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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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03/08/2016 10:28 AM

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Senator Hays moved the following:

Senate Amendment (with title amendment)

Delete lines 1370 -1405

and insert:

Section 51. Subsection (2) of section 720.302, Florida Statutes, is amended to read:

720.302 Purposes, scope, and application.—

(2) The Legislature recognizes that it is ~~not~~ in the best interest of homeowners' associations or the individual association members thereof to allow ~~create or impose~~ a bureau or other agency of state government to regulate a limited number



755076

12 of the affairs of homeowners' associations. ~~However,~~

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

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

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



755076

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

47 Section 52. Paragraph (b) of subsection (7) and subsection
48 (13) of section 720.303, Florida Statutes, are amended to read:

49 720.303 Association powers and duties; meetings of board;
50 official records; budgets; financial reporting; association
51 funds; recalls.-

52 (7) FINANCIAL REPORTING.—Within 90 days after the end of
53 the fiscal year, or annually on the date provided in the bylaws,
54 the association shall prepare and complete, or contract with a
55 third party for the preparation and completion of, a financial
56 report for the preceding fiscal year. Within 21 days after the
57 final financial report is completed by the association or
58 received from the third party, but not later than 120 days after
59 the end of the fiscal year or other date as provided in the
60 bylaws, the association shall, within the time limits set forth
61 in subsection (5), provide each member with a copy of the annual
62 financial report or a written notice that a copy of the
63 financial report is available upon request at no charge to the
64 member. Financial reports shall be prepared as follows:

65 (b)1. An association with total annual revenues of less
66 than \$150,000 shall prepare a report of cash receipts and
67 expenditures.

68 ~~2. An association in a community of fewer than 50 parcels,~~
69 ~~regardless of the association's annual revenues, may prepare a~~



755076

70 ~~report of cash receipts and expenditures in lieu of financial~~
71 ~~statements required by paragraph (a) unless the governing~~
72 ~~documents provide otherwise.~~

73 ~~2.3.~~ A report of cash receipts and disbursement must
74 disclose the amount of receipts by accounts and receipt
75 classifications and the amount of expenses by accounts and
76 expense classifications, including, but not limited to, the
77 following, as applicable: costs for security, professional, and
78 management fees and expenses; taxes; costs for recreation
79 facilities; expenses for refuse collection and utility services;
80 expenses for lawn care; costs for building maintenance and
81 repair; insurance costs; administration and salary expenses; and
82 reserves if maintained by the association.

83 (13) REPORTING REQUIREMENT.—The community association
84 manager or management firm, or the association when there is no
85 community association manager or management firm, shall submit a
86 report to the division by November 22, 2016 2013, and each year
87 thereafter in a manner and form prescribed by the division.

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

- 89 1. Legal name.
- 90 2. Federal employer identification number.
- 91 3. Mailing and physical addresses.
- 92 4. Total number of parcels.
- 93 5. Total amount of revenues and expenses from the
94 association's annual budget.

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

- 98 1. Legal name.



755076

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2. Mailing address.

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

(c) The reporting requirement provided in this subsection shall be a continuing obligation on each association until the required information is reported to the division. The community association manager or management firm, or the association if there is no community association manager or management firm, must resubmit the report required under this subsection upon the occurrence of a material change in the information required to be reported pursuant to paragraphs (a) and (b).

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

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

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

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

Section 53. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

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

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



755076

128 not exceed \$100 per violation against any member or any member's
129 tenant, guest, or invitee for the failure of the owner of the
130 parcel or its occupant, licensee, or invitee to comply with any
131 provision of the declaration, the association bylaws, or
132 reasonable rules of the association unless otherwise provided in
133 the governing documents. A fine may be levied by the board for
134 each day of a continuing violation, with a single notice and
135 opportunity for hearing, except that the fine may not exceed
136 \$1,000 in the aggregate unless otherwise provided in the
137 governing documents. A fine, or an action to collect on a fine,
138 may not result in foreclosure on ~~of less than \$1,000 may not~~
139 ~~become a lien against~~ a parcel. In any action to recover a fine,
140 the prevailing party is entitled to reasonable attorney fees and
141 costs from the nonprevailing party as determined by the court.

142 (a) An association may suspend, for a reasonable period of
143 time, the right of a member, or a member's tenant, guest, or
144 invitee, to use common areas and facilities for the failure of
145 the owner of the parcel or its occupant, licensee, or invitee to
146 comply with any provision of the declaration, the association
147 bylaws, or reasonable rules of the association. This paragraph
148 does not apply to that portion of common areas used to provide
149 access or utility services to the parcel. A suspension may not
150 prohibit an owner or tenant of a parcel from having vehicular
151 and pedestrian ingress to and egress from the parcel, including,
152 but not limited to, the right to park.

