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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 authorizing an association to waive the requirement of
54 obtaining an insurance policy or fidelity bond under
55 certain conditions; amending s. 720.306, F.S.;

56 requiring that a copy of an amendment to the governing
57 documents be provided to the members within 30 days
58 after it is recorded; revising procedures for the

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59 election of directors; amending s. 720.307, F.S.;
60 providing additional circumstances for authorizing
61 members to elect a majority of association board
62 members; providing circumstances under which members
63 other than the developer are authorized to elect a
64 specified number of members to the board of directors;
65 amending s. 720.3075, F.S.; providing public policy
66 regarding prohibited clauses in association documents;
67 providing prohibited clauses in association documents;
68 amending s. 720.3085, F.S.; defining the term
69 "previous owner" to exclude certain associations from
70 provisions relating to the liability of previous
71 owners of parcels for unpaid assessments; limiting a
72 present owner's liability for certain assessments;
73 providing an effective date.

74
75 Be It Enacted by the Legislature of the State of Florida:

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77 Section 1. Paragraph (b) of subsection (2) of section
78 468.436, Florida Statutes, is amended to read:

79 468.436 Disciplinary proceedings.—

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

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

83 2. Violation of any lawful order or rule rendered or
84 adopted by the department or the council.

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

87 4. Obtaining a license or certification or any other order,

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88 ruling, or authorization by means of fraud, misrepresentation,
89 or concealment of material facts.

90 5. Committing acts of gross misconduct or gross negligence
91 in connection with the profession.

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

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

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

102 720.303 Association powers and duties; meetings of board;
103 official records; budgets; financial reporting; association
104 funds; recalls.—

105 (5) INSPECTION AND COPYING OF RECORDS.—The official records
106 shall be maintained within the state for at least 7 years and
107 shall be made available to a parcel owner for inspection or
108 photocopying within 45 miles of the community or within the
109 county in which the association is located within 10 business
110 days after receipt by the board or its designee of a written
111 request ~~must be open to inspection and available for~~
112 ~~photocopying by members or their authorized agents at reasonable~~
113 ~~times and places within 10 business days after receipt of a~~
114 ~~written request for access.~~ This subsection may be complied with
115 by having a copy of the official records available for
116 inspection or copying in the community or, at the option of the

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117 association, by making the records available to a parcel owner
118 electronically via the Internet or by allowing the records to be
119 viewed in electronic format on a computer screen and printed
120 upon request. If the association has a photocopy machine
121 available where the records are maintained, it must provide
122 parcel owners with copies on request during the inspection if
123 the entire request is limited to no more than 25 pages. An
124 association shall allow a member or his or her authorized
125 representative to use a portable device, including a smartphone,
126 tablet, portable scanner, or any other technology capable of
127 scanning or taking photographs, to make an electronic copy of
128 the official records in lieu of providing the member or his or
129 her authorized representative with a copy of such records. The
130 association may not charge a fee to a member or his or her
131 authorized representative for such use of a portable device.

132 (a) The failure of an association to provide access to the
133 records within 10 business days after receipt of a written
134 request submitted by certified mail, return receipt requested,
135 creates a rebuttable presumption that the association willfully
136 failed to comply with this subsection.

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

143 (c) The association may adopt reasonable written rules
144 governing the frequency, time, location, notice, records to be
145 inspected, and manner of inspections, but may not require a

