

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to homeowners' associations; amending s.
7 720.303, F.S.; revising the powers and duties of
8 homeowners' associations; requiring certain associations
9 to be incorporated in this state; removing a provision
10 authorizing associations to operate more than one
11 community; prohibiting officers and directors from taking
12 any action that is inconsistent with the declaration of
13 covenants; authorizing associations to settle actions on
14 appeal; revising procedures relating to legal actions
15 commenced by the association; lowering the dollar amount
16 for which the association must obtain approval by the
17 members of the association before proceeding with the
18 legal action; authorizing the association to enter into
19 certain contracts; removing provisions authorizing an
20 association to have more than one class of members and to
21 issue membership certificates; prohibiting certain
22 association defenses; prohibiting associations from
23 restricting a member's freedom of association and from

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24 | limiting the number of guests a member may have within a
25 | 24-hour period; providing that officers and directors of
26 | an association may be personally liable for damages under
27 | certain circumstances; providing compensation for certain
28 | members under certain circumstances; providing criteria
29 | for establishing setback limits; prohibiting the
30 | association from denying or refusing to approve a member's
31 | plans for building on the member's property under certain
32 | circumstances; requiring the budget to provide for annual
33 | operating expenses; requiring the budget to include
34 | reserve accounts for capital expenditures and deferred
35 | maintenance; providing the amount to be reserved;
36 | authorizing the association to adjust replacement reserve
37 | assessments annually; authorizing the developer to vote to
38 | waive the reserves or reduce the funding of reserves for a
39 | certain period; revising provisions relating to financial
40 | reporting; revising time periods in which the association
41 | must complete its reporting; amending s. 720.307, F.S.;
42 | requiring developers to deliver financial records to the
43 | board; requiring certain information to be included in the
44 | records and for the records to be prepared in a specified
45 | manner; amending s. 720.308, F.S.; providing that a
46 | guarantee of common expenses shall be effective under
47 | certain circumstances; requiring the guarantee to meet
48 | certain requirements; authorizing the guarantee to provide
49 | certain requirements; requiring the stated dollar amount
50 | of the guarantee to be an exact dollar amount for each
51 | parcel identified in the declaration; providing payments

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52 required from the guarantor to be determined in a certain
 53 manner; providing a formula to determine the guarantor's
 54 total financial obligation to the association; providing
 55 that certain expenses incurred in the production of
 56 certain revenues shall not be included in the common
 57 expenses; providing an effective date.

58

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

60

61 Section 1. Subsections (1), (6), and (7) of section
 62 720.303, Florida Statutes, are amended to read:

63 720.303 Association powers and duties; meetings of board;
 64 official records; budgets; financial reporting; association
 65 funds; recalls.--

66 (1) POWERS AND DUTIES.--

67 (a) An association which operates a community as defined
 68 in s. 720.301, must be incorporated in this state, ~~operated by~~
 69 ~~an association that is a Florida corporation. After October 1,~~
 70 ~~1995, the association must be incorporated~~ and the initial
 71 governing documents must be recorded in the official records of
 72 the county in which the community is located. ~~An association may~~
 73 ~~operate more than one community.~~

74 (b) The officers and directors of an association have a
 75 fiduciary relationship to the members of ~~who are served by~~ the
 76 association.

77 (c) The powers and duties of an association include those
 78 set forth in this chapter and, ~~except as expressly limited or~~
 79 ~~restricted in this chapter,~~ those specifically set forth in the

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80 governing documents. The officers and directors of the
81 association may not take any action that is inconsistent with
82 the declaration of covenants.

83 (d) After control of the association is obtained by
84 members from the developers other than the developer, the
85 association may institute, maintain, or settle on, or appeal
86 actions or hearings in its name on behalf of the all members
87 concerning matters of common interest to the members, including,
88 but not limited to, the common areas; roof or structural
89 components of a building, or other improvements for which the
90 association is responsible; mechanical, electrical, or plumbing
91 elements serving an improvement or building for which the
92 association is responsible; representations of the developer
93 pertaining to any existing or proposed commonly used facility;
94 and protesting ad valorem taxes on commonly used facilities. The
95 association may defend actions in eminent domain or bring
96 inverse condemnation actions. Before commencing any legal action
97 litigation against any party in the name of the association
98 involving amounts in controversy in excess of \$50,000 \$100,000,
99 the association must obtain the affirmative approval of a
100 majority of the members of the association voting interests at a
101 meeting of the association membership at which a quorum is
102 present has been attained.

103 (e) The association may enter into contracts for the
104 benefit of the members of the association, including, but not
105 limited to, contracts for maintaining, repairing, or improving
106 the common areas of the association. This subsection does not
107 limit any statutory or common-law right of any individual member

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108 ~~or class of members to bring any action without participation by~~
109 ~~the association.~~

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

114 (g) In any action between a member and the association, it
115 shall not be a defense by the association that the association's
116 actions, although inconsistent with the declaration of
117 covenants, have been uniformly applied.

