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CS/HB 7119, Engrossed 2

2013 Legislature

1
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



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29 | valid while the director is on the board; providing
30 | penalties for failure to file such certification;
31 | requiring the association to retain such certification
32 | for 5 years; requiring the board to follow specified
33 | procedures relating to contracts or transactions
34 | between the association and certain entities;
35 | 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; providing for removal from office for
43 | violations; providing an exception; providing for the
44 | removal of any director or officer charged with a
45 | 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 the association to provide copies of



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57 amendments to the governing documents to members under
58 certain conditions; revising procedures for the
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 amendments to governing documents in
67 associations under developer control; amending s.
68 720.3085, F.S.; defining the term "previous owner" to
69 exclude certain associations from provisions relating
70 to the liability of previous owners of parcels for
71 unpaid assessments; limiting a present owner's
72 liability for certain assessments; providing an
73 effective date.

74

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

76

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.



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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
88 | order, ruling, or authorization by means of fraud,
89 | misrepresentation, 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 chapter 718, chapter 719, or
96 | chapter 720 during the course of performing community
97 | association management services pursuant to a contract with a
98 | community association as 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
106 | records shall be maintained within the state for at least 7
107 | years and shall be made available to a parcel owner for
108 | inspection or photocopying within 45 miles of the community or
109 | within the county in which the association is located within 10
110 | business days after receipt by the board or its designee of a
111 | written request ~~must be open to inspection and available for~~
112 | ~~photocopying by members or their authorized agents at reasonable~~



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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
 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. The
 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



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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
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 Personnel costs may not be charged for records requests that
156 result in the copying of 25 or fewer pages. The association may
157 charge up to 25 ~~50~~ cents per page for copies made on the
158 association's photocopier. If the association does not have a
159 photocopy machine available where the records are kept, or if
160 the records requested to be copied exceed 25 pages in length,
161 the 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



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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
 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
 194 residents.

195 5. Social security numbers, driver's license numbers,
 196 credit card numbers, electronic mailing addresses, telephone



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197 numbers, facsimile numbers, emergency contact information, any
198 addresses for a parcel owner other than as provided for
199 association notice requirements, and other personal identifying
200 information of any person, excluding the person's name, parcel
201 designation, mailing address, and property address. However, an
202 owner may consent in writing to the disclosure of protected
203 information described in this subparagraph. The association is
204 not liable for the disclosure of information that is protected
205 under this subparagraph if the information is included in an
206 official record of the association and is voluntarily provided
207 by an owner and not requested by the association.

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

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

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



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225 | incurred by the association in connection with the response.

226 | (6) BUDGETS.—

227 | (d) An association is deemed to have provided for reserve
 228 | accounts if reserve accounts have been initially established by
 229 | the developer or if the membership of the association
 230 | affirmatively elects to provide for reserves. If reserve
 231 | accounts are established by the developer, the budget must
 232 | designate the components for which the reserve accounts may be
 233 | used. If reserve accounts are not initially provided by the
 234 | developer, the membership of the association may elect to do so
 235 | upon the affirmative approval of a majority of the total voting
 236 | interests of the association. Such approval may be obtained by
 237 | vote of the members at a duly called meeting of the membership
 238 | or by the written consent of a majority of the total voting
 239 | interests of the association. The approval action of the
 240 | membership must state that reserve accounts shall be provided
 241 | for in the budget and must designate the components for which
 242 | the reserve accounts are to be established. Upon approval by the
 243 | membership, the board of directors shall include the required
 244 | reserve accounts in the budget in the next fiscal year following
 245 | the approval and each year thereafter. Once established as
 246 | provided in this subsection, the reserve accounts must be funded
 247 | or maintained or have their funding waived in the manner
 248 | provided in paragraph (f).

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



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253 prescribed by the division.

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

255 1. Legal name.

256 2. Federal employer identification number.

257 3. Mailing and physical addresses.

258 4. Total number of parcels.

259 5. Total amount of revenues and expenses from the

260 association's annual budget.

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

264 1. Legal name.

