

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 community associations; creating s.
7 712.11, F.S.; authorizing certain associations to revive
8 lapsed covenants; amending s. 718.114, F.S.; providing
9 that certain leaseholds, memberships, or other possessory
10 or use interests shall be considered a material alteration
11 or substantial addition to certain real property; amending
12 s. 720.302, F.S.; revising application; amending s.
13 720.303, F.S.; authorizing associations to charge
14 specified fees for providing certain information to
15 prospective purchasers or lienholders; limiting liability
16 for providing such information; revising what must be
17 included in an association's annual budget; providing for
18 reserve accounts for capital expenditures and deferred
19 maintenance; revising certain time requirements relating
20 to annual reports of associations; amending s. 720.305,
21 F.S.; prohibiting a fine levied by an association from
22 becoming a lien unless the governing documents claimed to
23 have been violated are recorded in the public records;

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24 amending s. 720.306, F.S.; providing that certain mergers
25 or consolidations do not alter specified voting interests;
26 amending s. 720.307, F.S.; providing additional documents
27 that the developer must deliver at the time the
28 association members elect the board of directors; amending
29 s. 720.308, F.S.; providing that a guarantee of common
30 expenses shall be effective under certain circumstances;
31 requiring the guarantee to meet certain requirements;
32 authorizing the guarantee to provide certain requirements;
33 requiring the stated dollar amount of the guarantee to be
34 an exact dollar amount for each parcel identified in the
35 declaration; providing payments required from the
36 guarantor to be determined in a certain manner; providing
37 a formula to determine the guarantor's total financial
38 obligation to the association; providing that certain
39 expenses incurred in the production of certain revenues
40 shall not be included in the operating expenses; amending
41 s. 720.402, F.S., relating to publication of false or
42 misleading information; clarifying that the section does
43 not limit common-law rights; providing an effective date.

44
45 Be It Enacted by the Legislature of the State of Florida:

46
47 Section 1. Section 712.11, Florida Statutes, is created to
48 read:

49 712.11 Covenant revitalization.--A homeowners' association
50 that is not subject to chapter 720 may use the procedures in ss.

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51 | 720.403-720.407 to revive covenants that have lapsed pursuant to
52 | this chapter.

53 | Section 2. Section 718.114, Florida Statutes, is amended
54 | to read:

55 | 718.114 Association powers.--An association has the power
56 | to enter into agreements, to acquire leaseholds, memberships,
57 | and other possessory or use interests in lands or facilities
58 | such as country clubs, golf courses, marinas, and other
59 | recreational facilities. It has this power whether or not the
60 | lands or facilities are contiguous to the lands of the
61 | condominium, if they are intended to provide enjoyment,
62 | recreation, or other use or benefit to the unit owners. All of
63 | these leaseholds, memberships, and other possessory or use
64 | interests existing or created at the time of recording the
65 | declaration must be stated and fully described in the
66 | declaration. Subsequent to the recording of the declaration,
67 | agreements acquiring these leaseholds, memberships, or other
68 | possessory or use interests not entered into within 12 months
69 | following the recording of the declaration shall be considered a
70 | material alteration or substantial addition to the real property
71 | that is association property, and the association may not
72 | acquire or enter into agreements acquiring these leaseholds,
73 | memberships, or other possessory or use interests except as
74 | authorized by the declaration as provided in s. 718.113. The
75 | declaration may provide that the rental, membership fees,
76 | operations, replacements, and other expenses are common expenses
77 | and may impose covenants and restrictions concerning their use
78 | and may contain other provisions not inconsistent with this

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79 | chapter. A condominium association may conduct bingo games as
80 | provided in s. 849.0931.

81 | Section 3. Subsections (3) and (5) of section 720.302,
82 | Florida Statutes, are amended to read:

83 | 720.302 Purposes, scope, and application.--

84 | (3) Except as specifically provided in this chapter, this
85 | chapter does not apply to:

86 | (a) A community that is composed of property primarily
87 | intended for commercial, industrial, or other nonresidential
88 | use; or

89 | (b) The commercial or industrial parcels in a community
90 | that contains both residential parcels and parcels intended for
91 | commercial or industrial use.

