

1 A bill to be entitled

2 An act relating to homeowners' and community associations;
3 creating s. 712.11, F.S.; authorizing certain associations
4 to revive lapsed covenants; amending s. 718.114, F.S.;
5 providing that certain leaseholds, memberships, or other
6 possessory or use interests shall be considered a material
7 alteration or substantial addition to certain real
8 property; amending s. 720.302, F.S.; revising certain
9 purposes for regulation; amending s. 720.303, F.S.;
10 revising notice requirements relating to the levy of
11 special assessments; authorizing associations to charge
12 specified fees for providing certain information to
13 prospective purchasers or lienholders; limiting liability
14 for providing such information; revising certain time
15 requirements relating to annual reports of associations;
16 amending s. 720.305, F.S.; prohibiting a fine levied by an
17 association from becoming a lien unless the governing
18 documents claimed to have been violated are recorded in
19 the public records; amending s. 720.306, F.S.; providing
20 that certain mergers or consolidations do not alter
21 specified voting interests; limiting the right of members
22 to speak at membership meetings; amending s. 720.402,
23 F.S., relating to publication of false or misleading
24 information; clarifying that the section does not limit
25 common-law rights; amending s. 720.405, F.S.; deleting a
26 requirement that a proposed revived governing document not
27 contain certain restrictive covenants; repealing s.
28 720.311, F.S., relating to an alternative dispute

HB 957

2006

29 resolution process; amending s. 34.01, F.S.; conforming a
 30 cross-reference; providing an effective date.

31

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

33

34 Section 1. Section 712.11, Florida Statutes, is created to
 35 read:

36 712.11 Covenant revitalization.--A homeowners' association
 37 that is not subject to chapter 720 may use the procedures in ss.
 38 720.403-720.407 to revive covenants that have lapsed pursuant to
 39 this chapter.

40 Section 2. Section 718.114, Florida Statutes, is amended
 41 to read:

42 718.114 Association powers.--An association has the power
 43 to enter into agreements, to acquire leaseholds, memberships,
 44 and other possessory or use interests in lands or facilities
 45 such as country clubs, golf courses, marinas, and other
 46 recreational facilities. It has this power whether or not the
 47 lands or facilities are contiguous to the lands of the
 48 condominium, if they are intended to provide enjoyment,
 49 recreation, or other use or benefit to the unit owners. All of
 50 these leaseholds, memberships, and other possessory or use
 51 interests existing or created at the time of recording the
 52 declaration must be stated and fully described in the
 53 declaration. Subsequent to the recording of the declaration,
 54 agreements acquiring these leaseholds, memberships, or other
 55 possessory or use interests shall be considered a material
 56 alteration or substantial addition to the real property that is

57 association property, and the association may not acquire or
 58 enter into agreements acquiring these leaseholds, memberships,
 59 or other possessory or use interests except as authorized by the
 60 declaration as provided in s. 718.113. The declaration may
 61 provide that the rental, membership fees, operations,
 62 replacements, and other expenses are common expenses and may
 63 impose covenants and restrictions concerning their use and may
 64 contain other provisions not inconsistent with this chapter. A
 65 condominium association may conduct bingo games as provided in
 66 s. 849.0931.

67 Section 3. Section 720.302, Florida Statutes, is amended
 68 to read:

69 720.302 Purposes, scope, and application.--

70 (1) The purposes of this chapter are to give statutory
 71 recognition to corporations not for profit that operate
 72 residential communities in this state, to provide procedures for
 73 operating homeowners' associations, and to protect the rights of
 74 association members without unduly impairing the ability of such
 75 associations to perform their functions.

76 (2) The Legislature recognizes that it is not in the best
 77 interest of homeowners' associations or the individual
 78 association members thereof to create or impose a bureau or
 79 other agency of state government to regulate the affairs of
 80 homeowners' associations. ~~However, in accordance with s.~~
 81 ~~720.311, the Legislature finds that homeowners' associations and~~
 82 ~~their individual members will benefit from an expedited~~
 83 ~~alternative process for resolution of election and recall~~
 84 ~~disputes and presuit mediation of other disputes involving~~

HB 957

2006

85 ~~covenant enforcement and authorizes the department to hear,~~
86 ~~administer, and determine these disputes as more fully set forth~~
87 ~~in this chapter.~~ Further, the Legislature recognizes that
88 certain contract rights have been created for the benefit of
89 homeowners' associations and members thereof before the
90 effective date of this act and that ss. 720.301-720.407 are not
91 intended to impair such contract rights, including, but not
92 limited to, the rights of the developer to complete the
93 community as initially contemplated.

