

CHAMBER ACTION

1 The Committee on Business Regulation recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to residential communities; amending s.  
7 720.301, F.S.; providing applicability of certain  
8 definitions; amending s. 720.302, F.S., to conform;  
9 creating s. 720.401, F.S.; authorizing certain parcel  
10 owners to revive a declaration of covenants that has  
11 ceased to govern a community; creating s. 720.402, F.S.;  
12 providing eligibility requirements to revive such  
13 declarations; creating s. 720.403, F.S.; requiring the  
14 formation of an organizing committee for certain purposes;  
15 providing for membership; providing duties and  
16 responsibilities of the organizing committee; directing  
17 the organizing committee to prepare certain documents;  
18 providing for the contents of the documents; providing for  
19 a vote of the eligible parcel owners; creating s. 720.404,  
20 F.S.; directing the organizing committee to submit certain  
21 documents to the Department of Community Affairs within a  
22 specified time period; specifying the content of the  
23 submission; requiring the department to approve or

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24 disapprove the request to revive the declaration of  
 25 covenants within a specified time period; creating s.  
 26 720.405, F.S.; requiring the organizing committee to file  
 27 and record certain documents within a specified time  
 28 period; directing the organizing committee to provide all  
 29 affected parcel owners with a copy of the documents filed  
 30 and recorded; providing effect of revived declarations;  
 31 providing an effective date.

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

34  
 35 Section 1. Section 720.301, Florida Statutes, is amended  
 36 to read:

37 720.301 Definitions.--As used in this chapter ~~ss. 720.301-~~  
 38 ~~720.312~~, the term:

39 (1) "Assessment" or "amenity fee" means a sum or sums of  
 40 money payable to the association, to the developer or other  
 41 owner of common areas, or to recreational facilities and other  
 42 properties serving the parcels by the owners of one or more  
 43 parcels as authorized in the governing documents, which if not  
 44 paid by the owner of a parcel, can result in a lien against the  
 45 parcel.

46 (2) "Common area" means all real property within a  
 47 community which is owned or leased by an association or  
 48 dedicated for use or maintenance by the association or its  
 49 members, including, regardless of whether title has been  
 50 conveyed to the association:

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

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

55 (3) "Community" means the real property that is or will be  
56 subject to a declaration of covenants which is recorded in the  
57 county where the property is located. The term "community"  
58 includes all real property, including undeveloped phases, that  
59 is or was the subject of a development-of-regional-impact  
60 development order, together with any approved modification  
61 thereto.

62 (4) "Declaration of covenants," or "declaration," means a  
63 recorded written instrument in the nature of covenants running  
64 with the land which subjects the land comprising the community  
65 to the jurisdiction and control of an association or  
66 associations in which the owners of the parcels, or their  
67 association representatives, must be members.

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

69 (a) Creates the community served by the association; or

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

73 (6) "Governing documents" means:

74 (a) The recorded declaration of covenants for a community,  
75 and all duly adopted and recorded amendments, supplements, and  
76 recorded exhibits thereto; and

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77 (b) The articles of incorporation and bylaws of the  
78 homeowners' association, and any duly adopted amendments  
79 thereto.

80 (7) "Homeowners' association" or "association" means a  
81 Florida corporation responsible for the operation of a community  
82 or a mobile home subdivision in which the voting membership is  
83 made up of parcel owners or their agents, or a combination  
84 thereof, and in which membership is a mandatory condition of  
85 parcel ownership, and which is authorized to impose assessments  
86 that, if unpaid, may become a lien on the parcel. The term  
87 "homeowners' association" does not include a community  
88 development district or other similar special taxing district  
89 created pursuant to statute.

90 (8) "Member" means a member of an association, and may  
91 include, but is not limited to, a parcel owner or an association  
92 representing parcel owners or a combination thereof.

