



1 association from denying or refusing to approve  
2 a member's plans for building on the member's  
3 property under certain circumstances; requiring  
4 the budget to provide for annual operating  
5 expenses; requiring the budget to include  
6 reserve accounts for capital expenditures and  
7 deferred maintenance; providing the amount to  
8 be reserved; authorizing the association to  
9 adjust replacement reserve assessments  
10 annually; authorizing the developer to vote to  
11 waive the reserves or reduce the funding of  
12 reserves for a certain period; revising  
13 provisions relating to financial reporting;  
14 revising time periods in which the association  
15 must complete its reporting; amending s.  
16 720.307, F.S.; requiring developers to deliver  
17 financial records to the board; requiring  
18 certain information to be included in the  
19 records and for the records to be prepared in a  
20 specified manner; amending s. 720.308, F.S.;  
21 providing that a guarantee of common expenses  
22 shall be effective under certain circumstances;  
23 requiring the guarantee to meet certain  
24 requirements; authorizing the guarantee to  
25 provide certain requirements; requiring the  
26 stated dollar amount of the guarantee to be an  
27 exact dollar amount for each parcel identified  
28 in the declaration; providing payments required  
29 from the guarantor to be determined in a  
30 certain manner; providing a formula to  
31 determine the guarantor's total financial

1 obligation to the association; providing that  
2 certain expenses incurred in the production of  
3 certain revenues shall not be included in the  
4 common expenses; providing an effective date.  
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6 Be It Enacted by the Legislature of the State of Florida:  
7

8 Section 1. Subsections (1), (6), and (7) of section  
9 720.303, Florida Statutes, are amended to read:

10 720.303 Association powers and duties; meetings of  
11 board; official records; budgets; financial reporting;  
12 association funds; recalls.--

13 (1) POWERS AND DUTIES.--

14 (a) An association which operates a community as  
15 defined in s. 720.301~~7~~ must be incorporated in this state,  
16 ~~operated by an association that is a Florida corporation.~~  
17 ~~After October 1, 1995, the association must be incorporated~~  
18 and the initial governing documents must be recorded in the  
19 official records of the county in which the community is  
20 located. ~~An association may operate more than one community.~~

21 (b) The officers and directors of an association have  
22 a fiduciary relationship to the members of ~~who are served by~~  
23 the association.

24 (c) The powers and duties of an association include  
25 those set forth in this chapter and, ~~except as expressly~~  
26 ~~limited or restricted in this chapter,~~ those specifically set  
27 forth in the governing documents. The officers and directors  
28 of the association may not take any action that is  
29 inconsistent with the declaration of covenants.

30 (d) After control of the association is obtained by  
31 members from the developers ~~other than the developer,~~ the

1 association may institute, maintain, or settle on, ~~or~~ appeal  
2 actions ~~or hearings~~ in its name on behalf of the ~~all~~ members  
3 concerning matters of common interest to the members,  
4 ~~including, but not limited to, the common areas; roof or~~  
5 ~~structural components of a building, or other improvements for~~  
6 ~~which the association is responsible; mechanical, electrical,~~  
7 ~~or plumbing elements serving an improvement or building for~~  
8 ~~which the association is responsible; representations of the~~  
9 ~~developer pertaining to any existing or proposed commonly used~~  
10 ~~facility; and protesting ad valorem taxes on commonly used~~  
11 ~~facilities. The association may defend actions in eminent~~  
12 ~~domain or bring inverse condemnation actions. Before~~  
13 commencing any legal action ~~litigation~~ against any party in  
14 the name of the association involving amounts in controversy  
15 in excess of ~~\$50,000~~ \$100,000, the association must obtain ~~the~~  
16 affirmative approval of a majority of the members of the  
17 association ~~voting interests~~ at a meeting of the association  
18 ~~membership~~ at which a quorum is present ~~has been attained~~.

19 (e) The association may enter into contracts for the  
20 benefit of the members of the association, including, but not  
21 limited to, contracts for maintaining, repairing, or improving  
22 the common areas of the association. This subsection does not  
23 limit any statutory or common law right of any individual  
24 member or class of members to bring any action without  
25 participation by the association.

26 (f) A member does not have the authority to act for  
27 the association by virtue of being a member of the  
28 association. ~~An association may have more than one class of~~  
29 ~~members and may issue membership certificates.~~

30 (g) In any action between a member and the  
31 association, it shall not be a defense by the association that

1 the association's actions, although inconsistent with the  
2 declaration of covenants, have been uniformly applied.

