

By the Committee on Regulated Industries; and Senator Atwater

315-2475B-04

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

1 F.S.; providing for notice of and right to
2 speak at member meetings; requiring election
3 disputes between a member and an association to
4 be submitted to mandatory binding arbitration;
5 amending s. 720.311, F.S.; expanding
6 requirements and guidelines with respect to
7 alternative dispute resolution; providing
8 requirements for mediation and arbitration;
9 providing for training and education programs;
10 transferring, renumbering, and amending s.
11 689.26, F.S.; modifying the disclosure form
12 that a prospective purchaser must receive
13 before a contract for sale; providing that
14 certain contracts are voidable for a specified
15 period; requiring that a purchaser provide
16 written notice of cancellation; transferring
17 and renumbering s. 689.265, F.S., relating to
18 required financial reports of certain
19 residential subdivision developers; amending s.
20 498.025, F.S., relating to the disposition of
21 subdivided lands; conforming cross-references;
22 creating s. 720.402, F.S.; providing remedies
23 for publication of false and misleading
24 information; creating s. 720.501, F.S.;
25 providing implied warranties relating to real
26 and personal property; amending s. 34.01, F.S.;
27 providing jurisdiction of disputes involving
28 homeowners' associations; amending ss.
29 316.00825, 558.002, F.S.; conforming
30 cross-references; providing for internal
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1 organization of ch. 720, F.S.; providing an
2 effective date.

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

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6 Section 1. Section 720.301, Florida Statutes, is
7 amended to read:

8 720.301 Definitions.--As used in ss. 720.301-720.501
9 ~~ss. 720.301-720.312~~, the term:

10 (1) "Assessment" or "amenity fee" means a sum or sums
11 of money payable to the association, to the developer or other
12 owner of common areas, or to recreational facilities and other
13 properties serving the parcels by the owners of one or more
14 parcels as authorized in the governing documents, which if not
15 paid by the owner of a parcel, can result in a lien against
16 the parcel.

17 (2) "Common area" means all real property within a
18 community which is owned or leased by an association or
19 dedicated for use or maintenance by the association or its
20 members, including, regardless of whether title has been
21 conveyed to the association:

22 (a) Real property the use of which is dedicated to the
23 association or its members by a recorded plat; or

24 (b) Real property committed by a declaration of
25 covenants to be leased or conveyed to the association.

26 (3) "Community" means the real property that is or
27 will be subject to a declaration of covenants which is
28 recorded in the county where the property is located. The
29 term "community" includes all real property, including
30 undeveloped phases, that is or was the subject of a

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1 development-of-regional-impact development order, together
2 with any approved modification thereto.

3 (4) "Declaration of covenants," or "declaration,"
4 means a recorded written instrument in the nature of covenants
5 running with the land which subjects the land comprising the
6 community to the jurisdiction and control of an association or
7 associations in which the owners of the parcels, or their
8 association representatives, must be members.

9 (5) "Developer" means a person or entity that:

10 (a) Creates the community served by the association;
11 or

12 (b) Succeeds to the rights and liabilities of the
13 person or entity that created the community served by the
14 association, provided that such is evidenced in writing.

15 (6) "Division" means the Division of Florida Land
16 Sales, Condominiums, and Mobile Homes in the Department of
17 Business and Professional Regulation.

18 (7)~~(6)~~ "Governing documents" means:

19 (a) The recorded declaration of covenants for a
20 community, and all duly adopted and recorded amendments,
21 supplements, and recorded exhibits thereto; and

22 (b) The articles of incorporation and bylaws of the
23 homeowners' association, and any duly adopted amendments
24 thereto.

25 (8)~~(7)~~ "Homeowners' association" or "association"
26 means a Florida corporation responsible for the operation of a
27 community or a mobile home subdivision in which the voting
28 membership is made up of parcel owners or their agents, or a
29 combination thereof, and in which membership is a mandatory
30 condition of parcel ownership, and which is authorized to
31 impose assessments that, if unpaid, may become a lien on the

1 parcel. The term "homeowners' association" does not include a
2 community development district or other similar special taxing
3 district created pursuant to statute.

4 (9)~~(8)~~ "Member" means a member of an association, and
5 may include, but is not limited to, a parcel owner or an
6 association representing parcel owners or a combination
7 thereof, and shall include any person or entity obligated by
8 the governing documents to pay an assessment or amenity fee.

9 (10)~~(9)~~ "Parcel" means a platted or unplatted lot,
10 tract, unit, or other subdivision of real property within a
11 community, as described in the declaration:

12 (a) Which is capable of separate conveyance; and
13 (b) Of which the parcel owner, or an association in
14 which the parcel owner must be a member, is obligated:

15 1. By the governing documents to be a member of an
16 association that serves the community; and

17 2. To pay to the homeowners' association assessments
18 that, if not paid, may result in a lien.

19 (11)~~(10)~~ "Parcel owner" means the record owner of
20 legal title to a parcel.

21 (12)~~(11)~~ "Voting interest" means the voting rights
22 distributed to the members of the homeowners' association,
23 pursuant to the governing documents.

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

26 720.302 Purposes, scope, and application.--

27 (2) The Legislature recognizes that it is not in the
28 best interest of homeowners' associations or the individual
29 association members thereof to create or impose a bureau or
30 other agency of state government to regulate the affairs of
31 homeowners' associations. However, in accordance with s.

1 720.311, the Legislature finds that homeowners' associations
2 and their individual members will benefit from an expedited
3 alternative process for resolution of election and recall
4 disputes and presuit mediation of other disputes involving
5 covenant enforcement and authorizes the division to hear,
6 administer, and determine these disputes as more fully set
7 forth in this chapter. Further, the Legislature recognizes
8 that certain contract rights have been created for the benefit
9 of homeowners' associations and members thereof before the
10 effective date of this act and that ss. 720.301-720.501 ~~ss.~~
11 ~~720.301-720.312~~ are not intended to impair such contract
12 rights, including, but not limited to, the rights of the
13 developer to complete the community as initially contemplated.