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

96 (a) Which is capable of separate conveyance; and

97 (b) Of which the parcel owner, or an association in which  
98 the parcel owner must be a member, is obligated:

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

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

103 (10) "Parcel owner" means the record owner of legal title  
104 to a parcel.

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105 (11) "Voting interest" means the voting rights distributed  
106 to the members of the homeowners' association, pursuant to the  
107 governing documents.

108 Section 2. Subsections (1), (3), and (4) of section  
109 720.302, Florida Statutes, are amended to read:

110 720.302 Purposes, scope, and application.--

111 (1) The purposes of this chapter ~~ss. 720.301-720.312~~ are  
112 to give statutory recognition to corporations not for profit  
113 that operate residential communities in this state, to provide  
114 procedures for operating homeowners' associations, and to  
115 protect the rights of association members without unduly  
116 impairing the ability of such associations to perform their  
117 functions.

118 (3) This chapter does ~~Sections 720.301-720.312~~ ~~do~~ not  
119 apply to:

120 (a) A community that is composed of property primarily  
121 intended for commercial, industrial, or other nonresidential  
122 use; or

123 (b) The commercial or industrial parcels in a community  
124 that contains both residential parcels and parcels intended for  
125 commercial or industrial use.

126 (4) This chapter does ~~Sections 720.301-720.312~~ ~~do~~ not  
127 apply to any association that is subject to regulation under  
128 chapter 718, chapter 719, or chapter 721; or to any nonmandatory  
129 association formed under chapter 723.

130 Section 3. Section 720.401, Florida Statutes, is created  
131 to read:

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132        720.401 Preservation of residential communities; revival  
 133 of declaration of covenants.--

134        (1) Consistent with required and optional elements of  
 135 local comprehensive plans and other applicable provisions of the  
 136 Local Government Comprehensive Planning and Land Development  
 137 Regulation Act, homeowners are encouraged to preserve existing  
 138 residential communities, promote available and affordable  
 139 housing, protect structural and aesthetic elements of their  
 140 residential community, and, as applicable, maintain roads and  
 141 streets, easements, water and sewer systems, utilities, drainage  
 142 improvements, conservation and open areas, recreational  
 143 amenities, and other infrastructure and common areas that serve  
 144 and support the residential community by the revival of a  
 145 previous declaration of covenants and other governing documents  
 146 that may have ceased to govern some or all parcels in the  
 147 community.

148        (2) In order to preserve a residential community and the  
 149 associated infrastructure and common areas for the purposes  
 150 described in this section, parcel owners in a community that was  
 151 previously subject to a declaration of covenants that has ceased  
 152 to govern some or all parcels in the community may revive the  
 153 declaration and the homeowners' association for the community  
 154 upon approval by the parcel owners to be governed thereby as  
 155 provided in this act, and upon approval of the declaration and  
 156 the other governing documents for the association by the  
 157 Department of Community Affairs in a manner consistent with this  
 158 act.

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159 Section 4. Section 720.402, Florida Statutes, is created  
160 to read:

161 720.402 Eligible residential communities; requirements for  
162 revival of declaration.--Parcel owners in a community shall be  
163 eligible to seek approval from the Department of Community  
164 Affairs to revive a declaration of covenants under this act if  
165 all of the following requirements are met:

166 (1) All parcels to be governed by the revived declaration  
167 must have been once governed by a previous declaration that has  
168 ceased to govern some or all of the parcels in the community.

169 (2) The revived declaration must be approved in the manner  
170 provided in s. 720.403(6).

171 (3) The revived declaration may not contain covenants that  
172 are more restrictive on the parcel owners than the covenants  
173 contained in the previous declaration, except that the  
174 declaration may:

175 (a) Have an effective term of longer duration than the  
176 term of the previous declaration.

177 (b) Omit restrictions contained in the previous  
178 declaration.

179 (c) Govern fewer than all of the parcels governed by the  
180 previous declaration.

181 (d) Provide for amendments to the declaration and other  
182 governing documents.