3 (h) An association may not restrict a member's freedom  
4 of association and may not limit the number of guests a member  
5 may have within a 24-hour period.

6 (i) An association of 15 or fewer ~~parcels~~ ~~parcel~~  
7 owners may enforce only ~~the requirements of~~ those deed  
8 restrictions established prior to the purchase of each parcel  
9 upon an affected parcel owner or owners.

10 (j) The officers and directors of an association may  
11 be personally liable for damages to a member if there is clear  
12 and convincing evidence that the actions of the officers and  
13 directors demonstrate a pattern of behavior designed to harass  
14 a member of the association.

15 (k) Any action of the association by and through the  
16 officers and directors that limits the legal use of any  
17 portion of a member's property which is inconsistent with the  
18 declaration of covenants shall entitle the member to  
19 compensation for the fair market value of that portion of the  
20 member's property the use of which is being restricted.

21 (l) In any association with more than 50 but fewer  
22 than 75 parcels, for purposes of establishing setback limits,  
23 any parcel of 1 acre or less shall be deemed to have one front  
24 for purposes of determining the required front setback, if  
25 any. Only those setbacks specifically set forth in the  
26 declaration of covenants may be enforced by the association.  
27 Where the covenants are silent, the applicable county or  
28 municipal setbacks shall apply.

29 (m) The association may not deny or refuse to approve  
30 a member's plans for building on the member's property unless  
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1 the plan under consideration violates a specific provision of  
2 the declaration of covenants.

3 (6) BUDGETS.--

4 (a) The association shall prepare an annual budget  
5 providing for the annual operating expenses. The budget must  
6 reflect the estimated revenues and expenses for that year and  
7 the estimated surplus or deficit as of the end of the current  
8 year. The budget must set out separately all fees or charges  
9 for recreational amenities, whether owned by the association,  
10 the developer, or another person. The association shall  
11 provide each member with a copy of the annual budget or a  
12 written notice that a copy of the budget is available upon  
13 request at no charge to the member. The copy must be provided  
14 to the member within the time limits set forth in subsection  
15 (5).

16 (b) In addition to annual operating expenses, the  
17 budget shall include reserve accounts for capital expenditures  
18 and deferred maintenance. These accounts shall include, but  
19 are not limited to, roof replacement, building painting, and  
20 pavement resurfacing, regardless of the amount of deferred  
21 maintenance expense or replacement cost, and any other item  
22 for which the deferred maintenance expense or replacement cost  
23 exceeds \$10,000. The amount to be reserved shall be computed  
24 by means of a formula that is based upon estimated remaining  
25 useful life and estimated replacement cost or deferred  
26 maintenance expense of each reserve item. The association may  
27 adjust replacement reserve assessments annually to take into  
28 account any changes in estimates or extension of the useful  
29 life of a reserve item caused by deferred maintenance. This  
30 paragraph does not apply to an adopted budget for which the  
31 members of an association have determined, by a majority vote

1 at a duly called meeting of the association, to provide no  
2 reserves or fewer reserves than required by this paragraph.  
3 However, prior to turnover of control of an association by a  
4 developer to unit owners, the developer may vote to waive the  
5 reserves or reduce the funding of reserves for the first 2  
6 fiscal years of the association's operation, beginning with  
7 the fiscal year in which the initial declaration is recorded,  
8 after which time reserves may be waived or reduced only upon  
9 the vote of a majority of all nondeveloper voting interests  
10 voting in person or by limited proxy at a duly called meeting  
11 of the association. If a meeting of the unit owners has been  
12 called to determine whether to waive or reduce the funding of  
13 reserves and no such result is achieved or a quorum is not  
14 attained, the reserves as included in the budget shall go into  
15 effect. After the turnover, the developer may vote its voting  
16 interest to waive or reduce the funding of reserves.

17 (7) FINANCIAL REPORTING.--Within 90 days after the end  
18 of the fiscal year, or annually on the date provided in the  
19 bylaws, the association shall prepare and complete, or  
20 contract for the preparation and completion of, a ~~an~~ annual  
21 financial report for the preceding fiscal year. Within ~~21~~ 60  
22 days after the final financial report is completed by the  
23 association or received from the third party, but not later  
24 than 120 days after the end of the fiscal year or other date  
25 as provided in the bylaws, ~~close of the fiscal year.~~ the  
26 association shall, within the time limits set forth in  
27 subsection (5), provide each member with a copy of the annual  
28 financial report or a written notice that a copy of the  
29 financial report is available upon request at no charge to the  
30 member. Financial reports shall be prepared as follows:  
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1 (a) An association that meets the criteria of this  
2 paragraph shall prepare or cause to be prepared a complete set  
3 of financial statements in accordance with generally accepted  
4 accounting principles as adopted by the Board of Accountancy.

