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LEGISLATIVE ACTION

Senate	.	House
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Senator Fasano moved the following:

Senate Amendment (with title amendment)

Delete lines 204 - 1490
and insert:

Section 2. Subsection (13) of section 718.110, Florida Statutes, is amended to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.-

(13) Any amendment prohibiting ~~restricting~~ unit owners from renting their units or altering the number of times unit owners are entitled to rent their units during a specified period ~~owners' rights relating to the rental of units~~ applies only to unit owners who consent to the amendment and unit owners who



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14 acquire title to purchase their units after the effective date
15 of that amendment.

16 Section 3. Subsections (12) and (13) of section 718.111,
17 Florida Statutes, are amended to read:

18 718.111 The association.—

19 (12) OFFICIAL RECORDS.—

20 (a) From the inception of the association, the association
21 shall maintain each of the following items, when applicable,
22 which shall constitute the official records of the association:

23 1. A copy of the plans, permits, warranties, and other
24 items provided by the developer pursuant to s. 718.301(4).

25 2. A photocopy of the recorded declaration of condominium
26 of each condominium operated by the association and of each
27 amendment to each declaration.

28 3. A photocopy of the recorded bylaws of the association
29 and of each amendment to the bylaws.

30 4. A certified copy of the articles of incorporation of the
31 association, or other documents creating the association, and of
32 each amendment thereto.

33 5. A copy of the current rules of the association.

34 6. A book or books which contain the minutes of all
35 meetings of the association, of the board of administration, and
36 of unit owners, which minutes shall be retained for a period of
37 not less than 7 years.

38 7. A current roster of all unit owners and their mailing
39 addresses, unit identifications, voting certifications, and, if
40 known, telephone numbers. The association shall also maintain
41 the electronic mailing addresses and the numbers designated by
42 unit owners for receiving notice sent by electronic transmission



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43 of those unit owners consenting to receive notice by electronic
44 transmission. The electronic mailing addresses and numbers
45 provided by unit owners to receive notice by electronic
46 transmission shall be removed from association records when
47 consent to receive notice by electronic transmission is revoked.
48 However, the association is not liable for an erroneous
49 disclosure of the electronic mail address or the number for
50 receiving electronic transmission of notices.

51 8. All current insurance policies of the association and
52 condominiums operated by the association.

53 9. A current copy of any management agreement, lease, or
54 other contract to which the association is a party or under
55 which the association or the unit owners have an obligation or
56 responsibility.

57 10. Bills of sale or transfer for all property owned by the
58 association.

59 11. Accounting records for the association and separate
60 accounting records for each condominium which the association
61 operates. All accounting records shall be maintained for a
62 period of not less than 7 years. Any person who knowingly or
63 intentionally defaces or destroys accounting records required to
64 be created and maintained by this chapter during the period for
65 which such records are required to be maintained pursuant to
66 this chapter, or who knowingly or intentionally fails to create
67 or maintain accounting records required to be maintained by this
68 chapter, with the intent of causing harm to the association or
69 one or more of its members, is personally subject to a civil
70 penalty pursuant to s. 718.501(1)(d). The accounting records
71 shall include, but are not limited to:



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72 a. Accurate, itemized, and detailed records of all receipts
73 and expenditures.

74 b. A current account and a monthly, bimonthly, or quarterly
75 statement of the account for each unit designating the name of
76 the unit owner, the due date and amount of each assessment, the
77 amount paid upon the account, and the balance due.

78 c. All audits, reviews, accounting statements, and
79 financial reports of the association or condominium.

80 d. All contracts for work to be performed. Bids for work to
81 be performed shall also be considered official records and shall
82 be maintained by the association.

83 12. Ballots, sign-in sheets, voting proxies, and all other
84 papers relating to voting by unit owners, which shall be
85 maintained for a period of 1 year from the date of the election,
86 vote, or meeting to which the document relates, notwithstanding
87 paragraph (b).

88 13. All rental records, when the association is acting as
89 agent for the rental of condominium units.

90 14. A copy of the current question and answer sheet as
91 described by s. 718.504.

92 15. All other records of the association not specifically
93 included in the foregoing which are related to the operation of
94 the association.

95 16. A copy of the inspection report as provided for in s.
96 718.301(4)(p).

97 (b) The official records of the association shall be
98 maintained within the state for at least 7 years. The records of
99 the association shall be made available to a unit owner within
100 45 miles of the condominium property or within the county in



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101 which the condominium property is located within 5 working days
102 after receipt of written request by the board or its designee.
103 However, such distance requirement does not apply to an
104 association governing a timeshare condominium. This paragraph
105 may be complied with by having a copy of the official records of
106 the association available for inspection or copying on the
107 condominium property or association property, or the association
108 may offer the option of making the records of the association
109 available to a unit owner either electronically via the Internet
110 or by allowing the records to be viewed in electronic format on
111 a computer screen and printed upon request. The association is
112 not responsible for the use or misuse of the information
113 provided pursuant to the compliance requirements of this chapter
114 unless the association has an affirmative duty not to disclose
115 such information pursuant to this chapter.

116 (c) The official records of the association are open to
117 inspection by any association member or the authorized
118 representative of such member at all reasonable times. The right
119 to inspect the records includes the right to make or obtain
120 copies, at the reasonable expense, if any, of the association
121 member, but does not include the right to obtain computer-
122 generated reports not kept or created by the association in the
123 ordinary course of business. The association may adopt
124 reasonable rules regarding the frequency, time, location,
125 notice, and manner of record inspections and copying. The
126 failure of an association to provide the records within 10
127 working days after receipt of a written request shall create a
128 rebuttable presumption that the association willfully failed to
129 comply with this paragraph. A unit owner who is denied access to



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130 official records is entitled to the actual damages or minimum
131 damages for the association's willful failure to comply with
132 this paragraph. The minimum damages shall be \$50 per calendar
133 day up to 10 days, the calculation to begin on the 11th working
134 day after receipt of the written request. The failure to permit
135 inspection of the association records as provided herein
136 entitles any person prevailing in an enforcement action to
137 recover reasonable attorney's fees from the person in control of
138 the records who, directly or indirectly, knowingly denied access
139 to the records for inspection. Any person who knowingly or
140 intentionally defaces or destroys accounting records that are
141 required by this chapter to be created and maintained during the
142 period for which such records are required to be maintained
143 pursuant to this chapter, or who knowingly or intentionally
144 fails to create or maintain accounting records that are required
145 to be maintained by this chapter, with the intent of causing
146 harm to the association or one or more of its members, is
147 personally subject to a civil penalty pursuant to s.
148 718.501(1)(d). The association shall maintain an adequate number
149 of copies of the declaration, articles of incorporation, bylaws,
150 and rules, and all amendments to each of the foregoing, as well
151 as the question and answer sheet provided for in s. 718.504 and
152 year-end financial information required in this section, on the
153 condominium property to ensure their availability to unit owners
154 and prospective purchasers, and may charge its actual costs for
155 preparing and furnishing these documents to those requesting the
156 documents ~~same~~. Notwithstanding the provisions of this
157 paragraph, the following records shall not be accessible to unit
158 owners:



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159 1. Any record protected by the lawyer-client privilege as
160 described in s. 90.502; and any record protected by the work-
161 product privilege, including any record prepared by an
162 association attorney or prepared at the attorney's express
163 direction; which reflects a mental impression, conclusion,
164 litigation strategy, or legal theory of the attorney or the
165 association, and which was prepared exclusively for civil or
166 criminal litigation or for adversarial administrative
167 proceedings, or which was prepared in anticipation of imminent
168 civil or criminal litigation or imminent adversarial
169 administrative proceedings until the conclusion of the
170 litigation or adversarial administrative proceedings.

171 2. Information obtained by an association in connection
172 with the approval of the lease, sale, or other transfer of a
173 unit.

174 3. Disciplinary, health, insurance, and personnel records
175 of the association's employees.

176 ~~4.3.~~ Medical records of unit owners.

177 ~~5.4.~~ Social security numbers, driver's license numbers,
178 credit card numbers, e-mail addresses, and other personal
179 identifying information of any person, excluding the person's
180 name, unit designation, mailing address, property address, and
181 other contact information.

182 6. Any electronic security measure that is used by the
183 association to safeguard data, including passwords.

184 7. The software used, licensed, or owned by the
185 association.

186 (13) FINANCIAL REPORTING.—Within 90 days after the end of
187 the fiscal year, or annually on a date provided in the bylaws,



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188 the association shall prepare and complete, or contract for the
189 preparation and completion of, a financial report for the
190 preceding fiscal year. Within 21 days after the final financial
191 report is completed by the association or received from the
192 third party, but not later than 120 days after the end of the
193 fiscal year or other date as provided in the bylaws, the
194 association shall mail to each unit owner at the address last
195 furnished to the association by the unit owner, or hand deliver
196 to each unit owner, a copy of the financial report or a notice
197 that a copy of the financial report will be mailed or hand
198 delivered to the unit owner, without charge, upon receipt of a
199 written request from the unit owner. The division shall adopt
200 rules setting forth uniform accounting principles and standards
201 to be used by all associations and shall adopt rules addressing
202 financial reporting requirements for multicondominium
203 associations. The rules shall include, but not be limited to,
204 standards for presenting a summary of association reserves,
205 including, but not limited to, a good faith estimate disclosing
206 the annual amount of reserve funds that would be necessary for
207 the association to fully fund reserves for each reserve item
208 based on the straight-line accounting method. This disclosure is
209 not applicable to reserves funded via the pooling method ~~uniform~~
210 ~~accounting principles and standards for stating the disclosure~~
211 ~~of at least a summary of the reserves, including information as~~
212 ~~to whether such reserves are being funded at a level sufficient~~
213 ~~to prevent the need for a special assessment and, if not, the~~
214 ~~amount of assessments necessary to bring the reserves up to the~~
215 ~~level necessary to avoid a special assessment. The person~~
216 ~~preparing the financial reports shall be entitled to rely on an~~



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217 ~~inspection report prepared for or provided to the association to~~
218 ~~meet the fiscal and fiduciary standards of this chapter.~~ In
219 adopting such rules, the division shall consider the number of
220 members and annual revenues of an association. Financial reports
221 shall be prepared as follows:

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

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

230 2. An association with total annual revenues of at least
231 \$200,000, but less than \$400,000, shall prepare reviewed
232 financial statements.

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

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

238 2. An association that ~~which~~ operates fewer ~~less~~ than 50
239 units, regardless of the association's annual revenues, shall
240 prepare a report of cash receipts and expenditures in lieu of
241 financial statements required by paragraph (a).

242 3. A report of cash receipts and disbursements must
243 disclose the amount of receipts by accounts and receipt
244 classifications and the amount of expenses by accounts and
245 expense classifications, including, but not limited to, the



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246 following, as applicable: costs for security, professional and
247 management fees and expenses, taxes, costs for recreation
248 facilities, expenses for refuse collection and utility services,
249 expenses for lawn care, costs for building maintenance and
250 repair, insurance costs, administration and salary expenses, and
251 reserves accumulated and expended for capital expenditures,
252 deferred maintenance, and any other category for which the
253 association maintains reserves.

254 (c) An association may prepare or cause to be prepared,
255 without a meeting of or approval by the unit owners:

256 1. Compiled, reviewed, or audited financial statements, if
257 the association is required to prepare a report of cash receipts
258 and expenditures;

259 2. Reviewed or audited financial statements, if the
260 association is required to prepare compiled financial
261 statements; or

262 3. Audited financial statements if the association is
263 required to prepare reviewed financial statements.

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

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

269 2. A report of cash receipts and expenditures or a compiled
270 financial statement in lieu of a reviewed or audited financial
271 statement; or

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



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276 Such meeting and approval must occur before ~~prior to~~ the end of
277 the fiscal year and is effective only for the fiscal year in
278 which the vote is taken, except that the approval also may be
279 effective for the following fiscal year. With respect to an
280 association to which the developer has not turned over control
281 of the association, all unit owners, including the developer,
282 may vote on issues related to the preparation of financial
283 reports for the first 2 fiscal years of the association's
284 operation, beginning with the fiscal year in which the
285 declaration is recorded. Thereafter, all unit owners except the
286 developer may vote on such issues until control is turned over
287 to the association by the developer. Any audit or review
288 prepared under this section shall be paid for by the developer
289 if done prior to turnover of control of the association. An
290 association may not waive the financial reporting requirements
291 of this section for more than 3 consecutive years.

