

Amendment No.

CHAMBER ACTION

Senate

House

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Representative La Rosa offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

468.436 Disciplinary proceedings.—

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

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

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

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

Amendment No.

15 4. Obtaining a license or certification or any other
16 order, ruling, or authorization by means of fraud,
17 misrepresentation, or concealment of material facts.

18 5. Committing acts of gross misconduct or gross negligence
19 in connection with the profession.

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

23 7. Violating any provision of chapter 718, chapter 719, or
24 chapter 720 during the course of performing community
25 association management services pursuant to a contract with a
26 community association as defined in s. 468.431(1).

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

30 720.303 Association powers and duties; meetings of board;
31 official records; budgets; financial reporting; association
32 funds; recalls.—

33 (5) INSPECTION AND COPYING OF RECORDS.—The official
34 records shall be maintained within the state for at least 7
35 years and shall be made available to a parcel owner for
36 inspection or photocopying within 45 miles of the community or
37 within the county in which the association is located within 10
38 business days after receipt by the board or its designee of a
39 written request ~~must be open to inspection and available for~~
40 ~~photocopying by members or their authorized agents at reasonable~~
41 ~~times and places within 10 business days after receipt of a~~
42 ~~written request for access.~~ This subsection may be complied with

930633

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Amendment No.

43 by having a copy of the official records available for
44 inspection or copying in the community or, at the option of the
45 association, by making the records available to a parcel owner
46 electronically via the Internet or by allowing the records to be
47 viewed in electronic format on a computer screen and printed
48 upon request. If the association has a photocopy machine
49 available where the records are maintained, it must provide
50 parcel owners with copies on request during the inspection if
51 the entire request is limited to no more than 25 pages. The
52 association shall allow a member or his or her authorized
53 representative to use a portable device, including a smartphone,
54 tablet, portable scanner, or any other technology capable of
55 scanning or taking photographs, to make an electronic copy of
56 the official records in lieu of providing the member or his or
57 her authorized representative with a copy of such records. The
58 association may not charge a fee to a member or his or her
59 authorized representative for such use of a portable device.

60 (a) The failure of an association to provide access to the
61 records within 10 business days after receipt of a written
62 request submitted by certified mail, return receipt requested,
63 creates a rebuttable presumption that the association willfully
64 failed to comply with this subsection.

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

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

71 (c) The association may adopt reasonable written rules
72 governing the frequency, time, location, notice, records to be
73 inspected, and manner of inspections, but may not require a
74 parcel owner to demonstrate any proper purpose for the
75 inspection, state any reason for the inspection, or limit a
76 parcel owner's right to inspect records to less than one 8-hour
77 business day per month. The association may impose fees to cover
78 the costs of providing copies of the official records,
79 ~~including, without limitation,~~ the costs of copying and the
80 costs required for personnel to retrieve and copy the records if
81 the time spent retrieving and copying the records exceeds one-
82 half hour and if the personnel costs do not exceed \$20 per hour.
83 Personnel costs may not be charged for records requests that
84 result in the copying of 25 or fewer pages. The association may
85 charge up to 25 ~~50~~ cents per page for copies made on the
86 association's photocopier. If the association does not have a
87 photocopy machine available where the records are kept, or if
88 the records requested to be copied exceed 25 pages in length,
89 the association may have copies made by an outside duplicating
90 service vendor or association management company personnel and
91 may charge the actual cost of copying, as supported by the
92 vendor invoice including any reasonable costs involving
93 ~~personnel fees and charges at an hourly rate for vendor or~~
94 ~~employee time to cover administrative costs to the vendor or~~
95 ~~association.~~ The association shall maintain an adequate number
96 of copies of the recorded governing documents, to ensure their
97 availability to members and prospective members. Notwithstanding

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

98 this paragraph, the following records are not accessible to
99 members or parcel owners:

100 1. Any record protected by the lawyer-client privilege as
101 described in s. 90.502 and any record protected by the work-
102 product privilege, including, but not limited to, a record
103 prepared by an association attorney or prepared at the
104 attorney's express direction which reflects a mental impression,
105 conclusion, litigation strategy, or legal theory of the attorney
106 or the association and which was prepared exclusively for civil
107 or criminal litigation or for adversarial administrative
108 proceedings or which was prepared in anticipation of such
109 litigation or proceedings until the conclusion of the litigation
110 or proceedings.

111 2. Information obtained by an association in connection
112 with the approval of the lease, sale, or other transfer of a
113 parcel.

114 3. Personnel records of the association's employees,
115 including, but not limited to, disciplinary, payroll, health,
116 and insurance records. For purposes of this subparagraph, the
117 term "personnel records" does not include written employment
118 agreements with an association employee or budgetary or
119 financial records that indicate the compensation paid to an
120 association employee.

121 4. Medical records of parcel owners or community
122 residents.