92 | (5) Unless expressly stated to the contrary, corporations
93 | ~~not for profit~~ that operate residential homeowners' associations
94 | in this state shall be governed by and subject to chapter 617
95 | and this chapter or chapter 607 if incorporated under that
96 | chapter. This subsection is intended to clarify existing law.

97 | Section 4. Subsections (5), (6), and (7) of section
98 | 720.303, Florida Statutes, are amended to read:

99 | 720.303 Association powers and duties; meetings of board;
100 | official records; budgets; financial reporting; association
101 | funds; recalls.--

102 | (5) INSPECTION AND COPYING OF RECORDS.--The official
103 | records shall be maintained within the state and must be open to
104 | inspection and available for photocopying by members or their
105 | authorized agents at reasonable times and places within 10
106 | business days after receipt of a written request for access.

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107 This subsection may be complied with by having a copy of the
108 official records available for inspection or copying in the
109 community. If the association has a photocopy machine available
110 where the records are maintained, it must provide parcel owners
111 with copies on request during the inspection if the entire
112 request is limited to no more than 25 pages.

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

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

123 (c) The association may adopt reasonable written rules
124 governing the frequency, time, location, notice, records to be
125 inspected, and manner of inspections, but may not impose a
126 requirement that a parcel owner demonstrate any proper purpose
127 for the inspection, state any reason for the inspection, or
128 limit a parcel owner's right to inspect records to less than one
129 8-hour business day per month. The association may impose fees
130 to cover the costs of providing copies of the official records,
131 including, without limitation, the costs of copying. The
132 association may charge up to 50 cents per page for copies made
133 on the association's photocopier. If the association does not
134 have a photocopy machine available where the records are kept,

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135 or if the records requested to be copied exceed 25 pages in
136 length, the association may have copies made by an outside
137 vendor and may charge the actual cost of copying. The
138 association shall maintain an adequate number of copies of the
139 recorded governing documents, to ensure their availability to
140 members and prospective members. Notwithstanding the provisions
141 of this paragraph, the following records shall not be accessible
142 to members or parcel owners:

143 1. Any record protected by the lawyer-client privilege as
144 described in s. 90.502 and any record protected by the work-
145 product privilege, including, but not limited to, any record
146 prepared by an association attorney or prepared at the
147 attorney's express direction which reflects a mental impression,
148 conclusion, litigation strategy, or legal theory of the attorney
149 or the association and was prepared exclusively for civil or
150 criminal litigation or for adversarial administrative
151 proceedings or which was prepared in anticipation of imminent
152 civil or criminal litigation or imminent adversarial
153 administrative proceedings until the conclusion of the
154 litigation or adversarial administrative proceedings.

155 2. Information obtained by an association in connection
156 with the approval of the lease, sale, or other transfer of a
157 parcel.

158 3. Disciplinary, health, insurance, and personnel records
159 of the association's employees.

160 4. Medical records of parcel owners or community
161 residents.

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162 (d) The association is not required to give a prospective
163 purchaser or lienholder information about the subdivision or the
164 association other than that required to be disclosed under this
165 chapter. It may charge the prospective purchaser, lienholder, or
166 current parcel owner or member a reasonable fee not to exceed
167 \$150 to provide such information, other than information
168 required by law, plus the reasonable cost of photocopying and
169 attorney's fees incurred by the association in connection with
170 the response.

171 (e) An association is not liable for providing such
172 information in good faith pursuant to a written request if the
173 person providing the information includes a written statement in
174 substantially the following form: "The responses herein are made
175 in good faith and to the best of my ability as to their
176 accuracy."

177 (6) BUDGETS.--

178 (a) The association shall prepare an annual budget that
179 sets out the annual operating expenses. The budget must reflect
180 the estimated revenues and expenses for that year and the
181 estimated surplus or deficit as of the end of the current year.
182 The budget must set out separately all fees or charges paid for
183 by the association for recreational amenities, whether owned by
184 the association, the developer, or another person. The
185 association shall provide each member with a copy of the annual
186 budget or a written notice that a copy of the budget is
187 available upon request at no charge to the member. The copy must
188 be provided to the member within the time limits set forth in
189 subsection (5).

