

By the Committees on Rules; Community Affairs; and 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 for an
27 educational certificate in lieu of written
28 certification; providing that such certification is
29 valid while the director is on the board; providing

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

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59 specified number of members to the board of directors;
60 amending s. 720.3075, F.S.; providing public policy
61 regarding prohibited clauses in association documents;
62 providing prohibited clauses in association documents;
63 amending s. 720.3085, F.S.; defining the term
64 "previous owner" to exclude certain associations from
65 provisions relating to the liability of previous
66 owners of parcels for unpaid assessments; limiting a
67 present owner's liability for certain assessments;
68 providing an effective date.

69
70 Be It Enacted by the Legislature of the State of Florida:

71
72 Section 1. Paragraph (b) of subsection (2) of section
73 468.436, Florida Statutes, is amended to read:

74 468.436 Disciplinary proceedings.—

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

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

78 2. Violation of any lawful order or rule rendered or
79 adopted by the department or the council.

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

82 4. Obtaining a license or certification or any other order,
83 ruling, or authorization by means of fraud, misrepresentation,
84 or concealment of material facts.

85 5. Committing acts of gross misconduct or gross negligence
86 in connection with the profession.

87 6. Contracting, on behalf of an association, with any

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88 entity in which the licensee has a financial interest that is
89 not disclosed.

90 7. Violating any provision of chapters 718, 719, or 720
91 during the course of performing community association management
92 services pursuant to a contract with a community association as
93 defined in s. 468.431(1).

94 Section 2. Subsection (5) and paragraph (d) of subsection
95 (6) of section 720.303, Florida Statutes, are amended, and
96 subsection (13) is added to that section, to read:

97 720.303 Association powers and duties; meetings of board;
98 official records; budgets; financial reporting; association
99 funds; recalls.—

100 (5) INSPECTION AND COPYING OF RECORDS.—The official records
101 shall be maintained within the state for at least 7 years and
102 shall be made available to a parcel owner for inspection or
103 photocopying within 45 miles of the community or within the
104 county in which the association is located within 10 business
105 days after receipt by the board or its designee of a written
106 request ~~must be open to inspection and available for~~
107 ~~photocopying by members or their authorized agents at reasonable~~
108 ~~times and places within 10 business days after receipt of a~~
109 ~~written request for access.~~ This subsection may be complied with
110 by having a copy of the official records available for
111 inspection or copying in the community or, at the option of the
112 association, by making the records available to a parcel owner
113 electronically via the Internet or by allowing the records to be
114 viewed in electronic format on a computer screen and printed
115 upon request. If the association has a photocopy machine
116 available where the records are maintained, it must provide

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117 parcel owners with copies on request during the inspection if
118 the entire request is limited to no more than 25 pages. An
119 association shall allow a member or his or her authorized
120 representative to use a portable device, including a smartphone,
121 tablet, portable scanner, or any other technology capable of
122 scanning or taking photographs, to make an electronic copy of
123 the official records in lieu of providing the member or his or
124 her authorized representative with a copy of such records. The
125 association may not charge a fee to a member or his or her
126 authorized representative for such use of a portable device.

127 (a) The failure of an association to provide access to the
128 records within 10 business days after receipt of a written
129 request submitted by certified mail, return receipt requested,
130 creates a rebuttable presumption that the association willfully
131 failed to comply with this subsection.

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

138 (c) The association may adopt reasonable written rules
139 governing the frequency, time, location, notice, records to be
140 inspected, and manner of inspections, but may not require a
141 parcel owner to demonstrate any proper purpose for the
142 inspection, state any reason for the inspection, or limit a
143 parcel owner's right to inspect records to less than one 8-hour
144 business day per month. The association may impose fees to cover
145 the costs of providing copies of the official records,

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146 including, ~~without limitation,~~ the costs of copying and the
147 costs required for personnel to retrieve and copy the records if
148 the time spent retrieving and copying the records exceeds one-
149 half hour and if the personnel costs do not exceed \$20 per hour.
150 No personnel costs may be charged for records requests that
151 result in 25 or fewer pages. The association may charge up to 25
152 ~~50~~ cents per page for copies made on the association's
153 photocopier. If the association does not have a photocopy
154 machine available where the records are kept, or if the records
155 requested to be copied exceed 25 pages in length, the
156 association may have copies made by an outside duplicating
157 service vendor or association management company personnel and
158 may charge the actual cost of copying, as supported by the
159 vendor invoice including any reasonable costs involving
160 personnel fees and charges at an hourly rate for vendor or
161 employee time to cover administrative costs to the vendor or
162 ~~association.~~ The association shall maintain an adequate number
163 of copies of the recorded governing documents, to ensure their
164 availability to members and prospective members. Notwithstanding
165 this paragraph, the following records are not accessible to
166 members or parcel owners:

