

By Senator Hays

11-00923C-16

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1                   A bill to be entitled  
2           An act relating to homeowners' associations; amending  
3           s. 718.509, F.S.; revising the uses of the Florida  
4           Condominiums, Timeshares, and Mobile Homes Trust Fund  
5           to include reimbursement of costs to the Division of  
6           Florida Condominiums, Timeshares, and Mobile Homes for  
7           the administration and operation of the Homeowners'  
8           Association Act; amending s. 720.303, F.S.; increasing  
9           certain fines; providing a cause of action for a  
10          member against a community association manager or  
11          management firm under certain circumstances;  
12          authorizing related fines; prohibiting reimbursement  
13          to a community association manager or management firm  
14          for certain fines; requiring the community association  
15          manager, the management firm, or the association to  
16          annually provide a specified report beginning on a  
17          specified date, and to resubmit the report under  
18          certain circumstances to the Division of Florida  
19          Condominiums, Timeshares, and Mobile Homes; revising  
20          the dates by which the Department of Business and  
21          Professional Regulation must meet certain reporting  
22          requirements; extending the scheduled expiration of  
23          specified statutory text; amending s. 720.305, F.S.;  
24          providing that a fine may not become a lien against a  
25          parcel; amending s. 720.307, F.S.; revising the  
26          circumstances under which members other than the  
27          developer are entitled to elect at least a majority of  
28          the board of directors of the association; amending s.  
29          720.311, F.S.; providing presuit mediation for  
30          election and recall disputes; providing for binding  
31          arbitration by the department for certain disputes  
32          between a parcel owner and a homeowners' association;

11-00923C-16

20161122\_\_

33 authorizing mediation or arbitration by a mediator or  
34 arbitrator, respectively, who has been certified by a  
35 county court; creating s. 720.318, F.S.; requiring the  
36 department to provide training and educational  
37 programs for homeowners' association members,  
38 directors, and officers; providing that the training  
39 may include certain methods; authorizing the  
40 department to review and approve training and  
41 educational programs for members, directors, and  
42 officers; requiring the department to maintain a  
43 current list of approved programs and providers and to  
44 make the list available to homeowners' associations in  
45 a reasonable and cost-effective manner; creating s.  
46 720.319, F.S.; authorizing the department to enforce  
47 and ensure compliance with the Homeowners' Association  
48 Act and specified rules; providing the department  
49 jurisdiction to investigate complaints relating to  
50 homeowners' associations; requiring homeowners'  
51 associations to pay a specified fee to cover the  
52 administrative and operational costs of the  
53 department; prohibiting the department from imposing  
54 the fee under certain circumstances; amending s.  
55 720.401, F.S.; requiring a seller of a parcel to  
56 provide a prospective buyer with specified association  
57 documents under certain circumstances; authorizing a  
58 prospective buyer to terminate a contract for purchase  
59 within a specified timeframe under certain  
60 circumstances; amending s. 720.402, F.S.; providing a  
61 cause of action against developers by nondeveloper

11-00923C-16

20161122\_\_

62 members of a homeowners' association or the  
63 homeowners' association; providing an effective date.

64

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

66

67 Section 1. Subsection (1) of section 718.509, Florida  
68 Statutes, is amended to read:

69 718.509 Division of Florida Condominiums, Timeshares, and  
70 Mobile Homes Trust Fund.—

71 (1) There is created within the State Treasury the Division  
72 of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund  
73 to be used for the administration and operation of this chapter  
74 and chapters 718, 719, 720, 721, and 723 by the division.

75 Section 2. Paragraph (b) of subsection (5) and subsection  
76 (13) of section 720.303, Florida Statutes, are amended to read:

77 720.303 Association powers and duties; meetings of board;  
78 official records; budgets; financial reporting; association  
79 funds; recalls.—

80 (5) INSPECTION AND COPYING OF RECORDS.—The official records  
81 shall be maintained within the state for at least 7 years and  
82 shall be made available to a parcel owner for inspection or  
83 photocopying within 45 miles of the community or within the  
84 county in which the association is located within 10 business  
85 days after receipt by the board or its designee of a written  
86 request. This subsection may be complied with by having a copy  
87 of the official records available for inspection or copying in  
88 the community or, at the option of the association, by making  
89 the records available to a parcel owner electronically via the  
90 Internet or by allowing the records to be viewed in electronic

