in this section
12 or any contract that is not to be fully performed within 1
13 year after the making thereof for the purchase, lease, or
14 renting of materials or equipment to be used by the
15 association in accomplishing its purposes under this chapter
16 or the governing documents, and all contracts for the
17 provision of services, shall be in writing. If a contract for
18 the purchase, lease, or renting of materials or equipment, or
19 for the provision of services, requires payment by the
20 association that exceeds 10 percent of the total annual budget
21 of the association, including reserves, the association must
22 obtain competitive bids for the materials, equipment, or
23 services. Nothing contained in this section shall be construed
24 to require the association to accept the lowest bid.

25 (2)(a)1. Notwithstanding the foregoing, contracts with
26 employees of the association, and contracts for attorney,
27 accountant, architect, community association manager,
28 engineering, and landscape architect services are not subject
29 to the provisions of this section.

30 2. A contract executed before July 1, 2004, and any
31 renewal thereof, is not subject to the competitive bid

1 requirements of this section. If a contract was awarded under
2 the competitive bid procedures of this section, any renewal of
3 that contract is not subject to such competitive bid
4 requirements if the contract contains a provision that allows
5 the board to cancel the contract on 30 days' notice.
6 Materials, equipment, or services provided to an association
7 under a local government franchise agreement by a franchise
8 holder are not subject to the competitive bid requirements of
9 this section. A contract with a manager, if made by a
10 competitive bid, may be made for up to 3 years. An association
11 whose declaration or bylaws provide for competitive bidding for
12 services may operate under the provisions of that declaration
13 or bylaws in lieu of this section if those provisions are not
14 less stringent than the requirements of this section.

15 (b) Nothing contained in this section is intended to
16 limit the ability of an association to obtain needed products
17 and services in an emergency.

18 (c) This section does not apply if the business entity
19 with which the association desires to enter into a contract is
20 the only source of supply within the county serving the
21 association.

22 (d) Nothing contained in this section shall excuse a
23 party contracting to provide maintenance or management
24 services from compliance with s. 720.309.

25 Section 7. Present subsections (5) through (8) of
26 section 720.306, Florida Statutes, are renumbered as
27 subsections (7) through (10), respectively, present subsection
28 (7) is amended, and subsections (5) and (6) are added to that
29 section to read:

30 720.306 Meetings of members; voting and election
31 procedures; amendments.--

1 (5) NOTICE OF MEETINGS.--The bylaws shall provide for
2 giving notice to members of all member meetings, and if they
3 do not do so shall be deemed to provide the following: The
4 association shall give all parcel owners and members actual
5 notice of all membership meetings, which shall be mailed,
6 delivered, or electronically transmitted to the members not
7 less than 14 days prior to the meeting. Evidence of compliance
8 with this 14-day notice shall be made by an affidavit executed
9 by the person providing the notice and filed upon execution
10 among the official records of the association. In addition to
11 mailing, delivering, or electronically transmitting the notice
12 of any meeting, the association may, by reasonable rule, adopt
13 a procedure for conspicuously posting and repeatedly
14 broadcasting the notice and the agenda on a closed-circuit
15 cable television system serving the association. When
16 broadcast notice is provided, the notice and agenda must be
17 broadcast in a manner and for a sufficient continuous length
18 of time so as to allow an average reader to observe the notice
19 and read and comprehend the entire content of the notice and
20 the agenda.

21 (6) RIGHT TO SPEAK.--Members and parcel owners have
22 the right to attend all membership meetings and to speak at
23 any meeting with reference to all items opened for discussion
24 or included on the agenda. Notwithstanding any provision to
25 the contrary in the governing documents or any rules adopted
26 by the board or by the membership, a member and a parcel owner
27 have the right to speak for at least 3 minutes on any item,
28 provided that the member or parcel owner submits a request to
29 speak prior to the meeting. The association may adopt written
30 reasonable rules governing the frequency, duration, and other

31

1 manner of member and parcel owner statements, which rules must
2 be consistent with this paragraph.

3 (9)(7) ELECTIONS.--Elections of directors must be
4 conducted in accordance with the procedures set forth in the
5 governing documents of the association. All members of the
6 association shall be eligible to serve on the board of
7 directors, and a member may nominate himself or herself as a
8 candidate for the board at a meeting where the election is to
9 be held. Except as otherwise provided in the governing
10 documents, boards of directors must be elected by a plurality
11 of the votes cast by eligible voters. Any election dispute
12 between a member and an association must be submitted to
13 mandatory binding arbitration with the division. Such
14 proceedings shall be conducted in the manner provided by s.
15 718.1255 and the procedural rules adopted by the division.