292 Section 4. Paragraphs (d), (n), and (o) of subsection (2)
293 of section 718.112, Florida Statutes, are amended to read:

294 718.112 Bylaws.—

295 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the
296 following and, if they do not do so, shall be deemed to include
297 the following:

298 (d) *Unit owner meetings.*—

299 1. There shall be an annual meeting of the unit owners held
300 at the location provided in the association bylaws and, if the
301 bylaws are silent as to the location, the meeting shall be held
302 within 45 miles of the condominium property. However, such
303 distance requirement does not apply to an association governing



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304 a timeshare condominium. Unless the bylaws provide otherwise, a
305 vacancy on the board caused by the expiration of a director's
306 term shall be filled by electing a new board member, and the
307 election shall be by secret ballot; however, if the number of
308 vacancies equals ~~or exceeds~~ the number of candidates, no
309 election is required. Except in a timeshare condominium, the
310 terms of all members of the board shall expire at the annual
311 meeting and such board members may stand for reelection unless
312 otherwise permitted by the bylaws. In the event that the bylaws
313 permit staggered terms of no more than 2 years and upon approval
314 of a majority of the total voting interests, the association
315 board members may serve 2-year staggered terms. If the number ~~no~~
316 ~~person is interested in or demonstrates an intention to run for~~
317 ~~the position~~ of a board members ~~member~~ whose terms have ~~term has~~
318 expired according to the provisions of this subparagraph exceeds
319 the number of eligible members showing interest in or
320 demonstrating an intention to run for the vacant positions, each
321 ~~such~~ board member whose term has expired ~~shall~~ becomes eligible
322 for reappointment ~~be automatically reappointed~~ to the board of
323 administration and needs ~~need~~ not stand for reelection. In a
324 condominium association of more than 10 units or in a
325 condominium association that does not include timeshare units,
326 coowners of a unit may not serve as members of the board of
327 directors at the same time unless they own more than one unit
328 and are not co-occupants of a unit or unless there are not
329 enough owners to fill the vacancies on the board. Any unit owner
330 desiring to be a candidate for board membership shall comply
331 with sub-subparagraph ~~subparagraph~~ 3.a. A person who has been
332 suspended or removed by the division under this chapter, or who



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333 is delinquent in the payment of any fee, fine, or special or
334 regular assessment as provided in paragraph (n), is not eligible
335 for board membership. A person who has been convicted of any
336 felony in this state or in a United States District or
337 Territorial Court, or who has been convicted of any offense in
338 another jurisdiction that would be considered a felony if
339 committed in this state, is not eligible for board membership
340 unless such felon's civil rights have been restored for a period
341 of no less than 5 years as of the date on which such person
342 seeks election to the board. The validity of an action by the
343 board is not affected if it is later determined that a member of
344 the board is ineligible for board membership due to having been
345 convicted of a felony.

346 2. The bylaws shall provide the method of calling meetings
347 of unit owners, including annual meetings. Written notice, which
348 notice must include an agenda, shall be mailed, hand delivered,
349 or electronically transmitted to each unit owner at least 14
350 days prior to the annual meeting and shall be posted in a
351 conspicuous place on the condominium property at least 14
352 continuous days preceding the annual meeting. Upon notice to the
353 unit owners, the board shall by duly adopted rule designate a
354 specific location on the condominium property or association
355 property upon which all notices of unit owner meetings shall be
356 posted; however, if there is no condominium property or
357 association property upon which notices can be posted, this
358 requirement does not apply. In lieu of or in addition to the
359 physical posting of notice of any meeting of the unit owners on
360 the condominium property, the association may, by reasonable
361 rule, adopt a procedure for conspicuously posting and repeatedly



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362 broadcasting the notice and the agenda on a closed-circuit cable
363 television system serving the condominium association. However,
364 if broadcast notice is used in lieu of a notice posted
365 physically on the condominium property, the notice and agenda
366 must be broadcast at least four times every broadcast hour of
367 each day that a posted notice is otherwise required under this
368 section. When broadcast notice is provided, the notice and
369 agenda must be broadcast in a manner and for a sufficient
370 continuous length of time so as to allow an average reader to
371 observe the notice and read and comprehend the entire content of
372 the notice and the agenda. Unless a unit owner waives in writing
373 the right to receive notice of the annual meeting, such notice
374 shall be hand delivered, mailed, or electronically transmitted
375 to each unit owner. Notice for meetings and notice for all other
376 purposes shall be mailed to each unit owner at the address last
377 furnished to the association by the unit owner, or hand
378 delivered to each unit owner. However, if a unit is owned by
379 more than one person, the association shall provide notice, for
380 meetings and all other purposes, to that one address which the
381 developer initially identifies for that purpose and thereafter
382 as one or more of the owners of the unit shall so advise the
383 association in writing, or if no address is given or the owners
384 of the unit do not agree, to the address provided on the deed of
385 record. An officer of the association, or the manager or other
386 person providing notice of the association meeting, shall
387 provide an affidavit or United States Postal Service certificate
388 of mailing, to be included in the official records of the
389 association affirming that the notice was mailed or hand
390 delivered, in accordance with this provision.



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391 3.a. The members of the board shall be elected by written
392 ballot or voting machine. Proxies shall in no event be used in
393 electing the board, either in general elections or elections to
394 fill vacancies caused by recall, resignation, or otherwise,
395 unless otherwise provided in this chapter. Not less than 60 days
396 before a scheduled election, the association shall mail,
397 deliver, or electronically transmit, whether by separate
398 association mailing or included in another association mailing,
399 delivery, or transmission, including regularly published
400 newsletters, to each unit owner entitled to a vote, a first
401 notice of the date of the election ~~along with a certification~~
402 ~~form provided by the division attesting that he or she has read~~
403 ~~and understands, to the best of his or her ability, the~~
404 ~~governing documents of the association and the provisions of~~
405 ~~this chapter and any applicable rules.~~ Any unit owner or other
406 eligible person desiring to be a candidate for the board must
407 give written notice of his or her intent to be a candidate to
408 the association not less than 40 days before a scheduled
409 election. Together with the written notice and agenda as set
410 forth in subparagraph 2., the association shall mail, deliver,
411 or electronically transmit a second notice of the election to
412 all unit owners entitled to vote therein, together with a ballot
413 which shall list all candidates. Upon request of a candidate,
414 ~~the association shall include~~ an information sheet, no larger
415 than 8 1/2 inches by 11 inches, which must be furnished by the
416 candidate not less than 35 days before the election, shall ~~along~~
417 ~~with the signed certification form provided for in this~~
418 ~~subparagraph,~~ to be included with the mailing, delivery, or
419 transmission of the ballot, with the costs of mailing, delivery,



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420 or electronic transmission and copying to be borne by the
421 association. The association is not liable for the contents of
422 the information sheets prepared by the candidates. In order to
423 reduce costs, the association may print or duplicate the
424 information sheets on both sides of the paper. The division
425 shall by rule establish voting procedures consistent with the
426 provisions contained herein, including rules establishing
427 procedures for giving notice by electronic transmission and
428 rules providing for the secrecy of ballots. Elections shall be
429 decided by a plurality of those ballots cast. There shall be no
430 quorum requirement; however, at least 20 percent of the eligible
431 voters must cast a ballot in order to have a valid election of
432 members of the board. No unit owner shall permit any other
433 person to vote his or her ballot, and any such ballots
434 improperly cast shall be deemed invalid, provided any unit owner
435 who violates this provision may be fined by the association in
436 accordance with s. 718.303. A unit owner who needs assistance in
437 casting the ballot for the reasons stated in s. 101.051 may
438 obtain assistance in casting the ballot. The regular election
439 shall occur on the date of the annual meeting. The provisions of
440 this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare
441 condominium associations. Notwithstanding the provisions of this
442 sub-subparagraph ~~subparagraph~~, an election is not required
443 unless more candidates file notices of intent to run or are
444 nominated than board vacancies exist.

445 b. Within 90 days after being elected to the board, each
446 newly elected director shall certify in writing to the secretary
447 of the association that he or she has read the association's
448 declarations of covenants and restrictions, articles of



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449 incorporation, bylaws, and current written policies; that he or
450 she will work to uphold such documents and policies to the best
451 of his or her ability; and that he or she will faithfully
452 discharge his or her fiduciary responsibility to the
453 association's members. In lieu of this written certification,
454 the newly elected director may submit a certificate of
455 satisfactory completion of the educational curriculum
456 administered by a division-approved condominium education
457 provider. Failure to timely file the written certification or
458 educational certificate automatically disqualifies the director
459 from service on the board. The secretary shall cause the
460 association to retain a director's written certification or
461 educational certificate for inspection by the members for 5
462 years after a director's election. Failure to have such written
463 certification or educational certificate on file does not affect
464 the validity of any appropriate action.

465 4. Any approval by unit owners called for by this chapter
466 or the applicable declaration or bylaws, including, but not
467 limited to, the approval requirement in s. 718.111(8), shall be
468 made at a duly noticed meeting of unit owners and shall be
469 subject to all requirements of this chapter or the applicable
470 condominium documents relating to unit owner decisionmaking,
471 except that unit owners may take action by written agreement,
472 without meetings, on matters for which action by written
473 agreement without meetings is expressly allowed by the
474 applicable bylaws or declaration or any statute that provides
475 for such action.

476 5. Unit owners may waive notice of specific meetings if
477 allowed by the applicable bylaws or declaration or any statute.



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478 If authorized by the bylaws, notice of meetings of the board of
479 administration, unit owner meetings, except unit owner meetings
480 called to recall board members under paragraph (j), and
481 committee meetings may be given by electronic transmission to
482 unit owners who consent to receive notice by electronic
483 transmission.

484 6. Unit owners shall have the right to participate in
485 meetings of unit owners with reference to all designated agenda
486 items. However, the association may adopt reasonable rules
487 governing the frequency, duration, and manner of unit owner
488 participation.

489 7. Any unit owner may tape record or videotape a meeting of
490 the unit owners subject to reasonable rules adopted by the
491 division.

492 8. Unless otherwise provided in the bylaws, any vacancy
493 occurring on the board before the expiration of a term may be
494 filled by the affirmative vote of the majority of the remaining
495 directors, even if the remaining directors constitute less than
496 a quorum, or by the sole remaining director. In the alternative,
497 a board may hold an election to fill the vacancy, in which case
498 the election procedures must conform to the requirements of sub-
499 subparagraph ~~subparagraph~~ 3.a. unless the association governs 10
500 units or fewer ~~less~~ and has opted out of the statutory election
501 process, in which case the bylaws of the association control.
502 Unless otherwise provided in the bylaws, a board member
503 appointed or elected under this section shall fill the vacancy
504 for the unexpired term of the seat being filled. Filling
505 vacancies created by recall is governed by paragraph (j) and
506 rules adopted by the division.



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507
508 Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-
509 subparagraph (d)3.a., an association of 10 or fewer units may,
510 by the affirmative vote of a majority of the total voting
511 interests, provide for different voting and election procedures
512 in its bylaws, which vote may be by a proxy specifically
513 delineating the different voting and election procedures. The
514 different voting and election procedures may provide for
515 elections to be conducted by limited or general proxy.

516 (n) *Director or officer delinquencies.*—A director or
517 officer more than 90 days delinquent in the payment of any fee,
518 fine, regular assessment, or special assessment ~~assessments~~
519 shall be deemed to have abandoned the office, creating a vacancy
520 in the office to be filled according to law.