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190 (b) In addition to annual operating expenses, the budget
191 may include reserve accounts for capital expenditures and
192 deferred maintenance for which the association is responsible to
193 the extent that the governing documents do not limit increases
194 in assessments, including reserves. If the budget of the
195 association includes reserve accounts, such reserves shall be
196 determined, maintained, and waived in the manner provided in
197 this subsection. Once an association provides for reserve
198 accounts in the budget, the association shall thereafter
199 determine, maintain, and waive reserves in compliance with the
200 provisions of this subsection.

201 (c) If the budget of the association does not provide for
202 reserve accounts governed by this subsection and is responsible
203 for the repair and maintenance of capital improvements that may
204 result in a special assessment, each financial report for the
205 preceding fiscal year required by subsection (7) shall contain
206 the following statement in conspicuous type: THE BUDGET OF THE
207 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL
208 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL
209 ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS
210 PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA
211 STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE
212 TOTAL VOTING INTERESTS OF THE ASSOCIATION.

213 (d) An association shall be deemed to have provided for
214 reserve accounts when reserve accounts have been initially
215 established by the developer or when the membership of the
216 association affirmatively elects to provide for reserves. If
217 reserve accounts are not initially provided for by the

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218 developer, the membership of the association may elect to do so
219 upon the affirmative approval of not less than a majority of the
220 total voting interests of the association. Such approval may be
221 attained by vote of the members at a duly called meeting of the
222 membership or upon a written consent executed by not less than a
223 majority of the total voting interests in the community. The
224 approval action of the membership shall state that reserve
225 accounts shall be provided for in the budget and shall designate
226 the components for which the reserve accounts are to be
227 established. Upon approval by the membership, the board of
228 directors shall provide for the required reserve accounts to be
229 included in the budget in the next fiscal year following the
230 approval and in each year thereafter. Once established as
231 provided in this paragraph, the reserve accounts shall be funded
232 or maintained or shall have their funding waived in the manner
233 provided in paragraph (f).

234 (e) The amount to be reserved in any account established
235 shall be computed by means of a formula that is based upon
236 estimated remaining useful life and estimated replacement cost
237 or deferred maintenance expense of each reserve item. The
238 association may adjust replacement reserve assessments annually
239 to take into account any changes in estimates of cost or useful
240 life of a reserve item.

241 (f) Once a reserve account is established, the membership
242 of the association, upon a majority vote at a meeting at which a
243 quorum is present, may provide for no reserves or less reserves
244 than required by this section. If a meeting of the unit owners
245 has been called to determine whether to waive or reduce the

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246 funding of reserves and no such result is achieved or a quorum
247 is not attained, the reserves as included in the budget shall go
248 into effect. After the turnover of control of an association by
249 a developer to parcel owners, the developer may vote its voting
250 interest to waive or reduce the funding of reserves. Any vote
251 taken pursuant to this paragraph to waive or reduce reserves
252 shall be applicable only to one budget year.

253 (g) Funding formulas for reserves authorized by this
254 subsection shall be based on either a separate analysis of each
255 of the required assets or a pooled analysis of two or more of
256 the required assets.

257 1. If the association maintains separate reserve accounts
258 for each of the required assets, the amount of the contribution
259 to each reserve account shall be the sum of the following two
260 calculations:

261 a. The total amount necessary, if any, to bring a negative
262 component balance to zero.

263 b. The total estimated deferred maintenance expense or
264 estimated replacement cost of the reserve component less the
265 estimated balance of the reserve component as of the beginning
266 of the period for which the budget will be in effect. The
267 remainder, if greater than zero, shall be divided by the
268 estimated remaining useful life of the component. The formula
269 may be adjusted each year for changes in estimates and deferred
270 maintenance performed during the year and may consider factors
271 such as inflation and earnings on invested funds.

272 2. If the association maintains a pooled account of two or
273 more of the required reserve assets, the amount of the

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274 contribution to the pooled reserve account as disclosed in the
275 proposed budget shall be not less than that required to ensure
276 that the balance on hand at the beginning of the period for
277 which the budget will go into effect plus the projected annual
278 cash inflows over the remaining estimated useful lives of all of
279 the assets that make up the reserve pool are equal to or greater
280 than the projected annual cash outflows over the remaining
281 estimated useful life of all of the assets that make up the
282 reserve pool, based on the current reserve analysis. The
283 projected annual cash inflows may include estimated earnings
284 from investment of principal. The reserve funding formula shall
285 not include any type of balloon payments.

