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LEGISLATIVE ACTION

Senate

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House

Floor: WD/2R

03/10/2016 10:51 AM

Senator Hays moved the following:

1 **Senate Amendment to Amendment (514448) (with title**
2 **amendment)**

3
4 Between lines 1075 and 1076
5 insert:

6 Section 40. Subsection (2) of section 720.302, Florida
7 Statutes, is amended to read:

8 720.302 Purposes, scope, and application.—

9 (2) The Legislature recognizes that it is ~~not~~ in the best
10 interest of homeowners' associations or the individual
11 association members thereof to allow ~~create or impose~~ a bureau



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12 or other agency of state government to regulate a limited number
13 of the affairs of homeowners' associations. ~~However,~~

14 (a) In accordance with s. 720.311, the Legislature finds
15 that homeowners' associations and their individual members will
16 benefit from an expedited alternative process for resolution of
17 election and recall disputes and presuit mediation of other
18 disputes involving covenant enforcement and authorizes the
19 department to hear, administer, and determine these disputes as
20 more fully set forth in this chapter.

21 (b) The Legislature finds that homeowners' associations and
22 their individual members will benefit from having access to all
23 records and financial documents. Therefore, the Legislature
24 authorizes the department to receive and make a determination on
25 complaints against homeowners' associations, their officers, or
26 any directors which involve association financial matters,
27 access to official records, passage of an annual budget, reserve
28 funds, or misappropriation of funds.

29 (c) The Legislature recognizes that certain existing
30 contract rights were created for the benefit of homeowners'
31 associations and their members before July 1, 2016, and that ss.
32 720.301-720.407 are not intended to impair such contract rights,
33 including, but not limited to, the rights of a developer to
34 complete a community as initially contemplated. Notwithstanding
35 this, the Legislature finds that homeowners' associations and
36 their individual members will benefit from being afforded
37 reasonable protections of their property through contractual
38 rights and authorizes the department to receive and make a
39 determination on complaints against any association or a
40 director or an officer of an association that is still subject



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41 to developer control ~~Further, the Legislature recognizes that~~
42 ~~certain contract rights have been created for the benefit of~~
43 ~~homeowners' associations and members thereof before the~~
44 ~~effective date of this act and that ss. 720.301-720.407 are not~~
45 ~~intended to impair such contract rights, including, but not~~
46 ~~limited to, the rights of the developer to complete the~~
47 ~~community as initially contemplated.~~

48 Section 41. Subsection (13) of section 720.303, Florida
49 Statutes, is amended to read:

50 720.303 Association powers and duties; meetings of board;
51 official records; budgets; financial reporting; association
52 funds; recalls.—

53 (13) REPORTING REQUIREMENT.—The community association
54 manager or management firm, or the association when there is no
55 community association manager or management firm, shall submit a
56 report to the division by November 22, 2016 2013, and each year
57 thereafter in a manner and form prescribed by the division.

58 (a) The report must ~~shall~~ include the association's:

- 59 1. Legal name.
60 2. Federal employer identification number.
61 3. Mailing and physical addresses.
62 4. Total number of parcels.
63 5. Total amount of revenues and expenses from the
64 association's annual budget.

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

- 68 1. Legal name.
69 2. Mailing address.



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

71 (c) The reporting requirement provided in this subsection
72 shall be a continuing obligation on each association until the
73 required information is reported to the division. The community
74 association manager or management firm, or the association if
75 there is no community association manager or management firm as
76 defined in s. 468.431, must resubmit the report required under
77 this subsection upon the occurrence of a material change in the
78 information required to be reported pursuant to paragraphs (a)
79 and (b).

80 (d) By October 1, 2016 ~~2013~~, the department shall establish
81 and implement a registration system through a ~~an Internet~~
82 website that provides for the reporting requirements of
83 paragraphs (a) and (b).

84 (e) The department shall prepare an annual report of the
85 data reported pursuant to this subsection and present it to the
86 Governor, the President of the Senate, and the Speaker of the
87 House of Representatives by December 1, 2016 ~~2013~~, and each year
88 thereafter.

89 (f) The division shall adopt rules pursuant to ss.
90 120.536(1) and 120.54 to implement the provisions of this
91 subsection.

92 (g) This subsection shall expire on July 1, 2026 ~~2016~~,
93 unless reenacted by the Legislature.

94 Section 42. Subsection (2) of section 720.305, Florida
95 Statutes, is amended to read:

96 720.305 Obligations of members; remedies at law or in
97 equity; levy of fines and suspension of use rights.—

98 (2) The association may levy reasonable fines. A fine may



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99 not exceed \$100 per violation against any member or any member's
100 tenant, guest, or invitee for the failure of the owner of the
101 parcel or its occupant, licensee, or invitee to comply with any
102 provision of the declaration, the association bylaws, or
103 reasonable rules of the association unless otherwise provided in
104 the governing documents. A fine may be levied by the board for
105 each day of a continuing violation, with a single notice and
106 opportunity for hearing, except that the fine may not exceed
107 \$1,000 in the aggregate unless otherwise provided in the
108 governing documents. A fine, or an action to collect on a fine,
109 may not result in foreclosure on ~~of less than \$1,000 may not~~
110 ~~become a lien against~~ a parcel. In any action to recover a fine,
111 the prevailing party is entitled to reasonable attorney fees and
112 costs from the nonprevailing party as determined by the court.

113 (a) An association may suspend, for a reasonable period of
114 time, the right of a member, or a member's tenant, guest, or
115 invitee, to use common areas and facilities for the failure of
116 the owner of the parcel or its occupant, licensee, or invitee to
117 comply with any provision of the declaration, the association
118 bylaws, or reasonable rules of the association. This paragraph
119 does not apply to that portion of common areas used to provide
120 access or utility services to the parcel. A suspension may not
121 prohibit an owner or tenant of a parcel from having vehicular
122 and pedestrian ingress to and egress from the parcel, including,
123 but not limited to, the right to park.