14 Section 3. Section 720.303, Florida Statutes, is
15 amended to read:

16 720.303 Association powers and duties; meetings of
17 board; official records; budgets; financial reporting;
18 association funds; recalls.--

19 (1) POWERS AND DUTIES.--An association which operates
20 a community as defined in s. 720.301, must be operated by an
21 association that is a Florida corporation. After October 1,
22 1995, the association must be incorporated and the initial
23 governing documents must be recorded in the official records
24 of the county in which the community is located. An
25 association may operate more than one community. The officers
26 and directors of an association have a fiduciary relationship
27 to the members who are served by the association. It is the
28 intent of the Legislature that nothing in this subsection be
29 construed as providing for or removing a requirement of a
30 fiduciary relationship between any manager employed by the
31 association and the parcel owners. An officer, director, or

1 manager may not solicit, offer to accept, or accept any thing
2 or service of value for which consideration has not been
3 provided for his or her own benefit, or that of his or her
4 immediate family, from any person providing or proposing to
5 provide goods or services to the association. Any such
6 officer, director, or manager who knowingly so solicits,
7 offers to accept, or accepts any thing or service of value
8 commits a felony of the third degree, punishable as provided
9 in s. 775.082 or s. 775.084, and shall thereafter be
10 permanently disqualified from serving on the board of
11 directors of the association or serving as an officer of the
12 association. However, this subsection does not prohibit an
13 officer, director, or manager from accepting customary
14 amenities provided in business relationships, such as food and
15 drinks at meetings or conferences, business lunches not
16 exceeding \$20 per person, or marketing trinkets, which
17 include, but are not limited to, pens, key chains, scribble
18 pads, and calendars, provided that the value of each item does
19 not exceed \$20.The powers and duties of an association
20 include those set forth in this chapter and, except as
21 expressly limited or restricted in this chapter, those set
22 forth in the governing documents. After control of the
23 association is obtained by members ~~unit owners~~ other than the
24 developer, the association may institute, maintain, settle, or
25 appeal actions or hearings in its name on behalf of all
26 members concerning matters of common interest to the members,
27 including, but not limited to, the common areas; roof or
28 structural components of a building, or other improvements for
29 which the association is responsible; mechanical, electrical,
30 or plumbing elements serving an improvement or building for
31 which the association is responsible; representations of the

1 developer pertaining to any existing or proposed commonly used
2 facility; and protesting ad valorem taxes on commonly used
3 facilities. The association may defend actions in eminent
4 domain or bring inverse condemnation actions. Before
5 commencing litigation against any party in the name of the
6 association involving amounts in controversy in excess of
7 \$100,000, the association must obtain the affirmative approval
8 of a majority of the voting interests at a meeting of the
9 membership at which a quorum has been attained. This
10 subsection does not limit any statutory or common-law right of
11 any individual member or class of members to bring any action
12 without participation by the association. A member does not
13 have authority to act for the association by virtue of being a
14 member. An association may have more than one class of members
15 and may issue membership certificates. An association of 15 or
16 fewer parcel owners may enforce only the requirements of those
17 deed restrictions established prior to the purchase of each
18 parcel upon an affected parcel owner or owners.

19 (2) BOARD MEETINGS.--

20 (a) A meeting of the board of directors of an
21 association occurs whenever a quorum of the board gathers to
22 conduct association business. All meetings of the board must
23 be open to all members except for meetings between the board
24 and its attorney with respect to proposed or pending
25 litigation where the contents of the discussion would
26 otherwise be governed by the attorney-client privilege.

27 (b) Members have the right to attend all meetings of
28 the board and to speak on any matter placed on the agenda by
29 petition of the voting interests for at least 3 minutes. The
30 association may adopt written reasonable rules expanding the
31 right of members to speak and governing the frequency,

1 duration, and other manner of member statements, which rules
2 must be consistent with this paragraph and may include a
3 sign-up sheet for members wishing to speak. Notwithstanding
4 any other law, the requirement that board meetings and
5 committee meetings be open to the members is inapplicable to
6 meetings between the board or a committee and the
7 association's attorney, with respect to meetings of the board
8 held for the purpose of discussing personnel matters.

9 (c) The bylaws shall provide for giving notice to
10 parcel owners and members of all board meetings and, if they
11 do not do so, shall be deemed to provide the following:

12 1. Notices of all board meetings must be posted in a
13 conspicuous place in the community at least 48 hours in
14 advance of a meeting, except in an emergency. In the
15 alternative, if notice is not posted in a conspicuous place in
16 the community, notice of each board meeting must be mailed or
17 delivered to each member at least 7 days before the meeting,
18 except in an emergency. Notwithstanding this general notice
19 requirement, for communities with more than 100 members, the
20 bylaws may provide for a reasonable alternative to posting or
21 mailing of notice for each board meeting, including
22 publication of notice, provision of a schedule of board
23 meetings, or the conspicuous posting and repeated broadcasting
24 of the notice on a closed-circuit cable television system
25 serving the homeowners' association. However, if broadcast
26 notice is used in lieu of a notice posted physically in the
27 community, the notice must be broadcast at least four times
28 every broadcast hour of each day that a posted notice is
29 otherwise required. When broadcast notice is provided, the
30 notice and agenda must be broadcast in a manner and for a
31 sufficient continuous length of time so as to allow an average

1 reader to observe the notice and read and comprehend the
2 entire content of the notice and the agenda. The bylaws or
3 amended bylaws may provide for giving notice by electronic
4 transmission in a manner authorized by law for meetings of the
5 board of directors, committee meetings requiring notice under
6 this section, and annual and special meetings of the members;
7 however, a member must consent in writing to receiving notice
8 by electronic transmission.

9 2. An assessment may not be levied at a board meeting
10 unless the notice of the meeting includes a statement that
11 assessments will be considered and the nature of the
12 assessments. Written notice of any meeting at which special
13 assessments will be considered or at which amendments to rules
14 regarding parcel use will be considered must be mailed,
15 delivered, or electronically transmitted to the members and
16 parcel owners and posted conspicuously on the property or
17 broadcast on closed-circuit cable television not less than 14
18 days before the meeting.

19 3. Directors may not vote by proxy or by secret ballot
20 at board meetings, except that secret ballots may be used in
21 the election of officers. This subsection also applies to the
22 meetings of any committee or other similar body, when a final
23 decision will be made regarding the expenditure of association
24 funds, and to any body vested with the power to approve or
25 disapprove architectural decisions with respect to a specific
26 parcel of residential property owned by a member of the
27 community.

28 (d) If 20 percent of the total voting interests
29 petition the board to address an item of business, the board
30 shall at its next regular board meeting or at a special
31 meeting of the board, but not later than 60 days after the

1 receipt of the petition, take the petitioned item up on an
2 agenda. The board shall give all members notice of the meeting
3 at which the petitioned item shall be addressed in accordance
4 with the 14-day notice requirement pursuant to subparagraph 2.
5 Each member shall have the right to speak for at least 3
6 minutes on each matter placed on the agenda by petition,
7 provided that the member signs the sign-up sheet, if one is
8 provided, or submits a written request to speak prior to the
9 meeting. Other than addressing the petitioned item at the
10 meeting, the board is not obligated to take any other action
11 requested by the petition.

