

By Senator Baxley

12-00497B-18

2018734\_\_

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; reviving, reenacting, and amending s.  
9       720.303, F.S.; increasing certain fines; providing a  
10      cause of action for a member against a community  
11      association manager or management firm under certain  
12      circumstances; authorizing related fines; prohibiting  
13      reimbursement to a community association manager or  
14      management firm for certain fines; requiring the  
15      community association manager, the management firm, or  
16      the association to annually provide a specified report  
17      beginning on a specified date, and to resubmit the  
18      report under certain circumstances to the Division of  
19      Florida Condominiums, Timeshares, and Mobile Homes;  
20      revising the dates by which the Department of Business  
21      and Professional Regulation must meet certain  
22      reporting requirements; extending the expiration of  
23      reporting requirements; 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  
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 homeowners' association;  
29      amending s. 720.311, F.S.; providing presuit mediation

12-00497B-18

2018734\_\_

30 for election and recall disputes; providing for  
31 binding arbitration by the department for certain  
32 disputes between a parcel owner and a homeowners'  
33 association; authorizing mediation or arbitration by a  
34 mediator or arbitrator, respectively, who has been  
35 certified by a county court; creating s. 720.318,  
36 F.S.; requiring the department to provide training and  
37 educational programs for homeowners' association  
38 members, directors, and officers; providing that the  
39 training 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 and  
43 make available a current list of approved programs and  
44 providers; creating s. 720.319, F.S.; authorizing the  
45 department to enforce and ensure compliance with the  
46 Homeowners' Association Act and specified rules;  
47 providing the department jurisdiction to investigate  
48 complaints relating to homeowners' associations;  
49 amending s. 720.401, F.S.; requiring a seller of a  
50 parcel to provide a prospective buyer with specified  
51 association documents under certain circumstances;  
52 authorizing a prospective buyer to terminate a  
53 contract for purchase within a specified timeframe  
54 under certain circumstances; amending s. 720.402,  
55 F.S.; providing a cause of action against developers  
56 by nondeveloper members of a homeowners' association  
57 or the homeowners' association; providing an effective  
58 date.

12-00497B-18

2018734\_\_

59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87

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

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

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

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

Section 2. Paragraph (b) of subsection (5) of section 720.303, Florida Statutes, is amended, and, notwithstanding the repeal of subsection (13) of that section, which occurred on July 1, 2016, subsection (13) of that section is revived, reenacted, and amended, to read:

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

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

12-00497B-18

2018734\_\_

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

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

12-00497B-18

2018734\_\_

117 minimum damages provided in this paragraph.

118 (13) REPORTING REQUIREMENT.—The community association  
119 manager or management firm, or the association when there is no  
120 community association manager or management firm, must submit a  
121 ~~shall~~ report to the division by November 22, 2018 ~~2013~~, and each  
122 year thereafter, in a manner and form prescribed by the  
123 division.

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

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

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

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

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

145 (d) By October 1, 2018 ~~2013~~, the department shall establish

12-00497B-18

2018734\_\_

146 and implement a registration system through an Internet website  
147 that provides for the reporting requirements of paragraphs (a)  
148 and (b).

149 (e) The department shall prepare an annual report of the  
150 data reported pursuant to this subsection and present it to the  
151 Governor, the President of the Senate, and the Speaker of the  
152 House of Representatives by December 1, 2018 ~~2013~~, and each year  
153 thereafter.

154 (f) The division shall adopt rules pursuant to ss.  
155 120.536(1) and 120.54 to implement the provisions of this  
156 subsection.

157 (g) This subsection shall expire on July 1, 2028 ~~2016~~,  
158 unless reenacted by the Legislature.

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

161 720.305 Obligations of members; remedies at law or in  
162 equity; levy of fines and suspension of use rights.-

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

12-00497B-18

2018734\_\_

175 prevailing party is entitled to reasonable attorney fees and  
176 costs from the nonprevailing party as determined by the court.

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

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

203 Section 4. Subsection (1) of section 720.307, Florida

12-00497B-18

2018734\_\_

204 Statutes, is amended to read:

205 720.307 Transition of association control in a community.—  
206 With respect to homeowners' associations:

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

211 (a) For a homeowners' association consisting of fewer than  
212 100 lots, the passage of 3 months after 75 percent of the  
213 parcels in all phases of the community which will ultimately be  
214 operated by the homeowners' association have been conveyed to  
215 members.

216 (b) For a homeowners' association consisting of fewer than  
217 200 lots, the passage of 10 years after the governing documents  
218 of the homeowners' association are filed with the local  
219 government.

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

229 ~~(b) Such other percentage of the parcels has been conveyed~~  
230 ~~to members, or such other date or event has occurred, as is set~~  
231 ~~forth in the governing documents in order to comply with the~~  
232 ~~requirements of any governmentally chartered entity with regard~~



12-00497B-18

2018734\_\_

233 ~~to the mortgage financing of parcels;~~

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

242 (e) (d) Upon the developer Filing by the developer of a  
243 petition seeking protection under chapter 7 of the federal  
244 Bankruptcy Code. ~~†~~

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

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

257 (h) Conveyance of another percentage of the parcels to  
258 members, or the occurrence of such other date or event, as  
259 provided in the governing documents in order to comply with the  
260 requirements of any governmentally chartered entity with regard  
261 to the mortgage financing of parcels.