286 (h) Reserve funds and any interest accruing thereon shall
287 remain in the reserve account or accounts and shall be used only
288 for authorized reserve expenditures unless their use for other
289 purposes is approved in advance by a majority vote at a meeting
290 at which a quorum is present. Prior to turnover of control of an
291 association by a developer to parcel owners, the developer-
292 controlled association shall not vote to use reserves for
293 purposes other than that for which they were intended without
294 the approval of a majority of all nondeveloper voting interests
295 voting in person or by limited proxy at a duly called meeting of
296 the association.

297 (7) FINANCIAL REPORTING.--The association shall prepare an
298 annual financial report by a date specified in the bylaws or
299 within ~~90~~ 60 days after the close of the fiscal year. The
300 association shall, within the time limits set forth in
301 subsection (5), provide each member with a copy of the annual

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302 financial report or a written notice that a copy of the
303 financial report is available upon request at no charge to the
304 member. Financial reports shall be prepared as follows:

305 (a) An association that meets the criteria of this
306 paragraph shall prepare or cause to be prepared a complete set
307 of financial statements in accordance with generally accepted
308 accounting principles as adopted by the Florida Board of
309 Accountancy. The financial statements shall be based upon the
310 association's total annual revenues, as follows:

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

314 2. An association with total annual revenues of at least
315 \$200,000, but less than \$400,000, shall prepare reviewed
316 financial statements.

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

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

322 2. An association in a community of fewer than 50 parcels,
323 regardless of the association's annual revenues, may prepare a
324 report of cash receipts and expenditures in lieu of financial
325 statements required by paragraph (a) unless the governing
326 documents provide otherwise.

327 3. A report of cash receipts and disbursement must
328 disclose the amount of receipts by accounts and receipt
329 classifications and the amount of expenses by accounts and

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330 expense classifications, including, but not limited to, the
331 following, as applicable: costs for security, professional, and
332 management fees and expenses; taxes; costs for recreation
333 facilities; expenses for refuse collection and utility services;
334 expenses for lawn care; costs for building maintenance and
335 repair; insurance costs; administration and salary expenses; and
336 reserves if maintained by the association.

337 (c) If 20 percent of the parcel owners petition the board
338 for a level of financial reporting higher than that required by
339 this section, the association shall duly notice and hold a
340 meeting of members within 30 days of receipt of the petition for
341 the purpose of voting on raising the level of reporting for that
342 fiscal year. Upon approval of a majority of the total voting
343 interests of the parcel owners, the association shall prepare or
344 cause to be prepared, shall amend the budget or adopt a special
345 assessment to pay for the financial report regardless of any
346 provision to the contrary in the governing documents, and shall
347 provide within 90 days of the meeting or the end of the fiscal
348 year, whichever occurs later:

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

352 2. Reviewed or audited financial statements, if the
353 association is otherwise required to prepare compiled financial
354 statements; or

355 3. Audited financial statements if the association is
356 otherwise required to prepare reviewed financial statements.

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

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

362 2. A report of cash receipts and expenditures or a
363 compiled financial statement in lieu of a reviewed or audited
364 financial statement; or

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

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

370 720.305 Obligations of members; remedies at law or in
371 equity; levy of fines and suspension of use rights; failure to
372 fill sufficient number of vacancies on board of directors to
373 constitute a quorum; appointment of receiver upon petition of
374 any member.--

375 (2) If the governing documents so provide, an association
376 may suspend, for a reasonable period of time, the rights of a
377 member or a member's tenants, guests, or invitees, or both, to
378 use common areas and facilities and may levy reasonable fines,
379 not to exceed \$100 per violation, against any member or any
380 tenant, guest, or invitee. A fine may be levied on the basis of
381 each day of a continuing violation, with a single notice and
382 opportunity for hearing, except that no such fine shall exceed
383 \$1,000 in the aggregate unless otherwise provided in the
384 governing documents. A fine shall not become a lien against a

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385 | parcel unless it is levied for a violation of governing
386 | documents that have been recorded in the public records of the
387 | county where the property is located. In any action to recover a
388 | fine, the prevailing party is entitled to collect its reasonable
389 | attorney's fees and costs from the nonprevailing party as
390 | determined by the court.