12 (3) MINUTES.--Minutes of all meetings of the members
13 of an association and of the board of directors of an
14 association must be maintained in written form or in another
15 form that can be converted into written form within a
16 reasonable time. A vote or abstention from voting on each
17 matter voted upon for each director present at a board meeting
18 must be recorded in the minutes.

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

22 (a) Copies of any plans, specifications, permits, and
23 warranties related to improvements constructed on the common
24 areas or other property that the association is obligated to
25 maintain, repair, or replace.

26 (b) A copy of the bylaws of the association and of
27 each amendment to the bylaws.

28 (c) A copy of the articles of incorporation of the
29 association and of each amendment thereto.

30 (d) A copy of the declaration of covenants and a copy
31 of each amendment thereto.

1 (e) A copy of the current rules of the homeowners'
2 association.

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

6 (g) A current roster of all members and their mailing
7 addresses and parcel identifications. The association shall
8 also maintain the electronic mailing addresses and the numbers
9 designated by members for receiving notice sent by electronic
10 transmission of those members consenting to receive notice by
11 electronic transmission. The electronic mailing addresses and
12 numbers provided by unit owners to receive notice by
13 electronic transmission shall be removed from association
14 records when consent to receive notice by electronic
15 transmission is revoked. However, the association is not
16 liable for an erroneous disclosure of the electronic mail
17 address or the number for receiving electronic transmission of
18 notices.

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

22 (i) A current copy of all contracts to which the
23 association is a party, including, without limitation, any
24 management agreement, lease, or other contract under which the
25 association has any obligation or responsibility. Bids
26 received by the association for work to be performed must also
27 be considered official records and must be kept for a period
28 of 1 year.

29 (j) The financial and accounting records of the
30 association, kept according to good accounting practices. All
31 financial and accounting records must be maintained for a

1 period of at least 7 years. The financial and accounting
2 records must include:

3 1. Accurate, itemized, and detailed records of all
4 receipts and expenditures.

5 2. A current account and a periodic statement of the
6 account for each member, designating the name and current
7 address of each member who is obligated to pay assessments,
8 the due date and amount of each assessment or other charge
9 against the member, the date and amount of each payment on the
10 account, and the balance due.

11 3. All tax returns, financial statements, and
12 financial reports of the association.

13 4. Any other records that identify, measure, record,
14 or communicate financial information.

15 (k) A copy of the disclosure summary described in s.
16 720.401(2).

17 (l) All other written records of the association not
18 specifically included in the foregoing which are related to
19 the operation of the association.

20 (5) INSPECTION AND COPYING OF RECORDS.--The official
21 records shall be maintained within the state and must be open
22 to inspection and available for photocopying by members or
23 their authorized agents at reasonable times and places within
24 10 business days after receipt of a written request for
25 access. This subsection may be complied with by having a copy
26 of the official records available for inspection or copying in
27 the community. If the association has a photocopy machine
28 available where the records are maintained, it must provide
29 parcel owners with copies on request during the inspection if
30 the entire request is limited to no more than 25 pages.
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1 (a) The failure of an association to provide access to
2 the records within 10 business days after receipt of a written
3 request creates a rebuttable presumption that the association
4 willfully failed to comply with this subsection.

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

11 (c) The association may adopt reasonable written rules
12 governing the frequency, time, location, notice, records to be
13 inspected, and manner of inspections, but may not impose a
14 requirement that a parcel owner demonstrate any proper purpose
15 for the inspection, state any reason for the inspection, or
16 limit a parcel owner's right to inspect records to less than
17 one 8-hour business day per month. The association and may
18 impose fees to cover the costs of providing copies of the
19 official records, including, without limitation, the costs of
20 copying. The association may charge up to 50 cents per page
21 for copies made on the association's photocopier. If the
22 association does not have a photocopy machine available where
23 the records are kept, or if the records requested to be copied
24 exceed 25 pages in length, the association may have copies
25 made by an outside vendor and may charge the actual cost of
26 copying.The association shall maintain an adequate number of
27 copies of the recorded governing documents, to ensure their
28 availability to members and prospective members, ~~and may~~
29 ~~charge only its actual costs for reproducing and furnishing~~
30 ~~these documents to those persons who are entitled to receive~~
31 ~~them.~~ Notwithstanding the provisions of this paragraph, the

1 following records shall not be accessible to members or parcel
2 owners:

3 1. Any record protected by the lawyer-client privilege
4 as described in s. 90.502 and any record protected by the
5 work-product privilege, including, but not limited to, any
6 record prepared by an association attorney or prepared at the
7 attorney's express direction which reflects a mental
8 impression, conclusion, litigation strategy, or legal theory
9 of the attorney or the association and was prepared
10 exclusively for civil or criminal litigation or for
11 adversarial administrative proceedings or which was prepared
12 in anticipation of imminent civil or criminal litigation or
13 imminent adversarial administrative proceedings until the
14 conclusion of the litigation or adversarial administrative
15 proceedings.

16 2. Information obtained by an association in
17 connection with the approval of the lease, sale, or other
18 transfer of a parcel.

19 3. Disciplinary, health, insurance, and personnel
20 records of the association's employees.

21 4. Medical records of parcel owners or community
22 residents.

23 (6) BUDGETS.--The association shall prepare an annual
24 budget. The budget must reflect the estimated revenues and
25 expenses for that year and the estimated surplus or deficit as
26 of the end of the current year. The budget must set out
27 separately all fees or charges for recreational amenities,
28 whether owned by the association, the developer, or another
29 person. The association shall provide each member with a copy
30 of the annual budget or a written notice that a copy of the
31 budget is available upon request at no charge to the member.

1 The copy must be provided to the member within the time limits
2 set forth in subsection (5).

3 (7) FINANCIAL REPORTING.--The association shall
4 prepare an annual financial report within 60 days after the
5 close of the fiscal year. The association shall, within the
6 time limits set forth in subsection (5), provide each member
7 with a copy of the annual financial report or a written notice
8 that a copy of the financial report is available upon request
9 at no charge to the member. Financial reports shall be
10 prepared as follows ~~The financial report must consist of~~
11 ~~either:~~

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

17 1. An association with total annual revenues of
18 \$100,000 or more, but less than \$200,000, shall prepare
19 compiled financial statements.