11-00923C-16

20161122\_\_

91 format on a computer screen and printed upon request. If the  
92 association has a photocopy machine available where the records  
93 are maintained, it must provide parcel owners with copies on  
94 request during the inspection if the entire request is limited  
95 to no more than 25 pages. An association shall allow a member or  
96 his or her authorized representative to use a portable device,  
97 including a smartphone, tablet, portable scanner, or any other  
98 technology capable of scanning or taking photographs, to make an  
99 electronic copy of the official records in lieu of the  
100 association's providing the member or his or her authorized  
101 representative with a copy of such records. The association may  
102 not charge a fee to a member or his or her authorized  
103 representative for the use of a portable device.

104 (b) A member who is denied access to official records is  
105 entitled to the actual damages or minimum damages for the  
106 association's willful failure to comply with this subsection.  
107 The minimum damages are \$500 ~~to be \$50~~ per calendar day up to 30  
108 ~~10~~ days, the calculation to begin on the 11th business day after  
109 receipt of the written request. If the association delegates to  
110 a community association manager or management firm the  
111 responsibility to provide members with access to official  
112 records, as provided in this section, a member who is denied  
113 access to official records by the community association manager  
114 or management firm has a cause of action against the community  
115 association manager or management firm for the actual or minimum  
116 damages provided in this paragraph. A community association  
117 manager or management firm may not be reimbursed or otherwise  
118 indemnified by the association for payment of any actual or  
119 minimum damages provided in this paragraph.

11-00923C-16

20161122\_\_

120 (13) REPORTING REQUIREMENT.—The community association  
121 manager or management firm, or the association when there is no  
122 community association manager or management firm, must submit a  
123 ~~shall~~ report to the division by November 22, 2016 ~~2013~~, and each  
124 year thereafter, in a manner and form prescribed by the  
125 division.

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

- 127 1. Legal name.
- 128 2. Federal employer identification number.
- 129 3. Mailing and physical addresses.
- 130 4. Total number of parcels.
- 131 5. Total amount of revenues and expenses from the  
132 association's annual budget.

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

- 136 1. Legal name.
- 137 2. Mailing address.
- 138 3. Total number of parcels owned on the date of reporting.

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

147 (d) By October 1, 2016 ~~2013~~, the department shall establish  
148 and implement a registration system through an Internet website

11-00923C-16

20161122\_\_

149 that provides for the reporting requirements of paragraphs (a)  
150 and (b).

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

156 (f) The division shall adopt rules pursuant to ss.  
157 120.536(1) and 120.54 to implement the provisions of this  
158 subsection.

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

161 Section 3. Subsection (2) of section 720.305, Florida  
162 Statutes, is amended to read:

163 720.305 Obligations of members; remedies at law or in  
164 equity; levy of fines and suspension of use rights.—

165 (2) The association may levy reasonable fines. A fine may  
166 not exceed \$100 per violation against any member or any member's  
167 tenant, guest, or invitee for the failure of the owner of the  
168 parcel or its occupant, licensee, or invitee to comply with any  
169 provision of the declaration, the association bylaws, or  
170 reasonable rules of the association unless otherwise provided in  
171 the governing documents. A fine may be levied by the board for  
172 each day of a continuing violation, with a single notice and  
173 opportunity for hearing, except that the fine may not exceed  
174 \$1,000 in the aggregate unless otherwise provided in the  
175 governing documents. A fine ~~of less than \$1,000~~ may not become a  
176 lien against a parcel. In any action to recover a fine, the  
177 prevailing party is entitled to reasonable attorney fees and

11-00923C-16

20161122\_\_

178 costs from the nonprevailing party as determined by the court.

179 (a) An association may suspend, for a reasonable period of  
180 time, the right of a member, or a member's tenant, guest, or  
181 invitee, to use common areas and facilities for the failure of  
182 the owner of the parcel or its occupant, licensee, or invitee to  
183 comply with any provision of the declaration, the association  
184 bylaws, or reasonable rules of the association. This paragraph  
185 does not apply to that portion of common areas used to provide  
186 access or utility services to the parcel. A suspension may not  
187 prohibit an owner or tenant of a parcel from having vehicular  
188 and pedestrian ingress to and egress from the parcel, including,  
189 but not limited to, the right to park.