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

96 (a) A community that is composed of property primarily
97 intended for commercial, industrial, or other nonresidential
98 use; or

99 (b) The commercial or industrial parcels in a community
100 that contains both residential parcels and parcels intended for
101 commercial or industrial use.

102 (4) This chapter does not apply to any association that is
103 subject to regulation under chapter 718, chapter 719, or chapter
104 721; or to any nonmandatory association formed under chapter
105 723.

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

111 Section 4. Subsections (2), (5), and (7) of section
112 720.303, Florida Statutes, are amended to read:

HB 957

2006

113 720.303 Association powers and duties; meetings of board;
114 official records; budgets; financial reporting; association
115 funds; recalls.--

116 (2) BOARD MEETINGS.--

117 (a) A meeting of the board of directors of an association
118 occurs whenever a quorum of the board gathers to conduct
119 association business. All meetings of the board must be open to
120 all members except for meetings between the board and its
121 attorney with respect to proposed or pending litigation where
122 the contents of the discussion would otherwise be governed by
123 the attorney-client privilege.

124 (b) Members have the right to attend all meetings of the
125 board and to speak on any matter placed on the agenda by
126 petition of the voting interests for at least 3 minutes. The
127 association may adopt written reasonable rules expanding the
128 right of members to speak and governing the frequency, duration,
129 and other manner of member statements, which rules must be
130 consistent with this paragraph and may include a sign-up sheet
131 for members wishing to speak. Notwithstanding any other law, the
132 requirement that board meetings and committee meetings be open
133 to the members is inapplicable to meetings between the board or
134 a committee and the association's attorney, with respect to
135 meetings of the board held for the purpose of discussing
136 personnel matters.

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

140 1. Notices of all board meetings must be posted in a

141 conspicuous place in the community at least 48 hours in advance
142 of a meeting, except in an emergency. In the alternative, if
143 notice is not posted in a conspicuous place in the community,
144 notice of each board meeting must be mailed or delivered to each
145 member at least 7 days before the meeting, except in an
146 emergency. Notwithstanding this general notice requirement, for
147 communities with more than 100 members, the bylaws may provide
148 for a reasonable alternative to posting or mailing of notice for
149 each board meeting, including publication of notice, provision
150 of a schedule of board meetings, or the conspicuous posting and
151 repeated broadcasting of the notice on a closed-circuit cable
152 television system serving the homeowners' association. However,
153 if broadcast notice is used in lieu of a notice posted
154 physically in the community, the notice must be broadcast at
155 least four times every broadcast hour of each day that a posted
156 notice is otherwise required. When broadcast notice is provided,
157 the notice and agenda must be broadcast in a manner and for a
158 sufficient continuous length of time so as to allow an average
159 reader to observe the notice and read and comprehend the entire
160 content of the notice and the agenda. The bylaws or amended
161 bylaws may provide for giving notice by electronic transmission
162 in a manner authorized by law for meetings of the board of
163 directors, committee meetings requiring notice under this
164 section, and annual and special meetings of the members;
165 however, a member must consent in writing to receiving notice by
166 electronic transmission.

167 2. A special ~~An~~ assessment may not be levied at a board
168 meeting unless the notice of the meeting includes a statement

HB 957

2006

169 that special assessments will be considered and the nature of
170 such ~~the~~ assessments. Written notice of any meeting at which
171 special assessments will be considered or at which amendments to
172 rules regarding parcel use will be considered must be mailed,
173 delivered, or electronically transmitted to the members and
174 parcel owners and posted conspicuously on the property or
175 broadcast on closed-circuit cable television not less than 14
176 days before the meeting.