265 2. Mailing address.

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

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

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

274 (e) The department shall prepare an annual report of the
275 data reported pursuant to this subsection and present it to the
276 Governor, the President of the Senate, and the Speaker of the
277 House of Representatives by December 1, 2013, and each year
278 thereafter.

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



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281 subsection.

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

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

286 720.3033 Officers and directors.—

287 (1) (a) Within 90 days after being elected or appointed to
288 the board, each director shall certify in writing to the
289 secretary of the association that he or she has read the
290 association's declaration of covenants, articles of
291 incorporation, bylaws, and current written rules and policies;
292 that he or she will work to uphold such documents and policies
293 to the best of his or her ability; and that he or she will
294 faithfully discharge his or her fiduciary responsibility to the
295 association's members. Within 90 days after being elected or
296 appointed to the board, in lieu of such written certification,
297 the newly elected or appointed director may submit a certificate
298 of having satisfactorily completed the educational curriculum
299 administered by a division-approved education provider within 1
300 year before or 90 days after the date of election or
301 appointment.

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



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

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

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

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

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

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

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



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

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

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



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365 subsection, the term "persons who control or disburse funds of
 366 the association" includes, but is not limited to, persons
 367 authorized to sign checks on behalf of the association, and the
 368 president, secretary, and treasurer of the association. The
 369 association shall bear the cost of any insurance or bond. If
 370 annually approved by a majority of the voting interests present
 371 at a properly called meeting of the association, an association
 372 may waive the requirement of obtaining an insurance policy or
 373 fidelity bond for all persons who control or disburse funds of
 374 the association.

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

378 720.306 Meetings of members; voting and election
 379 procedures; amendments.—

380 (1) QUORUM; AMENDMENTS.—

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

388 (9) (a) ELECTIONS AND BOARD VACANCIES.—Elections of
 389 directors must be conducted in accordance with the procedures
 390 set forth in the governing documents of the association. All
 391 members of the association are eligible to serve on the board of
 392 directors, and a member may nominate himself or herself as a



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393 candidate for the board at a meeting where the election is to be
 394 held; provided, however, that ~~or~~, if the election process allows
 395 candidates to be nominated ~~voting by absentee ballot~~, in advance
 396 of the meeting, the association is not required to allow
 397 nominations at the meeting. An election is not required unless
 398 more candidates are nominated than vacancies exist ~~balloting~~.
 399 Except as otherwise provided in the governing documents, boards
 400 of directors must be elected by a plurality of the votes cast by
 401 eligible voters.

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

406 720.307 Transition of association control in a community.—
 407 With respect to homeowners' associations:

408 (1) Members other than the developer are entitled to elect
 409 at least a majority of the members of the board of directors of
 410 the homeowners' association when the earlier of the following
 411 events occurs:

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

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

420 (c) Upon the developer abandoning or deserting its



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421 responsibility to maintain and complete the amenities or
422 infrastructure as disclosed in the governing documents. There is
423 a rebuttable presumption that the developer has abandoned and
424 deserted the property if the developer has unpaid assessments or
425 guaranteed amounts under s. 720.308 for a period of more than 2
426 years;

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

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

434 (f) Upon a receiver for the developer being appointed by a
435 circuit court and not being discharged within 30 days after such
436 appointment, unless the court determines within 30 days after
437 such appointment that transfer of control would be detrimental
438 to the association or its members.

439

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

444 (2) Members other than the developer are entitled to elect
445 at least one member of the board of directors of the homeowners'
446 association if 50 percent of the parcels in all phases of the
447 community which will ultimately be operated by the association
448 have been conveyed to members.



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

451 720.3075 Prohibited clauses in association documents.—

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

464 Section 7. Paragraph (b) of subsection (2) of section
465 720.3085, Florida Statutes, is amended to read:

466 720.3085 Payment for assessments; lien claims.—

467 (2)

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



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477 unpaid assessments is limited to any unpaid assessments that
478 accrued before the association acquired title to the delinquent
479 property through foreclosure or by deed in lieu of foreclosure.

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