183 (e) Contain provisions required by this chapter for new  
184 declarations that were not contained in the previous  
185 declaration.

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186 Section 5. Section 720.403, Florida Statutes, is created  
187 to read:

188 720.403 Organizing committee; parcel owner approval.--

189 (1) The proposal to revive a declaration of covenants and  
190 a homeowners' association for a community under the terms of  
191 this act shall be initiated by an organizing committee  
192 consisting of not fewer than three parcel owners located in the  
193 community that is proposed to be governed by the revived  
194 declaration. The name, address, and telephone number of each  
195 member of the organizing committee must be included in any  
196 notice or other document provided by the committee to parcel  
197 owners to be affected by the proposed revived declaration.

198 (2) The organizing committee shall prepare or cause to be  
199 prepared the complete text of the proposed revived declaration  
200 of covenants to be submitted to the parcel owners for approval.  
201 The proposed revived documents must identify each parcel that is  
202 to be subject to the governing documents by its legal  
203 description and by the name of the parcel owner or the person in  
204 whose name the parcel is assessed on the last completed tax  
205 assessment roll of the county at the time when the proposed  
206 revived declaration is submitted for approval by the parcel  
207 owners.

208 (3) The organizing committee shall prepare the full text  
209 of the proposed articles of incorporation and bylaws of the  
210 revived homeowners' association to be submitted to the parcel  
211 owners for approval, unless the association is then an existing  
212 corporation, in which case the organizing committee shall



213 prepare the existing articles of incorporation and bylaws to be  
 214 submitted to the parcel owners.

215 (4) The proposed revived declaration and other governing  
 216 documents for the community shall:

217 (a) Provide that the voting interest of each parcel owner  
 218 shall be the same as the voting interest of the parcel owner  
 219 under the previous governing documents.

220 (b) Provide that the proportional-assessment obligations  
 221 of each parcel owner shall be the same as proportional-  
 222 assessment obligations of the parcel owner under the previous  
 223 governing documents.

224 (c) Contain the same respective amendment provisions as  
 225 the previous governing documents or, if there were no amendment  
 226 provisions in the previous governing document, amendment  
 227 provisions that require approval of not less than two-thirds of  
 228 the affected parcel owners.

229 (d) Contain no covenants that are more restrictive on the  
 230 affected parcel owners than the covenants contained in the  
 231 previous governing documents, except as permitted under s.  
 232 720.402(3).

233 (e) Comply with the other requirements for a declaration  
 234 of covenants and other governing documents as specified in this  
 235 chapter.

236 (5) A copy of the complete text of the proposed revived  
 237 declaration of covenants, the proposed new or existing articles  
 238 of incorporation and bylaws of the homeowners' association, and  
 239 a graphic depiction of the property to be governed by the  
 240 revived declaration shall be presented to all of the affected

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241 parcel owners by mail or hand delivery not fewer than 14 days  
 242 before the time that the consent of the affected parcel owners  
 243 to the proposed governing documents is sought by the organizing  
 244 committee.

245 (6) A majority of the affected parcel owners must agree in  
 246 writing to the revived declaration of covenants and governing  
 247 documents of the homeowners' association or approve the revived  
 248 declaration and governing documents by a vote at a meeting of  
 249 the affected parcel owners noticed and conducted in the manner  
 250 prescribed by s. 720.306. Proof of notice of the meeting to all  
 251 affected parcel owners and the minutes of the meeting recording  
 252 the votes of the parcel owners shall be certified by a court  
 253 reporter or an attorney licensed to practice in this state.

254 Section 6. Section 720.404, Florida Statutes, is created  
 255 to read:

256 720.404 Department of Community Affairs; submission;  
 257 review and determination.--

258 (1) No later than 60 days after the date the proposed  
 259 revived declaration and other governing documents are approved  
 260 by the affected parcel owners, the organizing committee or its  
 261 designee must submit the proposed revived governing documents  
 262 and supporting materials to the Department of Community Affairs  
 263 to review and determine whether to approve or disapprove the  
 264 proposal to preserve the residential community. The submission  
 265 to the department must include:

266 (a) The full text of the proposed revived declaration of  
 267 covenants and articles of incorporation and bylaws of the  
 268 homeowners' association.