177 3. Directors may not vote by proxy or by secret ballot at
178 board meetings, except that secret ballots may be used in the
179 election of officers. This subsection also applies to the
180 meetings of any committee or other similar body, when a final
181 decision will be made regarding the expenditure of association
182 funds, and to meetings of any body vested with the power to
183 approve or disapprove architectural decisions with respect to a
184 specific parcel of residential property owned by a member of the
185 community.

186 (d) If 20 percent of the total voting interests petition
187 the board to address an item of business, the board shall at its
188 next regular board meeting or at a special meeting of the board,
189 but not later than 60 days after the receipt of the petition,
190 take the petitioned item up on an agenda. The board shall give
191 all members notice of the meeting at which the petitioned item
192 shall be addressed in accordance with the 14-day notice
193 requirement pursuant to subparagraph (c)2. Each member shall
194 have the right to speak for at least 3 minutes on each matter
195 placed on the agenda by petition, provided that the member signs
196 the sign-up sheet, if one is provided, or submits a written

197 request to speak prior to the meeting. Other than addressing the
198 petitioned item at the meeting, the board is not obligated to
199 take any other action requested by the petition.

200 (5) INSPECTION AND COPYING OF RECORDS.--The official
201 records shall be maintained within the state and must be open to
202 inspection and available for photocopying by members or their
203 authorized agents at reasonable times and places within 10
204 business days after receipt of a written request for access.
205 This subsection may be complied with by having a copy of the
206 official records available for inspection or copying in the
207 community. If the association has a photocopy machine available
208 where the records are maintained, it must provide parcel owners
209 with copies on request during the inspection if the entire
210 request is limited to no more than 25 pages.

211 (a) The failure of an association to provide access to the
212 records within 10 business days after receipt of a written
213 request creates a rebuttable presumption that the association
214 willfully failed to comply with this subsection.

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

221 (c) The association may adopt reasonable written rules
222 governing the frequency, time, location, notice, records to be
223 inspected, and manner of inspections, but may not impose a
224 requirement that a parcel owner demonstrate any proper purpose

225 for the inspection, state any reason for the inspection, or
226 limit a parcel owner's right to inspect records to less than one
227 8-hour business day per month. The association may impose fees
228 to cover the costs of providing copies of the official records,
229 including, without limitation, the costs of copying. The
230 association may charge up to 50 cents per page for copies made
231 on the association's photocopier. If the association does not
232 have a photocopy machine available where the records are kept,
233 or if the records requested to be copied exceed 25 pages in
234 length, the association may have copies made by an outside
235 vendor and may charge the actual cost of copying. The
236 association shall maintain an adequate number of copies of the
237 recorded governing documents, to ensure their availability to
238 members and prospective members. Notwithstanding the provisions
239 of this paragraph, the following records shall not be accessible
240 to members or parcel owners:

241 1. Any record protected by the lawyer-client privilege as
242 described in s. 90.502 and any record protected by the work-
243 product privilege, including, but not limited to, any record
244 prepared by an association attorney or prepared at the
245 attorney's express direction which reflects a mental impression,
246 conclusion, litigation strategy, or legal theory of the attorney
247 or the association and was prepared exclusively for civil or
248 criminal litigation or for adversarial administrative
249 proceedings or which was prepared in anticipation of imminent
250 civil or criminal litigation or imminent adversarial
251 administrative proceedings until the conclusion of the
252 litigation or adversarial administrative proceedings.

253 2. Information obtained by an association in connection
 254 with the approval of the lease, sale, or other transfer of a
 255 parcel.

256 3. Disciplinary, health, insurance, and personnel records
 257 of the association's employees.

258 4. Medical records of parcel owners or community
 259 residents.

260 (d) The association is not required to give a prospective
 261 purchaser or lienholder information about the subdivision or the
 262 association other than that required to be disclosed under this
 263 chapter. It may charge the prospective purchaser, lienholder, or
 264 current parcel owner or member a reasonable fee not to exceed
 265 \$150 to provide such information, other than information
 266 required by law, plus the reasonable cost of photocopying and
 267 attorney's fees incurred by the association in connection with
 268 the response.

269 (e) An association is not liable for providing such
 270 information in good faith pursuant to a written request if the
 271 person providing the information includes a written statement in
 272 substantially the following form: "The responses herein are made
 273 in good faith and to the best of my ability as to their
 274 accuracy."

