

1 conforming a cross-reference; providing an
2 effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Section 712.11, Florida Statutes, is
7 created to read:

8 712.11 Covenant revitalization.--A homeowners'
9 association that is not subject to chapter 720 may use the
10 procedures in ss. 720.403-720.407 to revive covenants that
11 have lapsed pursuant to this chapter.

12 Section 2. Section 720.302, Florida Statutes, is
13 amended to read:

14 720.302 Purposes, scope, and application.--

15 (1) The purposes of this chapter are to give statutory
16 recognition to corporations not for profit that operate
17 residential communities in this state, to provide procedures
18 for operating homeowners' associations, and to protect the
19 rights of association members without unduly impairing the
20 ability of such associations to perform their functions.

21 (2) The Legislature recognizes that it is not in the
22 best interest of homeowners' associations or the individual
23 association members thereof to create or impose a bureau or
24 other agency of state government to regulate the affairs of
25 homeowners' associations. ~~However, in accordance with s.~~
26 ~~720.311, the Legislature finds that homeowners' associations~~
27 ~~and their individual members will benefit from an expedited~~
28 ~~alternative process for resolution of election and recall~~
29 ~~disputes and presuit mediation of other disputes involving~~
30 ~~covenant enforcement and authorizes the department to hear,~~
31 ~~administer, and determine these disputes as more fully set~~

1 ~~forth in this chapter.~~ Further, the Legislature recognizes
2 that certain contract rights have been created for the benefit
3 of homeowners' associations and members thereof before the
4 effective date of this act and that ss. 720.301-720.407 are
5 not intended to impair such contract rights, including, but
6 not limited to, the rights of the developer to complete the
7 community as initially contemplated.

8 (3) Except as specifically provided in this chapter,
9 this chapter does not apply to:

10 (a) A community that is composed of property primarily
11 intended for commercial, industrial, or other nonresidential
12 use; or

13 (b) The commercial or industrial parcels in a
14 community that contains both residential parcels and parcels
15 intended for commercial or industrial use.

16 (4) This chapter does not apply to any association
17 that is subject to regulation under chapter 718, chapter 719,
18 or chapter 721; or to any nonmandatory association formed
19 under chapter 723.

20 (5) Unless expressly stated to the contrary,
21 corporations not for profit that operate residential
22 homeowners' associations in this state shall be governed by
23 and subject to chapter 617 and this chapter or chapter 607 if
24 incorporated under that chapter. This subsection is intended
25 to clarify existing law.

26 Section 3. Subsections (2), (5), and (7) of section
27 720.303, Florida Statutes, are amended to read:

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

31 (2) BOARD MEETINGS.--

1 (a) A meeting of the board of directors of an
2 association occurs whenever a quorum of the board gathers to
3 conduct association business. All meetings of the board must
4 be open to all members except for meetings between the board
5 and its attorney with respect to proposed or pending
6 litigation where the contents of the discussion would
7 otherwise be governed by the attorney-client privilege.

8 (b) Members have the right to attend all meetings of
9 the board and to speak on any matter placed on the agenda by
10 petition of the voting interests for at least 3 minutes. The
11 association may adopt written reasonable rules expanding the
12 right of members to speak and governing the frequency,
13 duration, and other manner of member statements, which rules
14 must be consistent with this paragraph and may include a
15 sign-up sheet for members wishing to speak. Notwithstanding
16 any other law, the requirement that board meetings and
17 committee meetings be open to the members is inapplicable to
18 meetings between the board or a committee and the
19 association's attorney, with respect to meetings of the board
20 held for the purpose of discussing personnel matters.