167 1. Any record protected by the lawyer-client privilege as
168 described in s. 90.502 and any record protected by the work-
169 product privilege, including, but not limited to, a record
170 prepared by an association attorney or prepared at the
171 attorney's express direction which reflects a mental impression,
172 conclusion, litigation strategy, or legal theory of the attorney
173 or the association and which was prepared exclusively for civil
174 or criminal litigation or for adversarial administrative

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175 proceedings or which was prepared in anticipation of such
176 litigation or proceedings until the conclusion of the litigation
177 or proceedings.

178 2. Information obtained by an association in connection
179 with the approval of the lease, sale, or other transfer of a
180 parcel.

181 3. Personnel records of the association's employees,
182 including, but not limited to, disciplinary, payroll, health,
183 and insurance records. For purposes of this subparagraph, the
184 term "personnel records" does not include written employment
185 agreements with an association employee or budgetary or
186 financial records that indicate the compensation paid to an
187 association employee.

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

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

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

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204 7. The software and operating system used by the
205 association which allows the manipulation of data, even if the
206 owner owns a copy of the same software used by the association.
207 The data is part of the official records of the association.

208 (d) The association or its authorized agent is not required
209 to provide a prospective purchaser or lienholder with
210 information about the residential subdivision or the association
211 other than information or documents required by this chapter to
212 be made available or disclosed. The association or its
213 authorized agent may charge a reasonable fee to the prospective
214 purchaser or lienholder or the current parcel owner or member
215 for providing good faith responses to requests for information
216 by or on behalf of a prospective purchaser or lienholder, other
217 than that required by law, if the fee does not exceed \$150 plus
218 the reasonable cost of photocopying and any attorney's fees
219 incurred by the association in connection with the response.

220 (6) BUDGETS.—

221 (d) An association is deemed to have provided for reserve
222 accounts if reserve accounts have been initially established by
223 the developer or if the membership of the association
224 affirmatively elects to provide for reserves. If reserve
225 accounts are established by the developer, the budget must
226 designate the components for which the reserve accounts may be
227 used. If reserve accounts are not initially provided by the
228 developer, the membership of the association may elect to do so
229 upon the affirmative approval of a majority of the total voting
230 interests of the association. Such approval may be obtained by
231 vote of the members at a duly called meeting of the membership
232 or by the written consent of a majority of the total voting

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233 interests of the association. The approval action of the
234 membership must state that reserve accounts shall be provided
235 for in the budget and must designate the components for which
236 the reserve accounts are to be established. Upon approval by the
237 membership, the board of directors shall include the required
238 reserve accounts in the budget in the next fiscal year following
239 the approval and each year thereafter. Once established as
240 provided in this subsection, the reserve accounts must be funded
241 or maintained or have their funding waived in the manner
242 provided in paragraph (f).

243 (13) REPORTING REQUIREMENT.—The community association
244 manager or management firm, or the association when there is no
245 community association manager or management firm, shall report
246 to the division by November 22, 2013, in a manner and form
247 prescribed by the division.

248 (a) The report shall include the association's:
249 1. Legal name.
250 2. Federal employer identification number.
251 3. Mailing and physical addresses.
252 4. Total number of parcels.
253 5. Total amount of revenues and expenses from the
254 association's annual budget.

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

258 1. Legal name.
259 2. Mailing address.
260 3. Total number of parcels owned on the date of reporting.

261 (c) The reporting requirement provided in this subsection

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262 shall be a continuing obligation on each association until the
263 required information is reported to the division.

264 (d) By October 1, 2013, the department shall establish and
265 implement a registration system through an Internet website that
266 provides for the reporting requirements of paragraphs (a) and
267 (b).

268 (e) On or before December 1, 2013, and annually thereafter
269 by December 1, the department shall submit a report to the
270 Governor, the President of the Senate, and the Speaker of the
271 House of Representatives providing the homeowner association
272 data reported pursuant to this subsection.

273 (f) The division may adopt rules pursuant to ss. 120.536(1)
274 and 120.54 to implement the provisions of this subsection.