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146 parcel owner to demonstrate any proper purpose for the
147 inspection, state any reason for the inspection, or limit a
148 parcel owner's right to inspect records to less than one 8-hour
149 business day per month. The association may impose fees to cover
150 the costs of providing copies of the official records,
151 including, ~~without limitation,~~ the costs of copying and the
152 costs required for personnel to retrieve and copy the records if
153 the time spent retrieving and copying the records exceeds one-
154 half hour and if the personnel costs do not exceed \$20 per hour.
155 No personnel costs may be charged for records requests that
156 result in 25 or fewer pages. The association may charge up to 25
157 ~~50~~ cents per page for copies made on the association's
158 photocopier. If the association does not have a photocopy
159 machine available where the records are kept, or if the records
160 requested to be copied exceed 25 pages in length, the
161 association may have copies made by an outside duplicating
162 service vendor or association management company personnel and
163 may charge the actual cost of copying, as supported by the
164 vendor invoice ~~including any reasonable costs involving~~
165 ~~personnel fees and charges at an hourly rate for vendor or~~
166 ~~employee time to cover administrative costs to the vendor or~~
167 ~~association.~~ The association shall maintain an adequate number
168 of copies of the recorded governing documents, to ensure their
169 availability to members and prospective members. Notwithstanding
170 this paragraph, the following records are not accessible to
171 members or parcel owners:

172 1. Any record protected by the lawyer-client privilege as
173 described in s. 90.502 and any record protected by the work-
174 product privilege, including, but not limited to, a record

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175 prepared by an association attorney or prepared at the
176 attorney's express direction which reflects a mental impression,
177 conclusion, litigation strategy, or legal theory of the attorney
178 or the association and which was prepared exclusively for civil
179 or criminal litigation or for adversarial administrative
180 proceedings or which was prepared in anticipation of such
181 litigation or proceedings until the conclusion of the litigation
182 or proceedings.

183 2. Information obtained by an association in connection
184 with the approval of the lease, sale, or other transfer of a
185 parcel.

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

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

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

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204 under this subparagraph if the information is included in an
205 official record of the association and is voluntarily provided
206 by an owner and not requested by the association.

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

209 7. The software and operating system used by the
210 association which allows the manipulation of data, even if the
211 owner owns a copy of the same software used by the association.
212 The data is part of the official records of the association.

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

225 (6) BUDGETS.—

226 (d) An association is deemed to have provided for reserve
227 accounts if reserve accounts have been initially established by
228 the developer or if the membership of the association
229 affirmatively elects to provide for reserves. If reserve
230 accounts are established by the developer, the budget must
231 designate the components for which the reserve accounts may be
232 used. If reserve accounts are not initially provided by the

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233 developer, the membership of the association may elect to do so
234 upon the affirmative approval of a majority of the total voting
235 interests of the association. Such approval may be obtained by
236 vote of the members at a duly called meeting of the membership
237 or by the written consent of a majority of the total voting
238 interests of the association. The approval action of the
239 membership must state that reserve accounts shall be provided
240 for in the budget and must designate the components for which
241 the reserve accounts are to be established. Upon approval by the
242 membership, the board of directors shall include the required
243 reserve accounts in the budget in the next fiscal year following
244 the approval and each year thereafter. Once established as
245 provided in this subsection, the reserve accounts must be funded
246 or maintained or have their funding waived in the manner
247 provided in paragraph (f).

248 (13) REPORTING REQUIREMENT.—The community association
249 manager or management firm, or the association when there is no
250 community association manager or management firm, shall report
251 to the division by November 22, 2013, in a manner and form
252 prescribed by the division.

253 (a) The report shall include the association's:
254 1. Legal name.
255 2. Federal employer identification number.
256 3. Mailing and physical addresses.
257 4. Total number of parcels.
258 5. Total amount of revenues and expenses from the
259 association's annual budget.

260 (b) For associations in which control of the association
261 has not been transitioned to nondeveloper members, as set forth

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262 in s. 720.307, the report shall also include the developer's:

263 1. Legal name.

264 2. Mailing address.

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

266 (c) The reporting requirement provided in this subsection
267 shall be a continuing obligation on each association until the
268 required information is reported to the division.

269 (d) By October 1, 2013, the department shall establish and
270 implement a registration system through an Internet website that
271 provides for the reporting requirements of paragraphs (a) and
272 (b).

273 (e) On or before December 1, 2013, and annually thereafter
274 by December 1, the department shall submit a report to the
275 Governor, the President of the Senate, and the Speaker of the
276 House of Representatives providing the homeowner association
277 data reported pursuant to this subsection.