275 (7) FINANCIAL REPORTING.--The association shall prepare an
 276 annual financial report by a date specified in the bylaws or
 277 within 90 60 days after the close of the fiscal year. The
 278 association shall, within 21 days after the report is prepared
 279 but not later than 120 days after the end of the fiscal year ~~the~~
 280 ~~time limits set forth in subsection (5), provide each member~~

281 with a copy of the annual financial report or a written notice
 282 that a copy of the financial report is available upon request at
 283 no charge to the member. Financial reports shall be prepared as
 284 follows:

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

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

293 2. An association with total annual revenues of at least
 294 \$200,000, but less than \$400,000, shall prepare reviewed
 295 financial statements.

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

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

301 2. An association in a community of fewer than 50 parcels,
 302 regardless of the association's annual revenues, may prepare a
 303 report of cash receipts and expenditures in lieu of financial
 304 statements required by paragraph (a) unless the governing
 305 documents provide otherwise.

306 3. A report of cash receipts and disbursement must
 307 disclose the amount of receipts by accounts and receipt
 308 classifications and the amount of expenses by accounts and

HB 957

2006

309 expense classifications, including, but not limited to, the
310 following, as applicable: costs for security, professional, and
311 management fees and expenses; taxes; costs for recreation
312 facilities; expenses for refuse collection and utility services;
313 expenses for lawn care; costs for building maintenance and
314 repair; insurance costs; administration and salary expenses; and
315 reserves if maintained by the association.

316 (c) If 20 percent of the parcel owners petition the board
317 for a level of financial reporting higher than that required by
318 this section, the association shall duly notice and hold a
319 meeting of members within 30 days of receipt of the petition for
320 the purpose of voting on raising the level of reporting for that
321 fiscal year. Upon approval of a majority of the total voting
322 interests of the parcel owners, the association shall prepare or
323 cause to be prepared, shall amend the budget or adopt a special
324 assessment to pay for the financial report regardless of any
325 provision to the contrary in the governing documents, and shall
326 provide within 90 days of the meeting or the end of the fiscal
327 year, whichever occurs later:

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

331 2. Reviewed or audited financial statements, if the
332 association is otherwise required to prepare compiled financial
333 statements; or

334 3. Audited financial statements if the association is
335 otherwise required to prepare reviewed financial statements.

336 (d) If approved by a majority of the voting interests

HB 957

2006

337 present at a properly called meeting of the association, an
338 association may prepare or cause to be prepared:

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

341 2. A report of cash receipts and expenditures or a
342 compiled financial statement in lieu of a reviewed or audited
343 financial statement; or

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

347 Section 5. Subsection (2) of section 720.305, Florida
348 Statutes, is amended to read:

349 720.305 Obligations of members; remedies at law or in
350 equity; levy of fines and suspension of use rights; failure to
351 fill sufficient number of vacancies on board of directors to
352 constitute a quorum; appointment of receiver upon petition of
353 any member.--

354 (2) If the governing documents so provide, an association
355 may suspend, for a reasonable period of time, the rights of a
356 member or a member's tenants, guests, or invitees, or both, to
357 use common areas and facilities and may levy reasonable fines,
358 not to exceed \$100 per violation, against any member or any
359 tenant, guest, or invitee. A fine may be levied on the basis of
360 each day of a continuing violation, with a single notice and
361 opportunity for hearing, except that no such fine shall exceed
362 \$1,000 in the aggregate unless otherwise provided in the
363 governing documents. A fine shall not become a lien against a
364 parcel unless it is levied for a violation of governing

HB 957

2006

365 documents that have been recorded in the public records of the
366 county where the property is located. In any action to recover a
367 fine, the prevailing party is entitled to collect its reasonable
368 attorney's fees and costs from the nonprevailing party as
369 determined by the court.

370 (a) A fine or suspension may not be imposed without notice
371 of at least 14 days to the person sought to be fined or
372 suspended and an opportunity for a hearing before a committee of
373 at least three members appointed by the board who are not
374 officers, directors, or employees of the association, or the
375 spouse, parent, child, brother, or sister of an officer,
376 director, or employee. If the committee, by majority vote, does
377 not approve a proposed fine or suspension, it may not be
378 imposed.

