

By the Committee on Regulated Industries; and Senator Hays

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1 A bill to be entitled
2 An act relating to homeowners' associations; amending
3 s. 468.436, F.S.; providing grounds for disciplinary
4 actions against community association managers;
5 amending s. 720.303, F.S.; requiring official records
6 to be maintained within a specified distance of the
7 association for a specified time; authorizing
8 associations to maintain such records online;
9 requiring associations to allow a member to use a
10 portable device to make an electronic copy of the
11 official records and prohibiting associations from
12 charging a fee for such an electronic copy; removing
13 provisions allowing the association to charge fees for
14 personnel costs related to records access; requiring
15 budgets to designate permissible uses of reserve
16 accounts; requiring a community association manager,
17 or the association in the absence of a community
18 association manager, to report certain information to
19 the Division of Florida Condominiums, Timeshares, and
20 Mobile Homes; providing an expiration date for the
21 reporting requirements; creating s. 720.3033, F.S.;
22 requiring association directors to file with the
23 association secretary written certification that they
24 have read certain association documents, will uphold
25 the documents, and will uphold their fiduciary
26 responsibility to the members; providing that such
27 certification is valid while the director is on the
28 board; providing penalties for failure to file such
29 certification; requiring the association secretary to

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30 retain such certification for 5 years; requiring the
31 board to follow specified procedures relating to
32 contracts or transactions between the association and
33 certain entities; providing for disclosure of the
34 contract or transaction to members; providing for the
35 cancellation of such contract or transaction under
36 certain circumstances; prohibiting any association
37 officer, director, or manager from soliciting or
38 receiving certain personal benefits from any person
39 providing or offering to provide goods or services to
40 the association and providing for removal for
41 knowingly taking such action; providing an exception;
42 providing for the removal of any director or officer
43 charged with a felony theft or embezzlement offense
44 involving association funds or property; providing for
45 the reinstatement of such person under certain
46 circumstances; prohibiting a member with pending
47 criminal charges from certain positions; requiring the
48 association to maintain insurance or a bond to cover
49 funds that will be in the custody of the association
50 or its management agent; providing a definition;
51 amending s. 720.306, F.S.; revising procedures for the
52 election of directors; amending s. 720.307, F.S.;
53 providing additional circumstances for authorizing
54 members to elect a majority of association board
55 members; providing circumstances under which members
56 other than the developer are authorized to elect a
57 specified number of members to the board of directors;
58 amending s. 720.308, F.S.; prohibiting the levy of

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59 special assessments or an increase in assessments
60 levied pursuant to the annual budget under certain
61 circumstances; providing an effective date.

62
63 Be It Enacted by the Legislature of the State of Florida:

64
65 Section 1. Paragraph (b) of subsection (2) of section
66 468.436, Florida Statutes, is amended to read:

67 468.436 Disciplinary proceedings.—

68 (2) The following acts constitute grounds for which the
69 disciplinary actions in subsection (4) may be taken:

70 (b)1. Violation of any provision of this part.

71 2. Violation of any lawful order or rule rendered or
72 adopted by the department or the council.

73 3. Being convicted of or pleading nolo contendere to a
74 felony in any court in the United States.

75 4. Obtaining a license or certification or any other order,
76 ruling, or authorization by means of fraud, misrepresentation,
77 or concealment of material facts.

78 5. Committing acts of gross misconduct or gross negligence
79 in connection with the profession.

80 6. Contracting, on behalf of an association, with any
81 entity in which the licensee has a financial interest that is
82 not disclosed.

83 7. Failing to report to the division as required in s.
84 720.303(13).

85 8. Violating any provision of chapter 720 during the course
86 of performing community association management services pursuant
87 to a contract with a homeowners' association.

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88 Section 2. Subsection (5) and paragraph (b) of subsection
89 (6) of section 720.303, Florida Statutes, are amended, and
90 subsection (13) is added to that section, to read:

91 720.303 Association powers and duties; meetings of board;
92 official records; budgets; financial reporting; association
93 funds; recalls.—

94 (5) INSPECTION AND COPYING OF RECORDS.—The official records
95 shall be maintained within the state for at least 7 years and
96 shall be made available to a parcel owner for inspection or
97 photocopying within 45 miles of the community or within the
98 county in which the association is located within 10 business
99 days after receipt by the board or its designee of a written
100 request ~~must be open to inspection and available for~~
101 ~~photocopying by members or their authorized agents at reasonable~~
102 ~~times and places within 10 business days after receipt of a~~
103 ~~written request for access.~~ This subsection may be complied with
104 by having a copy of the official records available for
105 inspection or copying in the community or, at the option of the
106 association, by making the records available to a parcel owner
107 electronically via the Internet or by allowing the records to be
108 viewed in electronic format on a computer screen and printed
109 upon request. If the association has a photocopy machine
110 available where the records are maintained, it must provide
111 parcel owners with copies on request during the inspection if
112 the entire request is limited to no more than 25 pages. An
113 association shall allow a member or his or her authorized
114 representative to use a portable device, including a smartphone,
115 tablet, portable scanner, or any other technology capable of
116 scanning or taking photographs, to make an electronic copy of

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117 the official records in lieu of providing the member or his or
118 her authorized representative with a copy of such records. The
119 association may not charge a fee to a member or his or her
120 authorized representative for such use of a portable device.