124 (b) A fine or suspension may not be imposed by the board of
125 administration without at least 14 days' notice to the person
126 sought to be fined or suspended and an opportunity for a hearing
127 before a committee of at least three members appointed by the



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128 board who are not officers, directors, or employees of the
129 association, or the spouse, parent, child, brother, or sister of
130 an officer, director, or employee. If the committee, by majority
131 vote, does not approve a proposed fine or suspension, it may not
132 be imposed. The role of the committee is limited to determining
133 whether to confirm or reject the fine or suspension levied by
134 the board. If the board of administration imposes a fine or
135 suspension, the association must provide written notice of such
136 fine or suspension by mail or hand delivery to the parcel owner
137 and, if applicable, to any tenant, licensee, or invitee of the
138 parcel owner.

139 Section 43. Subsection (1) and paragraph (d) of subsection
140 (2) of section 720.311, Florida Statutes, are amended to read:

141 720.311 Dispute resolution.—

142 (1) The Legislature finds that alternative dispute
143 resolution has made progress in reducing court dockets and
144 trials and in offering a more efficient, cost-effective option
145 to litigation. The filing of any petition for arbitration or the
146 serving of a demand for presuit mediation as provided for in
147 this section shall toll the applicable statute of limitations.
148 Any recall dispute filed with the department pursuant to s.
149 720.303(10) shall be conducted by the department in accordance
150 with the provisions of ss. 718.112(2)(j) and 718.1255 and the
151 rules adopted by the division. In addition, the department shall
152 conduct mandatory binding arbitration of election disputes
153 between a member and an association pursuant to s. 718.1255 and
154 rules adopted by the division. ~~Neither Election disputes and nor~~
155 ~~recall disputes are eligible for presuit mediation; these~~
156 ~~disputes shall be arbitrated by the department.~~ At the request



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157 of the parcel owner or the homeowners' association, the
158 department is authorized to, and shall provide, binding
159 arbitration in disputes involving covenants, restrictions, rule
160 enforcement, and duties to maintain and make safe pursuant to
161 the declaration of covenants, rules and regulations, and other
162 governing documents; disputes involving assessments; and
163 disputes involving the official records of the homeowners'
164 association. At the conclusion of the proceeding, the department
165 shall charge the parties a fee in an amount adequate to cover
166 all costs and expenses incurred by the department in conducting
167 the proceeding. Initially, the petitioner shall remit a filing
168 fee of at least \$200 to the department. The fees paid to the
169 department shall become a recoverable cost in the arbitration
170 proceeding, and the prevailing party in an arbitration
171 proceeding shall recover its reasonable costs and attorney
172 attorney's fees in an amount found reasonable by the arbitrator.
173 The department shall adopt rules to effectuate the purposes of
174 this section.

175 (2)

176 (d) A mediator or arbitrator shall be authorized to conduct
177 mediation or arbitration under this section only if he or she
178 has been certified as a county court or circuit court civil
179 mediator or arbitrator, respectively, pursuant to the
180 requirements established by the Florida Supreme Court.
181 Settlement agreements resulting from mediation do ~~shall~~ not have
182 precedential value in proceedings involving parties other than
183 those participating in the mediation to support either a claim
184 or defense in other disputes.

185 Section 44. Present subsection (2) of section 720.401,



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186 Florida Statutes, is redesignated as subsection (3), and a new
187 subsection (2) is added to that section, to read:

188 720.401 Prospective purchasers subject to association
189 membership requirement; disclosure required; covenants;
190 assessments; contract cancellation.—

191 (2) A seller of a parcel for which membership in a
192 homeowners' association is a condition of ownership must provide
193 a prospective buyer with the association's governing documents,
194 including the declaration of covenants, the articles and bylaws,
195 any rules and regulations, the operating budget for the current
196 year, and any amendments to such documents. The seller must
197 provide the prospective buyer with such documents at least 7
198 days before closing. The prospective buyer may terminate the
199 contract for purchase within 3 days after receipt of such
200 documents.

201
202 ===== T I T L E A M E N D M E N T =====

203 And the title is amended as follows:

204 Delete line 1220

205 and insert:

206 adopt rules; amending s. 720.302, F.S.; revising
207 legislative findings; amending s. 720.303, F.S.;

208 providing that a community association manager or
209 management firm, or the association, must submit an
210 annual report to the Division of Florida Condominiums,
211 Timeshares, and Mobile Homes beginning on a specified
212 date; requiring the community association or
213 management firm, or the association, to resubmit the
214 report under certain circumstances; revising the date



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215 by which the Department of Business and Professional
216 Regulation must establish and implement a certain
217 registration system through a website and the date by
218 which it must prepare a certain report; revising an
219 expiration date; amending s. 720.305, F.S.; providing
220 that an action to collect a fine may not result in
221 foreclosure on a parcel; deleting a provision
222 prohibiting a fine less than \$1,000 from becoming a
223 lien against a parcel; amending s. 720.311, F.S.;
224 providing that election and recall disputes are
225 eligible for presuit mediation; providing that the
226 department must provide binding arbitration for
227 certain disputes at the request of the parcel owner or
228 homeowners' association; revising certification
229 requirements to conduct mediation or arbitration in
230 such disputes; amending s. 720.401, F.S.; providing
231 that a seller must provide certain documents to a
232 prospective buyer if membership in a homeowners'
233 association is a condition of ownership; authorizing a
234 prospective buyer to terminate a contract for purchase
235 within a specified timeframe; providing an effective
236 date.