379 (b) The requirements of this subsection do not apply to
380 the imposition of suspensions or fines upon any member because
381 of the failure of the member to pay assessments or other charges
382 when due if such action is authorized by the governing
383 documents.

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

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

390 720.306 Meetings of members; voting and election
391 procedures; amendments.--

392 (1) QUORUM; AMENDMENTS.--

393 (a) Unless a lower number is provided in the bylaws, the
394 percentage of voting interests required to constitute a quorum
395 at a meeting of the members shall be 30 percent of the total
396 voting interests. Unless otherwise provided in this chapter or
397 in the articles of incorporation or bylaws, decisions that
398 require a vote of the members must be made by the concurrence of
399 at least a majority of the voting interests present, in person
400 or by proxy, at a meeting at which a quorum has been attained.

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

406 (c) Unless otherwise provided in the governing documents
407 as originally recorded or permitted by this chapter or chapter
408 617, an amendment may not materially and adversely alter the
409 proportionate voting interest appurtenant to a parcel or
410 increase the proportion or percentage by which a parcel shares
411 in the common expenses of the association unless the record
412 parcel owner and all record owners of liens on the parcels join
413 in the execution of the amendment. For purposes of this section,
414 a change in quorum requirements is not an alteration of voting
415 interests. The merger or consolidation of associations under a
416 plan of merger or consolidation pursuant to chapter 607 or
417 chapter 617 is not a material or adverse alteration of the
418 proportionate voting interest appurtenant to a parcel.

419 (6) RIGHT TO SPEAK.--Members and parcel owners have the
420 right to attend all membership meetings and to speak at any

421 meeting with reference to all items ~~opened for discussion or~~
 422 included on the agenda. Notwithstanding any provision to the
 423 contrary in the governing documents or any rules adopted by the
 424 board or by the membership, a member and a parcel owner have the
 425 right to speak for at least 3 minutes on any agenda item, if
 426 ~~provided that~~ the member or parcel owner submits a written
 427 request to speak prior to the meeting. The association may adopt
 428 written reasonable rules governing the frequency, duration, and
 429 other manner of member and parcel owner statements, which rules
 430 must be consistent with this subsection.

431 Section 7. Subsection (3) is added to section 720.402,
 432 Florida Statutes, to read:

433 720.402 Publication of false and misleading information.--

434 (3) This section does not limit any rights provided by
 435 common law.

436 Section 8. Subsection (4) of section 720.405, Florida
 437 Statutes, is amended to read:

438 720.405 Organizing committee; parcel owner approval.--

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

441 (a) Provide that the voting interest of each parcel owner
 442 shall be the same as the voting interest of the parcel owner
 443 under the previous governing documents;

444 (b) Provide that the proportional-assessment obligations
 445 of each parcel owner shall be the same as proportional-
 446 assessment obligations of the parcel owner under the previous
 447 governing documents;

448 (c) Contain the same respective amendment provisions as

449 the previous governing documents or, if there were no amendment
 450 provisions in the previous governing document, amendment
 451 provisions that require approval of not less than two-thirds of
 452 the affected parcel owners; and

453 ~~(d) Contain no covenants that are more restrictive on the~~
 454 ~~affected parcel owners than the covenants contained in the~~
 455 ~~previous governing documents, except as permitted under s.~~
 456 ~~720.404(3); and~~

457 (d)(e) Comply with the other requirements for a
 458 declaration of covenants and other governing documents as
 459 specified in this chapter.

460 Section 9. Section 720.311, Florida Statutes, is repealed.

461 Section 10. Subsection (1) of section 34.01, Florida
 462 Statutes, is amended to read:

463 34.01 Jurisdiction of county court.--

464 (1) County courts shall have original jurisdiction:

465 (a) In all misdemeanor cases not cognizable by the circuit
 466 courts;

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

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

472 (d) Of disputes occurring in the homeowners' associations
 473 as described in s. 720.311(2)(a), Florida Statutes 2005, which
 474 shall be concurrent with jurisdiction of the circuit courts.

475 Section 11. This act shall take effect July 1, 2006.