121 (a) The failure of an association to provide access to the
122 records within 10 business days after receipt of a written
123 request submitted by certified mail, return receipt requested,
124 creates a rebuttable presumption that the association willfully
125 failed to comply with this subsection.

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

132 (c) The association may adopt reasonable written rules
133 governing the frequency, time, location, notice, records to be
134 inspected, and manner of inspections, but may not require a
135 parcel owner to demonstrate any proper purpose for the
136 inspection, state any reason for the inspection, or limit a
137 parcel owner's right to inspect records to less than one 8-hour
138 business day per month. The association may impose fees to cover
139 the costs of providing copies of the official records,
140 including, ~~without limitation,~~ the costs of copying and the
141 costs required for personnel to retrieve and copy the records if
142 retrieving the records exceeds one-half hour and if the
143 personnel costs do not exceed \$20 per hour. The association may
144 charge up to 25 ~~50~~ cents per page for copies made on the
145 association's photocopier. If the association does not have a

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146 photocopy machine available where the records are kept, or if
147 the records requested to be copied exceed 25 pages in length,
148 the association may have copies made by an outside duplicating
149 service vendor ~~or association management company personnel~~ and
150 may charge the actual cost of copying, as supported by the
151 vendor invoice ~~including any reasonable costs involving~~
152 ~~personnel fees and charges at an hourly rate for vendor or~~
153 ~~employee time to cover administrative costs to the vendor or~~
154 ~~association~~. The association shall maintain an adequate number
155 of copies of the recorded governing documents, to ensure their
156 availability to members and prospective members. Notwithstanding
157 this paragraph, the following records are not accessible to
158 members or parcel owners:

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, but not limited to, a record
162 prepared by an association attorney or prepared at the
163 attorney's express direction which reflects a mental impression,
164 conclusion, litigation strategy, or legal theory of the attorney
165 or the association and which was prepared exclusively for civil
166 or criminal litigation or for adversarial administrative
167 proceedings or which was prepared in anticipation of such
168 litigation or proceedings until the conclusion of the litigation
169 or proceedings.

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

173 3. Personnel records of the association's employees,
174 including, but not limited to, disciplinary, payroll, health,

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175 and insurance records. For purposes of this subparagraph, the
176 term "personnel records" does not include written employment
177 agreements with an association employee or budgetary or
178 financial records that indicate the compensation paid to an
179 association employee.

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

181 5. Social security numbers, driver's license numbers,
182 credit card numbers, electronic mailing addresses, telephone
183 numbers, facsimile numbers, emergency contact information, any
184 addresses for a parcel owner other than as provided for
185 association notice requirements, and other personal identifying
186 information of any person, excluding the person's name, parcel
187 designation, mailing address, and property address. However, an
188 owner may consent in writing to the disclosure of protected
189 information described in this subparagraph. The association is
190 not liable for the disclosure of information that is protected
191 under this subparagraph if the information is included in an
192 official record of the association and is voluntarily provided
193 by an owner and not requested by the association.

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

196 7. The software and operating system used by the
197 association which allows the manipulation of data, even if the
198 owner owns a copy of the same software used by the association.
199 The data is part of the official records of the association.

200 (d) The association or its authorized agent is not required
201 to provide a prospective purchaser or lienholder with
202 information about the residential subdivision or the association
203 other than information or documents required by this chapter to

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204 be made available or disclosed. The association or its
205 authorized agent may charge a reasonable fee to the prospective
206 purchaser or lienholder or the current parcel owner or member
207 for providing good faith responses to requests for information
208 by or on behalf of a prospective purchaser or lienholder, other
209 than that required by law, if the fee does not exceed \$150 plus
210 the reasonable cost of photocopying and any attorney's fees
211 incurred by the association in connection with the response.