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

24 1. Notices of all board meetings must be posted in a
25 conspicuous place in the community at least 48 hours in
26 advance of a meeting, except in an emergency. In the
27 alternative, if notice is not posted in a conspicuous place in
28 the community, notice of each board meeting must be mailed or
29 delivered to each member at least 7 days before the meeting,
30 except in an emergency. Notwithstanding this general notice
31 requirement, for communities with more than 100 members, the

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

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

31 |

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

10 (d) If 20 percent of the total voting interests
11 petition the board to address an item of business, the board
12 shall at its next regular board meeting or at a special
13 meeting of the board, but not later than 60 days after the
14 receipt of the petition, take the petitioned item up on an
15 agenda. The board shall give all members notice of the meeting
16 at which the petitioned item shall be addressed in accordance
17 with the 14-day notice requirement pursuant to subparagraph
18 (c)2. Each member shall have the right to speak for at least 3
19 minutes on each matter placed on the agenda by petition,
20 provided that the member signs the sign-up sheet, if one is
21 provided, or submits a written request to speak prior to the
22 meeting. Other than addressing the petitioned item at the
23 meeting, the board is not obligated to take any other action
24 requested by the petition.

25 (5) INSPECTION AND COPYING OF RECORDS.--The official
26 records shall be maintained within the state and must be open
27 to inspection and available for photocopying by members or
28 their authorized agents at reasonable times and places within
29 10 business days after receipt of a written request for
30 access. This subsection may be complied with by having a copy
31 of the official records available for inspection or copying in

1 | the community. If the association has a photocopy machine
2 | available where the records are maintained, it must provide
3 | parcel owners with copies on request during the inspection if
4 | the entire request is limited to no more than 25 pages.

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

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

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

1 members and prospective members. Notwithstanding the
2 provisions of this paragraph, the following records shall not
3 be accessible to members or parcel owners:

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

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

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

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

24 5. The association is not required to give a
25 prospective purchaser or lienholder information about the
26 subdivision or the association other than that required to be
27 disclosed under this chapter. It may charge the prospective
28 purchaser, lienholder, or current parcel owner or member a
29 reasonable fee not to exceed \$150 to provide such information,
30 other than information required by law, plus the reasonable
31

1 cost of photocopying and attorney's fees incurred by the
2 association in connection with the response.

3 6. An association is not liable for providing such
4 information in good faith pursuant to a written request if the
5 person providing the information includes a written statement
6 in substantially the following form: "The responses herein are
7 made in good faith and to the best of my ability as to their
8 accuracy."

9 (7) FINANCIAL REPORTING.--The association shall
10 prepare an annual financial report by a date specified in the
11 bylaws or within 90 ~~60~~ days after the close of the fiscal
12 year. The association shall, within 21 days after the report
13 is prepared but not later than 120 days after the end of the
14 fiscal year ~~the time limits set forth in subsection (5),~~
15 provide each member with a copy of the annual financial report
16 or a written notice that a copy of the financial report is
17 available upon request at no charge to the member. Financial
18 reports shall be prepared as follows:

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

24 1. An association with total annual revenues of
25 \$100,000 or more, but less than \$200,000, shall prepare
26 compiled financial statements.

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

30 3. An association with total annual revenues of
31 \$400,000 or more shall prepare audited financial statements.

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

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

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 Section 4. Subsection (2) of section 720.305, Florida
23 Statutes, is amended to read:

24 720.305 Obligations of members; remedies at law or in
25 equity; levy of fines and suspension of use rights; failure to
26 fill sufficient number of vacancies on board of directors to
27 constitute a quorum; appointment of receiver upon petition of
28 any member.--

29 (2) If the governing documents so provide, an
30 association may suspend, for a reasonable period of time, the
31 rights of a member or a member's tenants, guests, or invitees,

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

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

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

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

1 Section 5. Subsections (1) and (6) of section 720.306,
2 Florida Statutes, are amended to read:

3 720.306 Meetings of members; voting and election
4 procedures; amendments.--

5 (1) QUORUM; AMENDMENTS.--

6 (a) Unless a lower number is provided in the bylaws,
7 the percentage of voting interests required to constitute a
8 quorum at a meeting of the members shall be 30 percent of the
9 total voting interests. Unless otherwise provided in this
10 chapter or in the articles of incorporation or bylaws,
11 decisions that require a vote of the members must be made by
12 the concurrence of at least a majority of the voting interests
13 present, in person or by proxy, at a meeting at which a quorum
14 has been attained.

15 (b) Unless otherwise provided in the governing
16 documents or required by law, and other than those matters set
17 forth in paragraph (c), any governing document of an
18 association may be amended by the affirmative vote of
19 two-thirds of the voting interests of the association.