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

23 3. An association with total annual revenues of
24 \$400,000 or more shall prepare audited financial statements.
25 ~~Financial statements presented in conformity with generally~~
26 ~~accepted accounting principles; or~~

27 (b) ~~A financial report of actual receipts and~~
28 ~~expenditures, cash basis, which report must show:~~

29 1. An association with total annual revenues of less
30 than \$100,000 shall prepare a report of cash receipts and
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1 expenditures.~~The amount of receipts and expenditures by~~
2 ~~classification; and~~

3 2. An association in a community of fewer than 50
4 parcels, regardless of the association's annual revenues, may
5 prepare a report of cash receipts and expenditures in lieu of
6 financial statements required by paragraph (a) unless the
7 governing documents provide otherwise.~~The beginning and~~
8 ~~ending cash balances of the association.~~

9 3. A report of cash receipts and disbursement must
10 disclose the amount of receipts by accounts and receipt
11 classifications and the amount of expenses by accounts and
12 expense classifications, including, but not limited to, the
13 following, as applicable: costs for security, professional,
14 and management fees and expenses; taxes; costs for recreation
15 facilities; expenses for refuse collection and utility
16 services; expenses for lawn care; costs for building
17 maintenance and repair; insurance costs; administration and
18 salary expenses; and reserves if maintained by the
19 association.

20 (c) If 20 percent of the parcel owners petition the
21 board for a level of financial reporting higher than that
22 required by this section, the association shall duly notice
23 and hold a meeting of members within 30 days of receipt of the
24 petition for the purpose of voting on raising the level of
25 reporting for that fiscal year. Upon approval of a majority of
26 the total voting interests of the parcel owners, the
27 association shall prepare or cause to be prepared, shall amend
28 the budget or adopt a special assessment to pay for the
29 financial report regardless of any provision to the contrary
30 in the governing documents, and shall provide within 90 days
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1 of the meeting or the end of the fiscal year, whichever occurs
2 later:
3 1. Compiled, reviewed, or audited financial
4 statements, if the association is otherwise required to
5 prepare a report of cash receipts and expenditures;
6 2. Reviewed or audited financial statements, if the
7 association is otherwise required to prepare compiled
8 financial statements; or
9 3. Audited financial statements if the association is
10 otherwise required to prepare reviewed financial statements.
11 (d) If approved by a majority of the voting interests
12 present at a properly called meeting of the association, an
13 association may prepare or cause to be prepared:
14 1. A report of cash receipts and expenditures in lieu
15 of a compiled, reviewed, or audited financial statement;
16 2. A report of cash receipts and expenditures or a
17 compiled financial statement in lieu of a reviewed or audited
18 financial statement; or
19 3. A report of cash receipts and expenditures, a
20 compiled financial statement, or a reviewed financial
21 statement in lieu of an audited financial statement.
22 (8) ASSOCIATION FUNDS; COMMINGLING.--
23 (a) All association funds held by a developer shall be
24 maintained separately in the association's name. Reserve and
25 operating funds of the association shall not be commingled
26 prior to turnover except the association may jointly invest
27 reserve funds; however, such jointly invested funds must be
28 accounted for separately.
29 (b) No developer in control of a homeowners'
30 association shall commingle any association funds with his or
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1 her funds or with the funds of any other homeowners'
2 association or community association.

3 (c) Association funds may not be used by a developer
4 to defend a civil or criminal action, administrative
5 proceeding, or arbitration proceeding that has been filed
6 against the developer or directors appointed to the
7 association board by the developer, even when the subject of
8 the action or proceeding concerns the operation of the
9 developer-controlled association.

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

13 (10) RECALL OF DIRECTORS.--

14 (a)1. Regardless of any provision to the contrary
15 contained in the governing documents, subject to the
16 provisions of s. 720.307 regarding transition of association
17 control, any member of the board or directors may be recalled
18 and removed from office with or without cause by a majority of
19 the total voting interests.

20 2. When the governing documents, including the
21 declaration, articles of incorporation, or bylaws, provide
22 that only a specific class of members is entitled to elect a
23 board director or directors, only that class of members may
24 vote to recall those board directors so elected.

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

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

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

18 4. Any rescission or revocation of a member's written
19 recall ballot or agreement must be in writing and, in order to
20 be effective, must be delivered to the association before the
21 association is served with the written recall agreements or
22 ballots.

23 5. The agreement in writing or ballot shall list at
24 least as many possible replacement directors as there are
25 directors subject to the recall, when at least a majority of
26 the board is sought to be recalled; the person executing the
27 recall instrument may vote for as many replacement candidates
28 as there are directors subject to the recall.

29 (c)1. If the declaration, articles of incorporation,
30 or bylaws specifically provide, the members may also recall
31 and remove a board director or directors by a vote taken at a

1 meeting. If so provided in the governing documents, a special
2 meeting of the members to recall a director or directors of
3 the board of administration may be called by 10 percent of the
4 voting interests giving notice of the meeting as required for
5 a meeting of members, and the notice shall state the purpose
6 of the meeting. Electronic transmission may not be used as a
7 method of giving notice of a meeting called in whole or in
8 part for this purpose.

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

17 (d) If the board determines not to certify the written
18 agreement or written ballots to recall a director or directors
19 of the board or does not certify the recall by a vote at a
20 meeting, the board shall, within 5 full business days after
21 the meeting, file with the division a petition for binding
22 arbitration pursuant to the applicable procedures in ss.
23 718.1255 and 718.112(2)(j) and the rules adopted thereunder.
24 For the purposes of this section, the members who voted at the
25 meeting or who executed the agreement in writing shall
26 constitute one party under the petition for arbitration. If
27 the arbitrator certifies the recall as to any director or
28 directors of the board, the recall will be effective upon
29 mailing of the final order of arbitration to the association.
30 The director or directors so recalled shall deliver to the
31 board any and all records of the association in their

1 possession within 5 full business days after the effective
2 date of the recall.

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

18 (f) If the board fails to duly notice and hold a board
19 meeting within 5 full business days after service of an
20 agreement in writing or within 5 full business days after the
21 adjournment of the member recall meeting, the recall shall be
22 deemed effective and the board directors so recalled shall
23 immediately turn over to the board all records and property of
24 the association.

25 (g) If a director who is removed fails to relinquish
26 his or her office or turn over records as required under this
27 section, the circuit court in the county where the association
28 maintains its principal office may, upon the petition of the
29 association, summarily order the director to relinquish his or
30 her office and turn over all association records upon
31 application of the association.

1 (h) The minutes of the board meeting at which the
2 board decides whether to certify the recall are an official
3 association record. The minutes must record the date and time
4 of the meeting, the decision of the board, and the vote count
5 taken on each board member subject to the recall. In addition,
6 when the board decides not to certify the recall, as to each
7 vote rejected, the minutes must identify the parcel number and
8 the specific reason for each such rejection.

