

1 A bill to be entitled

2 An act relating to homeowners' associations; amending s.
3 720.303, F.S.; revising the powers and duties of
4 homeowners' associations; requiring certain associations
5 to be incorporated in this state; removing a provision
6 authorizing associations to operate more than one
7 community; prohibiting officers and directors from taking
8 any action that is inconsistent with the declaration of
9 covenants; authorizing associations to settle actions on
10 appeal; revising procedures relating to legal actions
11 commenced by the association; lowering the dollar amount
12 for which the association must obtain approval by the
13 members of the association before proceeding with the
14 legal action; authorizing the association to enter into
15 certain contracts; removing provisions authorizing an
16 association to have more than one class of members and to
17 issue membership certificates; prohibiting certain
18 association defenses; prohibiting associations from
19 restricting a member's freedom of association and from
20 limiting the number of guests a member may have within a
21 24-hour period; providing that officers and directors of
22 an association may be personally liable for damages under
23 certain circumstances; providing compensation for certain
24 members under certain circumstances; providing criteria
25 for establishing setback limits; prohibiting the
26 association from denying or refusing to approve a member's
27 plans for building on the member's property under certain
28 circumstances; requiring the budget to provide for annual

29 | operating expenses; requiring the budget to include
30 | reserve accounts for capital expenditures and deferred
31 | maintenance; providing the amount to be reserved;
32 | authorizing the association to adjust replacement reserve
33 | assessments annually; authorizing the developer to vote to
34 | waive the reserves or reduce the funding of reserves for a
35 | certain period; revising provisions relating to financial
36 | reporting; revising time periods in which the association
37 | must complete its reporting; amending s. 720.307, F.S.;
38 | requiring developers to deliver financial records to the
39 | board; requiring certain information to be included in the
40 | records and for the records to be prepared in a specified
41 | manner; amending s. 720.308, F.S.; providing that a
42 | guarantee of common expenses shall be effective under
43 | certain circumstances; requiring the guarantee to meet
44 | certain requirements; authorizing the guarantee to provide
45 | certain requirements; requiring the stated dollar amount
46 | of the guarantee to be an exact dollar amount for each
47 | parcel identified in the declaration; providing payments
48 | required from the guarantor to be determined in a certain
49 | manner; providing a formula to determine the guarantor's
50 | total financial obligation to the association; providing
51 | that certain expenses incurred in the production of
52 | certain revenues shall not be included in the common
53 | expenses; providing an effective date.

54 |
55 | Be It Enacted by the Legislature of the State of Florida:
56 |

57 Section 1. Subsections (1), (6), and (7) of section
 58 720.303, Florida Statutes, are amended to read:

59 720.303 Association powers and duties; meetings of board;
 60 official records; budgets; financial reporting; association
 61 funds; recalls.--

62 (1) POWERS AND DUTIES.--

63 (a) An association which operates a community as defined
 64 in s. 720.301, must be incorporated in this state, ~~operated by~~
 65 ~~an association that is a Florida corporation. After October 1,~~
 66 ~~1995, the association must be incorporated~~ and the initial
 67 governing documents must be recorded in the official records of
 68 the county in which the community is located. ~~An association may~~
 69 ~~operate more than one community.~~

70 (b) The officers and directors of an association have a
 71 fiduciary relationship to the members of ~~who are served by~~ the
 72 association.

73 (c) The powers and duties of an association include those
 74 set forth in this chapter and, ~~except as expressly limited or~~
 75 ~~restricted in this chapter,~~ those specifically set forth in the
 76 governing documents. The officers and directors of the
 77 association may not take any action that is inconsistent with
 78 the declaration of covenants.

79 (d) After control of the association is obtained by
 80 members from the developers ~~other than the developer,~~ the
 81 association may institute, maintain, or settle on, ~~or~~ appeal
 82 actions ~~or hearings~~ in its name on behalf of the ~~all~~ members
 83 concerning matters of common interest to the members, ~~including,~~
 84 ~~but not limited to, the common areas, roof or structural~~