16 Section 8. Section 720.311, Florida Statutes, is
17 amended to read:

18 720.311 Dispute resolution.--

19 (1) The Legislature finds that alternative dispute
20 resolution has made progress in reducing court dockets and
21 trials and in offering a more efficient, cost-effective option
22 to litigation. The filing of any petition for mediation or
23 arbitration provided for in this section shall toll the
24 applicable statute of limitations. Any recall dispute filed
25 with the division pursuant to s. 720.303(10) shall be
26 conducted by the division in accordance with the provisions of
27 ss. 718.1255 and 718.112(2)(j) and the rules adopted by the
28 division. In addition, the division shall conduct mandatory
29 binding arbitration of election disputes between a member and
30 an association pursuant to s. 718.1255 and rules adopted by
31 the division. Neither election disputes nor recall disputes

1 are eligible for mediation; these disputes shall be arbitrated
2 by the division. At the conclusion of the proceeding, the
3 division shall charge the parties a fee in an amount adequate
4 to cover all costs and expenses incurred by the division in
5 conducting the proceeding. Initially, the petitioner shall
6 remit a filing fee of at least \$200 to the division. The fees
7 paid to the division shall become a recoverable cost in the
8 arbitration proceeding and the prevailing party in an
9 arbitration proceeding shall be paid its reasonable costs and
10 attorney's fees in an amount found reasonable by the
11 arbitrator. The division shall adopt rules to effectuate the
12 purposes of this section.

13 (2)(a) Disputes between an association and a parcel
14 owner regarding use of or changes to the parcel or the common
15 areas and other covenant enforcement disputes, disputes
16 regarding amendments to the association documents, disputes
17 regarding meetings of the board and committees appointed by
18 the board, membership meetings not including election
19 meetings, and access to the official records of the
20 association shall be filed with the division for mandatory
21 mediation before the dispute is filed in court. Mediation
22 proceedings must be conducted in accordance with the
23 applicable Florida Rules of Civil Procedure, and these
24 proceedings are privileged and confidential to the same extent
25 as court-ordered mediation. An arbitrator or judge may not
26 consider any information or evidence arising from the
27 mediation proceeding except in a proceeding to impose
28 sanctions for failure to attend a mediation session. Persons
29 who are not parties to the dispute may not attend the
30 mediation conference without the consent of all parties,
31 except for counsel for the parties and a corporate

1 representative designated by the association. When mediation
2 is attended by a quorum of the board, such mediation is not a
3 board meeting for purposes of notice and participation set
4 forth in s. 720.303. The division shall conduct the
5 proceedings through the use of division mediators or refer the
6 disputes to private mediators who have been duly certified by
7 the division as provided in paragraph (c). The parties shall
8 share the costs of mediation equally, including the fee
9 charged by the mediator, if any, unless the parties agree
10 otherwise. If a division mediator is used, the division may
11 charge such fee as is necessary to pay expenses of the
12 mediation, including, but not limited to, the salary and
13 benefits of the mediator and any travel expenses incurred. The
14 petitioner shall initially file with the division upon filing
15 the disputes, a filing fee of \$200, which shall be used to
16 defray the costs of the mediation. At the conclusion of the
17 mediation, the division shall charge to the parties, to be
18 shared equally unless otherwise agreed by the parties, such
19 further fees as are necessary to fully reimburse the division
20 for all expenses incurred in the mediation.

21 (b) If mediation as described in paragraph (a) is not
22 successful in resolving all issues between the parties, the
23 parties may file the unresolved dispute in a court of
24 competent jurisdiction or elect to enter into binding or
25 nonbinding arbitration pursuant to the procedures set forth in
26 s. 718.1255 and rules adopted by the division, with the
27 arbitration proceeding to be conducted by a division
28 arbitrator or by a private arbitrator certified by the
29 division. If all parties do not agree to arbitration
30 proceedings following an unsuccessful mediation, any party may
31 file the dispute in court. A final order resulting from

1 nonbinding arbitration is final and enforceable in the courts
2 if a complaint for trial de novo is not filed in a court of
3 competent jurisdiction within 30 days after entry of the
4 order.