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

13 Section 4. Section 720.304, Florida Statutes, is
14 amended to read:

15 720.304 Right of owners to peaceably assemble; display
16 of flag; SLAPP suits prohibited.--

17 (1) All common areas and recreational facilities
18 serving any homeowners' association shall be available to
19 parcel owners in the homeowners' association served thereby
20 and their invited guests for the use intended for such common
21 areas and recreational facilities. The entity or entities
22 responsible for the operation of the common areas and
23 recreational facilities may adopt reasonable rules and
24 regulations pertaining to the use of such common areas and
25 recreational facilities. No entity or entities shall
26 unreasonably restrict any parcel owner's right to peaceably
27 assemble or right to invite public officers or candidates for
28 public office to appear and speak in common areas and
29 recreational facilities.

30 (2) Any homeowner may display one portable, removable
31 United States flag or official flag of the State of Florida in

1 a respectful manner, and on Armed Forces Day, Memorial Day,
2 Flag Day, Independence Day, and Veterans Day may display in a
3 respectful manner portable, removable official flags, not
4 larger than 4 1/2 feet by 6 feet, which represents the United
5 States Army, Navy, Air Force, Marine Corps, or Coast Guard,
6 regardless of any declaration rules or requirements dealing
7 with flags or decorations.

8 (3) Any owner prevented from exercising rights
9 guaranteed by subsection (1) or subsection (2) may bring an
10 action in the appropriate court of the county in which the
11 alleged infringement occurred, and, upon favorable
12 adjudication, the court shall enjoin the enforcement of any
13 provision contained in any homeowners' association document or
14 rule that operates to deprive the owner of such rights.

15 (4) It is the intent of the Legislature to protect the
16 right of parcel owners to exercise their rights to instruct
17 their representatives and petition for redress of grievances
18 before the various governmental entities of this state as
19 protected by the First Amendment to the United States
20 Constitution and s. 5, Art. I of the State Constitution. The
21 Legislature recognizes that "Strategic Lawsuits Against Public
22 Participation" or "SLAPP" suits, as they are typically called,
23 have occurred when members are sued by individuals, business
24 entities, or governmental entities arising out of a parcel
25 owner's appearance and presentation before a governmental
26 entity on matters related to the homeowners' association.
27 However, it is the public policy of this state that government
28 entities, business organizations, and individuals not engage
29 in SLAPP suits because such actions are inconsistent with the
30 right of parcel owner to participate in the state's
31 institutions of government. Therefore, the Legislature finds

1 and declares that prohibiting such lawsuits by governmental
2 entities, business entities, and individuals against parcel
3 owners who address matters concerning their homeowners'
4 association will preserve this fundamental state policy,
5 preserve the constitutional rights of parcel owners, and
6 assure the continuation of representative government in this
7 state. It is the intent of the Legislature that such lawsuits
8 be expeditiously disposed of by the courts.

9 (a) As used in this subsection, the term "governmental
10 entity" means the state, including the executive, legislative,
11 and judicial branches of government, the independent
12 establishments of the state, counties, municipalities,
13 districts, authorities, boards, or commissions, or any
14 agencies of these branches which are subject to chapter 286.

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

25 (c) A parcel owner sued by a governmental entity,
26 business organization, or individual in violation of this
27 section has a right to an expeditious resolution of a claim
28 that the suit is in violation of this section. A parcel owner
29 may petition the court for an order dismissing the action or
30 granting final judgment in favor of that parcel owner. The
31 petitioner may file a motion for summary judgment, together

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

20 (d) Homeowners' associations may not expend
21 association funds in prosecuting a SLAPP suit against a parcel
22 owner.

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

25 720.305 Obligations of members; remedies at law or in
26 equity; levy of fines and suspension of use rights; failure to
27 fill sufficient number of vacancies on board of directors to
28 constitute a quorum; appointment of receiver upon petition of
29 any member.--

30 (2) If the governing documents so provide, an
31 association may suspend, for a reasonable period of time, the

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

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

22 | (b) The requirements of this subsection do not apply
23 | to the imposition of suspensions or fines upon any member
24 | because of the failure of the member to pay assessments or
25 | other charges when due if such action is authorized by the
26 | governing documents.

27 | (c) Suspension of common-area-use rights shall not
28 | impair the right of an owner or tenant of a parcel to have
29 | vehicular and pedestrian ingress to and egress from the
30 | parcel, including, but not limited to, the right to park.

31 |

1 Section 6. Section 720.3055, Florida Statutes, is
2 created to read:

3 720.3055 Contracts for products and services; in
4 writing; bids; exceptions.--

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

19 (2)(a)1. Notwithstanding the foregoing, contracts with
20 employees of the association, and contracts for attorney,
21 accountant, architect, community association manager,
22 engineering, and landscape architect services are not subject
23 to the provisions of this section.

24 2. A contract executed before October 1, 2004, and any
25 renewal thereof, is not subject to the competitive bid
26 requirements of this section. If a contract was awarded under
27 the competitive bid procedures of this section, any renewal of
28 that contract is not subject to such competitive bid
29 requirements if the contract contains a provision that allows
30 the board to cancel the contract on 30 days' notice.
31 Materials, equipment, or services provided to an association

1 under a local government franchise agreement by a franchise
2 holder are not subject to the competitive bid requirements of
3 this section. A contract with a manager, if made by a
4 competitive bid, may be made for up to 3 years. An association
5 whose declaration or bylaws provide for competitive bidding
6 for services may operate under the provisions of that
7 declaration or bylaws in lieu of this section if those
8 provisions are not less stringent than the requirements of
9 this section.

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

13 (c) This section does not apply if the business entity
14 with which the association desires to enter into a contract is
15 the only source of supply within the county serving the
16 association.

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

20 Section 7. Present subsections (5) through (8) of
21 section 720.306, Florida Statutes, are renumbered as
22 subsections (7) through (10), respectively, present subsection
23 (7) is amended, and new subsections (5) and (6) are added to
24 that section to read:

25 720.306 Meetings of members; voting and election
26 procedures; amendments.--

27 (5) NOTICE OF MEETINGS.--The bylaws shall provide for
28 giving notice to members of all member meetings, and if they
29 do not do so shall be deemed to provide the following: The
30 association shall give all parcel owners and members actual
31 notice of all membership meetings, which shall be mailed,

1 delivered, or electronically transmitted to the members not
2 less than 14 days prior to the meeting. Evidence of compliance
3 with this 14-day notice shall be made by an affidavit executed
4 by the person providing the notice and filed upon execution
5 among the official records of the association. In addition to
6 mailing, delivering, or electronically transmitting the notice
7 of any meeting, the association may, by reasonable rule, adopt
8 a procedure for conspicuously posting and repeatedly
9 broadcasting the notice and the agenda on a closed-circuit
10 cable television system serving the association. When
11 broadcast notice is provided, the notice and agenda must be
12 broadcast in a manner and for a sufficient continuous length
13 of time so as to allow an average reader to observe the notice
14 and read and comprehend the entire content of the notice and
15 the agenda.