521 (o) *Director or officer offenses.*—A director or officer
522 charged by information or indictment with a felony theft or
523 embezzlement offense involving the association's funds or
524 property shall be removed from office, creating a vacancy in the
525 office to be filled according to law. While such director or
526 officer has such criminal charge pending, he or she may not be
527 appointed or elected to a position as a director or officer.
528 However, should the charges be resolved without a finding of
529 guilt, the director or officer shall be reinstated for the
530 remainder of his or her term of office, if any.

531 Section 5. Paragraph (d) of subsection (1) of section
532 718.115, Florida Statutes, is amended to read:

533 718.115 Common expenses and common surplus.—

534 (1)

535 (d) If so provided in the declaration, the cost of



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536 communications services as defined in chapter 202, information
537 services, or Internet services ~~a master antenna television~~
538 ~~system or duly franchised cable television service~~ obtained
539 pursuant to a bulk contract shall be deemed a common expense. If
540 the declaration does not provide for the cost of communications
541 services as defined in chapter 202, information services, or
542 Internet services ~~a master antenna television system or duly~~
543 ~~franchised cable television service~~ obtained under a bulk
544 contract as a common expense, the board may enter into such a
545 contract, and the cost of the service will be a common expense
546 but allocated on a per-unit basis rather than a percentage basis
547 if the declaration provides for other than an equal sharing of
548 common expenses, and any contract entered into before July 1,
549 1998, in which the cost of the service is not equally divided
550 among all unit owners, may be changed by vote of a majority of
551 the voting interests present at a regular or special meeting of
552 the association, to allocate the cost equally among all units.
553 The contract shall be for a term of not less than 2 years.

554 1. Any contract made by the board after the effective date
555 hereof for communications services as defined in chapter 202,
556 information services, or Internet services ~~a community antenna~~
557 ~~system or duly franchised cable television service~~ may be
558 canceled by a majority of the voting interests present at the
559 next regular or special meeting of the association. Any member
560 may make a motion to cancel the ~~said~~ contract, but if no motion
561 is made or if such motion fails to obtain the required majority
562 at the next regular or special meeting, whichever occurs ~~is~~
563 sooner, following the making of the contract, ~~then~~ such contract
564 shall be deemed ratified for the term therein expressed.



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565 2. Any such contract shall provide, and shall be deemed to
566 provide if not expressly set forth, that any hearing-impaired or
567 legally blind unit owner who does not occupy the unit with a
568 non-hearing-impaired or sighted person, or any unit owner
569 receiving supplemental security income under Title XVI of the
570 Social Security Act or food stamps as administered by the
571 Department of Children and Family Services pursuant to s.
572 414.31, may discontinue the cable or video service without
573 incurring disconnect fees, penalties, or subsequent service
574 charges, and, as to such units, the owners shall not be required
575 to pay any common expenses charge related to such service. If
576 fewer less than all members of an association share the expenses
577 of cable or video service television, the expense shall be
578 shared equally by all participating unit owners. The association
579 may use the provisions of s. 718.116 to enforce payment of the
580 shares of such costs by the unit owners receiving cable or video
581 service television.

582 Section 6. Paragraph (b) of subsection (5) of section
583 718.116, Florida Statutes, is amended, and subsection (11) is
584 added to that section, to read:

585 718.116 Assessments; liability; lien and priority;
586 interest; collection.—

587 (5)

588 (b) To be valid, a claim of lien must state the description
589 of the condominium parcel, the name of the record owner, the
590 name and address of the association, the amount due, and the due
591 dates. It must be executed and acknowledged by an officer or
592 authorized agent of the association. No such lien shall be
593 effective longer than 1 year after the claim of lien was



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594 recorded unless, within that time, an action to enforce the lien
595 is commenced. The 1-year period shall automatically be extended
596 for any length of time during which the association is prevented
597 from filing a foreclosure action by an automatic stay resulting
598 from a bankruptcy petition filed by the parcel owner or any
599 other person claiming an interest in the parcel. The claim of
600 lien shall secure all unpaid assessments which are due and which
601 may accrue subsequent to the recording of the claim of lien and
602 before ~~prior to~~ the entry of a certificate of title, as well as
603 interest and all reasonable costs and attorney's fees incurred
604 by the association incident to the collection process. Costs to
605 the unit owner secured by the association's claim of lien with
606 regard to notices of delinquencies by management companies or
607 licensed managers as to any delinquent installment of an
608 assessment may not exceed \$75. Upon payment in full, the person
609 making the payment is entitled to a satisfaction of the lien.
610

611 After notice of contest of lien has been recorded, the
612 clerk of the circuit court shall mail a copy of the recorded
613 notice to the association by certified mail, return receipt
614 requested, at the address shown in the claim of lien or most
615 recent amendment to it and shall certify to the service on the
616 face of the notice. Service is complete upon mailing. After
617 service, the association has 90 days in which to file an action
618 to enforce the lien; and, if the action is not filed within the
619 90-day period, the lien is void. However, the 90-day period
620 shall be extended for any length of time that the association is
621 prevented from filing its action because of an automatic stay
622 resulting from the filing of a bankruptcy petition by the unit



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623 owner or by any other person claiming an interest in the parcel.
624 (11) If the unit is occupied by a tenant and the unit owner
625 is delinquent in the payment of regular assessments, the
626 association may demand that the tenant pay to the association
627 the future regular assessments related to the condominium unit.
628 The demand is continuing in nature, and upon demand, the tenant
629 shall continue to pay the regular assessments to the association
630 until the association releases the tenant or the tenant
631 discontinues tenancy in the unit. The association shall mail
632 written notice to the unit owner of the association's demand
633 that the tenant pay assessments and amounts due to the
634 association pursuant to this section, the declaration, or the
635 bylaws. The tenant is not liable for increases in the amounts
636 due unless the tenant was reasonably notified of the increase
637 before the day on which the rent is due. The liability of the
638 tenant may not exceed the amount due from the tenant to the
639 tenant's landlord. The tenant's landlord shall provide the
640 tenant a credit against rents due to the unit owner in the
641 amount of assessments paid to the association under this
642 section. The association shall, upon request, provide the tenant
643 with written receipts for payments made. The association may
644 issue notices under s. 83.56 and may sue for eviction under ss.
645 83.59-83.625 as if the association were a landlord under part II
646 of chapter 83 if the tenant fails to pay an assessment and, at
647 the option of the association, if a writ of possession is
648 issued, the association or the owner shall be placed in
649 possession. However, the association is not otherwise considered
650 a landlord under chapter 83 and specifically has no duties under
651 s. 83.51. The tenant does not, by virtue of payment of



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652 assessments, have any of the rights of a unit owner to vote in
653 any election or to examine the books and records of the
654 association. A court may supersede the effect of this subsection
655 by appointing a receiver.

656 Section 7. Section 718.303, Florida Statutes, is amended to
657 read:

658 718.303 Obligations of owners and occupants; waiver; levy
659 of finances, suspension of use or voting rights, and other
660 nonexclusive remedies in law or equity ~~fine against unit~~ by an
661 association.-

662 (1) Each unit owner, each tenant and other invitee, and
663 each association shall be governed by, and shall comply with the
664 provisions of, this chapter, the declaration, the documents
665 creating the association, and the association bylaws and the
666 provisions thereof shall be deemed expressly incorporated into
667 any lease of a unit. Actions for damages or for injunctive
668 relief, or both, for failure to comply with these provisions may
669 be brought by the association or by a unit owner against:

670 (a) The association.

671 (b) A unit owner.

672 (c) Directors designated by the developer, for actions
673 taken by them prior to the time control of the association is
674 assumed by unit owners other than the developer.

675 (d) Any director who willfully and knowingly fails to
676 comply with these provisions.

677 (e) Any tenant leasing a unit, and any other invitee
678 occupying a unit.

679
680 The prevailing party in any such action or in any action in



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681 which the purchaser claims a right of voidability based upon
682 contractual provisions as required in s. 718.503(1)(a) is
683 entitled to recover reasonable attorney's fees. A unit owner
684 prevailing in an action between the association and the unit
685 owner under this section, in addition to recovering his or her
686 reasonable attorney's fees, may recover additional amounts as
687 determined by the court to be necessary to reimburse the unit
688 owner for his or her share of assessments levied by the
689 association to fund its expenses of the litigation. This relief
690 does not exclude other remedies provided by law. Actions arising
691 under this subsection shall not be deemed to be actions for
692 specific performance.

693 (2) A provision of this chapter may not be waived if the
694 waiver would adversely affect the rights of a unit owner or the
695 purpose of the provision, except that unit owners or members of
696 a board of administration may waive notice of specific meetings
697 in writing if provided by the bylaws. Any instruction given in
698 writing by a unit owner or purchaser to an escrow agent may be
699 relied upon by an escrow agent, whether or not such instruction
700 and the payment of funds thereunder might constitute a waiver of
701 any provision of this chapter.

702 (3) If a unit owner is delinquent for more than 90 days in
703 the payment of a regular or special assessment or if the
704 declaration or bylaws so provide, the association may suspend,
705 for a reasonable time, the right of a unit owner or a unit's
706 occupant, licensee, or invitee to use common elements, common
707 facilities, or any other association property. This subsection
708 does not apply to limited common elements intended to be used
709 only by that unit, common elements that must be used to access



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710 the unit, utility services provided to the unit, parking spaces,
711 or elevators. The association may also levy reasonable fines
712 ~~against a unit~~ for the failure of the owner of the unit, or its
713 occupant, licensee, or invitee, to comply with any provision of
714 the declaration, the association bylaws, or reasonable rules of
715 the association. No fine will become a lien against a unit. A ~~No~~
716 fine may not exceed \$100 per violation. However, a fine may be
717 levied on the basis of each day of a continuing violation, with
718 a single notice and opportunity for hearing, provided that no
719 such fine shall in the aggregate exceed \$1,000. A ~~No~~ fine may
720 not be levied and a suspension may not be imposed unless the
721 association first gives ~~except after giving~~ reasonable notice
722 and opportunity for a hearing to the unit owner and, if
723 applicable, its occupant, licensee, or invitee. The hearing must
724 be held before a committee of other unit owners who are neither
725 board members nor persons residing in a board member's
726 household. If the committee does not agree with the fine or
727 suspension, the fine or suspension may not be levied or imposed.
728 ~~The provisions of this subsection do not apply to unoccupied~~
729 ~~units.~~ The notice and hearing requirements of this subsection do
730 not apply to the imposition of suspensions or fines against a
731 unit owner or a unit's occupant, licensee, or invitee because of
732 the failure to pay any amounts due the association.

733 (4) If such a fine or suspension is imposed, the
734 association must levy the fine or impose a reasonable suspension
735 at a properly noticed board meeting, and after the imposition of
736 such fine or suspension, the association must notify the unit
737 owner and, if applicable, the unit's occupant, licensee, or
738 invitee by mail or hand delivery.



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739 (5) If the declaration or bylaws so provide, an association
740 may also suspend the voting rights of a member due to nonpayment
741 of assessments, fines, or other charges payable to the
742 association which are delinquent in excess of 90 days.

743 Section 8. Subsection (16) of section 718.103, Florida
744 Statutes, is amended to read:

745 718.103 Definitions.—As used in this chapter, the term:

746 (16) "Developer" means a person who creates a condominium
747 or offers condominium parcels for sale or lease in the ordinary
748 course of business, but does not include:

749 (a) An owner or lessee of a condominium or cooperative unit
750 who has acquired the unit for his or her own occupancy; ~~nor~~
751 ~~does it include~~

752 (b) A cooperative association that ~~which~~ creates a
753 condominium by conversion of an existing residential cooperative
754 after control of the association has been transferred to the
755 unit owners if, following the conversion, the unit owners will
756 be the same persons who were unit owners of the cooperative and
757 no units are offered for sale or lease to the public as part of
758 the plan of conversion;~~—~~

759 (c) A bulk assignee or bulk buyer as defined in s. 718.703;
760 or

761 (d) A state, county, or municipal entity ~~is not a developer~~
762 ~~for any purposes under this act when it is acting as a lessor~~
763 ~~and not otherwise named as a developer in the~~ declaration of
764 condominium association.