5 (c) The division shall develop a certification and
6 training program for private mediators and private arbitrators
7 which shall emphasize experience and expertise in the area of
8 the operation of community associations. A mediator or
9 arbitrator shall be certified by the division only if he or
10 she has attended at least 20 hours of training in mediation or
11 arbitration, as appropriate, and only if the applicant has
12 mediated or arbitrated at least 10 disputes involving
13 community associations within 5 years prior to the date of the
14 application, or has mediated or arbitrated 10 disputes in any
15 area within 5 years prior to the date of application and has
16 completed 20 hours of training in community association
17 disputes. In order to be certified by the division, any
18 mediator must also be certified by the Florida Supreme Court.
19 The division may conduct the training and certification
20 program within the division or may contract with an outside
21 vendor to perform the training or certification. The expenses
22 of operating the training and certification and training
23 program shall be paid by the moneys and filing fees generated
24 by the arbitration of recall and election disputes and by the
25 mediation of those disputes referred to in this subsection and
26 by the training fees. Initially, the Department of Business
27 and Professional Regulation should seek sufficient funding to
28 cover the startup costs of establishing the certification and
29 training program.

30 (d) The mediation procedures provided by this
31 subsection may be used by a Florida corporation responsible

1 for the operation of a community in which the voting members
2 are parcel owners or their representatives, in which
3 membership in the corporation is not a mandatory condition of
4 parcel ownership, or which is not authorized to impose an
5 assessment that may become a lien on the parcel.

6 (3) The division shall develop an education program to
7 assist homeowners, associations, board members, and managers
8 in understanding and increasing awareness of the operation of
9 homeowners' associations pursuant to chapter 720 and in
10 understanding the use of alternative dispute resolution
11 techniques in resolving disputes between parcel owners and
12 associations or between owners. Such education program may
13 include the development of pamphlets and other written
14 instructional guides, the holding of classes and meetings by
15 division employees or outside vendors, as the division
16 determines, and the creation and maintenance of a website
17 containing instructional materials. The expenses of operating
18 the education program shall be initially paid by the moneys
19 and filing fees generated by the arbitration of recall and
20 election disputes and by the mediation of those disputes
21 referred to in this subsection. The Department of Business and
22 Professional Regulation shall seek funding to cover the
23 startup costs of the education, mediation, and arbitration
24 programs.~~At any time after the filing in a court of competent~~
25 ~~jurisdiction of a complaint relating to a dispute under ss.~~
26 ~~720.301-720.312, the court may order that the parties enter~~
27 ~~mediation or arbitration procedures.~~

28 Section 9. Section 689.26, Florida Statutes, is
29 transferred, renumbered as section 720.401, Florida Statutes,
30 and amended to read:

31 (Substantial rewording of section. See

1 s. 689.26, F.S., for present text.)
2 720.401 Prospective purchasers subject to association
3 membership requirement; disclosure required; covenants;
4 assessments; contract violability.--
5 (1)(a) A prospective parcel owner in a community must
6 be presented a disclosure summary before executing the
7 contract for sale. The disclosure summary must be in a form
8 substantially similar to the following form:

9
10 DISCLOSURE SUMMARY AND RECEIPT OF DOCUMENTS
11 FOR
12 (NAME OF COMMUNITY)
13

14 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY YOU
15 ARE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

16 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
17 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN
18 THIS COMMUNITY. THERE (ARE) (ARE NOT) UNRECORDED RULES AND
19 REGULATIONS AFFECTING THE PARCELS OR COMMON AREAS. ANY
20 COVENANTS THAT MAY EXIST ARE MATTERS OF PUBLIC RECORD AND CAN
21 BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE
22 PROPERTY IS LOCATED.

23 3. THERE (IS) (IS NOT) A MUNICIPALITY, COUNTY, OR
24 SPECIAL TAXING DISTRICT, WHICH MAY IMPOSE CHARGES OR
25 ASSESSMENTS SEPARATE FROM THE HOMEOWNERS' ASSOCIATION'S
26 ASSESSMENTS AND WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC
27 CHANGE.

28 4. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR
29 ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION
30 COULD RESULT IN A LIEN ON YOUR PROPERTY. LIENS MAY BE
31 FORECLOSED IN THE SAME MANNER AS A MORTGAGE.

1 5. THE DEVELOPER (OR THE HOMEOWNERS OTHER THAN THE
2 DEVELOPER) IS IN CONTROL OF THE HOMEOWNERS' ASSOCIATION.

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

8 7. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED
9 WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.

