

1 intended purposes under certain circumstances;
2 providing an exception; requiring an
3 association to prepare and complete a financial
4 report within a certain period; requiring an
5 association to use certain accounting
6 principles to prepare its financial statements;
7 amending s. 720.307, F.S.; requiring a
8 developer to deliver financial records and
9 source documents to the association; providing
10 requirements concerning financial records and
11 statements; requiring that a certified public
12 accountant examine supporting documents,
13 records, billings, cash receipts, and related
14 records of the association; amending s.
15 720.308, F.S.; providing for the establishment
16 of a guarantee of assessments; providing for a
17 guarantee period; providing for a dollar amount
18 of the guarantee; providing that assessments
19 charged to a member may not exceed a certain
20 amount; providing for the cash payments
21 required from the guarantee; providing the
22 calculation for the guarantee's final
23 obligation; providing that certain expenses may
24 not be included in the operating expenses;
25 requiring the guarantor to fund certain excess
26 expenses; providing that certain interest may
27 be used to pay income tax expense; requiring
28 that certain nonassessment-revenue-generating
29 activity be considered separately; providing
30 that certain portions of the parcel assessment
31

1 may not be used to pay operating expenses;
2 providing an effective date.

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

5
6 Section 1. Subsections (6) and (7) of section 720.303,
7 Florida Statutes, are amended to read:

8 720.303 Association powers and duties; meetings of
9 board; official records; budgets; financial reporting;
10 association funds; recalls.--

11 (6) BUDGETS.--

12 (a) The association shall prepare an annual budget
13 that sets out the annual operating expenses. The budget must
14 reflect the estimated revenues and expenses for that year and
15 the estimated surplus or deficit as of the end of the current
16 year. The budget must set out separately all fees or charges
17 paid by the association for recreational amenities, whether
18 owned by the association, the developer, or another person.
19 The association shall provide each member with a copy of the
20 annual budget or a written notice that a copy of the budget is
21 available upon request at no charge to the member. The copy
22 must be provided to the member within the time limits set
23 forth in subsection (5).

24 (b) In addition to annual operating expenses, the
25 budget may include reserve accounts for capital expenditures
26 and deferred maintenance for which the association is
27 responsible to the extent that the governing documents do not
28 limit increases in assessments, including reserves. If the
29 budget of the association includes reserve accounts, such
30 reserves shall be determined, maintained, and waived in the
31 manner provided in this subsection. Once an association

1 provides for reserve accounts in the budget, the association
2 shall thereafter determine, maintain, and waive reserves in
3 compliance with this subsection.

4 (c) If the budget of the association does not provide
5 for reserve accounts governed by this subsection and the
6 association is responsible for the repair and maintenance of
7 capital improvements that may result in a special assessment
8 if reserves are not provided, each financial report for the
9 preceding fiscal year required by subsection (7) must contain
10 the following statement in conspicuous type:

11
12 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE
13 FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
14 AND DEFERRED MAINTENANCE THAT MAY RESULT IN
15 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO
16 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
17 PROVISIONS OF SECTION 720.303(6), FLORIDA
18 STATUTES, UPON THE APPROVAL OF NOT LESS THAN A
19 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE
20 ASSOCIATION.

21
22 (d) An association shall be deemed to have provided
23 for reserve accounts when reserve accounts have been initially
24 established by the developer or when the membership of the
25 association affirmatively elects to provide for reserves. If
26 reserve accounts are not initially provided for by the
27 developer, the membership of the association may elect to do
28 so upon the affirmative approval of not less than a majority
29 of the total voting interests of the association. Such
30 approval may be attained by vote of the members at a duly
31 called meeting of the membership or upon a written consent

1 executed by not less than a majority of the total voting
2 interests in the community. The approval action of the
3 membership must state that reserve accounts shall be provided
4 for in the budget and designate the components for which the
5 reserve accounts are to be established. Upon approval by the
6 membership, the board of directors shall provide for the
7 required reserve accounts for inclusion in the budget in the
8 next fiscal year following the approval and in each year
9 thereafter. Once established as provided in this subsection,
10 the reserve accounts must be funded or maintained or must have
11 their funding waived in the manner provided in paragraph (f).