765 Section 9. Subsection (1) of section 718.301, Florida
766 Statutes, is amended to read:

767 718.301 Transfer of association control; claims of defect



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768 by association.—

769 (1) When unit owners other than the developer own 15
770 percent or more of the units in a condominium that will be
771 operated ultimately by an association, the unit owners other
772 than the developer shall be entitled to elect no less than one-
773 third of the members of the board of administration of the
774 association. Unit owners other than the developer are entitled
775 to elect not less than a majority of the members of the board of
776 administration of an association:

777 (a) Three years after 50 percent of the units that will be
778 operated ultimately by the association have been conveyed to
779 purchasers;

780 (b) Three months after 90 percent of the units that will be
781 operated ultimately by the association have been conveyed to
782 purchasers;

783 (c) When all the units that will be operated ultimately by
784 the association have been completed, some of them have been
785 conveyed to purchasers, and none of the others are being offered
786 for sale by the developer in the ordinary course of business;

787 (d) When some of the units have been conveyed to purchasers
788 and none of the others are being constructed or offered for sale
789 by the developer in the ordinary course of business;

790 (e) When the developer files a petition seeking protection
791 in bankruptcy;

792 (f) When a receiver for the developer is appointed by a
793 circuit court and is not discharged within 30 days after such
794 appointment, unless the court determines within 30 days after
795 appointment of the receiver that transfer of control would be
796 detrimental to the association or its members; or



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797 (g) Seven years after recordation of the declaration of
798 condominium; or, in the case of an association which may
799 ultimately operate more than one condominium, 7 years after
800 recordation of the declaration for the first condominium it
801 operates; or, in the case of an association operating a phase
802 condominium created pursuant to s. 718.403, 7 years after
803 recordation of the declaration creating the initial phase,
804 whichever occurs first. The developer is entitled to elect at
805 least one member of the board of administration of an
806 association as long as the developer holds for sale in the
807 ordinary course of business at least 5 percent, in condominiums
808 with fewer than 500 units, and 2 percent, in condominiums with
809 more than 500 units, of the units in a condominium operated by
810 the association. Following the time the developer relinquishes
811 control of the association, the developer may exercise the right
812 to vote any developer-owned units in the same manner as any
813 other unit owner except for purposes of reacquiring control of
814 the association or selecting the majority members of the board
815 of administration.

816 Section 10. Subsections (3) and (4) of section 719.108,
817 Florida Statutes, are amended, and subsection (10) is added to
818 that section, to read:

819 719.108 Rents and assessments; liability; lien and
820 priority; interest; collection; cooperative ownership.—

821 (3) Rents and assessments, and installments on them, not
822 paid when due bear interest at the rate provided in the
823 cooperative documents from the date due until paid. This rate
824 may not exceed the rate allowed by law, and, if no rate is
825 provided in the cooperative documents, then interest shall



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826 accrue at 18 percent per annum. Also, if the cooperative
827 documents or bylaws so provide, the association may charge an
828 administrative late fee in addition to such interest, in an
829 amount not to exceed the greater of \$25 or 5 percent of each
830 installment of the assessment for each delinquent installment
831 that the payment is late. Costs to the unit owner secured by the
832 association's claim of lien with regard to notices of
833 delinquencies by management companies or licensed managers as to
834 any delinquent installment of an assessment may not exceed \$75.
835 Any payment received by an association shall be applied first to
836 any interest accrued by the association, then to any
837 administrative late fee, then to any costs and reasonable
838 attorney's fees incurred in collection, then to any reasonable
839 costs for collection services for which the association has
840 contracted, and then to the delinquent assessment. The foregoing
841 shall be applicable notwithstanding any restrictive endorsement,
842 designation, or instruction placed on or accompanying a payment.
843 A late fee is not subject to chapter 687 or s. 719.303(3).

844 (4) The association shall have a lien on each cooperative
845 parcel for any unpaid rents and assessments, plus interest, any
846 authorized administrative late fees, and any reasonable costs
847 for collection services for which the association has contracted
848 against the unit owner of the cooperative parcel. If authorized
849 by the cooperative documents, said lien shall also secure
850 reasonable attorney's fees incurred by the association incident
851 to the collection of the rents and assessments or enforcement of
852 such lien. The lien is effective from and after the recording of
853 a claim of lien in the public records in the county in which the
854 cooperative parcel is located which states the description of



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855 the cooperative parcel, the name of the unit owner, the amount
856 due, and the due dates. The lien shall expire if a claim of lien
857 is not filed within 1 year after the date the assessment was
858 due, and no such lien shall continue for a longer period than 1
859 year after the claim of lien has been recorded unless, within
860 that time, an action to enforce the lien is commenced in a court
861 of competent jurisdiction. Except as otherwise provided in this
862 chapter, a lien may not be filed by the association against a
863 cooperative parcel until 30 days after the date on which a
864 notice of intent to file a lien has been delivered to the owner
865 by registered or certified mail, return receipt requested, and
866 by first-class United States mail to the owner at his or her
867 last address in the records of the association, if the address
868 is within the United States, and delivered to the owner at the
869 address of the unit if the owner's address as reflected in the
870 records of the association is not the unit address. If the
871 address in the records is outside the United States, notice
872 shall be sent to that address and to the unit address by first-
873 class United States mail. Delivery of the notice shall be deemed
874 given upon mailing as required by this subsection. ~~No lien may~~
875 ~~be filed by the association against a cooperative parcel until~~
876 ~~30 days after the date on which a notice of intent to file a~~
877 ~~lien has been served on the unit owner of the cooperative parcel~~
878 ~~by certified mail or by personal service in the manner~~
879 ~~authorized by chapter 48 and the Florida Rules of Civil~~
880 ~~Procedure.~~

881 (10) If the share is occupied by a tenant and the share
882 owner is delinquent in the payment of regular assessments, the
883 association may demand that the tenant pay to the association



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884 the future regular assessments related to the condominium share.
885 The demand is continuing in nature, and upon demand, the tenant
886 shall continue to pay the regular assessments to the association
887 until the association releases the tenant or the tenant
888 discontinues tenancy in the share. The association shall mail
889 written notice to the share owner of the association's demand
890 that the tenant pay assessments and amounts due to the
891 association pursuant to this section, the declaration, or the
892 bylaws. The tenant is not liable for increases in the amounts
893 due unless the tenant was reasonably notified of the increase
894 before the day on which the rent is due. The liability of the
895 tenant may not exceed the amount due from the tenant to the
896 tenants' landlord. The tenant's landlord shall provide the
897 tenant a credit against rents due to the unit owner in the
898 amount of assessments paid to the association under this
899 section. The association shall, upon request, provide the tenant
900 with written receipts for payments made. The association may
901 issue notices under s. 83.56 and may sue for eviction under ss.
902 83.59-83.625 as if the association were a landlord under part II
903 of chapter 83 if the tenant fails to pay an assessment, and, at
904 the option of the association, if a writ of possession is
905 issued, the association or the owner shall be placed in
906 possession. However, the association is not otherwise considered
907 a landlord under chapter 83 and specifically has no duties under
908 s. 83.51. The tenant does not, by virtue of payment of
909 assessments, have any of the rights of a share owner to vote in
910 any election or to examine the books and records of the
911 association. A court may supersede the effect of this subsection
912 by appointing a receiver.



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913 Section 11. Paragraph (b) of subsection (2) of section
914 720.304, Florida Statutes, is amended to read:

915 720.304 Right of owners to peaceably assemble; display of
916 flag; SLAPP suits prohibited.—

917 (2)

918 (b) Any homeowner may erect a freestanding flagpole no more
919 than 20 feet high on any portion of the homeowner's real
920 property, regardless of any covenants, restrictions, bylaws,
921 rules, or requirements of the association, if the flagpole does
922 not obstruct sightlines at intersections and is not erected
923 within or upon an easement. The homeowner may further display in
924 a respectful manner from that flagpole, regardless of any
925 covenants, restrictions, bylaws, rules, or requirements of the
926 association, one official United States flag, not larger than 4
927 1/2 feet by 6 feet, and may additionally display one official
928 flag of the State of Florida or the United States Army, Navy,
929 Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such
930 additional flag must be equal in size to or smaller than the
931 United States flag. The flagpole and display are subject to all
932 building codes, zoning setbacks, and other applicable
933 governmental regulations, including, but not limited to, noise
934 and lighting ordinances in the county or municipality in which
935 the flag pole is erected.

936 Section 12. Subsection (2) of section 720.305, Florida
937 Statutes, is amended to read:

938 720.305 Obligations of members; remedies at law or in
939 equity; levy of fines and suspension of use rights.—

940 (2) If a member is delinquent for more than 90 days in the
941 payment of a regular or special assessment or if the governing



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942 documents so provide, an association may suspend, for a
943 reasonable period of time, the rights of a member or a member's
944 tenants, guests, or invitees, or both, to use common areas and
945 facilities and may levy reasonable fines of up to, not to exceed
946 \$100 per violation, against any member or any tenant, guest, or
947 invitee. A fine may be levied on the basis of each day of a
948 continuing violation, with a single notice and opportunity for
949 hearing, except that a no such fine may not shall exceed \$1,000
950 in the aggregate unless otherwise provided in the governing
951 documents. A fine of less than \$1,000 may shall not become a
952 lien against a parcel. In any action to recover a fine, the
953 prevailing party is entitled to collect its reasonable
954 attorney's fees and costs from the nonprevailing party as
955 determined by the court. The provisions regarding the
956 suspension-of-use rights do not apply to the portion of common
957 areas that must be used to provide access to the parcel or
958 utility services provided to the parcel.

959 (a) A fine or suspension may not be imposed without notice
960 of at least 14 days to the person sought to be fined or
961 suspended and an opportunity for a hearing before a committee of
962 at least three members appointed by the board who are not
963 officers, directors, or employees of the association, or the
964 spouse, parent, child, brother, or sister of an officer,
965 director, or employee. If the committee, by majority vote, does
966 not approve a proposed fine or suspension, it may not be
967 imposed.

968 (b) The requirements of this subsection do not apply to the
969 imposition of suspensions or fines upon any member because of
970 the failure of the member to pay assessments or other charges



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971 when due if such action is authorized by the governing
972 documents. If such a fine or suspension is imposed, the
973 association must levy the fine or impose a reasonable suspension
974 at a properly noticed board meeting, and after the imposition of
975 such fine or suspension, the association must notify the owner
976 and, if applicable, the unit's occupant, licensee, or invitee by
977 mail or hand delivery.

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

982 Section 13. Paragraph (a) of subsection (1) of section
983 720.3085, Florida Statutes, is amended, and subsection (8) is
984 added to that section, to read:

985 720.3085 Payment for assessments; lien claims.—

986 (1) When authorized by the governing documents, the
987 association has a lien on each parcel to secure the payment of
988 assessments and other amounts provided for by this section.
989 Except as otherwise set forth in this section, the lien is
990 effective from and shall relate back to the date on which the
991 original declaration of the community was recorded. However, as
992 to first mortgages of record, the lien is effective from and
993 after recording of a claim of lien in the public records of the
994 county in which the parcel is located. This subsection does not
995 bestow upon any lien, mortgage, or certified judgment of record
996 on July 1, 2008, including the lien for unpaid assessments
997 created in this section, a priority that, by law, the lien,
998 mortgage, or judgment did not have before July 1, 2008.

999 (a) To be valid, a claim of lien must state the description



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1000 of the parcel, the name of the record owner, the name and
1001 address of the association, the assessment amount due, and the
1002 due date. The claim of lien shall secure all unpaid assessments
1003 that are due and that may accrue subsequent to the recording of
1004 the claim of lien and before entry of a certificate of title, as
1005 well as interest, late charges, and reasonable costs and
1006 attorney's fees incurred by the association incident to the
1007 collection process. Costs to the unit owner secured by the
1008 association's claim of lien with regard to notices of
1009 delinquencies by management companies or licensed managers as to
1010 any delinquent installment of an assessment may not exceed \$75.
1011 The person making the payment is entitled to a satisfaction of
1012 the lien upon payment in full.