190 (b) A fine or suspension may not be imposed by the board of  
191 administration without at least 14 days' notice to the person  
192 sought to be fined or suspended and an opportunity for a hearing  
193 before a committee of at least three members appointed by the  
194 board who are not officers, directors, or employees of the  
195 association, or the spouse, parent, child, brother, or sister of  
196 an officer, director, or employee. If the committee, by majority  
197 vote, does not approve a proposed fine or suspension, it may not  
198 be imposed. The role of the committee is limited to determining  
199 whether to confirm or reject the fine or suspension levied by  
200 the board. If the board of administration imposes a fine or  
201 suspension, the association must provide written notice of such  
202 fine or suspension by mail or hand delivery to the parcel owner  
203 and, if applicable, to any tenant, licensee, or invitee of the  
204 parcel owner.

205 Section 4. Subsection (1) of section 720.307, Florida  
206 Statutes, is amended to read:

11-00923C-16

20161122\_\_

207           720.307 Transition of association control in a community.-  
208 With respect to homeowners' associations:

209           (1) Members other than the developer are entitled to elect  
210 at least a majority of the members of the board of directors of  
211 the homeowners' association upon the occurrence of any of the  
212 following ~~when the earlier of the following events occurs:~~

213           (a) For a homeowners' association consisting of fewer than  
214 100 lots, the passage of 3 months after 75 percent of the  
215 parcels in all phases of the community which will ultimately be  
216 operated by the homeowners' association have been conveyed to  
217 members.

218           (b) For a homeowners' association consisting of fewer than  
219 200 lots, the passage of 10 years after the governing documents  
220 of the homeowners' association are filed with the local  
221 government.

222           (c) For a homeowners' association consisting of 200 or more  
223 lots, the earlier of the passage of 20 years after the governing  
224 documents of the homeowners' association are filed with the  
225 local government or 3 months after 90 percent of the parcels in  
226 all phases of the community which will ultimately be operated by  
227 the homeowners' association have been conveyed to members. ~~Three~~  
228 ~~months after 90 percent of the parcels in all phases of the~~  
229 ~~community that will ultimately be operated by the homeowners'~~  
230 ~~association have been conveyed to members;~~

231           (h) ~~(b)~~ Conveyance of another ~~Such other~~ percentage of the  
232 parcels ~~has been conveyed~~ to members, or the occurrence of such  
233 other date or event ~~has occurred~~, as is set forth in the  
234 governing documents in order to comply with the requirements of  
235 any governmentally chartered entity with regard to the mortgage



11-00923C-16

20161122\_\_

236 financing of parcels.†

237 (d)~~(e)~~ Abandonment by the developer, or the developer's  
238 failure of ~~Upon the developer abandoning or deserting its~~  
239 responsibility to maintain and complete the amenities or  
240 infrastructure as disclosed in the governing documents. There is  
241 a rebuttable presumption that the developer has abandoned and  
242 deserted the property if the developer has unpaid assessments or  
243 guaranteed amounts under s. 720.308 for a period of more than 2  
244 years.†

245 (e)~~(d)~~ ~~Upon the developer~~ Filing by the developer of a  
246 petition seeking protection under chapter 7 of the federal  
247 Bankruptcy Code.†

248 (f)~~(e)~~ Loss of ~~Upon the developer losing~~ title to the  
249 property by the developer through a foreclosure action or the  
250 transfer of a deed in lieu of foreclosure, unless the successor  
251 owner has accepted an assignment of developer rights and  
252 responsibilities first arising after the date of such  
253 assignment.† ~~or~~

254 (g)~~(f)~~ Appointment of ~~Upon~~ a receiver for the developer  
255 ~~being appointed~~ by a circuit court, if the receiver is ~~and not~~  
256 ~~being~~ discharged within 30 days after such appointment, unless  
257 the court determines within 30 days after such appointment that  
258 transfer of control would be detrimental to the association or  
259 its members.

260

261 For purposes of this section, the term "members other than the  
262 developer" does ~~shall~~ not include builders, contractors, or  
263 others who purchase a parcel for the purpose of constructing  
264 improvements ~~thereon~~ for resale.