85 ~~components of a building, or other improvements for which the~~
 86 ~~association is responsible; mechanical, electrical, or plumbing~~
 87 ~~elements serving an improvement or building for which the~~
 88 ~~association is responsible; representations of the developer~~
 89 ~~pertaining to any existing or proposed commonly used facility;~~
 90 ~~and protesting ad valorem taxes on commonly used facilities. The~~
 91 ~~association may defend actions in eminent domain or bring~~
 92 ~~inverse condemnation actions. Before commencing any legal action~~
 93 ~~litigation against any party in the name of the association~~
 94 ~~involving amounts in controversy in excess of \$50,000 ~~\$100,000~~,~~
 95 ~~the association must obtain the affirmative approval of a~~
 96 ~~majority of the members of the association ~~voting interests~~ at a~~
 97 ~~meeting of the association ~~membership~~ at which a quorum is~~
 98 ~~present has been attained.~~

99 (e) The association may enter into contracts for the
 100 benefit of the members of the association, including, but not
 101 limited to, contracts for maintaining, repairing, or improving
 102 the common areas of the association. This subsection does not
 103 ~~limit any statutory or common law right of any individual member~~
 104 ~~or class of members to bring any action without participation by~~
 105 ~~the association.~~

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

110 (g) In any action between a member and the association, it
 111 shall not be a defense by the association that the association's

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112 actions, although inconsistent with the declaration of
113 covenants, have been uniformly applied.

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

117 (i) An association of 15 or fewer ~~parcels~~ parcel owners
118 may enforce only ~~the requirements of~~ those deed restrictions
119 established prior to the purchase of each parcel upon an
120 affected parcel owner or owners.

121 (j) The officers and directors of an association may be
122 personally liable for damages to a member if the actions of the
123 officers and directors demonstrate a pattern of behavior
124 designed to harass a member of the association.

125 (k) Any action of the association by and through the
126 officers and directors that limits the legal use of any portion
127 of a member's property which is inconsistent with the
128 declaration of covenants shall entitle the member to
129 compensation for the fair market value of that portion of the
130 member's property the use of which is being restricted.

131 (l) In any association with more than 50 but fewer than 75
132 parcels, for purposes of establishing setback limits, any parcel
133 of 1 acre or less shall be deemed to have one front for purposes
134 of determining the required front setback, if any. Only those
135 setbacks specifically set forth in the declaration of covenants
136 may be enforced by the association. Where the covenants are
137 silent, the applicable county or municipal setbacks shall apply.

138 (m) The association may not deny or refuse to approve a
139 member's plans for building on the member's property unless the

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140 plan under consideration violates a specific provision of the
141 declaration of covenants.

142 (6) BUDGETS.--

143 (a) The association shall prepare an annual budget
144 providing for the annual operating expenses. The budget must
145 reflect the estimated revenues and expenses for that year and
146 the estimated surplus or deficit as of the end of the current
147 year. The budget must set out separately all fees or charges for
148 recreational amenities, whether owned by the association, the
149 developer, or another person. The association shall provide each
150 member with a copy of the annual budget or a written notice that
151 a copy of the budget is available upon request at no charge to
152 the member. The copy must be provided to the member within the
153 time limits set forth in subsection (5).

154 (b) In addition to annual operating expenses, the budget
155 shall include reserve accounts for capital expenditures and
156 deferred maintenance. These accounts shall include, but are not
157 limited to, roof replacement, building painting, and pavement
158 resurfacing, regardless of the amount of deferred maintenance
159 expense or replacement cost, and any other item for which the
160 deferred maintenance expense or replacement cost exceeds
161 \$10,000. The amount to be reserved shall be computed by means of
162 a formula that is based upon estimated remaining useful life and
163 estimated replacement cost or deferred maintenance expense of
164 each reserve item. The association may adjust replacement
165 reserve assessments annually to take into account any changes in
166 estimates or extension of the useful life of a reserve item
167 caused by deferred maintenance. This paragraph does not apply to

168 an adopted budget for which the members of an association have
 169 determined, by a majority vote at a duly called meeting of the
 170 association, to provide no reserves or fewer reserves than
 171 required by this paragraph. However, prior to turnover of
 172 control of an association by a developer to unit owners, the
 173 developer may vote to waive the reserves or reduce the funding
 174 of reserves for the first 2 fiscal years of the association's
 175 operation, beginning with the fiscal year in which the initial
 176 declaration is recorded, after which time reserves may be waived
 177 or reduced only upon the vote of a majority of all nondeveloper
 178 voting interests voting in person or by limited proxy at a duly
 179 called meeting of the association. If a meeting of the unit
 180 owners has been called to determine whether to waive or reduce
 181 the funding of reserves and no such result is achieved or a
 182 quorum is not attained, the reserves as included in the budget
 183 shall go into effect. After the turnover, the developer may vote
 184 its voting interest to waive or reduce the funding of reserves.