12 (e) The amount to be reserved in any account
13 established shall be computed by means of a formula that is
14 based upon estimated remaining useful life and estimated
15 replacement cost or deferred maintenance expense of each
16 reserve item. The association may adjust replacement reserve
17 assessments annually to take into account any changes in
18 estimates of cost or useful life of a reserve item.

19 (f) Once a reserve account or reserve accounts are
20 established, the membership of the association, upon a
21 majority vote at a meeting at which a quorum is present, may
22 provide for no reserves or less reserves than required by this
23 section. If a meeting of the unit owners has been called to
24 determine whether to waive or reduce the funding of reserves
25 and no such result is achieved or a quorum is not present, the
26 reserves as included in the budget shall go into effect. After
27 the turnover, the developer may vote its voting interest to
28 waive or reduce the funding of reserves. Any vote taken
29 pursuant to this subsection to waive or reduce reserves is
30 applicable to only one budget year.

31

1 (g) Funding formulas for reserves authorized by this
2 section shall be based on a separate analysis of each of the
3 required assets or a pooled analysis of two or more of the
4 required assets.

5 1. If the association maintains separate reserve
6 accounts for each of the required assets, the amount of the
7 contribution to each reserve account shall be the sum of the
8 following two calculations:

9 a. The total amount necessary, if any, to bring a
10 negative component balance to zero.

11 b. The total estimated deferred maintenance expense or
12 estimated replacement cost of the reserve component less the
13 estimated balance of the reserve component as of the beginning
14 of the period for which the budget will be in effect. The
15 remainder, if greater than zero, shall be divided by the
16 estimated remaining useful life of the component.

17
18 The formula may be adjusted each year for changes in estimates
19 and deferred maintenance performed during the year and may
20 include factors such as inflation and earnings on invested
21 funds.

22 2. If the association maintains a pooled account of
23 two or more of the required reserve assets, the amount of the
24 contribution to the pooled reserve account as disclosed on the
25 proposed budget may not be less than that required to ensure
26 that the balance on hand at the beginning of the period for
27 which the budget will go into effect plus the projected annual
28 cash inflows over the remaining estimated useful life of all
29 of the assets that make up the reserve pool are equal to or
30 greater than the projected annual cash outflows over the
31 remaining estimated useful lives of all of the assets that

1 make up the reserve pool, based on the current reserve
2 analysis. The projected annual cash inflows may include
3 estimated earnings from investment of principal. The reserve
4 funding formula may not include any type of balloon payments.

5 (h) Reserve funds and any interest accruing thereon
6 shall remain in the reserve account and shall be used only for
7 authorized reserve expenditures unless their use for other
8 purposes is approved in advance by a majority vote at a
9 meeting at which a quorum is present. Prior to turnover of
10 control of an association by a developer to parcel owners, the
11 developer-controlled association shall not vote to use
12 reserves for purposes other than those for which they were
13 intended without the approval of a majority of all
14 nondeveloper voting interests voting in person or by limited
15 proxy at a duly called meeting of the association.