278 (f) The division shall adopt rules pursuant to ss.
279 120.536(1) and 120.54 to implement the provisions of this
280 subsection.

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

283 Section 3. Section 720.3033, Florida Statutes, is created
284 to read:

285 720.3033 Officers and directors.—

286 (1) (a) Within 90 days after being elected or appointed to
287 the board, each director shall certify in writing to the
288 secretary of the association that he or she has read the
289 association's declaration of covenants, articles of
290 incorporation, bylaws, and current written rules and policies;

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291 that he or she will work to uphold such documents and policies
292 to the best of his or her ability; and that he or she will
293 faithfully discharge his or her fiduciary responsibility to the
294 association's members. Within 90 days after being elected or
295 appointed to the board, in lieu of this written certification,
296 the newly elected or appointed director may submit a certificate
297 of having satisfactorily completed the educational curriculum
298 administered by a division-approved education provider within 1
299 year before or 90 days after the date of election or
300 appointment.

301 (b) The written certification or educational certificate is
302 valid for the uninterrupted tenure of the director on the board.
303 A director who does not timely file the written certification or
304 educational certificate shall be suspended from the board until
305 he or she complies with the requirement. The board may
306 temporarily fill the vacancy during the period of suspension.

307 (c) The association shall retain each director's written
308 certification or educational certificate for inspection by the
309 members for 5 years after the director's election. However, the
310 failure to have the written certification or educational
311 certificate on file does not affect the validity of any board
312 action.

313 (2) If the association enters into a contract or other
314 transaction with any of its directors or a corporation, firm,
315 association that is not an affiliated homeowners' association,
316 or other entity in which an association director is also a
317 director or officer or is financially interested, the board
318 must:

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

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

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

324 (d) At the next regular or special meeting of the members,
325 disclose the existence of the contract or other transaction to
326 the members. Upon motion of any member, the contract or
327 transaction shall be brought up for a vote and may be canceled
328 by a majority vote of the members present. If the members cancel
329 the contract, the association is only liable for the reasonable
330 value of goods and services provided up to the time of
331 cancellation and is not liable for any termination fee,
332 liquidated damages, or other penalty for such cancellation.

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

347 (4) A director or officer charged by information or
348 indictment with a felony theft or embezzlement offense involving

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349 the association's funds or property is removed from office. The
350 board shall fill the vacancy according to general law until the
351 end of the period of the suspension or the end of the director's
352 term of office, whichever occurs first. However, if the charges
353 are resolved without a finding of guilt or without acceptance of
354 a plea of guilty or nolo contendere, the director or officer
355 shall be reinstated for any remainder of his or her term of
356 office. A member who has such criminal charges pending may not
357 be appointed or elected to a position as a director or officer.

358 (5) All associations shall maintain insurance or a fidelity
359 bond for all persons who control or disburse funds of the
360 association. The insurance policy or fidelity bond must cover
361 the maximum funds that will be in the custody of the association
362 or its management agent at any one time. As used in this
363 subsection, the term "persons who control or disburse funds of
364 the association" includes, but is not limited to, persons
365 authorized to sign checks on behalf of the association, and the
366 president, secretary, and treasurer of the association. The
367 association shall bear the cost of any insurance or bond. If
368 annually approved by a majority of the voting interests present
369 at a properly called meeting of the association, an association
370 may waive the requirement of obtaining an insurance policy or
371 fidelity bond for all persons who control or disburse funds of
372 the association.

373 Section 4. Paragraph (b) of subsection (1) and paragraph
374 (a) of subsection (9) of section 720.306, Florida Statutes, are
375 amended to read:

376 720.306 Meetings of members; voting and election
377 procedures; amendments.-

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378 (1) QUORUM; AMENDMENTS.—

379 (b) Unless otherwise provided in the governing documents or
380 required by law, and other than those matters set forth in
381 paragraph (c), any governing document of an association may be
382 amended by the affirmative vote of two-thirds of the voting
383 interests of the association. Within 30 days after recording an
384 amendment to the governing documents, the association shall
385 provide copies of the amendment to the members.