275 (g) This subsection shall expire on July 1, 2016, unless
276 reenacted by the Legislature.

277 Section 3. Section 720.3033, Florida Statutes, is created
278 to read:

279 720.3033 Officers and directors.-

280 (1) (a) Within 90 days after being elected or appointed to
281 the board, each director shall certify in writing to the
282 secretary of the association that he or she has read the
283 association's declaration of covenants, articles of
284 incorporation, bylaws, and current written rules and policies;
285 that he or she will work to uphold such documents and policies
286 to the best of his or her ability; and that he or she will
287 faithfully discharge his or her fiduciary responsibility to the
288 association's members. Within 90 days after being elected or
289 appointed to the board, in lieu of this written certification,
290 the newly elected or appointed director may submit a certificate

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291 of having satisfactorily completed the educational curriculum
292 administered by a division-approved education provider within 1
293 year before or 90 days after the date of election or
294 appointment.

295 (b) The written certification or educational certificate is
296 valid for the uninterrupted tenure of the director on the board.
297 A director who does not timely file the written certification or
298 educational certificate shall be suspended from the board until
299 he or she complies with the requirement. The board may
300 temporarily fill the vacancy during the period of suspension.

301 (c) The association shall retain each director's written
302 certification or educational certificate for inspection by the
303 members for 5 years after the director's election. However, the
304 failure to have the written certification or educational
305 certificate on file does not affect the validity of any board
306 action.

307 (2) If the association enters into a contract or other
308 transaction with any of its directors or a corporation, firm,
309 association that is not an affiliated homeowners' association,
310 or other entity in which an association director is also a
311 director or officer or is financially interested, the board
312 must:

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

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

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

318 (d) At the next regular or special meeting of the members,
319 disclose the existence of the contract or other transaction to

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320 the members. Upon motion of any member, the contract or
321 transaction shall be brought up for a vote and may be canceled
322 by a majority vote of the members present. If the members cancel
323 the contract, the association is only liable for the reasonable
324 value of goods and services provided up to the time of
325 cancellation and is not liable for any termination fee,
326 liquidated damages, or other penalty for such cancellation.

327 (3) An officer, director, or manager may not solicit, offer
328 to accept, or accept any good or service of value for which
329 consideration has not been provided for his or her benefit or
330 for the benefit of a member of his or her immediate family from
331 any person providing or proposing to provide goods or services
332 to the association. If the board finds that an officer or
333 director has violated this subsection, the board shall
334 immediately remove from office the officer or director. The
335 vacancy shall be filled according to law until the end of the
336 period of the end of the director's term of office. However, an
337 officer, director, or manager may accept food to be consumed at
338 a business meeting with a value of less than \$25 per individual
339 or a service or good received in connection with trade fairs or
340 education programs.

341 (4) A director or officer charged by information or
342 indictment with a felony theft or embezzlement offense involving
343 the association's funds or property is removed from office. The
344 board shall fill the vacancy according to general law until the
345 end of the period of the suspension or the end of the director's
346 term of office, whichever occurs first. However, if the charges
347 are resolved without a finding of guilt or without acceptance of
348 a plea of guilty or nolo contendere, the director or officer

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349 shall be reinstated for any remainder of his or her term of
350 office. A member who has such criminal charges pending may not
351 be appointed or elected to a position as a director or officer.

352 (5) All associations shall maintain insurance or a fidelity
353 bond for all persons who control or disburse funds of the
354 association. The insurance policy or fidelity bond must cover
355 the maximum funds that will be in the custody of the association
356 or its management agent at any one time. As used in this
357 subsection, the term "persons who control or disburse funds of
358 the association" includes, but is not limited to, persons
359 authorized to sign checks on behalf of the association, and the
360 president, secretary, and treasurer of the association. The
361 association shall bear the cost of any insurance or bond.

362 Section 4. Paragraph (a) of subsection (9) of section
363 720.306, Florida Statutes, is amended to read:

364 720.306 Meetings of members; voting and election
365 procedures; amendments.—

366 (9) (a) ELECTIONS AND BOARD VACANCIES.—Elections of
367 directors must be conducted in accordance with the procedures
368 set forth in the governing documents of the association. All
369 members of the association are eligible to serve on the board of
370 directors, and a member may nominate himself or herself as a
371 candidate for the board at a meeting where the election is to be
372 held; provided, however, that ~~or~~, if the election process allows
373 candidates to be nominated in advance of the meeting ~~voting by~~
374 ~~absentee ballot, in advance of the balloting,~~ the association is
375 not required to allow nominations at the meeting. An election is
376 not required unless more candidates are nominated than vacancies
377 exist. Except as otherwise provided in the governing documents,

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378 boards of directors must be elected by a plurality of the votes
379 cast by eligible voters.