16 (7) FINANCIAL REPORTING.--Within 90 days after the end
17 of the fiscal year, or annually on the date provided in the
18 bylaws, the association shall prepare and complete, or
19 contract with a third party for the preparation and completion
20 of, a financial report for the preceding fiscal year. Within
21 21 days after the final financial report is completed by the
22 association or received from the third party, but no later
23 than 120 days after the end of the fiscal year or other date
24 as provided in the bylaws, the association shall ~~prepare an~~
25 ~~annual financial report within 60 days after the close of the~~
26 ~~fiscal year. The association shall, within the time limits set~~
27 forth in subsection (5), provide each member with a copy of
28 the annual financial report or a written notice that a copy of
29 the financial report is available upon request at no charge to
30 the member. Financial reports shall be prepared as follows:
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1 (a) An association that meets the criteria of this
2 paragraph shall prepare or cause to be prepared a complete set
3 of financial statements in accordance with generally accepted
4 accounting principles as adopted by the Florida Board of
5 Accountancy. The financial statements shall be based upon the
6 association's total annual revenues, as follows:

7 1. An association with total annual revenues of
8 \$100,000 or more, but less than \$200,000, shall prepare
9 compiled financial statements.

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

13 3. An association with total annual revenues of
14 \$400,000 or more shall prepare audited financial statements.

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

18 2. An association in a community of fewer than 50
19 parcels, regardless of the association's annual revenues, may
20 prepare a report of cash receipts and expenditures in lieu of
21 financial statements required by paragraph (a) unless the
22 governing documents provide otherwise.

23 3. A report of cash receipts and disbursement must
24 disclose the amount of receipts by accounts and receipt
25 classifications and the amount of expenses by accounts and
26 expense classifications, including, but not limited to, the
27 following, as applicable: costs for security, professional,
28 and management fees and expenses; taxes; costs for recreation
29 facilities; expenses for refuse collection and utility
30 services; expenses for lawn care; costs for building
31 maintenance and repair; insurance costs; administration and

1 salary expenses; and reserves if maintained by the
2 association.

3 (c) If 20 percent of the parcel owners petition the
4 board for a level of financial reporting higher than that
5 required by this section, the association shall duly notice
6 and hold a meeting of members within 30 days of receipt of the
7 petition for the purpose of voting on raising the level of
8 reporting for that fiscal year. Upon approval of a majority of
9 the total voting interests of the parcel owners, the
10 association shall prepare or cause to be prepared, shall amend
11 the budget or adopt a special assessment to pay for the
12 financial report regardless of any provision to the contrary
13 in the governing documents, and shall provide within 90 days
14 of the meeting or the end of the fiscal year, whichever occurs
15 later:

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

19 2. Reviewed or audited financial statements, if the
20 association is otherwise required to prepare compiled
21 financial statements; or

22 3. Audited financial statements if the association is
23 otherwise required to prepare reviewed financial statements.

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

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

29 2. A report of cash receipts and expenditures or a
30 compiled financial statement in lieu of a reviewed or audited
31 financial statement; or

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

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

6 720.307 Transition of association control in a
7 community.--With respect to homeowners' associations:

8 (3) At the time the members are entitled to elect at
9 least a majority of the board of directors of the homeowners'
10 association, the developer shall, at the developer's expense,
11 within no more than 90 days deliver the following documents to
12 the board:

13 (t) The financial records, including financial
14 statements of the association, and source documents from the
15 incorporation of the association through the date of turnover.
16 The records shall be audited by an independent certified
17 public accountant for the period from the incorporation of the
18 association or from the period covered by the last audit, if
19 an audit has been performed for each fiscal year since
20 incorporation. All financial statements shall be prepared in
21 accordance with generally accepted accounting principles and
22 shall be audited in accordance with generally accepted
23 auditing standards, as prescribed by the Florida Board of
24 Accountancy under chapter 473. The certified public accountant
25 performing the audit shall examine to the extent necessary
26 supporting documents and records, including the cash
27 disbursements and related paid invoices to determine whether
28 expenditures were for association purposes. The certified
29 public accountant shall also examine the billings, cash
30 receipts, and related records of the association to determine
31 whether the developer was charged and paid the proper amounts

1 of assessments. This paragraph applies to associations having
2 a date of incorporation after December 31, 2007.