185 (7) FINANCIAL REPORTING.--Within 90 days after the end of
 186 the fiscal year, or annually on the date provided in the bylaws,
 187 the association shall prepare and complete, or contract for the
 188 preparation and completion of, a ~~an annual~~ financial report for
 189 the preceding fiscal year. Within ~~21~~ 60 days after the final
 190 financial report is completed by the association or received
 191 from the third party, but not later than 120 days after the end
 192 of the fiscal year or other date as provided in the bylaws,
 193 ~~close of the fiscal year.~~ the association shall, within the time
 194 limits set forth in subsection (5), provide each member with a
 195 copy of the annual financial report or a written notice that a

196 copy of the financial report is available upon request at no
 197 charge to the member. Financial reports shall be prepared as
 198 follows:

199 (a) An association that meets the criteria of this
 200 paragraph shall prepare or cause to be prepared a complete set
 201 of financial statements in accordance with generally accepted
 202 accounting principles as adopted by the Board of Accountancy.
 203 The financial statements shall be based upon the association's
 204 total annual revenues, as follows:

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

208 2. An association with total annual revenues of at least
 209 \$200,000, but less than \$400,000, shall prepare reviewed
 210 financial statements.

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

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

216 2. An association in a community of fewer than 50 parcels,
 217 regardless of the association's annual revenues, may prepare a
 218 report of cash receipts and expenditures in lieu of financial
 219 statements required by paragraph (a) unless the governing
 220 documents provide otherwise.

221 3. A report of cash receipts and disbursement must
 222 disclose the amount of receipts by accounts and receipt
 223 classifications and the amount of expenses by accounts and

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224 expense classifications, including, but not limited to, the
225 following, as applicable: costs for security, professional, and
226 management fees and expenses; taxes; costs for recreation
227 facilities; expenses for refuse collection and utility services;
228 expenses for lawn care; costs for building maintenance and
229 repair; insurance costs; administration and salary expenses; and
230 reserves if maintained by the association.

231 (c) If 20 percent of the parcel owners petition the board
232 for a level of financial reporting higher than that required by
233 this section, the association shall duly notice and hold a
234 meeting of members within 30 days of receipt of the petition for
235 the purpose of voting on raising the level of reporting for that
236 fiscal year. Upon approval of a majority of the total voting
237 interests of the parcel owners, the association shall prepare or
238 cause to be prepared, shall amend the budget or adopt a special
239 assessment to pay for the financial report regardless of any
240 provision to the contrary in the governing documents, and shall
241 provide within 90 days of the meeting or the end of the fiscal
242 year, whichever occurs later:

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

246 2. Reviewed or audited financial statements, if the
247 association is otherwise required to prepare compiled financial
248 statements; or

249 3. Audited financial statements if the association is
250 otherwise required to prepare reviewed financial statements.

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

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

256 2. A report of cash receipts and expenditures or a
 257 compiled financial statement in lieu of a reviewed or audited
 258 financial statement; or

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

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

264 720.307 Transition of association control in a
 265 community.--With respect to homeowners' associations:

266 (3) At the time the members are entitled to elect at least
 267 a majority of the board of directors of the homeowners'
 268 association, the developer shall, at the developer's expense,
 269 within no more than 90 days deliver the following documents to
 270 the board:

271 (t) The financial records, including financial statements
 272 of the association, and source documents from the incorporation
 273 of the association through the date of turnover. The records
 274 shall be audited by an independent certified public accountant
 275 for the period from the incorporation of the association or from
 276 the period covered by the last audit, if an audit has been
 277 performed for each fiscal year since incorporation. All
 278 financial statements shall be prepared in accordance with

279 generally accepted accounting principles and shall be audited in
 280 accordance with generally accepted auditing standards, as
 281 prescribed by the Board of Accountancy, pursuant to chapter 473.
 282 The certified public accountant performing the audit shall
 283 examine to the extent necessary supporting documents and
 284 records, including the cash disbursements and related paid
 285 invoices to determine whether expenditures were for association
 286 purposes and the billings, cash receipts, and related records to
 287 determine whether the developer was charged and paid the proper
 288 amounts of assessments.