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

29 (9)(7) ELECTIONS.--Elections of directors must be
30 conducted in accordance with the procedures set forth in the
31 governing documents of the association. All members of the

1 association shall be eligible to serve on the board of
2 directors, and a member may nominate himself or herself as a
3 candidate for the board at a meeting where the election is to
4 be held. Except as otherwise provided in the governing
5 documents, boards of directors must be elected by a plurality
6 of the votes cast by eligible voters. Any election dispute
7 between a member and an association must be submitted to
8 mandatory binding arbitration with the division. Such
9 proceedings shall be conducted in the manner provided by s.
10 718.1255 and the procedural rules adopted by the division.

11 Section 8. Section 720.311, Florida Statutes, is
12 amended to read:

13 720.311 Dispute resolution.--

14 (1) The Legislature finds that alternative dispute
15 resolution has made progress in reducing court dockets and
16 trials and in offering a more efficient, cost-effective option
17 to litigation. The filing of any petition for mediation or
18 arbitration provided for in this section shall toll the
19 applicable statute of limitations. Any recall dispute filed
20 with the division pursuant to s. 720.303(10) shall be
21 conducted by the division in accordance with the provisions of
22 ss. 718.1255 and 718.112(2)(j) and the rules adopted by the
23 division. In addition, the division shall conduct mandatory
24 binding arbitration of election disputes between a member and
25 an association pursuant to s. 718.1255 and rules adopted by
26 the division. Neither election disputes nor recall disputes
27 are eligible for mediation; these disputes shall be arbitrated
28 by the division. At the conclusion of the proceeding, the
29 division shall charge the parties a fee in an amount adequate
30 to cover all costs and expenses incurred by the division in
31 conducting the proceeding. Initially, the petitioner shall

1 remit a filing fee of at least \$200 to the division. The fees
2 paid to the division shall become a recoverable cost in the
3 arbitration proceeding and the prevailing party in an
4 arbitration proceeding shall be paid its reasonable costs and
5 attorney's fees in an amount found reasonable by the
6 arbitrator. The division shall adopt rules to effectuate the
7 purposes of this section.

8 (2)(a) Disputes between an association and a parcel
9 owner regarding use of or changes to the parcel or the common
10 areas and other covenant enforcement disputes, disputes
11 regarding amendments to the association documents, disputes
12 regarding meetings of the board and committees appointed by
13 the board, membership meetings not including election
14 meetings, and access to the official records of the
15 association shall be filed with the division for mandatory
16 mediation before the dispute is filed in court. Mediation
17 proceedings must be conducted in accordance with the
18 applicable Florida Rules of Civil Procedure, and these
19 proceedings are privileged and confidential to the same extent
20 as court-ordered mediation. An arbitrator or judge may not
21 consider any information or evidence arising from the
22 mediation proceeding except in a proceeding to impose
23 sanctions for failure to attend a mediation session. Persons
24 who are not parties to the dispute may not attend the
25 mediation conference without the consent of all parties,
26 except for counsel for the parties and a corporate
27 representative designated by the association. When mediation
28 is attended by a quorum of the board, such mediation is not a
29 board meeting for purposes of notice and participation set
30 forth in s. 720.303. The division shall conduct the
31 proceedings through the use of division mediators or refer the

1 disputes to private mediators who have been duly certified by
2 the division as provided in paragraph (c). The parties shall
3 share the costs of mediation equally, including the fee
4 charged by the mediator, if any, unless the parties agree
5 otherwise. If a division mediator is used, the division may
6 charge such fee as is necessary to pay expenses of the
7 mediation, including, but not limited to, the salary and
8 benefits of the mediator and any travel expenses incurred. The
9 petitioner shall initially file with the division upon filing
10 the disputes, a filing fee of \$200, which shall be used to
11 defray the costs of the mediation. At the conclusion of the
12 mediation, the division shall charge to the parties, to be
13 shared equally unless otherwise agreed by the parties, such
14 further fees as are necessary to fully reimburse the division
15 for all expenses incurred in the mediation.

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

31

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

26 (d) The mediation procedures provided by this
27 subsection may be used by a Florida corporation responsible
28 for the operation of a community in which the voting members
29 are parcel owners or their representatives, in which
30 membership in the corporation is not a mandatory condition of
31

1 parcel ownership, or which is not authorized to impose an
2 assessment that may become a lien on the parcel.

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

22 Section 9. Section 689.26, Florida Statutes, is
23 transferred, renumbered as section 720.401, Florida Statutes,
24 and amended to read:

25 720.401 ~~689.26~~ Prospective purchasers subject to
26 association membership requirement; disclosure required;
27 covenants; assessments; contract cancellation ~~voidability~~.--

28 (1)(a) A prospective parcel owner in a community must
29 be presented a disclosure summary before executing the
30 contract for sale. The disclosure summary must be in a form
31 substantially similar to the following form:

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DISCLOSURE SUMMARY
FOR
(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL~~(WILL)~~~~(WILL NOT)~~BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

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

3. YOU WILL~~(WILL)~~~~(WILL NOT)~~BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____.

4. YOU MAY~~(WILL)~~~~(WILL NOT)~~BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

~~5.4.~~ YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.

~~6.5.~~ THERE MAY BE~~(IS)~~~~(IS NOT)~~AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____.~~(If such obligation exists, then the amount of the current obligation shall be set forth.)~~

1 7.6. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE
2 RESTRICTIVE COVENANTS ~~(CAN) (CANNOT) BE AMENDED~~ WITHOUT THE
3 APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE,
4 ~~IF NO MANDATORY ASSOCIATION EXISTS,~~ PARCEL OWNERS.

5 8.7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM
6 ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER,
7 YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION
8 GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

9 9.8. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC
10 RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE
11 COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND
12 CAN BE OBTAINED FROM THE DEVELOPER.