5 The financial statements shall be based upon the association's  
6 total annual revenues, as follows:

7 1. An association with total annual revenues of  
8 \$100,000 or more, but less than \$200,000, shall prepare  
9 compiled financial statements.

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

13 3. An association with total annual revenues of  
14 \$400,000 or more shall prepare audited financial statements.

15 (b)1. An association with total annual revenues of  
16 less than \$100,000 shall prepare a report of cash receipts and  
17 expenditures.

18 2. An association in a community of fewer than 50  
19 parcels, regardless of the association's annual revenues, may  
20 prepare a report of cash receipts and expenditures in lieu of  
21 financial statements required by paragraph (a) unless the  
22 governing documents provide otherwise.

23 3. A report of cash receipts and disbursement must  
24 disclose the amount of receipts by accounts and receipt  
25 classifications and the amount of expenses by accounts and  
26 expense classifications, including, but not limited to, the  
27 following, as applicable: costs for security, professional,  
28 and management fees and expenses; taxes; costs for recreation  
29 facilities; expenses for refuse collection and utility  
30 services; expenses for lawn care; costs for building  
31 maintenance and repair; insurance costs; administration and



1 salary expenses; and reserves if maintained by the  
2 association.

3 (c) If 20 percent of the parcel owners petition the  
4 board for a level of financial reporting higher than that  
5 required by this section, the association shall duly notice  
6 and hold a meeting of members within 30 days of receipt of the  
7 petition for the purpose of voting on raising the level of  
8 reporting for that fiscal year. Upon approval of a majority of  
9 the total voting interests of the parcel owners, the  
10 association shall prepare or cause to be prepared, shall amend  
11 the budget or adopt a special assessment to pay for the  
12 financial report regardless of any provision to the contrary  
13 in the governing documents, and shall provide within 90 days  
14 of the meeting or the end of the fiscal year, whichever occurs  
15 later:

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

19 2. Reviewed or audited financial statements, if the  
20 association is otherwise required to prepare compiled  
21 financial statements; or

22 3. Audited financial statements if the association is  
23 otherwise required to prepare reviewed financial statements.

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

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

29 2. A report of cash receipts and expenditures or a  
30 compiled financial statement in lieu of a reviewed or audited  
31 financial statement; or

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

4           Section 2. Paragraph (t) is added to subsection (3) of  
5 section 720.307, Florida Statutes, to read:

6           720.307 Transition of association control in a  
7 community.--With respect to homeowners' associations:

8           (3) At the time the members are entitled to elect at  
9 least a majority of the board of directors of the homeowners'  
10 association, the developer shall, at the developer's expense,  
11 within no more than 90 days deliver the following documents to  
12 the board:

13           (t) The financial records, including financial  
14 statements of the association, and source documents from the  
15 incorporation of the association through the date of turnover.  
16 The records shall be audited by an independent certified  
17 public accountant for the period from the incorporation of the  
18 association or from the period covered by the last audit, if  
19 an audit has been performed for each fiscal year since  
20 incorporation. All financial statements shall be prepared in  
21 accordance with generally accepted accounting principles and  
22 shall be audited in accordance with generally accepted  
23 auditing standards, as prescribed by the Board of Accountancy,  
24 pursuant to chapter 473. The certified public accountant  
25 performing the audit shall examine to the extent necessary  
26 supporting documents and records, including the cash  
27 disbursements and related paid invoices to determine whether  
28 expenditures were for association purposes and the billings,  
29 cash receipts, and related records to determine whether the  
30 developer was charged and paid the proper amounts of  
31 assessments.

1           Section 3. Section 720.308, Florida Statutes, is  
2 amended to read:

3           720.308 Assessments and charges.--

4           (1) For any community created after October 1, 1995,  
5 the governing documents must describe the manner in which  
6 expenses are shared and specify the member's proportional  
7 share thereof. Assessments levied pursuant to the annual  
8 budget or special assessment must be in the member's  
9 proportional share of expenses as described in the governing  
10 document, which share may be different among classes of  
11 parcels based upon the state of development thereof, levels of  
12 services received by the applicable members, or other relevant  
13 factors. While the developer is in control of the homeowners'  
14 association, it may be excused from payment of its share of  
15 the operating expenses and assessments related to its parcels  
16 for any period of time for which the developer has, in the  
17 declaration, obligated itself to pay any operating expenses  
18 incurred that exceed the assessments receivable from other  
19 members and other income of the association. This subsection  
20 ~~section~~ does not apply to an association, no matter when  
21 created, if the association is created in a community that is  
22 included in an effective development-of-regional-impact  
23 development order as of the effective date of this act,  
24 together with any approved modifications thereto.