123 5. Social security numbers, driver's license numbers,
124 credit card numbers, electronic mailing addresses, telephone
125 numbers, facsimile numbers, emergency contact information, any

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

126 addresses for a parcel owner other than as provided for
127 association notice requirements, and other personal identifying
128 information of any person, excluding the person's name, parcel
129 designation, mailing address, and property address. However, an
130 owner may consent in writing to the disclosure of protected
131 information described in this subparagraph. The association is
132 not liable for the disclosure of information that is protected
133 under this subparagraph if the information is included in an
134 official record of the association and is voluntarily provided
135 by an owner and not requested by the association.

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

138 7. The software and operating system used by the
139 association which allows the manipulation of data, even if the
140 owner owns a copy of the same software used by the association.
141 The data is part of the official records of the association.

142 (d) The association or its authorized agent is not
143 required to provide a prospective purchaser or lienholder with
144 information about the residential subdivision or the association
145 other than information or documents required by this chapter to
146 be made available or disclosed. The association or its
147 authorized agent may charge a reasonable fee to the prospective
148 purchaser or lienholder or the current parcel owner or member
149 for providing good faith responses to requests for information
150 by or on behalf of a prospective purchaser or lienholder, other
151 than that required by law, if the fee does not exceed \$150 plus
152 the reasonable cost of photocopying and any attorney's fees
153 incurred by the association in connection with the response.

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

154 (6) BUDGETS.—

155 (d) An association is deemed to have provided for reserve
156 accounts if reserve accounts have been initially established by
157 the developer or if the membership of the association
158 affirmatively elects to provide for reserves. If reserve
159 accounts are established by the developer, the budget must
160 designate the components for which the reserve accounts may be
161 used. If reserve accounts are not initially provided by the
162 developer, the membership of the association may elect to do so
163 upon the affirmative approval of a majority of the total voting
164 interests of the association. Such approval may be obtained by
165 vote of the members at a duly called meeting of the membership
166 or by the written consent of a majority of the total voting
167 interests of the association. The approval action of the
168 membership must state that reserve accounts shall be provided
169 for in the budget and must designate the components for which
170 the reserve accounts are to be established. Upon approval by the
171 membership, the board of directors shall include the required
172 reserve accounts in the budget in the next fiscal year following
173 the approval and each year thereafter. Once established as
174 provided in this subsection, the reserve accounts must be funded
175 or maintained or have their funding waived in the manner
176 provided in paragraph (f).

177 (13) REPORTING REQUIREMENT.—The community association
178 manager or management firm, or the association when there is no
179 community association manager or management firm, shall report
180 to the division by November 22, 2013, in a manner and form
181 prescribed by the division.

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

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

183 1. Legal name.

184 2. Federal employer identification number.

185 3. Mailing and physical addresses.

186 4. Total number of parcels.

187 5. Total amount of revenues and expenses from the
188 association's annual budget.

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

192 1. Legal name.

193 2. Mailing address.

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

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

198 (d) By October 1, 2013, the department shall establish and
199 implement a registration system through an Internet website that
200 provides for the reporting requirements of paragraphs (a) and
201 (b).

202 (e) The department shall prepare an annual report of the
203 data reported pursuant to this subsection and present it to the
204 Governor, the President of the Senate, and the Speaker of the
205 House of Representatives by December 1, 2013, and each year
206 thereafter.

207 (f) The division shall adopt rules pursuant to ss.
208 120.536(1) and 120.54 to implement the provisions of this
209 subsection.

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

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

212 Section 3. Section 720.3033, Florida Statutes, is created
213 to read:

214 720.3033 Officers and directors.-

215 (1) (a) Within 90 days after being elected or appointed to
216 the board, each director shall certify in writing to the
217 secretary of the association that he or she has read the
218 association's declaration of covenants, articles of
219 incorporation, bylaws, and current written rules and policies;
220 that he or she will work to uphold such documents and policies
221 to the best of his or her ability; and that he or she will
222 faithfully discharge his or her fiduciary responsibility to the
223 association's members. Within 90 days after being elected or
224 appointed to the board, in lieu of such written certification,
225 the newly elected or appointed director may submit a certificate
226 of having satisfactorily completed the educational curriculum
227 administered by a division-approved education provider within 1
228 year before or 90 days after the date of election or
229 appointment.

230 (b) The written certification or educational certificate
231 is valid for the uninterrupted tenure of the director on the
232 board. A director who does not timely file the written
233 certification or educational certificate shall be suspended from
234 the board until he or she complies with the requirement. The
235 board may temporarily fill the vacancy during the period of
236 suspension.

Amendment No.

237 (c) The association shall retain each director's written
238 certification or educational certificate for inspection by the
239 members for 5 years after the director's election. However, the
240 failure to have the written certification or educational
241 certificate on file does not affect the validity of any board
242 action.