10 8. THE ASSOCIATION (IS) (IS NOT) INVOLVED IN
11 LITIGATION, WHICH MAY RESULT IN EXPOSURE TO THE ASSOCIATION IN
12 EXCESS OF \$100.00.

13 9. THE STATEMENTS CONTAINED IN THE DISCLOSURE FORM ARE
14 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
15 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
16 DOCUMENTS BEFORE PURCHASING PROPERTY.

17 10. PURCHASER(S) ACKNOWLEDGE THAT THE SELLER HAS
18 PROVIDED THE PURCHASER WITH DOCUMENTS IDENTIFIED AS: (a) THE
19 DISCLOSURE STATEMENT REQUIRED BY THIS SECTION; (b) A COMPLETE
20 AND MOST RECENT SET OF GOVERNING DOCUMENTS WITH ALL
21 AMENDMENTS, WHICH INCLUDES ANY CURRENT RESTATEMENT; (c) THE
22 MOST RECENT BUDGET; AND (d) THE MOST RECENT YEAR-END
23 FINANCIAL STATEMENT.

24
25 PURCHASER(S) SHOULD NOT EXECUTE THE CONTRACT OR AGREEMENT
26 UNTIL THEY HAVE RECEIVED AND READ THIS DISCLOSURE SUMMARY AND
27 DOCUMENTS FROM SELLER. YOU HAVE 3 DAYS FROM THE RECEIPT OF THE
28 DOCUMENTS IN #10 TO CANCEL THIS CONTRACT.

29
30 DATE:

PURCHASER:

PURCHASER:

1
2 (b) At the time of signing a contract of purchase or
3 agreement for sale, the developer or the parcel owner, if the
4 owner is not the developer, must give to the prospective
5 purchaser:

6 1. The disclosure statement required by this section;

7 2. A complete and most recent set of governing
8 documents currently in effect, which includes any current
9 restatement of the governing documents;

10 3. The most recent adopted budget; and

11 4. The most recent year-end financial statement.

12 (c) Each contract entered into for the sale of
13 property governed by covenants subject to disclosure required
14 by this section must contain in conspicuous type a clause that
15 states:

16
17 IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401, FLORIDA
18 STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER
19 BEFORE EXECUTING THIS CONTRACT FOR SALE, PURCHASER MAY CANCEL
20 THIS CONTRACT BY DELIVERING TO SELLER OR SELLER'S AGENT
21 WRITTEN NOTICE OF THE PURCHASER'S INTENTION TO CANCEL WITHIN 3
22 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY; GOVERNING
23 DOCUMENTS WITH AMENDMENTS; CURRENT BUDGET; AND COPY OF CURRENT
24 YEAR-END FINANCIAL STATEMENT OR PRIOR TO CLOSING, WHICHEVER
25 OCCURS FIRST. ANY PURPORTED WAIVER OF THIS RIGHT TO CANCEL HAS
26 NO EFFECT. PURCHASER'S RIGHT TO CANCEL THIS CONTRACT SHALL
27 TERMINATE AT CLOSING.

28
29 (d) A contract that does not conform to the
30 requirements of this subsection may be canceled at the option
31 of the purchaser prior to closing.

1 (e) For purposes of this section, the association
2 shall make available to a parcel owner or his or her agent
3 within 10 calendar days from receipt of request at a cost of
4 50 cents per page, not to exceed a total of \$50, a copy of:

5 1. The disclosure statement required by this section;

6 2. A complete and most recent set of governing
7 documents currently in effect, which may be satisfied by the
8 most recent restatement of the governing documents;

9 3. The most recent adopted budget; and

10 4. The most recent year-end financial statement.

11 (2) The association shall prepare and update annually
12 the disclosure statement required by subsection (1).

13 (3) This section does not apply to any association
14 regulated under chapter 718, chapter 719, chapter 721, or
15 chapter 723 and also does not apply if disclosure regarding
16 the association is otherwise made in connection with the
17 requirements of chapter 718, chapter 719, chapter 721, or
18 chapter 723.