20 (c) Unless otherwise provided in the governing
21 documents as originally recorded or permitted by this chapter
22 or chapter 617, an amendment may not materially and adversely
23 alter the proportionate voting interest appurtenant to a
24 parcel or increase the proportion or percentage by which a
25 parcel shares in the common expenses of the association unless
26 the record parcel owner and all record owners of liens on the
27 parcels join in the execution of the amendment. For purposes
28 of this section, a change in quorum requirements is not an
29 alteration of voting interests. The merger or consolidation of
30 associations under a plan of merger or consolidation pursuant
31 to chapter 607 or chapter 617 is not a material or adverse

1 alteration of the proportionate voting interest appurtenant to
2 a parcel.

3 (6) RIGHT TO SPEAK.--Members and parcel owners have
4 the right to attend all membership meetings and to speak at
5 any meeting with reference to all items ~~opened for discussion~~
6 ~~or~~ included on the agenda. Notwithstanding any provision to
7 the contrary in the governing documents or any rules adopted
8 by the board or by the membership, a member and a parcel owner
9 have the right to speak for at least 3 minutes on any agenda
10 item, if ~~provided that~~ the member or parcel owner submits a
11 written request to speak prior to the meeting. The association
12 may adopt written reasonable rules governing the frequency,
13 duration, and other manner of member and parcel owner
14 statements, which rules must be consistent with this
15 subsection.

16 Section 6. Subsection (3) is added to section 720.402,
17 Florida Statutes, to read:

18 720.402 Publication of false and misleading
19 information.--

20 (3) This section does not limit any rights provided by
21 common law.

22 Section 7. Subsection (4) of section 720.405, Florida
23 Statutes, is amended to read:

24 720.405 Organizing committee; parcel owner approval.--

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

27 (a) Provide that the voting interest of each parcel
28 owner shall be the same as the voting interest of the parcel
29 owner under the previous governing documents;

30 (b) Provide that the proportional-assessment
31 obligations of each parcel owner shall be the same as

1 proportional-assessment obligations of the parcel owner under
2 the previous governing documents;

3 (c) Contain the same respective amendment provisions
4 as the previous governing documents or, if there were no
5 amendment provisions in the previous governing document,
6 amendment provisions that require approval of not less than
7 two-thirds of the affected parcel owners; and

8 ~~(d) Contain no covenants that are more restrictive on~~
9 ~~the affected parcel owners than the covenants contained in the~~
10 ~~previous governing documents, except as permitted under s.~~
11 ~~720.404(3); and~~

12 ~~(d)(e)~~ Comply with the other requirements for a
13 declaration of covenants and other governing documents as
14 specified in this chapter.

15 Section 8. Section 720.311 is repealed.

16 Section 9. Subsection (1) of section 34.01, Florida
17 Statutes, is amended to read:

18 34.01 Jurisdiction of county court.--

19 (1) County courts shall have original jurisdiction:

20 (a) In all misdemeanor cases not cognizable by the
21 circuit courts;

22 (b) Of all violations of municipal and county
23 ordinances;

24 (c) Of all actions at law in which the matter in
25 controversy does not exceed the sum of \$15,000, exclusive of
26 interest, costs, and attorney's fees, except those within the
27 exclusive jurisdiction of the circuit courts; and

28 (d) Of disputes occurring in the homeowners'
29 associations as described in s. 720.311(2)(a) (2005), which
30 shall be concurrent with jurisdiction of the circuit courts.

31 Section 10. This act shall take effect July 1, 2006.

SENATE SUMMARY

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Revises provisions related to homeowners' associations. Provides for reviving lapsed covenants. Revises noticed requirements related to special assessments. Authorizes fees for providing information to purchasers or lienholders. Limits liability for disclosing such information. Revises time limits related to annual report requirements. Prohibits certain fines from becoming liens unless certain governing documents are recorded. Clarifies the effect of certain mergers or consolidations. Limits the right of members to speak at meetings. Clarifies certain common-law rights. Deletes a requirement relating to the revival of governing documents containing restrictive covenants. Repeals a provision providing an alternative dispute resolution process.