269        (b) A verified copy of the previous declaration of  
 270 covenants and other previous governing documents for the  
 271 community, including any amendments thereto.

272        (c) The legal description of each parcel to be subject to  
 273 the revived declaration and other governing documents and a plat  
 274 or other graphic depiction of the affected properties in the  
 275 community.

276        (d) A verified copy of the written consents of the  
 277 requisite number of the affected parcel owners approving the  
 278 revived declaration and other governing documents or, if  
 279 approval was obtained by a vote at a meeting of affected parcel  
 280 owners, verified copies of the notice of the meeting,  
 281 attendance, and voting results.

282        (e) An affidavit by a current or former officer of the  
 283 homeowners' association or by a member of the organizing  
 284 committee verifying that the requirements for the revived  
 285 declaration set forth in s. 720.402 have been satisfied.

286        (f) Such other documentation that the organizing committee  
 287 believes is supportive of the policy of preserving the  
 288 residential community and operating, managing, and maintaining  
 289 the infrastructure, aesthetic character, and common areas  
 290 erving the residential community.

291        (2) No later than 60 days after receiving the submission,  
 292 the department must determine whether the proposed revived  
 293 declaration of covenants and other governing documents comply  
 294 with the requirements of this act.

295        (a) If the department determines that the proposed revived  
 296 declaration and other governing documents comply with this act

297 and have been approved by the parcel owners as required by this  
 298 act, the department shall notify the organizing committee in  
 299 writing of its approval.

300 (b) If the department determines that the proposed revived  
 301 declaration and other governing documents do not comply with  
 302 this act or have not been approved as required by this act, the  
 303 department shall notify the organizing committee in writing that  
 304 it does not approve the governing documents and shall state the  
 305 reasons for the disapproval.

306 Section 7. Section 720.405, Florida Statutes, is created  
 307 to read:

308 720.405 Recording; notice of recording; applicability and  
 309 effective date.--

310 (1) No later than 30 days after receiving approval from  
 311 the department, the organizing committee shall file the articles  
 312 of incorporation of the homeowners' association with the  
 313 Division of Corporations of the Department of State if the  
 314 articles have not been previously filed with the division.

315 (2) No later than 30 days after receiving approval from  
 316 the division, the president and secretary of the homeowners'  
 317 association shall execute the revived declaration and other  
 318 governing documents approved by the department in the name of  
 319 the homeowners' association and have the documents recorded  
 320 with the clerk of the circuit court in the county where the  
 321 affected parcels are located.

322 (3) The recorded documents shall include the full text of  
 323 the approved declaration of covenants, the articles of  
 324 incorporation and bylaws of the homeowners' association, the

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325 letter of approval by the department, and the legal description  
326 of each affected parcel.

327 (4) Immediately after recording the documents, a complete  
328 copy of all of the approved recorded documents must be mailed or  
329 hand-delivered to the owner of each affected parcel. The revived  
330 declaration and other governing documents shall be effective  
331 upon recordation in the public records with respect to each  
332 affected parcel subject thereto, regardless of whether the  
333 particular parcel owner approved the revived declaration. Upon  
334 recordation, the revived declaration shall replace and supersede  
335 the previous declaration with respect to all affected parcels  
336 then governed by the previous declaration and shall have the  
337 same record priority as the superseded previous declaration.  
338 With respect to any affected parcels that had ceased to be  
339 governed by the previous declaration as of the recording date,  
340 the revived declaration may not have retroactive effect with  
341 respect to the parcel and shall take priority with respect to  
342 the parcel as of the recording date.

343 Section 8. This act shall take effect July 1, 2004.