243 (2) If the association enters into a contract or other
244 transaction with any of its directors or a corporation, firm,
245 association that is not an affiliated homeowners' association,
246 or other entity in which an association director is also a
247 director or officer or is financially interested, the board
248 must:

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

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

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

254 (d) At the next regular or special meeting of the members,
255 disclose the existence of the contract or other transaction to
256 the members. Upon motion of any member, the contract or
257 transaction shall be brought up for a vote and may be canceled
258 by a majority vote of the members present. If the members cancel
259 the contract, the association is only liable for the reasonable
260 value of goods and services provided up to the time of
261 cancellation and is not liable for any termination fee,
262 liquidated damages, or other penalty for such cancellation.

263 (3) An officer, director, or manager may not solicit,
264 offer to accept, or accept any good or service of value for

Amendment No.

265 which consideration has not been provided for his or her benefit
266 or for the benefit of a member of his or her immediate family
267 from any person providing or proposing to provide goods or
268 services to the association. If the board finds that an officer
269 or director has violated this subsection, the board shall
270 immediately remove the officer or director from office. The
271 vacancy shall be filled according to law until the end of the
272 director's term of office. However, an officer, director, or
273 manager may accept food to be consumed at a business meeting
274 with a value of less than \$25 per individual or a service or
275 good received in connection with trade fairs or education
276 programs.

277 (4) A director or officer charged by information or
278 indictment with a felony theft or embezzlement offense involving
279 the association's funds or property is removed from office. The
280 board shall fill the vacancy according to general law until the
281 end of the period of the suspension or the end of the director's
282 term of office, whichever occurs first. However, if the charges
283 are resolved without a finding of guilt or without acceptance of
284 a plea of guilty or nolo contendere, the director or officer
285 shall be reinstated for any remainder of his or her term of
286 office. A member who has such criminal charges pending may not
287 be appointed or elected to a position as a director or officer.

288 (5) The association shall maintain insurance or a fidelity
289 bond for all persons who control or disburse funds of the
290 association. The insurance policy or fidelity bond must cover
291 the maximum funds that will be in the custody of the association
292 or its management agent at any one time. As used in this

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

293 subsection, the term "persons who control or disburse funds of
294 the association" includes, but is not limited to, persons
295 authorized to sign checks on behalf of the association, and the
296 president, secretary, and treasurer of the association. The
297 association shall bear the cost of any insurance or bond.

298 Section 4. Paragraph (a) of subsection (9) of section
299 720.306, Florida Statutes, is amended to read:

300 720.306 Meetings of members; voting and election
301 procedures; amendments.—

302 (9) (a) ELECTIONS AND BOARD VACANCIES.—Elections of
303 directors must be conducted in accordance with the procedures
304 set forth in the governing documents of the association. All
305 members of the association are eligible to serve on the board of
306 directors, and a member may nominate himself or herself as a
307 candidate for the board at a meeting where the election is to be
308 held; provided, however, that ~~or,~~ if the election process allows
309 candidates to be nominated ~~voting by absentee ballot,~~ in advance
310 of the meeting, the association is not required to allow
311 nominations at the meeting. An election is not required unless
312 more candidates are nominated than vacancies exist ~~balloting.~~
313 Except as otherwise provided in the governing documents, boards
314 of directors must be elected by a plurality of the votes cast by
315 eligible voters.

316 Section 5. Subsection (1) of section 720.307, Florida
317 Statutes, is amended, present subsections (2) through (4) are
318 renumbered as subsections (3) through (5), respectively, and a
319 new subsection (2) is added to that section, to read:

Amendment No.

320 720.307 Transition of association control in a community.-

321 With respect to homeowners' associations:

322 (1) Members other than the developer are entitled to elect
323 at least a majority of the members of the board of directors of
324 the homeowners' association when the earlier of the following
325 events occurs:

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

329 (b) Such other percentage of the parcels has been conveyed
330 to members, or such other date or event has occurred, as is set
331 forth in the governing documents in order to comply with the
332 requirements of any governmentally chartered entity with regard
333 to the mortgage financing of parcels;

334 (c) Upon the developer abandoning or deserting its
335 responsibility to maintain and complete the amenities or
336 infrastructure as disclosed in the governing documents. There is
337 a rebuttable presumption that the developer has abandoned and
338 deserted the property if the developer has unpaid assessments or
339 guaranteed amounts under s. 720.308 for a period of more than 2
340 years;

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

343 (e) Upon the developer losing title to the property
344 through a foreclosure action or the transfer of a deed in lieu
345 of foreclosure, unless the successor owner has accepted an
346 assignment of developer rights and responsibilities first
347 arising after the date of such assignment; or

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

348 (f) Upon a receiver for the developer being appointed by a
349 circuit court and not being discharged within 30 days after such
350 appointment, unless the court determines within 30 days after
351 such appointment that transfer of control would be detrimental
352 to the association or its members.