19 Section 10. Section 720.402, Florida Statutes, is
20 created to read:

21 720.402 Publication of false and misleading
22 information.--

23 (1) Any person who, in reasonable reliance upon any
24 material statement or information that is false or misleading
25 and published by or under authority from the developer in
26 advertising and promotional materials, including, but not
27 limited to, a contract of purchaser, the declaration of
28 covenants, exhibits to a declaration of covenants, brochures,
29 and newspaper advertising, pays anything of value toward the
30 purchase of a parcel in a community located in this state has
31 a cause of action to rescind the contract or collect damages

1 from the developer for his or her loss before the closing of
2 the transaction. After the closing of the transaction, the
3 purchaser has a cause of action against the developer for
4 damages under this section from the time of closing until 1
5 year after the date upon which the last of the events
6 described in paragraphs (a) through (d) occur:

7 (a) The closing of the transaction;

8 (b) The issuance by the applicable governmental
9 authority of a certificate of occupancy or other evidence of
10 sufficient completion of construction of the purchaser's
11 residence to allow lawful occupancy of the residence by the
12 purchaser. In counties or municipalities in which certificates
13 of occupancy or other evidences of completion sufficient to
14 allow lawful occupancy are not customarily issued, for the
15 purpose of this section, evidence of lawful occupancy shall be
16 deemed to be given or issued upon the date that such lawful
17 occupancy of the residence may be allowed under prevailing
18 applicable laws, ordinances, or statutes;

19 (c) The completion by the developer of the common
20 areas and such recreational facilities, whether or not the
21 same are common areas, which the developer is obligated to
22 complete or provide under the terms of the written contract,
23 governing documents, or written agreement for purchase or
24 lease of the parcel; or

25 (d) In the event there is not a written contract or
26 agreement for sale or lease of the parcel, then the completion
27 by the developer of the common areas and such recreational
28 facilities, whether or not they are common areas, which the
29 developer would be obligated to complete under any rule of law
30 applicable to the developer's obligation.

31

1 Under no circumstances may a cause of action created or
2 recognized under this section survive for a period of more
3 than 5 years after the closing of the transaction.

4 (2) In any action for relief under this section, the
5 prevailing party may recover reasonable attorney's fees. A
6 developer may not expend association funds in the defense of
7 any suit under this section.

8 Section 11. Section 720.501, Florida Statutes, is
9 created to read:

10 720.501 Warranties.--

11 (1)(a) The developer shall be deemed to have granted
12 to the homeowners' association an implied warranty of fitness
13 and merchantability for the purposes or uses intended as
14 follows:

15 1. As to the common areas and improvements thereon, a
16 warranty for 3 years commencing with the completion of the
17 building or improvement, or for 1 year after transfer of
18 control of the association from the developer to the members
19 other than the developer, in no event for more than 5 years
20 after completion of the building or improvement.

21 2. As to the personal property that is transferred
22 with or appurtenant to the common areas, a warranty that is
23 for the same period as that provided by the manufacturer of
24 the personal property, commencing with the date of transfer of
25 the common areas to the association.

26 (b) The statute of limitations for any actions in law
27 or equity which an association may have shall not begin to run
28 until the members other than the developer have elected a
29 majority of the members of the board.

30 (2) The contractor, and all subcontractors and
31 suppliers, grant to the developer and to the homeowners'

1 association implied warranties of fitness as to the work
2 performed or materials supplied by them as follows:

3 (a) For a period of 3 years from the date of
4 completion of construction of a building or improvement, a
5 warranty as to the roof and structural components of the
6 building or improvement and mechanical and plumbing elements
7 serving a building or an improvement located on the common
8 areas or association property.

9 (b) For a period of 1 year after completion of all
10 construction, a warranty as to all other improvements and
11 materials.

12 (3) The term "completion of a building or improvement"
13 means issuance of a certificate of occupancy for the entire
14 building or improvement, or the equivalent authorization
15 issued by the governmental body having jurisdiction, and in
16 jurisdictions where no certificate of occupancy or equivalent
17 authorization is issued it means substantial completion of
18 construction, finishing, and equipping of the building or
19 improvement according to the plans and specifications.

20 (4) These warranties are conditioned upon routine
21 maintenance being performed, unless the maintenance is an
22 obligation of the developer or a developer-controlled
23 association.

24 (5) The warranties provided by this section shall
25 inure to the benefit of each owner and his or her successor
26 owners and to the benefit of the developer.

27 (6) This section does not affect a homeowners'
28 association as to which rights are established by transfer of
29 control and ownership rights of the common areas from the
30 developer to the homeowners' association prior to July 1,
31 2004.

1 (7) Common areas may be covered by an insured warranty
2 program underwritten by a licensed insurance company
3 registered in this state, provided that such warranty program
4 meets the minimum requirements of this chapter. To the degree
5 that such warranty program does not meet the minimum
6 requirements of this chapter, such requirements apply.