1013 (8) If the parcel is occupied by a tenant and the parcel
1014 owner is delinquent in the payment of regular assessments, the
1015 association may demand that the tenant pay to the association
1016 the future regular assessments related to the parcel. The demand
1017 is continuing in nature, and upon demand, the tenant shall
1018 continue to pay the regular assessments to the association until
1019 the association releases the tenant or the tenant discontinues
1020 tenancy in the parcel. The association shall mail written notice
1021 to the parcel owner of the association's demand that the tenant
1022 pay regular assessments to the association. The tenant is not
1023 liable for increases in the amount of the regular assessment due
1024 unless the tenant was reasonably notified of the increase before
1025 the day on which the rent is due. The tenant shall be given a
1026 credit against rents due to the parcel owner in the amount of
1027 assessments paid to the association. The association shall, upon
1028 request, provide the tenant with written receipts for payments



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1029 made. The association may issue notices under s. 83.56 and may
1030 sue for eviction under ss. 83.59-83.625 as if the association
1031 were a landlord under part II of chapter 83 if the tenant fails
1032 to pay an assessment, and at the option of the association, if a
1033 writ of possession is issued, the association of the owner shall
1034 be placed in possession. However, the association is not
1035 otherwise considered a landlord under chapter 83 and
1036 specifically has no duties under s. 83.51. The tenant does not,
1037 by virtue of payment of assessments, have any of the rights of a
1038 parcel owner to vote in any election or to examine the books and
1039 records of the association. A court may supersede the effect of
1040 this subsection by appointing a receiver.

1041 Section 14. Subsection (6) is added to section 720.31,
1042 Florida Statutes, to read:

1043 720.31 Recreational leaseholds; right to acquire;
1044 escalation clauses.—

1045 (6) An association may enter into agreements to acquire
1046 leaseholds, memberships, and other possessory or use interests
1047 in lands or facilities such as country clubs, golf courses,
1048 marinas, and other recreational facilities. An association may
1049 enter into such agreements regardless of whether the lands or
1050 facilities are contiguous to the lands of the community or
1051 whether such lands or facilities are intended to provide
1052 enjoyment, recreation, or other use or benefit to the owners.
1053 All leaseholds, memberships, and other possessory or use
1054 interests existing or created at the time of recording the
1055 declaration must be stated and fully described in the
1056 declaration. Subsequent to the recording of the declaration,
1057 agreements acquiring leaseholds, memberships, or other



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1058 possessory or use interests not entered into within 12 months
1059 following the recording of the declaration may be entered into
1060 only if authorized by the declaration for material alterations
1061 or substantial additions to the common areas or association
1062 property. If the declaration is silent, any such transaction
1063 requires the approval of 75 percent of the total voting
1064 interests of the association. The declaration may provide that
1065 the rental, membership fees, operations, replacements, or other
1066 expenses are common expenses; impose covenants and restrictions
1067 concerning their use; and contain other provisions not
1068 inconsistent with this subsection. An association exercising its
1069 rights under this subsection may join with other associations
1070 that are part of the same development or with a master
1071 association responsible for the enforcement of shared covenants,
1072 conditions, and restrictions in carrying out the intent of this
1073 subsection.

1074 Section 15. Subsection (17) of section 721.05, Florida
1075 Statutes, is amended to read:

1076 721.05 Definitions.—As used in this chapter, the term:

1077 (17) "Facility" means any permanent amenity, including any
1078 structure, furnishing, fixture, equipment, service, improvement,
1079 or real or personal property, improved or unimproved, other than
1080 an accommodation of the timeshare plan, which is made available
1081 to the purchasers of a timeshare plan. The term does not include
1082 an incidental benefit as defined in this section.

1083 Section 16. Subsection (2) of section 553.509, Florida
1084 Statutes, is repealed.

1085 Section 17. Paragraph (b) of subsection (2), paragraphs (a)
1086 and (c) of subsection (5), and paragraphs (b), (c), (d), (f),



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1087 and (g) of subsection (6) of section 720.303, Florida Statutes,
1088 are amended, and subsection (12) is added to that section, to
1089 read:

1090 720.303 Association powers and duties; meetings of board;
1091 official records; budgets; financial reporting; association
1092 funds; recalls.—

1093 (2) BOARD MEETINGS.—

1094 (b) Members have the right to attend all meetings of the
1095 board and to speak on any matter placed on the agenda by
1096 petition of the voting interests for at least 3 minutes. The
1097 association may adopt written reasonable rules expanding the
1098 right of members to speak and governing the frequency, duration,
1099 and other manner of member statements, which rules must be
1100 consistent with this paragraph and may include a sign-up sheet
1101 for members wishing to speak. Notwithstanding any other law, ~~the~~
1102 ~~requirement that board meetings and committee meetings be open~~
1103 ~~to the members is inapplicable to~~ meetings between the board or
1104 a committee and the association's attorney to discuss proposed
1105 or pending litigation, or with respect to meetings of the board
1106 held for the purpose of discussing personnel matters are not
1107 required to be open to the members.

1108 (5) INSPECTION AND COPYING OF RECORDS.—The official records
1109 shall be maintained within the state and must be open to
1110 inspection and available for photocopying by members or their
1111 authorized agents at reasonable times and places within 10
1112 business days after receipt of a written request for access.
1113 This subsection may be complied with by having a copy of the
1114 official records available for inspection or copying in the
1115 community. If the association has a photocopy machine available



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1116 where the records are maintained, it must provide parcel owners
1117 with copies on request during the inspection if the entire
1118 request is limited to no more than 25 pages.

1119 (a) The failure of an association to provide access to the
1120 records within 10 business days after receipt of a written
1121 request submitted by certified mail, return receipt requested,
1122 creates a rebuttable presumption that the association willfully
1123 failed to comply with this subsection.

1124 (c) The association may adopt reasonable written rules
1125 governing the frequency, time, location, notice, records to be
1126 inspected, and manner of inspections, but may not require ~~impose~~
1127 ~~a requirement that~~ a parcel owner to demonstrate any proper
1128 purpose for the inspection, state any reason for the inspection,
1129 or limit a parcel owner's right to inspect records to less than
1130 one 8-hour business day per month. The association may impose
1131 fees to cover the costs of providing copies of the official
1132 records, including, without limitation, the costs of copying.
1133 The association may charge up to 50 cents per page for copies
1134 made on the association's photocopier. If the association does
1135 not have a photocopy machine available where the records are
1136 kept, or if the records requested to be copied exceed 25 pages
1137 in length, the association may have copies made by an outside
1138 vendor or association management company personnel and may
1139 charge the actual cost of copying. The association shall
1140 maintain an adequate number of copies of the recorded governing
1141 documents, to ensure their availability to members and
1142 prospective members. Notwithstanding the provisions of this
1143 paragraph, the following records are ~~shall~~ not ~~be~~ accessible to
1144 members or parcel owners:



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1145 1. Any record protected by the lawyer-client privilege as
1146 described in s. 90.502 and any record protected by the work-
1147 product privilege, including, but not limited to, any record
1148 prepared by an association attorney or prepared at the
1149 attorney's express direction which reflects a mental impression,
1150 conclusion, litigation strategy, or legal theory of the attorney
1151 or the association and which was prepared exclusively for civil
1152 or criminal litigation or for adversarial administrative
1153 proceedings or which was prepared in anticipation of imminent
1154 civil or criminal litigation or imminent adversarial
1155 administrative proceedings until the conclusion of the
1156 litigation or ~~adversarial~~ administrative proceedings.

1157 2. Information obtained by an association in connection
1158 with the approval of the lease, sale, or other transfer of a
1159 parcel.

1160 3. Disciplinary, health, insurance, and personnel records,
1161 including payroll records, of the association's employees.

1162 4. Medical records of parcel owners or community residents.

1163 (6) BUDGETS.—

1164 (b) In addition to annual operating expenses, the budget
1165 may include reserve accounts for capital expenditures and
1166 deferred maintenance for which the association is responsible.
1167 If reserve accounts are not established pursuant to paragraph
1168 (d), funding of such reserves shall be limited to the extent
1169 that the governing documents do not limit increases in
1170 assessments, including reserves. If the budget of the
1171 association includes reserve accounts established pursuant to
1172 paragraph (d), such reserves shall be determined, maintained,
1173 and waived in the manner provided in this subsection. Once an



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1174 association provides for reserve accounts pursuant to paragraph
1175 (d) in the budget, the association shall thereafter determine,
1176 maintain, and waive reserves in compliance with this subsection.
1177 The provisions of this section do not preclude the termination
1178 of a reserve account established pursuant to this paragraph upon
1179 approval of a majority of the voting interests of the
1180 association. Upon such approval, the terminating reserve account
1181 shall be removed from the budget.

1182 (c)1. If the budget of the association does not provide for
1183 reserve accounts pursuant to paragraph (d) governed by this
1184 subsection and the association is responsible for the repair and
1185 maintenance of capital improvements that may result in a special
1186 assessment if reserves are not provided, each financial report
1187 for the preceding fiscal year required by subsection (7) shall
1188 contain the following statement in conspicuous type: THE BUDGET
1189 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR
1190 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
1191 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
1192 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
1193 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN A~~
1194 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY
1195 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

1196 2. If the budget of the association does provide for
1197 funding accounts for deferred expenditures, including, but not
1198 limited to, funds for capital expenditures and deferred
1199 maintenance, but such accounts are not created or established
1200 pursuant to paragraph (d), each financial report for the
1201 preceding fiscal year required under subsection (7) must also
1202 contain the following statement in conspicuous type: THE BUDGET



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1203 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED
1204 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
1205 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
1206 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
1207 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),
1208 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
1209 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
1210 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

1211 (d) An association shall be deemed to have provided for
1212 reserve accounts if ~~when~~ reserve accounts have been initially
1213 established by the developer or if ~~when~~ the membership of the
1214 association affirmatively elects to provide for reserves. If
1215 reserve accounts are not initially provided for by the
1216 developer, the membership of the association may elect to do so
1217 upon the affirmative approval of ~~not less than~~ a majority of the
1218 total voting interests of the association. Such approval may be
1219 obtained ~~attained~~ by vote of the members at a duly called
1220 meeting of the membership or by the ~~upon~~ a written consent of
1221 ~~executed by not less than~~ a majority of the total voting
1222 interests in the community. The approval action of the
1223 membership shall state that reserve accounts shall be provided
1224 for in the budget and shall designate the components for which
1225 the reserve accounts are to be established. Upon approval by the
1226 membership, the board of directors shall include ~~provide for~~ the
1227 required reserve accounts ~~for inclusion~~ in the budget in the
1228 next fiscal year following the approval and ~~in~~ each year
1229 thereafter. Once established as provided in this subsection, the
1230 reserve accounts shall be funded or maintained or shall have
1231 their funding waived in the manner provided in paragraph (f).



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1232 (f) After one or more ~~Once a reserve account or~~ reserve
1233 accounts are established, the membership of the association,
1234 upon a majority vote at a meeting at which a quorum is present,
1235 may provide for no reserves or less reserves than required by
1236 this section. If a meeting of the unit owners has been called to
1237 determine whether to waive or reduce the funding of reserves and
1238 no such result is achieved or a quorum is not present, the
1239 reserves as included in the budget shall go into effect. After
1240 the turnover, the developer may vote its voting interest to
1241 waive or reduce the funding of reserves. Any vote taken pursuant
1242 to this subsection to waive or reduce reserves is ~~shall be~~
1243 applicable only to one budget year.

1244 (g) Funding formulas for reserves authorized by this
1245 section shall be based on either a separate analysis of each of
1246 the required assets or a pooled analysis of two or more of the
1247 required assets.

1248 1. If the association maintains separate reserve accounts
1249 for each of the required assets, the amount of the contribution
1250 to each reserve account is ~~shall be~~ the sum of the following two
1251 calculations:

1252 a. The total amount necessary, if any, to bring a negative
1253 component balance to zero.

1254 b. The total estimated deferred maintenance expense or
1255 estimated replacement cost of the reserve component less the
1256 estimated balance of the reserve component as of the beginning
1257 of the period ~~for which~~ the budget will be in effect. The
1258 remainder, if greater than zero, shall be divided by the
1259 estimated remaining useful life of the component.