353
354 For purposes of this section, the term "members other than the
355 developer" shall not include builders, contractors, or others
356 who purchase a parcel for the purpose of constructing
357 improvements thereon for resale.

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

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

365 720.3075 Prohibited clauses in association documents.—

366 (5) It is declared the public policy of this state that
367 prior to transition of homeowners' association control in a
368 community from the developer to the nondeveloper members, as set
369 forth in s. 720.307, a developer is prohibited from unilaterally
370 making amendments to the governing documents that are arbitrary,
371 capricious or in bad faith, unreasonably modify the original
372 plan of development, prejudice the rights of the existing
373 nondeveloper members to use and enjoy the benefits of the common
374 property, or materially shift economic burdens from the
375 developer to the existing nondeveloper members.

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Amendment No.

376 Section 7. Paragraph (b) of subsection (2) of section
377 720.3085, Florida Statutes, is amended to read:

378 720.3085 Payment for assessments; lien claims.-
379 (2)

380 (b) A parcel owner is jointly and severally liable with
381 the previous parcel owner for all unpaid assessments that came
382 due up to the time of transfer of title. This liability is
383 without prejudice to any right the present parcel owner may have
384 to recover any amounts paid by the present owner from the
385 previous owner. For the purposes of this paragraph, the term
386 "previous owner" shall not include an association that acquires
387 title to a delinquent property through foreclosure or by deed in
388 lieu of foreclosure. The present parcel owner's liability for
389 unpaid assessments is limited to any unpaid assessments that
390 accrued before the association acquired title to the delinquent
391 property through foreclosure or by deed in lieu of foreclosure.

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

393
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T I T L E A M E N D M E N T

395 Remove everything before the enacting clause and insert:

396 A bill to be entitled

397 An act relating to homeowners' associations; amending
398 s. 468.436, F.S.; providing grounds for disciplinary
399 actions against community association managers;
400 amending s. 720.303, F.S.; requiring official records
401 to be maintained within a specified distance of the
402 association for a specified time; authorizing
403

Amendment No.

404 associations to maintain such records online;
405 requiring associations to allow a member to use a
406 portable device to make an electronic copy of the
407 official records and prohibiting associations from
408 charging a fee for such an electronic copy; removing
409 provisions allowing the association to charge fees for
410 personnel costs related to records access; requiring
411 budgets to designate permissible uses of reserve
412 accounts; requiring a community association manager,
413 or the association in the absence of a community
414 association manager, to report certain information to
415 the Division of Florida Condominiums, Timeshares, and
416 Mobile Homes; providing an expiration date for the
417 reporting requirements; creating s. 720.3033, F.S.;
418 requiring association directors to file with the
419 association secretary written certification that they
420 have read certain association documents, will uphold
421 the documents, and will uphold their fiduciary
422 responsibility to the members; providing for an
423 educational certificate in lieu of written
424 certification; providing that such certification is
425 valid while the director is on the board; providing
426 penalties for failure to file such certification;
427 requiring the association to retain such certification
428 for 5 years; requiring the board to follow specified
429 procedures relating to contracts or transactions
430 between the association and certain entities;
431 providing for disclosure of the contract or

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Page 16 of 18

Amendment No.

432 transaction to members; providing for the cancellation
433 of such contract or transaction under certain
434 circumstances; prohibiting any association officer,
435 director, or manager from soliciting or receiving
436 certain personal benefits from any person providing or
437 offering to provide goods or services to the
438 association; providing for removal from office for
439 violations; providing an exception; providing for the
440 removal of any director or officer charged with a
441 felony theft or embezzlement offense involving
442 association funds or property; providing for the
443 reinstatement of such person under certain
444 circumstances; prohibiting a member with pending
445 criminal charges from certain positions; requiring the
446 association to maintain insurance or a bond to cover
447 funds that will be in the custody of the association
448 or its management agent; providing a definition;
449 amending s. 720.306, F.S.; revising procedures for the
450 election of directors; amending s. 720.307, F.S.;
451 providing additional circumstances for authorizing
452 members to elect a majority of association board
453 members; providing circumstances under which members
454 other than the developer are authorized to elect a
455 specified number of members to the board of directors;
456 amending s. 720.3075, F.S.; providing public policy
457 regarding amendments to governing documents in
458 associations under developer control; amending s.
459 720.3085, F.S.; defining the term "previous owner" to

930633

Approved For Filing: 4/23/2013 10:55:56 AM

Page 17 of 18

Amendment No.

460 exclude certain associations from provisions relating
461 to the liability of previous owners of parcels for
462 unpaid assessments; limiting a present owner's
463 liability for certain assessments; providing an
464 effective date.