7 Section 12. Subsection (1) of section 34.01, Florida
8 Statutes, is amended to read:

9 34.01 Jurisdiction of county court.--

10 (1) County courts shall have original jurisdiction:

11 (a) In all misdemeanor cases not cognizable by the
12 circuit courts;

13 (b) Of all violations of municipal and county
14 ordinances; ~~and~~

15 (c) Of all actions at law in which the matter in
16 controversy does not exceed the sum of \$15,000, exclusive of
17 interest, costs, and attorney's fees, except those within the
18 exclusive jurisdiction of the circuit courts. The party
19 instituting any civil action, suit, or proceeding pursuant to
20 this paragraph where the amount in controversy is in excess of
21 \$5,000 shall pay to the clerk of the county court the filing
22 fees and service charges in the same amounts and in the same
23 manner as provided in s. 28.241; ~~and-~~

24 (d) Of disputes occurring in the homeowners'
25 associations as described in s. 720.311(2)(a), which shall be
26 concurrent with jurisdiction of the circuit courts.

27 Section 13. Paragraph (a) of subsection (1) of section
28 316.00825, Florida Statutes, is amended to read:

29 316.00825 Closing and abandonment of roads; optional
30 conveyance to homeowners' association; traffic control
31 jurisdiction.--

1 (1)(a) In addition to the authority provided in s.
2 336.12, the governing body of the county may abandon the roads
3 and rights-of-way dedicated in a recorded residential
4 subdivision plat and simultaneously convey the county's
5 interest in such roads, rights-of-way, and appurtenant
6 drainage facilities to a homeowners' association for the
7 subdivision, if the following conditions have been met:

8 1. The homeowners' association has requested the
9 abandonment and conveyance in writing for the purpose of
10 converting the subdivision to a gated neighborhood with
11 restricted public access.

12 2. No fewer than four-fifths of the owners of record
13 of property located in the subdivision have consented in
14 writing to the abandonment and simultaneous conveyance to the
15 homeowners' association.

16 3. The homeowners' association is both a corporation
17 not for profit organized and in good standing under chapter
18 617, and a "homeowners' association" as defined in s.
19 720.301(8)~~s. 720.301(7)~~with the power to levy and collect
20 assessments for routine and periodic major maintenance and
21 operation of street lighting, drainage, sidewalks, and
22 pavement in the subdivision.

23 4. The homeowners' association has entered into and
24 executed such agreements, covenants, warranties, and other
25 instruments; has provided, or has provided assurance of, such
26 funds, reserve funds, and funding sources; and has satisfied
27 such other requirements and conditions as may be established
28 or imposed by the county with respect to the ongoing
29 operation, maintenance, and repair and the periodic
30 reconstruction or replacement of the roads, drainage, street
31

1 lighting, and sidewalks in the subdivision after the
2 abandonment by the county.

3 Section 14. Subsection (2) of section 558.002, Florida
4 Statutes, is amended to read:

5 558.002 Definitions.--As used in this act, the term:

6 (2) "Association" has the same meaning as in s.
7 718.103(2), s. 719.103(2), s. 720.301(8)~~s. 720.301(7)~~, or s.
8 723.025.

9 Section 15. The Division of Statutory Revision is
10 requested to designate sections 720.301-720.312, Florida
11 Statutes, as part I of chapter 720, Florida Statutes; to
12 designate sections 720.401 and 720.402, Florida Statutes, as
13 part II of chapter 720, Florida Statutes, and entitle that
14 part "DISCLOSURE PRIOR TO SALE OF RESIDENTIAL PARCELS"; and to
15 designate section 720.501, Florida Statutes, as part III of
16 chapter 720, Florida Statutes, and entitle that part "RIGHTS
17 AND OBLIGATIONS OF DEVELOPERS."

18 Section 16. This act shall take effect July 1, 2004.

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21 SENATE SUMMARY

22 Expands the alternative dispute resolution provisions
23 relating to disputes involving homeowners' associations,
24 providing for both arbitration and mediation and
25 providing for training programs and education programs.
26 Provides additional requirements with respect to members'
27 or parcel owners' rights to appear and address meetings
28 of association boards and of members, to inspect and copy
29 records, and to have items placed on an agenda for
30 consideration. Provides additional standards for
31 procurement of materials and services and provides for
warranties with respect to common areas and to personal
property. (See bill for details.)