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

121 (i) An association of 15 or fewer parcels ~~parcel owners~~
122 may enforce only ~~the requirements of~~ those deed restrictions
123 established prior to the purchase of each parcel upon an
124 affected parcel owner or owners.

125 (j) The officers and directors of an association may be
126 personally liable for damages to a member if the actions of the
127 officers and directors demonstrate a pattern of behavior
128 designed to harass a member of the association.

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

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

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

146 (6) BUDGETS.--

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

158 (b) In addition to annual operating expenses, the budget
159 shall include reserve accounts for capital expenditures and
160 deferred maintenance. These accounts shall include, but are not
161 limited to, roof replacement, building painting, and pavement
162 resurfacing, regardless of the amount of deferred maintenance

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163 expense or replacement cost, and any other item for which the
164 deferred maintenance expense or replacement cost exceeds
165 \$10,000. The amount to be reserved shall be computed by means of
166 a formula that is based upon estimated remaining useful life and
167 estimated replacement cost or deferred maintenance expense of
168 each reserve item. The association may adjust replacement
169 reserve assessments annually to take into account any changes in
170 estimates or extension of the useful life of a reserve item
171 caused by deferred maintenance. This paragraph does not apply to
172 an adopted budget for which the members of an association have
173 determined, by a majority vote at a duly called meeting of the
174 association, to provide no reserves or fewer reserves than
175 required by this paragraph. However, prior to turnover of
176 control of an association by a developer to unit owners, the
177 developer may vote to waive the reserves or reduce the funding
178 of reserves for the first 2 fiscal years of the association's
179 operation, beginning with the fiscal year in which the initial
180 declaration is recorded, after which time reserves may be waived
181 or reduced only upon the vote of a majority of all nondeveloper
182 voting interests voting in person or by limited proxy at a duly
183 called meeting of the association. If a meeting of the unit
184 owners has been called to determine whether to waive or reduce
185 the funding of reserves and no such result is achieved or a
186 quorum is not attained, the reserves as included in the budget
187 shall go into effect. After the turnover, the developer may vote
188 its voting interest to waive or reduce the funding of reserves.
189 (7) FINANCIAL REPORTING.--Within 90 days after the end of
190 the fiscal year, or annually on the date provided in the bylaws,

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191 the association shall prepare and complete, or contract for the
192 preparation and completion of, a ~~an annual~~ financial report for
193 the preceding fiscal year. Within 21 ~~60~~ days after the final
194 financial report is completed by the association or received
195 from the third party, but not later than 120 days after the end
196 of the fiscal year or other date as provided in the bylaws,
197 ~~close of the fiscal year.~~ the association shall, within the time
198 limits set forth in subsection (5), provide each member with a
199 copy of the annual financial report or a written notice that a
200 copy of the financial report is available upon request at no
201 charge to the member. Financial reports shall be prepared as
202 follows:

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

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

212 2. An association with total annual revenues of at least
213 \$200,000, but less than \$400,000, shall prepare reviewed
214 financial statements.

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

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

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

225 3. A report of cash receipts and disbursement must
226 disclose the amount of receipts by accounts and receipt
227 classifications and the amount of expenses by accounts and
228 expense classifications, including, but not limited to, the
229 following, as applicable: costs for security, professional, and
230 management fees and expenses; taxes; costs for recreation
231 facilities; expenses for refuse collection and utility services;
232 expenses for lawn care; costs for building maintenance and
233 repair; insurance costs; administration and salary expenses; and
234 reserves if maintained by the association.

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

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245 | provide within 90 days of the meeting or the end of the fiscal
246 | year, whichever occurs later:

247 | 1. Compiled, reviewed, or audited financial statements, if
248 | the association is otherwise required to prepare a report of
249 | cash receipts and expenditures;

250 | 2. Reviewed or audited financial statements, if the
251 | association is otherwise required to prepare compiled financial
252 | statements; or

253 | 3. Audited financial statements if the association is
254 | otherwise required to prepare reviewed financial statements.

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

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

260 | 2. A report of cash receipts and expenditures or a
261 | compiled financial statement in lieu of a reviewed or audited
262 | financial statement; or

263 | 3. A report of cash receipts and expenditures, a compiled
264 | financial statement, or a reviewed financial statement in lieu
265 | of an audited financial statement.