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

5 720.308 Assessments and charges.--

6 (1) ASSESSMENTS.--For any community created after
7 October 1, 1995, the governing documents must describe the
8 manner in which expenses are shared and specify the member's
9 proportional share thereof. Assessments levied pursuant to the
10 annual budget or special assessment must be in the member's
11 proportional share of expenses as described in the governing
12 document, which share may be different among classes of
13 parcels based upon the state of development thereof, levels of
14 services received by the applicable members, or other relevant
15 factors. While the developer is in control of the homeowners'
16 association, it may be excused from payment of its share of
17 the operating expenses and assessments related to its parcels
18 for any period of time for which the developer has, in the
19 declaration, obligated itself to pay any operating expenses
20 incurred that exceed the assessments receivable from other
21 members and other income of the association. This section
22 does not apply to an association, no matter when created, if
23 the association is created in a community that is included in
24 an effective development-of-regional-impact development order
25 as of the effective date of this act, together with any
26 approved modifications thereto.

27 (2) GUARANTEES OF COMMON EXPENSES.--

28 (a) If a guarantee of the assessments of parcel owners
29 is not included in the purchase contracts or declaration, any
30 agreement establishing a guarantee is effective only upon the
31 approval of a majority of the voting interests of the members

1 other than the developer. Approval shall be expressed at a
2 meeting of the members voting in person or by limited proxy or
3 by agreement in writing without a meeting if provided in the
4 bylaws. Such guarantee must meet the requirements of this
5 section.

6 (b) The period of time for the guarantee shall be
7 indicated by a specific beginning and ending date or event.

8 1. The ending date or event shall be the same for all
9 of the members of an association, including members in
10 different phases of the development.

11 2. The guarantee may provide for different intervals
12 of time during a guarantee period and may provide different
13 dollar amounts for each such interval.

14 3. The guarantee may provide that, after the initial
15 stated period, the developer has the option to extend the
16 guarantee for one or more additional stated periods. The
17 extension of a guarantee is limited to extending the ending
18 date or event; therefore, the developer does not have the
19 option of changing the level of assessments guaranteed.

20 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
21 amount of the guarantee shall be an exact dollar amount for
22 each parcel identified in the declaration. Regardless of the
23 stated dollar amount of the guarantee, assessments charged to
24 a member shall not exceed the maximum obligation of the member
25 based on the total amount of the adopted budget and the
26 member's proportionate ownership share of the common elements.

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

30 (a) If at any time during the guarantee period the
31 funds collected from member assessments at the guaranteed

1 level and other revenues collected by the association are not
2 sufficient to provide payment, on a timely basis, of all
3 assessments, including the full funding of the reserves unless
4 properly waived, the guarantor shall advance sufficient cash
5 to the association at the time such payments are due.

6 (b) Expenses incurred in the production of
7 nonassessment revenues, which are not in excess of the
8 nonassessment revenues, shall not be included in the
9 assessments. If the expenses attributable to nonassessment
10 revenues exceed nonassessment revenues, only the excess
11 expenses must be funded by the guarantor. Interest earned on
12 the investment of association funds may be used to pay the
13 income tax expense incurred as a result of the investment.
14 Such expense may not be charged to the guarantor, and the net
15 investment income shall be retained by the association. Each
16 such nonassessment-revenue-generating activity shall be
17 considered separately. Any portion of the parcel assessment
18 which is budgeted for designated capital contributions of the
19 association may not be used to pay operating expenses.

20 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
21 guarantor's total financial obligation to the association at
22 the end of the guarantee period shall be determined on the
23 accrual basis using the following formula: the guarantor shall
24 pay any deficits that exceed the guaranteed amount, less the
25 total regular periodic assessments earned by the association
26 from the members other than the guarantor during the guarantee
27 period regardless of whether the actual level charged was less
28 than the maximum guaranteed amount.

29 (6) EXPENSES.--Expenses incurred in the production of
30 nonassessment revenues, which are not in excess of the
31 nonassessment revenues, may not be included in the operating