25           (2) If a guarantee of common expenses is not included  
26 in the purchase contracts, declaration, or prospectus, any  
27 agreement establishing a guarantee shall be effective only  
28 upon the approval of a majority of the voting interests of the  
29 members other than the developer. Approval shall be expressed  
30 at a meeting of the members, voting in person or by limited  
31 proxy, or by agreement in writing without a meeting if

1 provided in the bylaws. Such guarantee shall meet the  
2 requirements of this section.

3 (a) The period of time for the guarantee shall be  
4 indicated by a specific beginning and ending date or event.  
5 The ending date or event shall be the same for all of the  
6 members of a homeowners' association, including members in  
7 different phases of the homeowners' association.

8 (b) The guarantee may provide:

9 1. Different intervals of time during a guarantee  
10 period with different dollar amounts for each such interval.

11 2. That after the initial stated period the developer  
12 has an option to extend the guarantee for one or more  
13 additional stated periods. The extension of a guarantee is  
14 limited to extending the ending date or event; therefore, the  
15 developer does not have the option of changing the level of  
16 assessments guaranteed.

17 (3) The stated dollar amount of the guarantee shall be  
18 an exact dollar amount for each parcel identified in the  
19 declaration. Regardless of the stated dollar amount of the  
20 guarantee, assessments charged to a member shall not exceed  
21 the maximum obligation of the member based on the total amount  
22 of the adopted budget and the member's proportionate ownership  
23 share of the common elements.

24 (4) The cash payments required from the guarantor  
25 during the guarantee period shall be determined as follows:

26 (a) If at any time during the guarantee period the  
27 funds collected from member assessments at the guaranteed  
28 level and other revenues collected by the association are not  
29 sufficient to provide payment, on a timely basis, of all  
30 common expenses, including the full funding of the reserves  
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1 unless properly waived, the guarantor shall advance sufficient  
2 cash to the association at the time such payments are due.

3 (b) Expenses incurred in the production of  
4 non-assessment revenues, which expenses are not in excess of  
5 the non-assessment revenues, shall not be included in the  
6 common expenses. If the expenses attributable to  
7 non-assessment revenues exceed non-assessment revenues, only  
8 the excess expenses must be funded by the guarantor. For  
9 example, if the association operates a rental program in which  
10 rental expenses exceed rental revenues, the guarantor shall  
11 fund the rental expenses in excess of the rental revenues.  
12 Interest earned on the investment of association funds may be  
13 used to pay the income tax expense incurred as a result of the  
14 investment, such expense shall not be charged to the  
15 guarantor, and the net investment income shall be retained by  
16 the association. Each such non-assessment, revenue-generating  
17 activity shall be considered separately. Capital contributions  
18 collected from members are not revenues and shall not be used  
19 to pay common expenses.

20 (5) The guarantor's total financial obligation to the  
21 association at the end of the guarantee period shall be  
22 determined on the accrual basis using the following formula:  
23 the guarantor shall fund the total common expenses incurred  
24 during the guarantee period, including the full funding of the  
25 reserves unless properly waived, less the total regular  
26 periodic assessments earned by the association from the  
27 members other than the guarantor during the guarantee period,  
28 regardless of whether the actual level charged was less than  
29 the maximum guaranteed amount.

30 (6) Expenses incurred in the production of  
31 non-assessment revenues, which expenses are not in excess of

1 the non-assessment revenues, shall not be included in the  
2 common expenses. If the expenses attributable to  
3 non-assessment revenues exceed non-assessment revenues, only  
4 the excess expenses must be funded by the guarantor. For  
5 example, if the association operates a rental program in which  
6 rental expenses exceed rental revenues, the guarantor shall  
7 fund the rental expenses in excess of the rental revenues.  
8 Interest earned on the investment of association funds may be  
9 used to pay the income tax expense incurred as a result of the  
10 investment, such expense shall not be charged to the  
11 guarantor, and the net investment income shall be retained by  
12 the association. Each such non-assessment, revenue-generating  
13 activity shall be considered separately. Capital contributions  
14 collected from members are not revenues and shall not be used  
15 to pay common expenses.

16           Section 4. This act shall take effect July 1, 2006.  
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