391 | (a) A fine or suspension may not be imposed without notice
392 | of at least 14 days to the person sought to be fined or
393 | suspended and an opportunity for a hearing before a committee of
394 | at least three members appointed by the board who are not
395 | officers, directors, or employees of the association, or the
396 | spouse, parent, child, brother, or sister of an officer,
397 | director, or employee. If the committee, by majority vote, does
398 | not approve a proposed fine or suspension, it may not be
399 | imposed.

400 | (b) The requirements of this subsection do not apply to
401 | the imposition of suspensions or fines upon any member because
402 | of the failure of the member to pay assessments or other charges
403 | when due if such action is authorized by the governing
404 | documents.

405 | (c) Suspension of common-area-use rights shall not impair
406 | the right of an owner or tenant of a parcel to have vehicular
407 | and pedestrian ingress to and egress from the parcel, including,
408 | but not limited to, the right to park.

409 | Section 6. Subsection (1) of section 720.306, Florida
410 | Statutes, is amended to read:

411 | 720.306 Meetings of members; voting and election
412 | procedures; amendments.--

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413 (1) QUORUM; AMENDMENTS.--

414 (a) Unless a lower number is provided in the bylaws, the
415 percentage of voting interests required to constitute a quorum
416 at a meeting of the members shall be 30 percent of the total
417 voting interests. Unless otherwise provided in this chapter or
418 in the articles of incorporation or bylaws, decisions that
419 require a vote of the members must be made by the concurrence of
420 at least a majority of the voting interests present, in person
421 or by proxy, at a meeting at which a quorum has been attained.

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

427 (c) Unless otherwise provided in the governing documents
428 as originally recorded or permitted by this chapter or chapter
429 617, an amendment may not materially and adversely alter the
430 proportionate voting interest appurtenant to a parcel or
431 increase the proportion or percentage by which a parcel shares
432 in the common expenses of the association unless the record
433 parcel owner and all record owners of liens on the parcels join
434 in the execution of the amendment. For purposes of this section,
435 a change in quorum requirements is not an alteration of voting
436 interests. The merger or consolidation of associations under a
437 plan of merger or consolidation pursuant to chapter 607 or
438 chapter 617 is not a material or adverse alteration of the
439 proportionate voting interest appurtenant to a parcel.

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440 Section 7. Paragraph (t) is added to subsection (3) of
441 section 720.307, Florida Statutes, to read:

442 720.307 Transition of association control in a
443 community.--With respect to homeowners' associations:

444 (3) At the time the members are entitled to elect at least
445 a majority of the board of directors of the homeowners'
446 association, the developer shall, at the developer's expense,
447 within no more than 90 days deliver the following documents to
448 the board:

449 (t) The financial records, including financial statements
450 of the association, and source documents from the incorporation
451 of the association through the date of turnover. The records
452 shall be audited by an independent certified public accountant
453 for the period from the incorporation of the association or from
454 the period covered by the last audit, if an audit has been
455 performed for each fiscal year since incorporation. All
456 financial statements shall be prepared in accordance with
457 generally accepted accounting principles and shall be audited in
458 accordance with generally accepted auditing standards, as
459 prescribed by the Florida Board of Accountancy, pursuant to
460 chapter 473. The certified public accountant performing the
461 audit shall examine to the extent necessary supporting documents
462 and records, including the cash disbursements and related paid
463 invoices, to determine if expenditures were for association
464 purposes, and the billings, cash receipts, and related records
465 to determine that the developer was charged and paid the proper
466 amounts of assessments. This paragraph applies to associations
467 with a date of incorporation after December 31, 2006.

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468 Section 8. Section 720.308, Florida Statutes, is amended
469 to read:

470 720.308 Assessments and charges.--

471 (1) ASSESSMENTS.--For any community created after October
472 1, 1995, the governing documents must describe the manner in
473 which expenses are shared and specify the member's proportional
474 share thereof. Assessments levied pursuant to the annual budget
475 or special assessment must be in the member's proportional share
476 of expenses as described in the governing document, which share
477 may be different among classes of parcels based upon the state
478 of development thereof, levels of services received by the
479 applicable members, or other relevant factors. While the
480 developer is in control of the homeowners' association, it may
481 be excused from payment of its share of the operating expenses
482 and assessments related to its parcels for any period of time
483 for which the developer has, in the declaration, obligated
484 itself to pay any operating expenses incurred that exceed the
485 assessments receivable from other members and other income of
486 the association. This section does not apply to an association,
487 no matter when created, if the association is created in a
488 community that is included in an effective development-of-
489 regional-impact development order as of the effective date of
490 this act, together with any approved modifications thereto.