212 (6) BUDGETS.—

213 (b) In addition to annual operating expenses, the budget
214 may include reserve accounts for capital expenditures and
215 deferred maintenance for which the association is responsible.
216 If reserve accounts are established, the budget must designate
217 the components for which the reserve accounts may be used. If
218 reserve accounts are not established pursuant to paragraph (d),
219 funding of such reserves is limited to the extent that the
220 governing documents limit increases in assessments, including
221 reserves. If the budget of the association includes reserve
222 accounts established pursuant to paragraph (d), such reserves
223 shall be determined, maintained, and waived in the manner
224 provided in this subsection. Once an association provides for
225 reserve accounts pursuant to paragraph (d), the association
226 shall thereafter determine, maintain, and waive reserves in
227 compliance with this subsection. This section does not preclude
228 the termination of a reserve account established pursuant to
229 this paragraph upon approval of a majority of the total voting
230 interests of the association. Upon such approval, the
231 terminating reserve account shall be removed from the budget.

232 (13) REPORTING REQUIREMENT.—The community association

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233 manager, or the association when there is no community
234 association manager, shall report to the division by November
235 22, 2013, and annually thereafter, in a manner and form
236 prescribed by the division.

237 (a) The report shall include the association's:

238 1. Legal name.

239 2. Federal employer identification number.

240 3. Mailing and physical addresses.

241 4. Total number of parcels.

242 5. Total amount of revenues and expenses from the
243 association's annual budget.

244 (b) For associations in which control of the association
245 has not been transitioned to nondeveloper members, as set forth
246 in s. 720.307, the report shall also include the developer's:

247 1. Legal name.

248 2. Mailing address.

249 3. Total number of parcels owned on the date of reporting.

250 (c) By October 1, 2013, the department shall establish and
251 implement a registration system through an Internet website that
252 provides for the reporting requirements of paragraphs (a) and
253 (b).

254 (d) On or before December 1, 2013, and annually thereafter
255 by December 1, the department shall submit a report to the
256 Governor, the President of the Senate, and the Speaker of the
257 House of Representatives providing the homeowner association
258 data reported pursuant to this subsection.

259 (e) The department may adopt rules pursuant to ss.
260 120.536(1) and 120.54 to implement the provisions of this
261 subsection.

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262 (f) This subsection shall expire on July 1, 2016, unless
263 reenacted by the Legislature.

264 Section 3. Section 720.3033, Florida Statutes, is created
265 to read:

266 720.3033 Officers and directors.-

267 (1) (a) Within 90 days after being elected or appointed to
268 the board, each director shall certify in writing to the
269 secretary of the association that he or she has read the
270 association's declaration of covenants, articles of
271 incorporation, bylaws, and current written rules and policies;
272 that he or she will work to uphold such documents and policies
273 to the best of his or her ability; and that he or she will
274 faithfully discharge his or her fiduciary responsibility to the
275 association's members.

276 (b) The written certification is valid for the
277 uninterrupted tenure of the director on the board. A director
278 who does not timely file the written certification shall be
279 suspended from the board until he or she complies with the
280 requirement. The board may temporarily fill the vacancy during
281 the period of suspension.

282 (c) The secretary shall retain each director's written
283 certification for inspection by the members for 5 years after
284 the director's election.

285 (2) If the association enters into a contract or other
286 transaction with any of its directors or a corporation, firm,
287 association, or other entity in which an association director is
288 also a director or officer or is financially interested, the
289 board must:

290 (a) Comply with the requirements of s. 617.0832.

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291 (b) Enter the disclosures required by s. 617.0832 into the
292 written minutes of the meeting.

293 (c) Approve the contract or other transaction by an
294 affirmative vote of two-thirds of the directors present.

295 (d) At the next regular or special meeting of the members,
296 disclose the existence of the contract or other transaction to
297 the members. Upon motion of any member, the contract or
298 transaction shall be brought up for a vote and may be canceled
299 by a majority vote of the members present. If the members cancel
300 the contract, the association is only liable for the reasonable
301 value of goods and services provided up to the time of
302 cancellation and is not liable for any termination fee,
303 liquidated damages, or other penalty for such cancellation.

304 (3) An officer, director, or manager may not solicit, offer
305 to accept, or accept any good or service of value for which
306 consideration has not been provided for his or her benefit or
307 for the benefit of a member of his or her immediate family from
308 any person providing or proposing to provide goods or services
309 to the association. If the board finds that an officer or
310 director has violated this subsection, the board shall
311 immediately remove from office the officer or director. The
312 vacancy shall be filled according to law until the end of the
313 period of the end of the director's term of office. However, an
314 officer, director, or manager may accept food to be consumed at
315 a business meeting with a value of less than \$25 per individual
316 or a service or good received in connection with trade fairs or
317 education programs.

318 (4) The board shall immediately remove from office a
319 director or officer charged by information or indictment with a

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320 felony theft or embezzlement offense involving the association's
321 funds or property. The vacancy shall be filled according to
322 general law until the end of the period of the suspension or the
323 end of the director's term of office, whichever occurs first.
324 However, if the charges are resolved without a finding of guilt
325 or without acceptance of a plea of guilt or nolo contendere, the
326 director or officer shall be reinstated for any remainder of his
327 or her term of office. A member who has such criminal charges
328 pending may not be appointed or elected to a position as a
329 director or officer.