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1261 The formula may be adjusted each year for changes in
1262 estimates and deferred maintenance performed during the year and
1263 may include factors such as inflation and earnings on invested
1264 funds.

1265 2. If the association maintains a pooled account of two or
1266 more of the required reserve assets, the amount of the
1267 contribution to the pooled reserve account as disclosed on the
1268 proposed budget may ~~shall~~ not be less than that required to
1269 ensure that the balance on hand at the beginning of the period
1270 ~~for which~~ the budget will go into effect plus the projected
1271 annual cash inflows over the remaining estimated useful life of
1272 all of the assets that make up the reserve pool are equal to or
1273 greater than the projected annual cash outflows over the
1274 remaining estimated useful lives of all ~~of~~ the assets that make
1275 up the reserve pool, based on the current reserve analysis. The
1276 projected annual cash inflows may include estimated earnings
1277 from investment of principal and accounts receivable minus the
1278 allowance for doubtful accounts. The reserve funding formula may
1279 ~~shall~~ not include any type of balloon payments.

1280 (12) COMPENSATION PROHIBITED.—A director, officer, or
1281 committee member of the association may not directly receive any
1282 salary or compensation from the association for the performance
1283 of duties as a director, officer, or committee member and may
1284 not in any other way benefit financially from service to the
1285 association. This subsection does not preclude:

1286 (a) Participation by such person in a financial benefit
1287 accruing to all or a significant number of members as a result
1288 of actions lawfully taken by the board or a committee of which
1289 he or she is a member, including, but not limited to, routine



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1290 maintenance, repair, or replacement of community assets.
1291 (b) Reimbursement for out-of-pocket expenses incurred by
1292 such person on behalf of the association, subject to approval in
1293 accordance with procedures established by the association's
1294 governing documents or, in the absence of such procedures, in
1295 accordance with an approval process established by the board.
1296 (c) Any recovery of insurance proceeds derived from a
1297 policy of insurance maintained by the association for the
1298 benefit of its members.
1299 (d) Any fee or compensation authorized in the governing
1300 documents.
1301 (e) Any fee or compensation authorized in advance by a vote
1302 of a majority of the voting interests voting in person or by
1303 proxy at a meeting of the members.
1304 (f) A developer or its representative from serving as a
1305 director, officer, or committee member of the association and
1306 benefitting financially from service to the association.
1307 Section 18. Subsections (8) and (9) of section 720.306,
1308 Florida Statutes, are amended to read:
1309 720.306 Meetings of members; voting and election
1310 procedures; amendments.—
1311 (8) PROXY VOTING.—The members have the right, unless
1312 otherwise provided in this subsection or in the governing
1313 documents, to vote in person or by proxy.
1314 (a) To be valid, a proxy must be dated, must state the
1315 date, time, and place of the meeting for which it was given, and
1316 must be signed by the authorized person who executed the proxy.
1317 A proxy is effective only for the specific meeting for which it
1318 was originally given, as the meeting may lawfully be adjourned



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1319 and reconvened from time to time, and automatically expires 90
1320 days after the date of the meeting for which it was originally
1321 given. A proxy is revocable at any time at the pleasure of the
1322 person who executes it. If the proxy form expressly so provides,
1323 any proxy holder may appoint, in writing, a substitute to act in
1324 his or her place.

1325 (b) If the governing documents permit voting by secret
1326 ballot by members who are not in attendance at a meeting of the
1327 members for the election of directors, such ballots shall be
1328 placed in an inner envelope with no identifying markings and
1329 mailed or delivered to the association in an outer envelope
1330 bearing identifying information reflecting the name of the
1331 member, the lot or parcel for which the vote is being cast, and
1332 the signature of the lot or parcel owner casting that ballot. If
1333 the eligibility of the member to vote is confirmed and no other
1334 ballot has been submitted for that lot or parcel, the inner
1335 envelope shall be removed from the outer envelope bearing the
1336 identification information, placed with the ballots which were
1337 personally cast, and opened when the ballots are counted. If
1338 more than one ballot is submitted for a lot or parcel, the
1339 ballots for that lot or parcel shall be disqualified. Any vote
1340 by ballot received after the closing of the balloting may not be
1341 considered.

1342 (9) ELECTIONS.—Elections of directors must be conducted in
1343 accordance with the procedures set forth in the governing
1344 documents of the association. All members of the association are
1345 ~~shall be~~ eligible to serve on the board of directors, and a
1346 member may nominate himself or herself as a candidate for the
1347 board at a meeting where the election is to be held or, if the



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1348 election process allows voting by absentee ballot, in advance of
1349 the balloting. Except as otherwise provided in the governing
1350 documents, boards of directors must be elected by a plurality of
1351 the votes cast by eligible voters. Any election dispute between
1352 a member and an association must be submitted to mandatory
1353 binding arbitration with the division. Such proceedings shall be
1354 conducted in the manner provided by s. 718.1255 and the
1355 procedural rules adopted by the division.

1356 Section 19. Section 720.315, Florida Statutes, is created
1357 to read:

1358 720.315 Passage of special assessments before turnover by
1359 developer.—Before turnover, the board of directors controlled by
1360 the developer may not levy a special assessment unless a
1361 majority of the parcel owners other than the developer have
1362 approved the special assessment by a majority vote at a duly
1363 called special meeting of the membership at which a quorum is
1364 present.

1365 Section 20. Section 723.071, Florida Statutes, is amended
1366 to read:

1367 723.071 Sale of mobile home parks.—

1368 (1) (a) If a mobile home park owner intends to offer ~~offers~~
1369 a mobile home park for sale, or if a mobile home park owner
1370 receives a bona fide offer to purchase the park which she or he
1371 intends to consider or make a counteroffer to, she or he shall
1372 notify, by certified mail, the officers of the homeowners'
1373 association created pursuant to ss. 723.075-723.079, and the
1374 Florida Housing Finance Corporation, of the offer, or of her or
1375 his intent to offer, stating the price and the terms and
1376 conditions of sale, if the requirements of the homeowners' offer



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1377 to purchase as set forth in subsection (2) have been met by the
1378 homeowners' association.

1379 (b) The mobile home owners, by and through the association
1380 defined in s. 723.075, shall have the right to purchase the
1381 park, and the mobile home park owner is obligated to sell to the
1382 home owners, provided the home owners meet the price and terms
1383 and conditions of the mobile home park owner by executing a
1384 contract with the park owner within 45 days, unless agreed to
1385 otherwise, from the date of mailing of the notice and provided
1386 they have complied with ss. 723.075-723.079. If a contract
1387 between the park owner and the association is not executed
1388 within such 45-day period, then, unless the park owner
1389 thereafter elects to offer the park at a price lower than the
1390 price specified in her or his notice to the officers of the
1391 homeowners' association, the park owner has no further
1392 obligations under this subsection, and her or his only
1393 obligation shall be as set forth in subsection (2).

1394 (c) If the park owner thereafter elects to offer the park
1395 at a price lower or higher than the price specified in her or
1396 his notice to the home owners, the home owners, by and through
1397 the association, will have an additional 21 ~~10~~ days to meet the
1398 price and terms and conditions of the park owner by executing a
1399 contract. The homeowners, by and through the association, shall
1400 have 21 days to meet the price and terms and conditions of a
1401 counteroffer.

1402 (2) If the mobile home owners, by and through the
1403 association, have informed the mobile home park owner that they
1404 are ready and willing to purchase the park, the park owner shall
1405 comply with the provisions of subsection (1). The expression of



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1406 readiness and willingness to purchase the park must be renewed
1407 annually by certified mail to the park owner and must include
1408 information about the number of homeowners concurring; the date,
1409 time, and place of the homeowners' association meeting
1410 authorizing the notice to be sent; and information concerning
1411 the ability of the homeowners to purchase the park using the
1412 income approach method to estimate the property value. If the
1413 homeowners' association has not substantially complied with this
1414 requirement, the park owner has no obligation to comply with the
1415 provisions of subsection (1). ~~If a mobile home park owner~~
1416 ~~receives a bona fide offer to purchase the park that she or he~~
1417 ~~intends to consider or make a counteroffer to, the park owner's~~
1418 ~~only obligation shall be to notify the officers of the~~
1419 ~~homeowners' association that she or he has received an offer and~~
1420 ~~disclose the price and material terms and conditions upon which~~
1421 ~~she or he would consider selling the park and consider any offer~~
1422 ~~made by the home owners, provided the home owners have complied~~
1423 ~~with ss. 723.075-723.079. The park owner shall be under no~~
1424 ~~obligation to sell to the home owners or to interrupt or delay~~
1425 ~~other negotiations and shall be free at any time to execute a~~
1426 ~~contract for the sale of the park to a party or parties other~~
1427 ~~than the home owners or the association.~~

1428 ~~(3) (a) As used in subsections (1) and (2), the term~~
1429 ~~"notify" means the placing of a notice in the United States mail~~
1430 ~~addressed to the officers of the homeowners' association. Each~~
1431 ~~such notice shall be deemed to have been given upon the deposit~~
1432 ~~of the notice in the United States mail.~~

1433 ~~(b) As used in subsection (1), the term "offer" means any~~
1434 ~~solicitation by the park owner to the general public.~~



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1435 ~~(3)-(4)~~ This section does not apply to:

1436 (a) Any sale or transfer to a person who would be included
1437 within the table of descent and distribution if the park owner
1438 were to die intestate.

1439 (b) Any transfer by gift, devise, or operation of law.

1440 (c) Any transfer by a corporation to an affiliate. As used
1441 herein, the term "affiliate" means any shareholder of the
1442 transferring corporation; any corporation or entity owned or
1443 controlled, directly or indirectly, by the transferring
1444 corporation; or any other corporation or entity owned or
1445 controlled, directly or indirectly, by any shareholder of the
1446 transferring corporation.

1447 (d) Any transfer by a partnership to any of its partners.

1448 (e) Any conveyance of an interest in a mobile home park
1449 incidental to the financing of such mobile home park.

1450 (f) Any conveyance resulting from the foreclosure of a
1451 mortgage, deed of trust, or other instrument encumbering a
1452 mobile home park or any deed given in lieu of such foreclosure.

1453 (g) Any sale or transfer between or among joint tenants or
1454 tenants in common owning a mobile home park.

1455 (h) Any exchange of a mobile home park for other real
1456 property, whether or not such exchange also involves the payment
1457 of cash or other boot.

1458 (i) The purchase of a mobile home park by a governmental
1459 entity under its powers of eminent domain.

1460 Section 21. Subsection (1) of section 718.501, Florida
1461 Statutes, is amended to read:

1462 718.501 Authority, responsibility, and duties of Division
1463 of Florida Condominiums, Timeshares, and Mobile Homes.—



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1464 (1) The Division of Florida Condominiums, Timeshares, and
1465 Mobile Homes of the Department of Business and Professional
1466 Regulation, referred to as the "division" in this part, has the
1467 power to enforce and ensure compliance with the provisions of
1468 this chapter and rules relating to the development,
1469 construction, sale, lease, ownership, operation, and management
1470 of residential condominium units. In performing its duties, the
1471 division has complete jurisdiction to investigate complaints and
1472 enforce compliance with the provisions of this chapter with
1473 respect to associations that are still under developer control
1474 and complaints against developers involving improper turnover or
1475 failure to turnover, pursuant to s. 718.301. However, after
1476 turnover has occurred, the division shall only have jurisdiction
1477 to investigate complaints related to financial issues, failure
1478 to maintain common elements, elections, and unit owner access to
1479 association records pursuant to s. 718.111(12).

1480 (a)1. The division may make necessary public or private
1481 investigations within or outside this state to determine whether
1482 any person has violated this chapter or any rule or order
1483 hereunder, to aid in the enforcement of this chapter, or to aid
1484 in the adoption of rules or forms hereunder.

