

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee  
3 Representative Kerner offered the following:

**Amendment (with title amendment)**

Between lines 907 and 908, insert:

7 Section 5. Section 720.307, Florida Statutes, is amended  
8 to read:

9 720.307 Transition of association control in a community.—

10 With respect to homeowners' associations:

11 (1) Members other than the developer are entitled to elect  
12 at least a majority of the members of the board of directors of  
13 the homeowners' association when the earliest ~~earlier~~ of the  
14 following events occurs:

15 (a) Three months after 75 ~~90~~ percent of the parcels in all  
16 phases of the community that will ultimately be operated by the  
17 homeowners' association have been conveyed to members. If any

## Amendment No. 2

18 parcel or parcels will be operated as an independent  
19 subassociation, the members other than the developer may elect  
20 at least a majority of the members of the board of directors of  
21 the subassociation if 75 percent of the parcels of that phase of  
22 the community that will ultimately be operated by the  
23 homeowners' association have been conveyed to members;

24 (b) Three months after 90 percent of the parcels in that  
25 phase of the community that will ultimately be operated by the  
26 homeowners' association have been conveyed to members if the  
27 association is conveyed in phases;

28 (c) ~~(b)~~ Such other percentage of the parcels has been  
29 conveyed to members, or such other date or event has occurred,  
30 as is set forth in the governing documents in order to comply  
31 with the requirements of any governmentally chartered entity  
32 with regard to the mortgage financing of parcels;

33 (d) ~~(e)~~ Upon the developer abandoning or deserting its  
34 responsibility to maintain and complete the amenities or  
35 infrastructure as disclosed in the governing documents. There is  
36 a rebuttable presumption that the developer has abandoned and  
37 deserted the property if the developer has unpaid assessments or  
38 guaranteed amounts under s. 720.308 for a period of more than 2  
39 years;

40 (e) ~~(d)~~ Upon the developer filing a petition seeking  
41 protection under chapter 7 of the federal Bankruptcy Code;

42 (f) ~~(e)~~ Upon the developer losing title to the property  
43 through a foreclosure action or the transfer of a deed in lieu

## Amendment No. 2

44 of foreclosure, unless the successor owner has accepted an  
45 assignment of developer rights and responsibilities first  
46 arising after the date of such assignment; or

47 (g)~~(f)~~ Upon a receiver for the developer being appointed  
48 by a circuit court and not being discharged within 30 days after  
49 such appointment, unless the court determines within 30 days  
50 after such appointment that transfer of control would be  
51 detrimental to the association or its members.

52  
53 For purposes of this section, the term "members other than the  
54 developer" does ~~shall~~ not include builders, contractors, or  
55 others who purchase a parcel for the purpose of constructing  
56 improvements thereon for resale.

57 (2) The developer may not prohibit or unreasonably  
58 restrict the right of any member to peaceably assemble for a  
59 discussion of association operations and business before,  
60 during, or after turnover. The developer must make common areas  
61 and recreational facilities available for members to peaceably  
62 assemble for a discussion of association operations and business  
63 without charge to any member.

64 (3)~~(2)~~ Members other than the developer are entitled to  
65 elect at least one member of the board of directors of the  
66 homeowners' association if 50 percent of the parcels in all  
67 phases of the community which will ultimately be operated by the  
68 association have been conveyed to members. Any member other than  
69 the developer elected to the board of directors has the same

Amendment No. 2

70 rights as granted to any director pursuant to chapter 607 or  
71 chapter 617.

72 (4)-(3) The developer is entitled to elect at least one  
73 member of the board of directors of the homeowners' association  
74 as long as the developer holds for sale in the ordinary course  
75 of business at least 5 percent of the parcels in all phases of  
76 the community. After the developer relinquishes control of the  
77 homeowners' association, the developer may exercise the right to  
78 vote any developer-owned voting interests in the same manner as  
79 any other member, except for purposes of reacquiring control of  
80 the homeowners' association or selecting the majority of the  
81 members of the board of directors.

82 (5) The developer must provide, at the closing of each  
83 property, a list of items that will be under the control of the  
84 association after the association is turned over to the members  
85 other than the developer. The developer shall advise each member  
86 of the financial responsibilities of the developer and of the  
87 members before, during, and after turnover of the association.

88 (6) (a) After 50 percent of the parcels in all phases of  
89 the community that will ultimately be operated by the  
90 association have been conveyed to the members, any proposed  
91 change to the declaration of covenants of the association must  
92 be provided to all members other than the developer for the  
93 members' consent and approval. Such changes to the covenants may  
94 not be made without member consent and approval.

Amendment No. 2

105 (b) After 50 percent of the parcels in a single phase of  
106 the community that will be an independent subassociation and  
107 that will ultimately be operated by the association have been  
108 conveyed to the members, any proposed change to the declaration  
109 of covenants of the association must be provided to all members  
110 other than the developer for the members' consent and approval.  
111 Such changes to the covenants may not be made without member  
112 consent and approval.