13 DATE:

PURCHASER:

14

PURCHASER:

15

16 The disclosure must be supplied by the developer, or by the
17 parcel owner if the sale is by an owner that is not the
18 developer. Any contract or agreement for sale shall refer to
19 and incorporate the disclosure summary and shall include, in
20 prominent language, a statement that the potential buyer
21 should not execute the contract or agreement until they have
22 received and read the disclosure summary required by this
23 section.

24 (b) Each contract entered into for the sale of
25 property governed by covenants subject to disclosure required
26 by this section must contain in conspicuous type a clause that
27 states:

28

29 IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION
30 720.401 ~~689.26~~, FLORIDA STATUTES, HAS NOT BEEN
31 PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE

1 EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT
2 IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR
3 SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE
4 OF THE BUYER'S INTENTION TO CANCEL WITHIN 3
5 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR
6 PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY
7 PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS
8 NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT
9 SHALL TERMINATE AT CLOSING.

10
11 (c) If the disclosure summary is not provided to a
12 prospective purchaser before the purchaser executes a contract
13 for the sale of property governed by covenants that are
14 subject to disclosure pursuant to this section, the purchaser
15 may void the contract by delivering to the seller or the
16 seller's agent or representative written notice canceling the
17 contract within 3 days after receipt of the disclosure summary
18 or prior to closing, whichever occurs first. This right may
19 not be waived by the purchaser but terminates at closing. A
20 ~~contract that does not conform to the requirements of this~~
21 ~~subsection is voidable at the option of the purchaser prior to~~
22 ~~closing.~~

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

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31

1 Section 10. Section 689.265, Florida Statutes, is
2 transferred and renumbered as section 720.3086, Florida
3 Statutes, to read:

4 720.3086 ~~689.265~~ Financial report.--In a residential
5 subdivision in which the owners of lots or parcels must pay
6 mandatory maintenance or amenity fees to the subdivision
7 developer or to the owners of the common areas, recreational
8 facilities, and other properties serving the lots or parcels,
9 the developer or owner of such areas, facilities, or
10 properties shall make public, within 60 days following the end
11 of each fiscal year, a complete financial report of the
12 actual, total receipts of mandatory maintenance or amenity
13 fees received by it, and an itemized listing of the
14 expenditures made by it from such fees, for that year. Such
15 report shall be made public by mailing it to each lot or
16 parcel owner in the subdivision, by publishing it in a
17 publication regularly distributed within the subdivision, or
18 by posting it in prominent locations in the subdivision. This
19 section does not apply to amounts paid to homeowner
20 associations pursuant to chapter 617, chapter 718, chapter
21 719, chapter 721, or chapter 723, or to amounts paid to local
22 governmental entities, including special districts.

23 Section 11. Paragraphs (g) and (h) of subsection (2)
24 of section 498.025, Florida Statutes, are amended to read:

25 498.025 Exemptions.--

26 (2) Except as provided in s. 498.022, the provisions
27 of this chapter do not apply to offers or dispositions of
28 interests in lots, parcels, or units contained in a recorded
29 subdivision plat, or resulting from the subdivision of land in
30 accordance with applicable local land development laws and
31 regulations pursuant to part II of chapter 163, including

1 lots, parcels, units, or interest vested under such part, if
2 all of the following conditions exist:

3 (g) The contract for purchase or lease contains, and
4 the subdivider complies with, the following provisions:

5 1. The purchaser must inspect the subdivided land
6 prior to the execution of the contract or lease.

7 2. The purchaser shall have an absolute right to
8 cancel the contract or lease for any reason whatsoever for a
9 period of 7 business days following the date on which the
10 contract or lease was executed by the purchaser.

11 3. In the event the purchaser elects to cancel within
12 the period provided, all funds or other property paid by the
13 purchaser shall be refunded without penalty or obligation
14 within 20 days of the receipt of the notice of cancellation by
15 the developer.

16 4. All funds or property paid by the purchaser shall
17 be put in escrow until closing has occurred and the lease or
18 deed has been recorded.

19 5. Unless otherwise timely canceled, closing shall
20 occur within 180 days of the date of execution of the contract
21 by the purchaser.

22 6. When title is conveyed, said title shall be
23 conveyed by statutory warranty deed unencumbered by any lien
24 or mortgage except for any first purchase money mortgage given
25 by the purchaser and restrictions, covenants, or easements of
26 record.

27 7. The subdivider presents to the purchaser the
28 disclosure required by s. 720.401 ~~s. 689.26~~ prior to the
29 execution of the contract or lease.

30 (h) The agreement for deed contains, and the
31 subdivider complies with, the following provisions:

1 1. The purchaser must inspect the subdivided land
2 prior to the execution of the agreement for deed.

3 2. The purchaser shall have an absolute right to
4 cancel the agreement for deed for any reason whatsoever for a
5 period of 7 business days following the date on which the
6 agreement for deed was executed by the purchaser.

7 3. If the purchaser elects to cancel within the period
8 provided, all funds or other property paid by the purchaser
9 shall be refunded without penalty or obligation within 20 days
10 after the receipt of the notice of cancellation by the
11 developer.

12 4. All funds or ~~for~~ property paid by the purchaser
13 shall be put in escrow until the agreement for deed has been
14 recorded in the county in which the subdivision is located.

15 5. Unless otherwise timely canceled, the agreement for
16 deed shall be recorded within 180 days after its execution by
17 the purchaser.

18 6. Sale of lots in the subdivision shall be restricted
19 solely to residents of the state.

20 7. The underlying mortgage or other ancillary
21 documents shall contain release provisions for the individual
22 lot purchased.

23 8. The subdivider presents to the purchaser the
24 disclosure required by s. 720.401 ~~s. 689.26~~ prior to the
25 execution of the agreement for deed.