1485 2. The division may submit any official written report,
1486 worksheet, or other related paper, or a duly certified copy
1487 thereof, compiled, prepared, drafted, or otherwise made by and
1488 duly authenticated by a financial examiner or analyst to be
1489 admitted as competent evidence in any hearing in which the
1490 financial examiner or analyst is available for cross-examination
1491 and attests under oath that such documents were prepared as a
1492 result of an examination or inspection conducted pursuant to



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1493 this chapter.

1494 (b) The division may require or permit any person to file a
1495 statement in writing, under oath or otherwise, as the division
1496 determines, as to the facts and circumstances concerning a
1497 matter to be investigated.

1498 (c) For the purpose of any investigation under this
1499 chapter, the division director or any officer or employee
1500 designated by the division director may administer oaths or
1501 affirmations, subpoena witnesses and compel their attendance,
1502 take evidence, and require the production of any matter which is
1503 relevant to the investigation, including the existence,
1504 description, nature, custody, condition, and location of any
1505 books, documents, or other tangible things and the identity and
1506 location of persons having knowledge of relevant facts or any
1507 other matter reasonably calculated to lead to the discovery of
1508 material evidence. Upon the failure by a person to obey a
1509 subpoena or to answer questions propounded by the investigating
1510 officer and upon reasonable notice to all persons affected
1511 thereby, the division may apply to the circuit court for an
1512 order compelling compliance.

1513 (d) Notwithstanding any remedies available to unit owners
1514 and associations, if the division has reasonable cause to
1515 believe that a violation of any provision of this chapter or
1516 related rule has occurred, the division may institute
1517 enforcement proceedings in its own name against any developer,
1518 association, officer, or member of the board of administration,
1519 or its assignees or agents, as follows:

1520 1. The division may permit a person whose conduct or
1521 actions may be under investigation to waive formal proceedings



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1522 and enter into a consent proceeding whereby orders, rules, or
1523 letters of censure or warning, whether formal or informal, may
1524 be entered against the person.

1525 2. The division may issue an order requiring the developer,
1526 association, developer-designated officer, or developer-
1527 designated member of the board of administration, developer-
1528 designated assignees or agents, community association manager,
1529 or community association management firm to cease and desist
1530 from the unlawful practice and take such affirmative action as
1531 in the judgment of the division will carry out the purposes of
1532 this chapter. If the division finds that a developer,
1533 association, officer, or member of the board of administration,
1534 or its assignees or agents, is violating or is about to violate
1535 any provision of this chapter, any rule adopted or order issued
1536 by the division, or any written agreement entered into with the
1537 division, and presents an immediate danger to the public
1538 requiring an immediate final order, it may issue an emergency
1539 cease and desist order reciting with particularity the facts
1540 underlying such findings. The emergency cease and desist order
1541 is effective for 90 days. If the division begins nonemergency
1542 cease and desist proceedings, the emergency cease and desist
1543 order remains effective until the conclusion of the proceedings
1544 under ss. 120.569 and 120.57.

1545 3. If a developer fails to pay any restitution determined
1546 by the division to be owed, plus any accrued interest at the
1547 highest rate permitted by law, within 30 days after expiration
1548 of any appellate time period of a final order requiring payment
1549 of restitution or the conclusion of any appeal thereof,
1550 whichever is later, the division shall bring an action in



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1551 circuit or county court on behalf of any association, class of
1552 unit owners, lessees, or purchasers for restitution, declaratory
1553 relief, injunctive relief, or any other available remedy. The
1554 division may also temporarily revoke its acceptance of the
1555 filing for the developer to which the restitution relates until
1556 payment of restitution is made.

1557 4. The division may petition the court for the appointment
1558 of a receiver or conservator. If appointed, the receiver or
1559 conservator may take action to implement the court order to
1560 ensure the performance of the order and to remedy any breach
1561 thereof. In addition to all other means provided by law for the
1562 enforcement of an injunction or temporary restraining order, the
1563 circuit court may impound or sequester the property of a party
1564 defendant, including books, papers, documents, and related
1565 records, and allow the examination and use of the property by
1566 the division and a court-appointed receiver or conservator.

1567 5. The division may apply to the circuit court for an order
1568 of restitution whereby the defendant in an action brought
1569 pursuant to subparagraph 4. shall be ordered to make restitution
1570 of those sums shown by the division to have been obtained by the
1571 defendant in violation of this chapter. Such restitution shall,
1572 at the option of the court, be payable to the conservator or
1573 receiver appointed pursuant to subparagraph 4. or directly to
1574 the persons whose funds or assets were obtained in violation of
1575 this chapter.

1576 6. The division may impose a civil penalty against a
1577 developer or association, or its assignee or agent, for any
1578 violation of this chapter or a rule adopted under this chapter.
1579 The division may impose a civil penalty individually against any



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1580 officer or board member who willfully and knowingly violates a
1581 provision of this chapter, adopted rule, or a final order of the
1582 division; may order the removal of such individual as an officer
1583 or from the board of administration or as an officer of the
1584 association; and may prohibit such individual from serving as an
1585 officer or on the board of a community association for a period
1586 of time. The term "willfully and knowingly" means that the
1587 division informed the officer or board member that his or her
1588 action or intended action violates this chapter, a rule adopted
1589 under this chapter, or a final order of the division and that
1590 the officer or board member refused to comply with the
1591 requirements of this chapter, a rule adopted under this chapter,
1592 or a final order of the division. The division, prior to
1593 initiating formal agency action under chapter 120, shall afford
1594 the officer or board member an opportunity to voluntarily comply
1595 with this chapter, a rule adopted under this chapter, or a final
1596 order of the division. An officer or board member who complies
1597 within 10 days is not subject to a civil penalty. A penalty may
1598 be imposed on the basis of each day of continuing violation, but
1599 in no event shall the penalty for any offense exceed \$5,000. By
1600 January 1, 1998, the division shall adopt, by rule, penalty
1601 guidelines applicable to possible violations or to categories of
1602 violations of this chapter or rules adopted by the division. The
1603 guidelines must specify a meaningful range of civil penalties
1604 for each such violation of the statute and rules and must be
1605 based upon the harm caused by the violation, the repetition of
1606 the violation, and upon such other factors deemed relevant by
1607 the division. For example, the division may consider whether the
1608 violations were committed by a developer or owner-controlled



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1609 association, the size of the association, and other factors. The
1610 guidelines must designate the possible mitigating or aggravating
1611 circumstances that justify a departure from the range of
1612 penalties provided by the rules. It is the legislative intent
1613 that minor violations be distinguished from those which endanger
1614 the health, safety, or welfare of the condominium residents or
1615 other persons and that such guidelines provide reasonable and
1616 meaningful notice to the public of likely penalties that may be
1617 imposed for proscribed conduct. This subsection does not limit
1618 the ability of the division to informally dispose of
1619 administrative actions or complaints by stipulation, agreed
1620 settlement, or consent order. All amounts collected shall be
1621 deposited with the Chief Financial Officer to the credit of the
1622 Division of Florida Condominiums, Timeshares, and Mobile Homes
1623 Trust Fund. If a developer fails to pay the civil penalty and
1624 the amount deemed to be owed to the association, the division
1625 shall issue an order directing that such developer cease and
1626 desist from further operation until such time as the civil
1627 penalty is paid or may pursue enforcement of the penalty in a
1628 court of competent jurisdiction. If an association fails to pay
1629 the civil penalty, the division shall pursue enforcement in a
1630 court of competent jurisdiction, and the order imposing the
1631 civil penalty or the cease and desist order will not become
1632 effective until 20 days after the date of such order. Any action
1633 commenced by the division shall be brought in the county in
1634 which the division has its executive offices or in the county
1635 where the violation occurred.

1636 7. If a unit owner presents the division with proof that
1637 the unit owner has requested access to official records in



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1638 writing by certified mail, and that after 10 days the unit owner
1639 again made the same request for access to official records in
1640 writing by certified mail, and that more than 10 days has
1641 elapsed since the second request and the association has still
1642 failed or refused to provide access to official records as
1643 required by this chapter, the division shall issue a subpoena
1644 requiring production of the requested records where the records
1645 are kept pursuant to s. 718.112.

1646 8. In addition to subparagraph 6., the division may seek
1647 the imposition of a civil penalty through the circuit court for
1648 any violation for which the division may issue a notice to show
1649 cause under paragraph (r). The civil penalty shall be at least
1650 \$500 but no more than \$5,000 for each violation. The court may
1651 also award to the prevailing party court costs and reasonable
1652 attorney's fees and, if the division prevails, may also award
1653 reasonable costs of investigation.

1654 9. Notwithstanding subparagraph 6., when the division finds
1655 that an officer or director has intentionally falsified
1656 association records with the intent to conceal material facts
1657 from the division, the board, or unit owners, the division shall
1658 prohibit the officer or director from acting as an officer or
1659 director of any condominium, cooperative, or homeowners'
1660 association for at least 1 year.

1661 10. When the division finds that any person has derived an
1662 improper personal benefit from a condominium association, the
1663 division shall order the person to pay restitution to the
1664 association and shall order the person to pay to the division
1665 the costs of investigation and prosecution.

1666 (e) The division may prepare and disseminate a prospectus



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1667 and other information to assist prospective owners, purchasers,
1668 lessees, and developers of residential condominiums in assessing
1669 the rights, privileges, and duties pertaining thereto.

1670 (f) The division has authority to adopt rules pursuant to
1671 ss. 120.536(1) and 120.54 to implement and enforce the
1672 provisions of this chapter.

1673 (g) The division shall establish procedures for providing
1674 notice to an association and the developer during the period
1675 where the developer controls the association when the division
1676 is considering the issuance of a declaratory statement with
1677 respect to the declaration of condominium or any related
1678 document governing in such condominium community.

1679 (h) The division shall furnish each association which pays
1680 the fees required by paragraph (2) (a) a copy of this act,
1681 subsequent changes to this act on an annual basis, an amended
1682 version of this act as it becomes available from the Secretary
1683 of State's office on a biennial basis, and the rules adopted
1684 thereto on an annual basis.

1685 (i) The division shall annually provide each association
1686 with a summary of declaratory statements and formal legal
1687 opinions relating to the operations of condominiums which were
1688 rendered by the division during the previous year.

1689 (j) The division shall provide training and educational
1690 programs for condominium association board members and unit
1691 owners. The training may, in the division's discretion, include
1692 web-based electronic media, and live training and seminars in
1693 various locations throughout the state. The division shall have
1694 the authority to review and approve education and training
1695 programs for board members and unit owners offered by providers



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1696 and shall maintain a current list of approved programs and
1697 providers and shall make such list available to board members
1698 and unit owners in a reasonable and cost-effective manner.

1699 (k) The division shall maintain a toll-free telephone
1700 number accessible to condominium unit owners.

1701 (l) The division shall develop a program to certify both
1702 volunteer and paid mediators to provide mediation of condominium
1703 disputes. The division shall provide, upon request, a list of
1704 such mediators to any association, unit owner, or other
1705 participant in arbitration proceedings under s. 718.1255
1706 requesting a copy of the list. The division shall include on the
1707 list of volunteer mediators only the names of persons who have
1708 received at least 20 hours of training in mediation techniques
1709 or who have mediated at least 20 disputes. In order to become
1710 initially certified by the division, paid mediators must be
1711 certified by the Supreme Court to mediate court cases in county
1712 or circuit courts. However, the division may adopt, by rule,
1713 additional factors for the certification of paid mediators,
1714 which factors must be related to experience, education, or
1715 background. Any person initially certified as a paid mediator by
1716 the division must, in order to continue to be certified, comply
1717 with the factors or requirements imposed by rules adopted by the
1718 division.