289 Section 3. Section 720.308, Florida Statutes, is amended
 290 to read:

291 720.308 Assessments and charges.--

292 (1) For any community created after October 1, 1995, the
 293 governing documents must describe the manner in which expenses
 294 are shared and specify the member's proportional share thereof.
 295 Assessments levied pursuant to the annual budget or special
 296 assessment must be in the member's proportional share of
 297 expenses as described in the governing document, which share may
 298 be different among classes of parcels based upon the state of
 299 development thereof, levels of services received by the
 300 applicable members, or other relevant factors. While the
 301 developer is in control of the homeowners' association, it may
 302 be excused from payment of its share of the operating expenses
 303 and assessments related to its parcels for any period of time
 304 for which the developer has, in the declaration, obligated
 305 itself to pay any operating expenses incurred that exceed the
 306 assessments receivable from other members and other income of

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307 the association. This subsection ~~section~~ does not apply to an
308 association, no matter when created, if the association is
309 created in a community that is included in an effective
310 development-of-regional-impact development order as of the
311 effective date of this act, together with any approved
312 modifications thereto.

313 (2) If a guarantee of common expenses is not included in
314 the purchase contracts, declaration, or prospectus, any
315 agreement establishing a guarantee shall be effective only upon
316 the approval of a majority of the voting interests of the
317 members other than the developer. Approval shall be expressed at
318 a meeting of the members, voting in person or by limited proxy,
319 or by agreement in writing without a meeting if provided in the
320 bylaws. Such guarantee shall meet the requirements of this
321 section.

322 (a) The period of time for the guarantee shall be
323 indicated by a specific beginning and ending date or event. The
324 ending date or event shall be the same for all of the members of
325 a homeowners' association, including members in different phases
326 of the homeowners' association.

327 (b) The guarantee may provide:

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

330 2. That after the initial stated period the developer has
331 an option to extend the guarantee for one or more additional
332 stated periods. The extension of a guarantee is limited to
333 extending the ending date or event; therefore, the developer

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334 does not have the option of changing the level of assessments
335 guaranteed.

336 (3) The stated dollar amount of the guarantee shall be an
337 exact dollar amount for each parcel identified in the
338 declaration. Regardless of the stated dollar amount of the
339 guarantee, assessments charged to a member shall not exceed the
340 maximum obligation of the member based on the total amount of
341 the adopted budget and the member's proportionate ownership
342 share of the common elements.

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

345 (a) If at any time during the guarantee period the funds
346 collected from member assessments at the guaranteed level and
347 other revenues collected by the association are not sufficient
348 to provide payment, on a timely basis, of all common expenses,
349 including the full funding of the reserves unless properly
350 waived, the guarantor shall advance sufficient cash to the
351 association at the time such payments are due.

352 (b) Expenses incurred in the production of non-assessment
353 revenues, which expenses are not in excess of the non-assessment
354 revenues, shall not be included in the common expenses. If the
355 expenses attributable to non-assessment revenues exceed non-
356 assessment revenues, only the excess expenses must be funded by
357 the guarantor. For example, if the association operates a rental
358 program in which rental expenses exceed rental revenues, the
359 guarantor shall fund the rental expenses in excess of the rental
360 revenues. Interest earned on the investment of association funds
361 may be used to pay the income tax expense incurred as a result

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362 of the investment, such expense shall not be charged to the
363 guarantor, and the net investment income shall be retained by
364 the association. Each such non-assessment revenue-generating
365 activity shall be considered separately. Capital contributions
366 collected from members are not revenues and shall not be used to
367 pay common expenses.

368 (5) The guarantor's total financial obligation to the
369 association at the end of the guarantee period shall be
370 determined on the accrual basis using the following formula: the
371 guarantor shall fund the total common expenses incurred during
372 the guarantee period, including the full funding of the reserves
373 unless properly waived, less the total regular periodic
374 assessments earned by the association from the members other
375 than the guarantor during the guarantee period, regardless of
376 whether the actual level charged was less than the maximum
377 guaranteed amount.

378 (6) Expenses incurred in the production of non-assessment
379 revenues, which expenses are not in excess of the non-assessment
380 revenues, shall not be included in the common expenses. If the
381 expenses attributable to non-assessment revenues exceed non-
382 assessment revenues, only the excess expenses must be funded by
383 the guarantor. For example, if the association operates a rental
384 program in which rental expenses exceed rental revenues, the
385 guarantor shall fund the rental expenses in excess of the rental
386 revenues. Interest earned on the investment of association funds
387 may be used to pay the income tax expense incurred as a result
388 of the investment, such expense shall not be charged to the
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390 the association. Each such non-assessment revenue-generating
391 activity shall be considered separately. Capital contributions
392 collected from members are not revenues and shall not be used to
393 pay common expenses.

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