380 Section 5. Subsection (1) of section 720.307, Florida
381 Statutes, is amended, present subsections (2) through (4) are
382 renumbered as subsections (3) through (5), respectively, and new
383 subsection (2) is added to that section, to read:

384 720.307 Transition of association control in a community.-
385 With respect to homeowners' associations:

386 (1) Members other than the developer are entitled to elect
387 at least a majority of the members of the board of directors of
388 the homeowners' association when the earlier of the following
389 events occurs:

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

393 (b) Such other percentage of the parcels has been conveyed
394 to members, or such other date or event has occurred, as is set
395 forth in the governing documents in order to comply with the
396 requirements of any governmentally chartered entity with regard
397 to the mortgage financing of parcels;

398 (c) Upon the developer abandoning or deserting its
399 responsibility to maintain and complete the amenities or
400 infrastructure as disclosed in the governing documents. There is
401 a rebuttable presumption that the developer has abandoned and
402 deserted the property if the developer has unpaid assessments or
403 guaranteed amounts under s. 720.308 for a period of more than 2
404 years;

405 (d) Upon the developer filing a petition seeking protection
406 under chapter 7 of the federal Bankruptcy Code;

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407 (e) Upon the developer losing title to the property through
408 a foreclosure, or the transfer of a deed in lieu of foreclosure,
409 unless the successor owner has accepted an assignment of
410 developer rights and responsibilities first arising after the
411 date of such assignment; or

412 (f) Upon a receiver for the developer being appointed by a
413 circuit court and not being discharged within 30 days after such
414 appointment, unless the court determines within 30 days after
415 such appointment that transfer of control would be detrimental
416 to the association or its members.

417
418 For purposes of this section, the term "members other than
419 the developer" shall not include builders, contractors, or
420 others who purchase a parcel for the purpose of constructing
421 improvements thereon for resale.

422 (2) Members other than the developer are entitled to elect
423 at least one member of the board of directors of the homeowners'
424 association if 25 percent of the parcels in all phases of the
425 community which will ultimately be operated by the association
426 have been conveyed to members.

427 Section 6. Subsection (5) is added to section 720.3075,
428 Florida Statutes, to read:

429 720.3075 Prohibited clauses in association documents.—

430 (5) It is declared that the public policy of this state is
431 that prior to transition of homeowners' association control in a
432 community from the developer to the nondeveloper members, as set
433 forth in s. 720.307, a developer is prohibited from unilaterally
434 making amendments to the governing documents which bind members
435 of the association, which would unreasonably modify the original

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436 plan of development, radically change the community scheme, or
437 prejudice the rights of the existing nondeveloper members to use
438 and enjoy the benefits of the common property. An amendment to
439 the governing documents shall not be deemed to unreasonably
440 modify the original plan of development, radically change the
441 community scheme, or prejudice the rights of the existing
442 nondeveloper members to use and enjoy the benefits of the common
443 property unless the developer's authority to make such
444 amendments was not reserved in the original governing documents,
445 and the amendment is arbitrary, capricious or in bad faith,
446 destroys the general plan of development, or materially shifts
447 economic burdens from the developer to the existing nondeveloper
448 members.

449 Section 7. Paragraph (b) of subsection (2) of section
450 720.3085, Florida Statutes, is amended to read:

451 720.3085 Payment for assessments; lien claims.—

452 (2)

453 (b) A parcel owner is jointly and severally liable with the
454 previous parcel owner for all unpaid assessments that came due
455 up to the time of transfer of title. This liability is without
456 prejudice to any right the present parcel owner may have to
457 recover any amounts paid by the present owner from the previous
458 owner. For the purposes of this subsection, the term "previous
459 owner" shall not include an association that acquires title to a
460 delinquent property through foreclosure or by deed in lieu of
461 foreclosure. The present parcel owner's liability for unpaid
462 assessments is limited to any unpaid assessments that accrued
463 before the association acquired title to the delinquent property
464 through foreclosure or by deed in lieu of foreclosure.

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Section 8. This act shall take effect July 1, 2013.