1719 (m) When a complaint is made, the division shall conduct
1720 its inquiry with due regard to the interests of the affected
1721 parties. Within 30 days after receipt of a complaint, the
1722 division shall acknowledge the complaint in writing and notify
1723 the complainant whether the complaint is within the jurisdiction
1724 of the division and whether additional information is needed by



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1725 the division from the complainant. The division shall conduct
1726 its investigation and shall, within 90 days after receipt of the
1727 original complaint or of timely requested additional
1728 information, take action upon the complaint. However, the
1729 failure to complete the investigation within 90 days does not
1730 prevent the division from continuing the investigation,
1731 accepting or considering evidence obtained or received after 90
1732 days, or taking administrative action if reasonable cause exists
1733 to believe that a violation of this chapter or a rule of the
1734 division has occurred. If an investigation is not completed
1735 within the time limits established in this paragraph, the
1736 division shall, on a monthly basis, notify the complainant in
1737 writing of the status of the investigation. When reporting its
1738 action to the complainant, the division shall inform the
1739 complainant of any right to a hearing pursuant to ss. 120.569
1740 and 120.57.

1741 (n) Condominium association directors, officers, and
1742 employees; condominium developers; community association
1743 managers; and community association management firms have an
1744 ongoing duty to reasonably cooperate with the division in any
1745 investigation pursuant to this section. The division shall refer
1746 to local law enforcement authorities any person whom the
1747 division believes has altered, destroyed, concealed, or removed
1748 any record, document, or thing required to be kept or maintained
1749 by this chapter with the purpose to impair its verity or
1750 availability in the department's investigation.

1751 (o) The division may:

1752 1. Contract with agencies in this state or other
1753 jurisdictions to perform investigative functions; or



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1754 2. Accept grants-in-aid from any source.

1755 (p) The division shall cooperate with similar agencies in
1756 other jurisdictions to establish uniform filing procedures and
1757 forms, public offering statements, advertising standards, and
1758 rules and common administrative practices.

1759 (q) The division shall consider notice to a developer to be
1760 complete when it is delivered to the developer's address
1761 currently on file with the division.

1762 (r) In addition to its enforcement authority, the division
1763 may issue a notice to show cause, which shall provide for a
1764 hearing, upon written request, in accordance with chapter 120.

1765 (s) The division shall submit to the Governor, the
1766 President of the Senate, the Speaker of the House of
1767 Representatives, and the chairs of the legislative
1768 appropriations committees an annual report that includes, but
1769 need not be limited to, the number of training programs provided
1770 for condominium association board members and unit owners, the
1771 number of complaints received by type, the number and percent of
1772 complaints acknowledged in writing within 30 days and the number
1773 and percent of investigations acted upon within 90 days in
1774 accordance with paragraph (m), and the number of investigations
1775 exceeding the 90-day requirement. The annual report shall also
1776 include an evaluation of the division's core business processes
1777 and make recommendations for improvements, including statutory
1778 changes. The report shall be submitted by September 30 following
1779 the end of the fiscal year.

1780 Section 22. Paragraph (d) of subsection (1) of section
1781 718.115, Florida Statutes, is amended to read:

1782 718.115 Common expenses and common surplus.-



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1783 (1)
1784 (d) If so provided in the declaration, the cost of
1785 communications services as defined in chapter 202, information
1786 services, or Internet services ~~a master antenna television~~
1787 ~~system or duly franchised cable television service~~ obtained
1788 pursuant to a bulk contract shall be deemed a common expense. If
1789 the declaration does not provide for the cost of communications
1790 services as defined in chapter 202, information services, or
1791 Internet services ~~a master antenna television system or duly~~
1792 ~~franchised cable television service~~ obtained under a bulk
1793 contract as a common expense, the board may enter into such a
1794 contract, and the cost of the service will be a common expense
1795 but allocated on a per-unit basis rather than a percentage basis
1796 if the declaration provides for other than an equal sharing of
1797 common expenses, and any contract entered into before July 1,
1798 1998, in which the cost of the service is not equally divided
1799 among all unit owners, may be changed by vote of a majority of
1800 the voting interests present at a regular or special meeting of
1801 the association, to allocate the cost equally among all units.
1802 The contract shall be for a term of not less than 2 years.

1803 1. Any contract made by the board after the effective date
1804 hereof for communications services as defined in chapter 202,
1805 information services, or Internet services ~~a community antenna~~
1806 ~~system or duly franchised cable television service~~ may be
1807 canceled by a majority of the voting interests present at the
1808 next regular or special meeting of the association. Any member
1809 may make a motion to cancel the ~~said~~ contract, but if no motion
1810 is made or if such motion fails to obtain the required majority
1811 at the next regular or special meeting, whichever occurs ~~is~~



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1812 sooner, following the making of the contract, ~~then~~ such contract
1813 shall be deemed ratified for the term therein expressed.

1814 2. Any such contract shall provide, and shall be deemed to
1815 provide if not expressly set forth, that any hearing-impaired or
1816 legally blind unit owner who does not occupy the unit with a
1817 non-hearing-impaired or sighted person, or any unit owner
1818 receiving supplemental security income under Title XVI of the
1819 Social Security Act or food stamps as administered by the
1820 Department of Children and Family Services pursuant to s.
1821 414.31, may discontinue the cable or video service without
1822 incurring disconnect fees, penalties, or subsequent service
1823 charges, and, as to such units, the owners shall not be required
1824 to pay any common expenses charge related to such service. If
1825 fewer ~~less~~ than all members of an association share the expenses
1826 of cable or video service ~~television~~, the expense shall be
1827 shared equally by all participating unit owners. The association
1828 may use the provisions of s. 718.116 to enforce payment of the
1829 shares of such costs by the unit owners receiving cable or video
1830 service ~~television~~.

1831
1832 ===== T I T L E A M E N D M E N T =====

1833 And the title is amended as follows:

1834 Delete lines 7 - 75

1835 and insert:

1836 association manager licenses; amending s. 718.110,
1837 F.S.; providing for the application of certain
1838 amendments to a declaration of condominium to certain
1839 unit owners; amending s. 718.111, F.S.; providing
1840 penalties for any person who knowingly or



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1841 intentionally defaces or destroys certain records of
1842 an association with the intent to harm the association
1843 or any of its members; providing that an association
1844 is not responsible for the use or misuse of certain
1845 information obtained pursuant to state law requiring
1846 the maintenance of certain records of an association;
1847 providing an exception; providing that the right to
1848 inspect and copy records of an association does not
1849 include certain computer-generated reports; providing
1850 that, notwithstanding the other requirements, certain
1851 records are not accessible to unit owners; requiring
1852 that any rules adopted for the purpose of setting
1853 forth accounting principles or addressing financial
1854 reporting requirements include certain provisions and
1855 standards; amending s. 718.112, F.S.; revising
1856 requirements for the reappointment of certain board
1857 members; revising board eligibility requirements;
1858 revising notice requirements for board candidates;
1859 establishing requirements for newly elected board
1860 members; providing that a director or officer
1861 delinquent in the payment of fee, fine, regular
1862 assessment, or special assessments by more than a
1863 specified number of days is deemed to have abandoned
1864 the office; requiring that a director charged by
1865 information or indictment of certain offenses
1866 involving an association's funds or property be
1867 removed from office; amending s. 718.115, F.S.;
1868 requiring that certain services obtained pursuant to a
1869 bulk contract as provided in the declaration be deemed



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1870 a common expense; requiring that such contracts
1871 contain certain provisions; authorizing the
1872 cancellation of certain contracts; amending s.
1873 718.116, F.S.; limiting the amount of certain costs to
1874 the unit owner; authorizing an association to demand
1875 future regular assessments related to the condominium
1876 unit under specified conditions; providing that the
1877 demand is continuing in nature; requiring that a
1878 tenant continue to pay assessments until the
1879 occurrence of specified events; requiring the delivery
1880 of notice of such demand; limiting the liability of a
1881 tenant; authorizing the association to sue for
1882 eviction or to be placed in possession under specified
1883 conditions; amending s. 718.303, F.S.; authorizing an
1884 association to suspend for a reasonable time the right
1885 of a unit owner or the unit's occupant, licensee, or
1886 invitee to use certain common elements under certain
1887 circumstances; excluding certain common elements from
1888 such authorization; prohibiting a fine from being
1889 levied or a suspension from being imposed unless the
1890 association meets certain notice requirements;
1891 providing circumstances under which such notice
1892 requirements do not apply; providing procedures and
1893 notice requirements for levying a fine or imposing a
1894 suspension; authorizing an association to suspend
1895 voting rights due to nonpayment of assessments, fines,
1896 or other charges delinquent by a specified number of
1897 days under certain circumstances; amending s. 718.103,
1898 F.S.; expanding the definition of "developer" to



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1899 include a bulk assignee or bulk buyer; amending s.
1900 718.301, F.S.; revising conditions under which unit
1901 owners other than the developer may elect not less
1902 than a majority of the members of the board of
1903 administration of an association; amending s. 719.108,
1904 F.S.; limiting certain costs to a unit owner;
1905 providing a prioritized list for disbursement of
1906 payments received by an association; providing for a
1907 lien by an association on a condominium unit for
1908 certain fees and costs; providing procedures and
1909 notice requirements for the filing of a lien by an
1910 association; authorizing an association to demand
1911 future regular assessments related to a unit under
1912 specified conditions; amending s. 720.304, F.S.;
1913 providing that a flagpole and any flagpole display are
1914 subject to certain codes and regulations; amending s.
1915 720.305, F.S.; authorizing the association to suspend
1916 certain rights under certain circumstances; providing
1917 that certain provisions regarding the suspension-of-
1918 use rights of an association do not apply to certain
1919 portions of common areas; providing procedures and
1920 notice requirements for levying a fine or imposing a
1921 suspension; amending s. 720.3085, F.S.; limiting
1922 certain costs to the unit owner; authorizing an
1923 association to demand future regular assessments
1924 related to a parcel under specified conditions;
1925 amending s. 720.31, F.S.; authorizing an association
1926 to enter into certain agreements; requiring that
1927 certain items be stated and fully described in the



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1928 declaration; limiting an association's power to enter
1929 into such agreements after a specified period
1930 following the recording of a declaration; requiring
1931 that certain agreements be approved by a specified
1932 percentage of voting interests of an association when
1933 the declaration is silent as to the authority of an
1934 association to enter into such agreement; authorizing
1935 an association to join with other associations or a
1936 master association under certain circumstances and for
1937 specified purposes; amending s. 721.05, F.S.; limiting
1938 the definition of "facility" to certain permanent
1939 amenities; repealing s. 553.509(2), F.S., relating to
1940 public elevators and emergency operation plans in
1941 certain condominiums and multifamily dwellings;
1942 amending s. 720.303, F.S.; revising provisions
1943 relating to homeowners' association board meetings,
1944 inspection of records, and reserve accounts of
1945 budgets; prohibiting certain association personnel
1946 from receiving a salary or compensation; providing
1947 exceptions; amending s. 720.306, F.S.; providing
1948 requirements for secret ballots; creating s. 720.315,
1949 F.S.; prohibiting the board of directors of a
1950 homeowners' association from levying a special
1951 assessment before turnover of the association by the
1952 developer unless certain conditions are met; amending
1953 s. 723.071, F.S.; revising notice requirements
1954 relating to the sale of mobile home parks; revising
1955 provisions relating to a homeowners' association's
1956 right to purchase the mobile home park; providing



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1957 requirements for the purchase of the park by a
1958 homeowners' association; requiring that a park owner
1959 comply with certain provisions of state law if the
1960 mobile home owners have informed the park owner that
1961 they are ready and willing to purchase the park;
1962 providing that the park owner has no obligation to
1963 comply with such provisions under certain
1964 circumstances; providing requirements for the
1965 homeowners' expression of readiness and willingness to
1966 purchase the park; deleting definitions to conform to
1967 changes made by the act; amending s. 718.501, F.S.;
1968 providing for division jurisdiction to investigate
1969 complaints concerning failure to maintain common
1970 elements; prohibiting an officer or director from
1971 acting as such for a specified period after having
1972 been found to have committed specified violations;
1973 providing for payment of restitution and costs of
1974 investigation and prosecution in certain
1975 circumstances; amending s. 718.115, F.S.; requiring
1976 that certain services obtained pursuant to a bulk
1977 contract as provided in the declaration be deemed a
1978 common expense; requiring that such contracts contain
1979 certain provisions; authorizing the cancellation of
1980 certain contracts; creating s. 720.3095, F.S.;