330 (5) All associations shall maintain insurance or a fidelity
331 bond for all persons who control or disburse funds of the
332 association. The insurance policy or fidelity bond must cover
333 the maximum funds that will be in the custody of the association
334 or its management agent at any one time. As used in this
335 subsection, the term "persons who control or disburse funds of
336 the association" includes, but is not limited to, persons
337 authorized to sign checks on behalf of the association, and the
338 president, secretary, and treasurer of the association. The
339 association shall bear the cost of any insurance or bond.

340 Section 4. Paragraph (a) of subsection (9) of section
341 720.306, Florida Statutes, is amended to read:

342 720.306 Meetings of members; voting and election
343 procedures; amendments.-

344 (9) (a) ELECTIONS AND BOARD VACANCIES.-Elections of
345 directors must be conducted in accordance with the procedures
346 set forth in the governing documents of the association. All
347 members of the association are eligible to serve on the board of
348 directors, and a member may nominate himself or herself as a

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349 candidate for the board at a meeting where the election is to be
350 held; provided, however, that ~~or~~, if the election process allows
351 candidates to nominate themselves ~~voting by absentee ballot~~, in
352 advance of the balloting, the association is not required to
353 allow nominations at the meeting. An election is not required
354 unless more candidates are nominated than vacancies exist.
355 Except as otherwise provided in the governing documents, boards
356 of directors must be elected by a plurality of the votes cast by
357 eligible voters.

358 Section 5. Subsection (1) of section 720.307, Florida
359 Statutes, is amended, present subsections (2) through (4) are
360 renumbered as subsections (4) through (6), respectively, and new
361 subsections (2) and (3) are added to that section, to read:

362 720.307 Transition of association control in a community.-
363 With respect to homeowners' associations:

364 (1) Members other than the developer are entitled to elect
365 at least a majority of the members of the board of directors of
366 the homeowners' association when the earlier of the following
367 events occurs:

368 (a) Three months after 90 percent of the parcels in all
369 phases of the community that will ultimately be operated by the
370 homeowners' association have been conveyed to members; ~~or~~

371 (b) Such other percentage of the parcels has been conveyed
372 to members, or such other date or event has occurred, as is set
373 forth in the governing documents in order to comply with the
374 requirements of any governmentally chartered entity with regard
375 to the mortgage financing of parcels;

376 (c) Two years after the developer has ceased construction
377 or ceased to offer parcels for sale in the ordinary course of

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378 business;

379 (d) Upon the developer abandoning or deserting its
380 responsibility to maintain and complete the advertised amenities
381 or infrastructure. There is a rebuttable presumption that the
382 developer has abandoned and deserted the property if the
383 developer has not engaged in construction or sale of properties
384 or has unpaid assessments or guaranteed amounts under s. 720.308
385 for a period of more than 2 years;

386 (e) Upon the developer filing a petition seeking protection
387 under chapter 7 of the federal Bankruptcy Code;

388 (f) Upon the developer losing title to the property through
389 a foreclosure action or the transfer of a deed in lieu of
390 foreclosure; or

391 (g) Upon a receiver for the developer being appointed by a
392 circuit court and not being discharged within 30 days after such
393 appointment, unless the court determines within 30 days after
394 such appointment that transfer of control would be detrimental
395 to the association or its members.

396
397 For purposes of this section, the term "members other than the
398 developer" shall not include builders, contractors, or others
399 who purchase a parcel for the purpose of constructing
400 improvements thereon for resale.

401 (2) Members other than the developer are entitled to elect
402 at least one member of the board of directors of the homeowners'
403 association if 15 percent of the parcels in all phases of the
404 community which will ultimately be operated by the association
405 have been conveyed to members.

406 (3) Members other than the developer are entitled to elect

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407 at least two members of the board of directors of the
408 homeowners' association if 50 percent of the parcels in all
409 phases of the community which will ultimately be operated by the
410 association have been conveyed to members.

411 Section 6. Subsection (7) is added to section 720.308,
412 Florida Statutes, to read:

413 720.308 Assessments and charges.—

414 (7) Assessments levied pursuant to the annual budget may
415 not be increased, and special assessments may not be levied,
416 without the approval of the majority of nondeveloper voting
417 interests while the developer is in control of the association
418 and entitled to elect the majority of the members of the board,
419 unless the budget specifically describes and justifies the
420 increased assessment or the levy of the special assessment.

421 Section 7. This act shall take effect July 1, 2013.