386 (9) (a) ELECTIONS AND BOARD VACANCIES.—Elections of
387 directors must be conducted in accordance with the procedures
388 set forth in the governing documents of the association. All
389 members of the association are eligible to serve on the board of
390 directors, and a member may nominate himself or herself as a
391 candidate for the board at a meeting where the election is to be
392 held; provided, however, that ~~or~~, if the election process allows
393 candidates to be nominated in advance of the meeting, the
394 association is not required to allow nominations at the meeting.
395 An election is not required unless more candidates are nominated
396 than vacancies exist ~~voting by absentee ballot, in advance of~~
397 the balloting. Except as otherwise provided in the governing
398 documents, boards of directors must be elected by a plurality of
399 the votes cast by eligible voters.

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

404 720.307 Transition of association control in a community.—
405 With respect to homeowners' associations:

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

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407 at least a majority of the members of the board of directors of
408 the homeowners' association when the earlier of the following
409 events occurs:

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

413 (b) Such other percentage of the parcels has been conveyed
414 to members, or such other date or event has occurred, as is set
415 forth in the governing documents in order to comply with the
416 requirements of any governmentally chartered entity with regard
417 to the mortgage financing of parcels;

418 (c) Upon the developer abandoning or deserting its
419 responsibility to maintain and complete the amenities or
420 infrastructure as disclosed in the governing documents. There is
421 a rebuttable presumption that the developer has abandoned and
422 deserted the property if the developer has unpaid assessments or
423 guaranteed amounts under s. 720.308 for a period of more than 2
424 years;

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

427 (e) Upon the developer losing title to the property through
428 a foreclosure, or the transfer of a deed in lieu of foreclosure,
429 unless the successor owner has accepted an assignment of
430 developer rights and responsibilities first arising after the
431 date of such assignment; or

432 (f) Upon a receiver for the developer being appointed by a
433 circuit court and not being discharged within 30 days after such
434 appointment, unless the court determines within 30 days after
435 such appointment that transfer of control would be detrimental

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436 to the association or its members.

437

438 For purposes of this section, the term "members other than the
439 developer" shall not include builders, contractors, or others
440 who purchase a parcel for the purpose of constructing
441 improvements thereon for resale.

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

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

449 720.3075 Prohibited clauses in association documents.—

450 (5) It is declared that the public policy of this state is
451 that prior to the transition of homeowners' association control
452 in a community from the developer to the nondeveloper members,
453 as set forth in s. 720.307, the right of developers to amend
454 governing documents is subject to a test of reasonableness,
455 which prohibits the developer from unilaterally amending the
456 governing documents in a manner that is arbitrary, capricious,
457 or in bad faith, that destroys the general plan of development,
458 that prejudices the rights of existing nondeveloper members to
459 use and enjoy the benefits of common property, or that
460 materially shifts economic burdens from the developer to the
461 existing nondeveloper members.

462 Section 7. Paragraph (b) of subsection (2) of section
463 720.3085, Florida Statutes, is amended to read:

464 720.3085 Payment for assessments; lien claims.—

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465 (2)

466 (b) A parcel owner is jointly and severally liable with the
467 previous parcel owner for all unpaid assessments that came due
468 up to the time of transfer of title. This liability is without
469 prejudice to any right the present parcel owner may have to
470 recover any amounts paid by the present owner from the previous
471 owner. For the purposes of this subsection, the term "previous
472 owner" shall not include an association that acquires title to a
473 delinquent property through foreclosure or by deed in lieu of
474 foreclosure. The present parcel owner's liability for unpaid
475 assessments is limited to any unpaid assessments that accrued
476 before the association acquired title to the delinquent property
477 through foreclosure or by deed in lieu of foreclosure.

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