26 Section 12. Section 720.402, Florida Statutes, is
27 created to read:

28 720.402 Publication of false and misleading
29 information.--

30 (1) Any person who, in reasonable reliance upon any
31 material statement or information that is false or misleading

1 and published by or under authority from the developer in
2 advertising and promotional materials, including, but not
3 limited to, a contract of purchaser, the declaration of
4 covenants, exhibits to a declaration of covenants, brochures,
5 and newspaper advertising, pays anything of value toward the
6 purchase of a parcel in a community located in this state has
7 a cause of action to rescind the contract or collect damages
8 from the developer for his or her loss before the closing of
9 the transaction. After the closing of the transaction, the
10 purchaser has a cause of action against the developer for
11 damages under this section from the time of closing until 1
12 year after the date upon which the last of the events
13 described in paragraphs (a) through (d) occur:
14 (a) The closing of the transaction;
15 (b) The issuance by the applicable governmental
16 authority of a certificate of occupancy or other evidence of
17 sufficient completion of construction of the purchaser's
18 residence to allow lawful occupancy of the residence by the
19 purchaser. In counties or municipalities in which certificates
20 of occupancy or other evidences of completion sufficient to
21 allow lawful occupancy are not customarily issued, for the
22 purpose of this section, evidence of lawful occupancy shall be
23 deemed to be given or issued upon the date that such lawful
24 occupancy of the residence may be allowed under prevailing
25 applicable laws, ordinances, or statutes;
26 (c) The completion by the developer of the common
27 areas and such recreational facilities, whether or not the
28 same are common areas, which the developer is obligated to
29 complete or provide under the terms of the written contract,
30 governing documents, or written agreement for purchase or
31 lease of the parcel; or

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

7
8 Under no circumstances may a cause of action created or
9 recognized under this section survive for a period of more
10 than 5 years after the closing of the transaction.

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

15 Section 13. Section 720.501, Florida Statutes, is
16 created to read:

17 720.501 Warranties.--

18 (1)(a) The developer shall be deemed to have granted
19 to the homeowners' association an implied warranty of fitness
20 and merchantability for the purposes or uses intended as
21 follows:

22 1. As to the common areas and improvements thereon, a
23 warranty for 3 years commencing with the completion of the
24 building or improvement, or for 1 year after transfer of
25 control of the association from the developer to the members
26 other than the developer, but in no event for more than 5
27 years after completion of the building or improvement.

28 2. As to the personal property that is transferred
29 with or appurtenant to the common areas, a warranty that is
30 for the same period as that provided by the manufacturer of
31

1 the personal property, commencing with the date of transfer of
2 the common areas to the association.

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

7 (2) The term "completion of a building or improvement"
8 means issuance of a certificate of occupancy for the entire
9 building or improvement, or the equivalent authorization
10 issued by the governmental body having jurisdiction, and in
11 jurisdictions where no certificate of occupancy or equivalent
12 authorization is issued it means substantial completion of
13 construction, finishing, and equipping of the building or
14 improvement according to the plans and specifications.

15 (3) These warranties are conditioned upon routine
16 maintenance being performed, unless the maintenance is an
17 obligation of the developer or a developer-controlled
18 association.

19 (4) The warranties provided by this section shall
20 inure to the benefit of each owner and his or her successor
21 owners and to the benefit of the developer.

22 (5) This section does not affect a homeowners'
23 association as to which rights are established by transfer of
24 control and ownership rights of the common areas from the
25 developer to the homeowners' association prior to October 1,
26 2004.

27 (6) The warranties provided by this section may be
28 covered by an insured warranty program underwritten by a
29 licensed insurance company registered in this state, provided
30 that such warranty program meets the minimum requirements of
31 this chapter.

1 Section 14. Subsection (1) of section 34.01, Florida
2 Statutes, is amended to read:

3 34.01 Jurisdiction of county court.--

4 (1) County courts shall have original jurisdiction:

5 (a) In all misdemeanor cases not cognizable by the
6 circuit courts;

7 (b) Of all violations of municipal and county
8 ordinances; ~~and~~

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

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

21 Section 15. Paragraph (a) of subsection (1) of section
22 316.00825, Florida Statutes, is amended to read:

23 316.00825 Closing and abandonment of roads; optional
24 conveyance to homeowners' association; traffic control
25 jurisdiction.--

26 (1)(a) In addition to the authority provided in s.
27 336.12, the governing body of the county may abandon the roads
28 and rights-of-way dedicated in a recorded residential
29 subdivision plat and simultaneously convey the county's
30 interest in such roads, rights-of-way, and appurtenant

31

1 drainage facilities to a homeowners' association for the
2 subdivision, if the following conditions have been met:

3 1. The homeowners' association has requested the
4 abandonment and conveyance in writing for the purpose of
5 converting the subdivision to a gated neighborhood with
6 restricted public access.

7 2. No fewer than four-fifths of the owners of record
8 of property located in the subdivision have consented in
9 writing to the abandonment and simultaneous conveyance to the
10 homeowners' association.

11 3. The homeowners' association is both a corporation
12 not for profit organized and in good standing under chapter
13 617, and a "homeowners' association" as defined in s.
14 720.301(8)~~s. 720.301(7)~~with the power to levy and collect
15 assessments for routine and periodic major maintenance and
16 operation of street lighting, drainage, sidewalks, and
17 pavement in the subdivision.

18 4. The homeowners' association has entered into and
19 executed such agreements, covenants, warranties, and other
20 instruments; has provided, or has provided assurance of, such
21 funds, reserve funds, and funding sources; and has satisfied
22 such other requirements and conditions as may be established
23 or imposed by the county with respect to the ongoing
24 operation, maintenance, and repair and the periodic
25 reconstruction or replacement of the roads, drainage, street
26 lighting, and sidewalks in the subdivision after the
27 abandonment by the county.

28 Section 16. Subsection (2) of section 558.002, Florida
29 Statutes, is amended to read:

30 558.002 Definitions.--As used in this act, the term:
31

1 (2) "Association" has the same meaning as in s.
2 718.103(2), s. 719.103(2), s. 720.301(8)~~s. 720.301(7)~~, or s.
3 723.025.

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

13 Section 18. This act shall take effect October 1,
14 2004.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2984

The committee substitute amends the definition of the term "member" in s. 720.301, F.S. It provides a limitation for the enforcement of deed restrictions in homeowners' associations of 15 or fewer parcel owners. It amends the parcel owner's right to speak and open meeting provisions of s. 720.302(2)(b), F.S., for board meetings, and for association meetings under s. 720.302(2)(d), F.S. It deletes the requirement in s. 720.311(3), F.S., that the Department of Business and Professional Regulation seek funding to cover the startup costs of the education, mediation, and arbitration programs.

The committee substitute amends s. 720.3055, F.S., to apply the competitive bidding requirements to contracts entered into after October 1, 2004, instead of July 1, 2004. It also amends s. 720.3055, F.S., to require a written request to speak before a meeting. It amends the disclosure requirements in s. 720.401, F.S., and makes conforming amendments to ss. 720.3086 and 498.025, F.S.

The committee substitute amends the provisions of s. 720.501, F.S., to delete the implied warranties relating to contractors, all subcontractors, and suppliers. It also amends the provision relating to insured warranty programs, and provides that the provisions of this section do not apply to associations that are member-controlled before October 1, 2004, instead of July 1, 2004. The committee substitute extends the effective date of the bill from July 1, 2004, to October 1, 2004.