11-00923C-16

20161122\_\_

265 Section 5. Subsection (1) and paragraph (d) of subsection  
266 (2) of section 720.311, Florida Statutes, are amended to read:  
267 720.311 Dispute resolution.—

268 (1) The Legislature finds that alternative dispute  
269 resolution has made progress in reducing court dockets and  
270 trials and in offering a more efficient, cost-effective option  
271 to litigation. The filing of any petition for arbitration or the  
272 serving of a demand for presuit mediation as provided for in  
273 this section shall toll the applicable statute of limitations.  
274 Any recall dispute filed with the department pursuant to s.  
275 720.303(10) shall be conducted by the department in accordance  
276 with the provisions of ss. 718.112(2)(j) and 718.1255 and the  
277 rules adopted by the division. In addition, the department shall  
278 conduct mandatory binding arbitration of election disputes  
279 between a member and an association pursuant to s. 718.1255 and  
280 rules adopted by the division. ~~Neither Election disputes and nor~~  
281 ~~recall disputes are eligible for presuit mediation; these~~  
282 ~~disputes shall be arbitrated by the department. At the request~~  
283 ~~of the parcel owner or homeowners' association, the department~~  
284 shall provide binding arbitration in disputes involving  
285 covenants, restrictions, rule enforcement, and duties to  
286 maintain and make safe pursuant to the declaration of covenants,  
287 rules and regulations, and other governing documents; disputes  
288 involving assessments; and disputes involving the official  
289 records of the homeowners' association. At the conclusion of the  
290 proceeding, the department shall charge the parties a fee in an  
291 amount adequate to cover all costs and expenses incurred by the  
292 department in conducting the proceeding. Initially, the  
293 petitioner shall remit a filing fee of at least \$200 to the

11-00923C-16

20161122\_\_

294 department. The fees paid to the department shall become a  
295 recoverable cost in the arbitration proceeding, and the  
296 prevailing party in an arbitration proceeding shall recover its  
297 reasonable costs and attorney ~~attorney's~~ fees in an amount found  
298 reasonable by the arbitrator. The department shall adopt rules  
299 to effectuate the purposes of this section.

300 (2)

301 (d) A mediator or arbitrator shall be authorized to conduct  
302 mediation or arbitration under this section only if he or she  
303 has been certified as a county court or circuit court civil  
304 mediator or arbitrator, respectively, pursuant to the  
305 requirements established by the Florida Supreme Court.  
306 Settlement agreements resulting from mediation do ~~shall~~ not have  
307 precedential value in proceedings involving parties other than  
308 those participating in the mediation to support either a claim  
309 or defense in other disputes.

310 Section 6. Section 720.318, Florida Statutes, is created to  
311 read:

312 720.318 Training and educational programs.—The department  
313 shall provide training and educational programs for homeowners'  
314 association members, directors, and officers. At the  
315 department's discretion, the training and educational programs  
316 may include web-based electronic media, live training, and  
317 seminars in various locations throughout the state. The  
318 department may review and approve training and educational  
319 programs for members, directors, and officers of homeowners'  
320 associations which are offered by providers. The department  
321 shall maintain a current list of approved programs and providers  
322 and shall make such list available to homeowners' associations

11-00923C-16

20161122\_\_

323 in a reasonable and cost-effective manner.

324 Section 7. Section 720.319, Florida Statutes, is created to  
325 read:

326 720.319 Authority of the department.-

327 (1) The department may enforce and ensure compliance with  
328 this chapter and rules relating to records access, financial  
329 management, and elections of homeowners' associations and may  
330 investigate any complaint made to the department against a  
331 homeowners' association.

332 (2) Homeowners' associations must pay to the department an  
333 annual fee of \$2 per lot to cover the department's  
334 administrative and operational costs in complying with this  
335 chapter. The fee must be submitted to the department with the  
336 annual report required under s. 720.303(13) and deposited into  
337 the Division of Florida Condominiums, Timeshares, and Mobile  
338 Homes Trust Fund. However, the department may not impose this  
339 fee when it has determined, based on the long-range estimates of  
340 such revenue, that the funds collected exceed those required to  
341 cover such costs.