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

268 | 720.307 Transition of association control in a
269 | community.--With respect to homeowners' associations:

270 | (3) At the time the members are entitled to elect at least
271 | a majority of the board of directors of the homeowners'
272 | association, the developer shall, at the developer's expense,

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273 | within no more than 90 days deliver the following documents to
274 | the board:

275 | (t) The financial records, including financial statements
276 | of the association, and source documents from the incorporation
277 | of the association through the date of turnover. The records
278 | shall be audited by an independent certified public accountant
279 | for the period from the incorporation of the association or from
280 | the period covered by the last audit, if an audit has been
281 | performed for each fiscal year since incorporation. All
282 | financial statements shall be prepared in accordance with
283 | generally accepted accounting principles and shall be audited in
284 | accordance with generally accepted auditing standards, as
285 | prescribed by the Board of Accountancy, pursuant to chapter 473.
286 | The certified public accountant performing the audit shall
287 | examine to the extent necessary supporting documents and
288 | records, including the cash disbursements and related paid
289 | invoices to determine whether expenditures were for association
290 | purposes and the billings, cash receipts, and related records to
291 | determine whether the developer was charged and paid the proper
292 | amounts of assessments.

293 | Section 3. Section 720.308, Florida Statutes, is amended
294 | to read:

295 | 720.308 Assessments and charges.--

296 | (1) ASSESSMENTS.--For any community created after October
297 | 1, 1995, the governing documents must describe the manner in
298 | which expenses are shared and specify the member's proportional
299 | share thereof. Assessments levied pursuant to the annual budget
300 | or special assessment must be in the member's proportional share

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301 of expenses as described in the governing document, which share
302 may be different among classes of parcels based upon the state
303 of development thereof, levels of services received by the
304 applicable members, or other relevant factors. While the
305 developer is in control of the homeowners' association, it may
306 be excused from payment of its share of the operating expenses
307 and assessments related to its parcels for any period of time
308 for which the developer has, in the declaration, obligated
309 itself to pay any operating expenses incurred that exceed the
310 assessments receivable from other members and other income of
311 the association. This section does not apply to an association,
312 no matter when created, if the association is created in a
313 community that is included in an effective development-of-
314 regional-impact development order as of the effective date of
315 this act, together with any approved modifications thereto.

316 (2) GUARANTEE OF COMMON EXPENSES.--

317 (a) Establishment of a guarantee.--If a guarantee is not
318 included in the purchase contracts, declaration, or prospectus,
319 any agreement establishing a guarantee shall only be effective
320 either upon the vote of a majority of all nondeveloper voting
321 interests voting in person or by limited proxy at a duly called
322 meeting of the association or by agreement in writing without a
323 meeting if provided in the bylaws. Such guarantee shall meet the
324 requirements of this section.

325 (b) Guarantee period.--The period of time for the
326 guarantee shall be indicated by a specific beginning and ending
327 date or event.

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328 1. The ending date or event shall be the same for all of
329 the members of a homeowners' association, including members in
330 different phases of homeowners' associations.

331 2. The guarantee may provide for different intervals of
332 time during a guarantee period with different dollar amounts for
333 each such interval.

334 (c) Guarantee extension.--The guarantee may provide that
335 after the initial stated period the developer has an option to
336 extend the guarantee for one or more additional stated periods.
337 The extension of a guarantee is limited to extending the ending
338 date or event; therefore, the developer does not have the option
339 of changing the level of assessments guaranteed.

340 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
341 amount of the guarantee shall be an exact dollar amount for each
342 parcel identified in the declaration. Regardless of the stated
343 dollar amount of the guarantee, assessments charged to a member
344 shall not exceed the maximum obligation of the member based on
345 the total amount of the adopted budget and the member's
346 proportionate ownership share of the common elements.

347 (4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash
348 payments required from the guarantor during the guarantee period
349 shall be determined as follows:

350 (a) If at any time during the guarantee period the funds
351 collected from member assessments at the guaranteed level and
352 other revenues collected by the association are not sufficient
353 to provide payment, on a timely basis, of all common expenses,
354 including the full funding of the reserves unless properly

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355 waived, the guarantor shall advance sufficient cash to the
356 association at the time such payments are due.

357 (b) Expenses incurred in the production of nonassessment
358 revenues, not in excess of the nonassessment revenues, shall not
359 be included in the common expenses. If the expenses attributable
360 to nonassessment revenues exceed nonassessment revenues, only
361 the excess expenses must be funded by the guarantor. For
362 example, if the association operates a rental program in which
363 rental expenses exceed rental revenues, the guarantor shall fund
364 the rental expenses in excess of the rental revenues. Interest
365 earned on the investment of association funds may be used to pay
366 the income tax expense incurred as a result of the investment,
367 such expense shall not be charged to the guarantor, and the net
368 investment income shall be retained by the association. Each
369 such nonassessment-revenue-generating activity shall be
370 considered separately. Capital contributions collected from
371 members are not revenues and shall not be used to pay common
372 expenses.

373 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
374 guarantor's total financial obligation to the association at the
375 end of the guarantee period shall be determined on the accrual
376 basis using the following formula: the guarantor shall fund the
377 total common expenses incurred during the guarantee period,
378 including the full funding of the reserves unless properly
379 waived, less the total regular periodic assessments earned by
380 the association from the members other than the guarantor during
381 the guarantee period, regardless of whether the actual level
382 charged was less than the maximum guaranteed amount.

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

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