491 (2) GUARANTEE OF COMMON EXPENSES.--

492 (a) Establishment of a guarantee.--If a guarantee of the
493 assessments of parcel owners is not included in the purchase
494 contracts or declaration, any agreement establishing a guarantee
495 shall be effective only upon the approval of a majority of the

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496 voting interests of the members other than the developer.
497 Approval shall be expressed at a meeting of the members, voting
498 in person or by limited proxy, or by agreement in writing
499 without a meeting if provided in the bylaws. Such guarantee
500 shall meet the requirements of this section.

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

504 1. The ending date or event shall be the same for all of
505 the members of a homeowners' association, including members in
506 different phases of the development.

507 2. The guarantee may provide for different intervals of
508 time during a guarantee period with different dollar amounts for
509 each such interval.

510 (c) Guarantee extension.--The guarantee may provide that
511 after the initial stated period the developer has an option to
512 extend the guarantee for one or more additional stated periods.
513 The extension of a guarantee is limited to extending the ending
514 date or event; therefore, the developer does not have the option
515 of changing the level of assessments guaranteed.

516 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
517 amount of the guarantee shall be an exact dollar amount for each
518 parcel identified in the declaration. Regardless of the stated
519 dollar amount of the guarantee, assessments charged to a member
520 shall not exceed the maximum obligation of the member based on
521 the total amount of the adopted budget and the member's
522 proportionate ownership share of the assessments.

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

526 (a) If at any time during the guarantee period the funds
527 collected from member assessments at the guaranteed level and
528 other revenues collected by the association are not sufficient
529 to provide payment, on a timely basis, of all assessments,
530 including the full funding of the reserves unless properly
531 waived, the guarantor shall advance sufficient cash to the
532 association at the time such payments are due.

533 (b) Expenses incurred in the production of nonassessment
534 revenues, not in excess of the nonassessment revenues, shall not
535 be included in the assessments. If the expenses attributable to
536 nonassessment revenues exceed nonassessment revenues, only the
537 excess expenses must be funded by the guarantor. Interest earned
538 on the investment of association funds may be used to pay the
539 income tax expense incurred as a result of the investment; such
540 expense shall not be charged to the guarantor; and the net
541 investment income shall be retained by the association. Each
542 such nonassessment revenue-generating activity shall be
543 considered separately. Any portion of the parcel assessments
544 that is budgeted for designated capital contributions of the
545 association shall not be used to pay operating expenses.

546 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
547 guarantor's total financial obligation to the association at the
548 end of the guarantee period shall be determined on the accrual
549 basis using the following formula: the guarantor shall pay any
550 deficits that exceed the guaranteed amount, less the total

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551 regular periodic assessments earned by the association from the
552 members other than the guarantor during the guarantee period,
553 regardless of whether the actual level charged was less than the
554 maximum guaranteed amount.

555 (6) EXPENSES.--Expenses incurred in the production of
556 nonassessment revenues, not in excess of the nonassessment
557 revenues, shall not be included in the operating expenses. If
558 the expenses attributable to nonassessment revenues exceed
559 nonassessment revenues, only the excess expenses must be funded
560 by the guarantor. Interest earned on the investment of
561 association funds may be used to pay the income tax expense
562 incurred as a result of the investment; such expense shall not
563 be charged to the guarantor; and the net investment income shall
564 be retained by the association. Each such nonassessment revenue-
565 generating activity shall be considered separately. Any portion
566 of the parcel assessment that is budgeted for designated capital
567 contributions of the association shall not be used to pay
568 operating expenses.

569 Section 9. Subsection (3) is added to section 720.402,
570 Florida Statutes, to read:

571 720.402 Publication of false and misleading information.--

572 (3) This section does not limit any rights provided by
573 common law.

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