113 (7) After 75 percent of the parcels in all phases of the  
114 community that will ultimately be operated by the association  
115 have been conveyed to the members, the developer must:

116 (a) Provide the list in subsection (5) to every member,  
117 with an estimated period in which the developer expects to  
118 complete construction and turnover of the community. The  
119 developer must turn over all plans, budgets, and operating  
120 documents that were created during the beginning of construction  
until this time.

121 (b) Recognize any ad hoc committee of members other than  
122 the developer to oversee the use of any and all actual and  
123 planned common facilities. The members other than the developer  
124 may appoint or elect the ad hoc committee, which must consist of  
125 at least three homeowners. The committee may amend the  
126 developer's budget to manage common facilities if funds for  
127 operating the facilities have been divided equally between the  
128 developer and the members. However, if the committee finds the  
129 developer did not properly prepare the budget to operate the

## Amendment No. 2

121 common facilities, the committee may provide an alternative  
122 budget and operating plan to an arbitrator mutually agreed upon  
123 by the developer and the committee. The costs of the arbitrator  
124 shall be shared equally by the committee and the developer.

125 ~~(8)-(4)~~ At the time the members are entitled to elect at  
126 least a majority of the board of directors of the homeowners'  
127 association, the developer shall, at the developer's expense,  
128 within no more than 90 days deliver the following documents to  
129 the board:

130 (a) All deeds to common property owned by the association.

131 (b) The original of the association's declarations of  
132 covenants and restrictions.

133 (c) A certified copy of the articles of incorporation of  
134 the association.

135 (d) A copy of the bylaws.

136 (e) The minute books, including all minutes.

137 (f) The books and records of the association.

138 (g) Policies, rules, and regulations, if any, which have  
139 been adopted.

140 (h) Resignations of directors who are required to resign  
141 because the developer is required to relinquish control of the  
142 association.

143 (i) The financial records of the association from the date  
144 of incorporation through the date of turnover.

145 (j) All association funds and control thereof.

146 (k) All tangible property of the association.

## Amendment No. 2

147        (l) A copy of all as-built plans and specifications for  
148 common property and limited common property.

149        (m)~~(l)~~ A copy of all contracts which may be in force with  
150 the association as one of the parties.

151        (n)~~(m)~~ A list of the names and addresses and telephone  
152 numbers of all contractors, subcontractors, or others in the  
153 current employ of the association.

154        (o)~~(n)~~ Any and all insurance policies in effect.

155        (p)~~(o)~~ Any permits issued to the association by  
156 governmental entities.

157        (q)~~(p)~~ Any and all warranties in effect.

158        (r)~~(q)~~ A roster of current homeowners and their addresses  
159 and telephone numbers and section and lot numbers.

160        (s)~~(r)~~ Employment and service contracts in effect.

161        (t)~~(s)~~ All other contracts in effect to which the  
162 association is a party.

163        (u)~~(t)~~ The financial records, including financial  
164 statements of the association, and source documents from the  
165 incorporation of the association through the date of turnover.  
166 The records shall be audited by an independent certified public  
167 accountant for the period from the incorporation of the  
168 association or from the period covered by the last audit, if an  
169 audit has been performed for each fiscal year since  
170 incorporation. All financial statements shall be prepared in  
171 accordance with generally accepted accounting principles and  
172 shall be audited in accordance with generally accepted auditing

Amendment No. 2

173 standards, as prescribed by the Board of Accountancy, pursuant  
174 to chapter 473. The certified public accountant performing the  
175 audit shall examine to the extent necessary supporting documents  
176 and records, including the cash disbursements and related paid  
177 invoices to determine if expenditures were for association  
178 purposes and the billings, cash receipts, and related records of  
179 the association to determine that the developer was charged and  
180 paid the proper amounts of assessments. This paragraph applies  
181 to associations with a date of incorporation after December 31,  
182 2007.

183 (9)~~(5)~~ This section does not apply to a homeowners'  
184 association in existence on the effective date of this act, or  
185 to a homeowners' association, no matter when created, if such  
186 association is created in a community that is included in an  
187 effective development-of-regional-impact development order as of  
188 the effective date of this act, together with any approved  
189 modifications thereof.

190 -----  
191  
192 **T I T L E A M E N D M E N T**

193 Remove line 38 and insert:

194 F.S.; conforming cross-references; amending s.  
195 720.307, F.S.; revising the circumstances under which  
196 members other than the developer are entitled to elect  
197 at least a majority of the board of directors of the  
198 association; providing requirements relating to the



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1405 (2016)

Amendment No. 2

199 assembly of members to discuss association operations  
200 and business; providing rights of certain members  
201 elected to the board of directors; requiring a  
202 developer to provide certain information to a  
203 homeowner; providing requirements for proposed changes  
204 to the declaration of covenants of the association;  
205 providing developer responsibilities; requiring a  
206 developer to deliver certain information to the  
207 association; providing an