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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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03/11/2016 02:06 PM

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Senator Hays moved the following:

Senate Amendment (with title amendment)

Between lines 1130 and 1131

insert:

Section 40. 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



118464

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~~



118464

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

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

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

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

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

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

- 67 1. Legal name.
68 2. Mailing address.
69 3. Total number of parcels owned on the date of reporting.



118464

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

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

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

87 (f) The division shall adopt rules pursuant to ss.
88 120.536(1) and 120.54 to implement the provisions of this
89 subsection.

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

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

94 720.305 Obligations of members; remedies at law or in
95 equity; levy of fines and suspension of use rights.—

96 (2) The association may levy reasonable fines. A fine may
97 not exceed \$100 per violation against any member or any member's
98 tenant, guest, or invitee for the failure of the owner of the



118464

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

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

122 (b) A fine or suspension may not be imposed by the board of
123 administration without at least 14 days' notice to the person
124 sought to be fined or suspended and an opportunity for a hearing
125 before a committee of at least three members appointed by the
126 board who are not officers, directors, or employees of the
127 association, or the spouse, parent, child, brother, or sister of



118464

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

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

139 720.311 Dispute resolution.—

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



118464

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

173 (2)

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

183 Section 44. Present subsection (2) of section 720.401,
184 Florida Statutes, is redesignated as subsection (3), and a new
185 subsection (2) is added to that section, to read:



118464

186 720.401 Prospective purchasers subject to association
187 membership requirement; disclosure required; covenants;
188 assessments; contract cancellation.—

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

199
200 ===== T I T L E A M E N D M E N T =====

201 And the title is amended as follows:

202 Delete line 139

203 and insert:

204 adopt rules; amending s. 720.302, F.S.; revising
205 legislative findings; amending s. 720.303, F.S.;

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



118464

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