12-00497B-18

2018734\_\_

262

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

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

269 720.311 Dispute resolution.—

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

12-00497B-18

2018734\_\_

291 ~~shall be arbitrated by the department.~~ At the conclusion of the  
292 proceeding, the department shall charge the parties a fee in an  
293 amount adequate to cover all costs and expenses incurred by the  
294 department in conducting the proceeding. Initially, the  
295 petitioner shall remit a filing fee of at least \$200 to the  
296 department. The fees paid to the department shall become a  
297 recoverable cost in the arbitration proceeding, and the  
298 prevailing party in an arbitration proceeding shall recover its  
299 reasonable costs and attorney ~~attorney's~~ fees in an amount found  
300 reasonable by the arbitrator. The department shall adopt rules  
301 to effectuate the purposes of this section.

302 (2)

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

312 Section 6. Section 720.318, Florida Statutes, is created to  
313 read:

314 720.318 Training and educational programs.—The Department  
315 of Business and Professional Regulation shall provide training  
316 and educational programs for homeowners' association members,  
317 directors, and officers. At the department's discretion, the  
318 training and educational programs may include web-based  
319 electronic media, live training, and seminars in various

12-00497B-18

2018734\_\_

320 locations throughout the state. The department may review and  
321 approve training and educational programs for members,  
322 directors, and officers of homeowners' associations which are  
323 offered by providers. The department shall maintain a current  
324 list of approved programs and providers and shall make such list  
325 available to homeowners' associations in a reasonable and cost-  
326 effective manner.

327 Section 7. Section 720.319, Florida Statutes, is created to  
328 read:

329 720.319 Authority of department.—The Department of Business  
330 and Professional Regulation may enforce and ensure compliance  
331 with this chapter and rules relating to records access,  
332 financial management, and elections of homeowners' associations  
333 and may investigate any complaint made to the department against  
334 a homeowners' association.

335 Section 8. Subsection (2) of section 720.401, Florida  
336 Statutes, is renumbered as subsection (3), and a new subsection  
337 (2) is added to that section, to read:

338 720.401 Prospective purchasers subject to association  
339 membership requirement; disclosure required; covenants;  
340 assessments; contract cancellation.—

341 (2) A seller of a parcel for which membership in a  
342 homeowners' association is a condition of ownership must provide  
343 a prospective buyer with the association's governing documents,  
344 including the declaration of covenants, articles and bylaws,  
345 rules and regulations, and operating budget for the current  
346 year, and any amendment to such documents. The seller must  
347 provide the prospective buyer with such documents at least 7  
348 days before closing. The prospective buyer may terminate the

12-00497B-18

2018734\_\_

349 contract for purchase within 3 days after receipt of such  
350 documents.

351 Section 9. Section 720.402, Florida Statutes, is amended to  
352 read:

353 720.402 Publication of false and misleading information;  
354 developer's use of homeowners' association fund prohibited.-

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

370 (a) The closing of the transaction;

371 (b) The issuance by the applicable governmental authority  
372 of a certificate of occupancy or other evidence of sufficient  
373 completion of construction of the purchaser's residence to allow  
374 lawful occupancy of the residence by the purchaser. In counties  
375 or municipalities in which certificates of occupancy or other  
376 evidences of completion sufficient to allow lawful occupancy are  
377 not customarily issued, for the purpose of this section,

12-00497B-18

2018734\_\_

378 evidence of lawful occupancy shall be deemed to be given or  
379 issued upon the date that such lawful occupancy of the residence  
380 may be allowed under prevailing applicable laws, ordinances, or  
381 statutes;

382 (c) The completion by the developer of the common areas and  
383 such recreational facilities, whether or not the same are common  
384 areas, which the developer is obligated to complete or provide  
385 under the terms of the written contract, governing documents, or  
386 written agreement for purchase or lease of the parcel; or

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

393 (2) A nondeveloper parcel owner has a cause of action  
394 against the developer for:

395 (a) Damages resulting from the developer's abandonment or  
396 failure of his or her responsibility to maintain and complete  
397 amenities or infrastructure disclosed in the governing  
398 documents, written contract, or written agreement for purchase  
399 of the parcel.

400 (b) The developer's failure to perform or comply with any  
401 duty or obligation required under the governing documents,  
402 written contract, or written agreement for purchase of the  
403 parcel.

404 (3) A developer may not use association funds for a purpose  
405 not specifically authorized in a homeowners' association budget  
406 adopted in accordance with the governing documents and s.

12-00497B-18

2018734\_\_

407 720.303. Any use of association funds by a developer in  
408 violation of this section is actionable by a nondeveloper parcel  
409 owner or the homeowners' association. This subsection is  
410 intended to clarify existing law and applies to all homeowners'  
411 associations in existence on July 1, 2018, and created  
412 thereafter.

413 (4) Under no circumstances may a cause of action created or  
414 recognized under this section survive for a period of more than  
415 5 years after the closing of the transaction.

416 (5)~~(2)~~ In any action for relief under this section, the  
417 prevailing party may recover reasonable attorney ~~attorney's~~  
418 fees. A developer may not expend association funds in the  
419 defense of any suit under this section.

420 Section 10. This act shall take effect July 1, 2018.