342 Section 8. Present subsection (2) of section 720.401,  
343 Florida Statutes, is redesignated as subsection (3), and a new  
344 subsection (2) is added to that section, to read:

345 720.401 Prospective purchasers subject to association  
346 membership requirement; disclosure required; covenants;  
347 assessments; contract cancellation.-

348 (2) A seller of a parcel for which membership in a  
349 homeowners' association is a condition of ownership must provide  
350 a prospective buyer with the association's governing documents,  
351 including the declaration of covenants, articles and bylaws,

11-00923C-16

20161122\_\_

352 rules and regulations, and operating budget for the current  
353 year, and any amendment to such documents. The seller must  
354 provide the prospective buyer with such documents at least 7  
355 days before closing. The prospective buyer may terminate the  
356 contract for purchase within 3 days after receipt of such  
357 documents.

358 Section 9. Section 720.402, Florida Statutes, is amended to  
359 read:

360 720.402 Publication of false and misleading information;  
361 developer's use of homeowners' association fund prohibited.-

362 (1) Any person who, in reasonable reliance upon any  
363 material statement or information that is false or misleading  
364 and published by or under authority from the developer in  
365 advertising and promotional materials, including, but not  
366 limited to, a contract of purchase, the declaration of  
367 covenants, exhibits to a declaration of covenants, brochures,  
368 and newspaper advertising, pays anything of value toward the  
369 purchase of a parcel in a community located in this state has a  
370 cause of action to rescind the contract or collect damages from  
371 the developer for his or her loss before the closing of the  
372 transaction. After the closing of the transaction, the purchaser  
373 has a cause of action against the developer for damages under  
374 this section from the time of closing until 1 year after the  
375 date upon which the last of the events described in paragraphs  
376 (a) through (d) occurs:

377 (a) The closing of the transaction;

378 (b) The issuance by the applicable governmental authority  
379 of a certificate of occupancy or other evidence of sufficient  
380 completion of construction of the purchaser's residence to allow

11-00923C-16

20161122\_\_

381 lawful occupancy of the residence by the purchaser. In counties  
382 or municipalities in which certificates of occupancy or other  
383 evidences of completion sufficient to allow lawful occupancy are  
384 not customarily issued, for the purpose of this section,  
385 evidence of lawful occupancy shall be deemed to be given or  
386 issued upon the date that such lawful occupancy of the residence  
387 may be allowed under prevailing applicable laws, ordinances, or  
388 statutes;

389 (c) The completion by the developer of the common areas and  
390 such recreational facilities, whether or not the same are common  
391 areas, which the developer is obligated to complete or provide  
392 under the terms of the written contract, governing documents, or  
393 written agreement for purchase or lease of the parcel; or

394 (d) In the event there is not a written contract or  
395 agreement for sale or lease of the parcel, then the completion  
396 by the developer of the common areas and such recreational  
397 facilities, whether or not they are common areas, which the  
398 developer would be obligated to complete under any rule of law  
399 applicable to the developer's obligation.

400 (2) (a) A nondeveloper parcel owner has a cause of action  
401 against the developer for damages resulting from the developer's  
402 abandonment or failure of his or her responsibility to maintain  
403 and complete amenities or infrastructure disclosed in the  
404 governing documents, written contract, or written agreement for  
405 purchase of the parcel.

406 (b) A nondeveloper parcel owner has a cause of action  
407 against the developer for the developer's failure to perform or  
408 comply with any duty or obligation required under the governing  
409 documents, written contract, or written agreement for purchase

11-00923C-16

20161122\_\_

410 of the parcel.

411 (3) A developer may not use association funds for any  
412 purpose not specifically authorized in a homeowners' association  
413 budget adopted in accordance with the governing documents and s.  
414 720.303. Any use of association funds by a developer in  
415 violation of this section is actionable by a nondeveloper parcel  
416 owner or the homeowners' association. This subsection is  
417 intended to clarify existing law and applies to all homeowners'  
418 associations existing on July 1, 2016 and created thereafter.

419 (4) Under no circumstances may a cause of action created or  
420 recognized under this section survive for a period of more than  
421 5 years after the closing of the transaction.

422 (5)~~(2)~~ In any action for relief under this section, the  
423 prevailing party may recover reasonable attorney ~~attorney's~~  
424 fees. A developer may not expend association funds in the  
425 defense of any suit under this section.

426 Section 10. This act shall take effect July 1, 2016.