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



755076

157 board who are not officers, directors, or employees of the
158 association, or the spouse, parent, child, brother, or sister of
159 an officer, director, or employee. If the committee, by majority
160 vote, does not approve a proposed fine or suspension, it may not
161 be imposed. The role of the committee is limited to determining
162 whether to confirm or reject the fine or suspension levied by
163 the board. If the board of administration imposes a fine or
164 suspension, the association must provide written notice of such
165 fine or suspension by mail or hand delivery to the parcel owner
166 and, if applicable, to any tenant, licensee, or invitee of the
167 parcel owner.

168 Section 54. Subsection (1) and paragraph (d) of subsection
169 (2) of section 720.311, Florida Statutes, are amended to read:

170 720.311 Dispute resolution.—

171 (1) The Legislature finds that alternative dispute
172 resolution has made progress in reducing court dockets and
173 trials and in offering a more efficient, cost-effective option
174 to litigation. The filing of any petition for arbitration or the
175 serving of a demand for presuit mediation as provided for in
176 this section shall toll the applicable statute of limitations.
177 Any recall dispute filed with the department pursuant to s.
178 720.303(10) shall be conducted by the department in accordance
179 with the provisions of ss. 718.112(2)(j) and 718.1255 and the
180 rules adopted by the division. In addition, the department shall
181 conduct mandatory binding arbitration of election disputes
182 between a member and an association pursuant to s. 718.1255 and
183 rules adopted by the division. ~~Neither Election disputes and nor~~
184 ~~recall disputes are eligible for presuit mediation; these~~
185 ~~disputes shall be arbitrated by the department.~~ At the request



755076

186 of the parcel owner or the homeowners' association, the
187 department is authorized to, and shall provide, binding
188 arbitration in disputes involving covenants, restrictions, rule
189 enforcement, and duties to maintain and make safe pursuant to
190 the declaration of covenants, rules and regulations, and other
191 governing documents; disputes involving assessments; and
192 disputes involving the official records of the homeowners'
193 association. At the conclusion of the proceeding, the department
194 shall charge the parties a fee in an amount adequate to cover
195 all costs and expenses incurred by the department in conducting
196 the proceeding. Initially, the petitioner shall remit a filing
197 fee of at least \$200 to the department. The fees paid to the
198 department shall become a recoverable cost in the arbitration
199 proceeding, and the prevailing party in an arbitration
200 proceeding shall recover its reasonable costs and attorney
201 ~~attorney's~~ fees in an amount found reasonable by the arbitrator.
202 The department shall adopt rules to effectuate the purposes of
203 this section.

204 (2)

205 (d) A mediator or arbitrator shall be authorized to conduct
206 mediation or arbitration under this section only if he or she
207 has been certified as a county court or circuit court civil
208 mediator or arbitrator, respectively, pursuant to the
209 requirements established by the Florida Supreme Court.
210 Settlement agreements resulting from mediation do ~~shall~~ not have
211 precedential value in proceedings involving parties other than
212 those participating in the mediation to support either a claim
213 or defense in other disputes.

214 Section 55. Present subsection (2) of section 720.401,



755076

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

217 720.401 Prospective purchasers subject to association
218 membership requirement; disclosure required; covenants;
219 assessments; contract cancellation.—

220 (2) A seller of a parcel for which membership in a
221 homeowners' association is a condition of ownership must provide
222 a prospective buyer with the association's governing documents,
223 including the declaration of covenants, the articles and bylaws,
224 any rules and regulations, the operating budget for the current
225 year, and any amendments to such documents. The seller must
226 provide the prospective buyer with such documents at least 7
227 days before closing. The prospective buyer may terminate the
228 contract for purchase within 3 days after receipt of such
229 documents.

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231 ===== T I T L E A M E N D M E N T =====

232 And the title is amended as follows:

233 Delete lines 146 - 148

234 and insert:

235 financial report; amending s. 720.302, F.S.; revising
236 legislative findings; amending s. 720.303, F.S.;

237 deleting a provision authorizing a certain association
238 to prepare a specified report; providing that a
239 community association manager or management firm, or
240 the association, must submit an annual report to the
241 Division of Florida Condominiums, Timeshares, and
242 Mobile Homes beginning on a specified date; requiring
243 the community association or management firm, or the



755076

244 association, to resubmit the report under certain
245 circumstances; revising the date by which the
246 Department of Business and Professional Regulation
247 must establish and implement a certain registration
248 system through a website and the date by which it must
249 prepare a certain report; revising an expiration date;
250 amending s. 720.305, F.S.; providing that an action to
251 collect a fine may not result in foreclosure on a
252 parcel; deleting a provision prohibiting a fine less
253 than \$1,000 from becoming a lien against a parcel;
254 amending s. 720.311, F.S.; providing that election and
255 recall disputes are eligible for presuit mediation;
256 providing that the department must provide binding
257 arbitration for certain disputes at the request of the
258 parcel owner or homeowners' association; revising
259 certification requirements to conduct mediation or
260 arbitration in such disputes; amending s. 720.401,
261 F.S.; providing that a seller must provide certain
262 documents to a prospective buyer if membership in a
263 homeowners' association is a condition of ownership;
264 authorizing a prospective buyer to terminate a
265 contract for purchase within a specified timeframe;
266 providing an effective