

By Senator Torres

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1 A bill to be entitled
2 An act relating to homeowners' association recalls;
3 providing a short title; amending s. 720.303, F.S.;
4 revising the process for recalling a director of a
5 homeowners' association; requiring a specified
6 percentage of certain parcel owners to initiate a
7 recall petition or a special meeting to recall a
8 director; requiring the board of directors to duly
9 notice and hold a referendum within a specified time;
10 conforming provisions to changes made by the act;
11 providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

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15 Section 1. This act may be cited as the "Community Recall
16 Act."

17 Section 2. Subsection (10) of section 720.303, Florida
18 Statutes, is amended to read:

19 720.303 Association powers and duties; meetings of board;
20 official records; budgets; financial reporting; association
21 funds; recalls.—

22 (10) RECALL OF DIRECTORS.—

23 (a)1. Regardless of any provision to the contrary contained
24 in the governing documents, subject to the provisions of s.
25 720.307 regarding transition of association control, any member
26 of the board of directors may be recalled and removed from
27 office with or without cause as provided in paragraphs (b) and
28 (c) by a majority of the total voting interests.

29 2. When the governing documents, including the declaration,

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30 articles of incorporation, or bylaws, provide that only a
31 specific class of members is entitled to elect a board director
32 or directors, only that class of members may vote to recall
33 those board directors so elected.

34 (b)1. A board director ~~directors~~ may be subject to removal
35 from office ~~recalled~~ by a recall petition signed by at least 60
36 percent of the parcel owners whose parcels are their homesteads
37 ~~an agreement in writing or by written ballot without a~~
38 ~~membership meeting.~~ A recall petition with a sufficient number
39 of signatures ~~The agreement in writing or the written ballots,~~
40 or a copy thereof, shall be served on the association by
41 certified mail or by personal service in the manner authorized
42 by chapter 48 and the Florida Rules of Civil Procedure.

43 2. The board shall duly notice and hold a referendum
44 ~~meeting of the board~~ within 30 ~~5 full~~ business days after
45 receipt of the recall petition ~~agreement in writing or written~~
46 ~~ballots.~~ The board shall give all members notice of the date by
47 which ballots must be returned in accordance with the 14-day
48 notice requirement under subparagraph (2)(c)2. All members with
49 a voting interest may cast a vote in favor of or opposition to
50 the recall petition. If a majority of the votes cast are in
51 favor of the recall petition, the board shall duly notice and
52 hold a meeting of the board within 5 business days after the
53 closing date for submitting ballots in the referendum. At the
54 meeting, the board shall either certify the recall petition
55 ~~written ballots or written agreement~~ to recall a director or
56 directors of the board, in which case such director or directors
57 shall be recalled effective immediately and shall turn over to
58 the board within 5 ~~full~~ business days any and all records and

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59 property of the association in their possession, or proceed as
60 described in paragraph (d).

61 3. ~~If~~ When it is determined by the department through
62 ~~pursuant to~~ binding arbitration proceedings that a ~~an~~ initial
63 recall effort under this paragraph was defective, the ~~written~~
64 ~~recall agreements or written~~ ballots used in the first
65 referendum that are ~~recall effort and~~ not found to be defective
66 may be reused in one subsequent referendum ~~recall effort~~.
67 However, in no event is a ~~written agreement or written~~ ballot
68 valid for more than 120 days after it has been signed by the
69 member.

70 4. Any rescission or revocation of a member's ~~written~~
71 ~~recall ballot or agreement~~ must be in writing and, in order to
72 be effective, must be delivered to the association before the
73 closing date for submitting ballots in referendum ~~association is~~
74 ~~served with the written recall agreements or ballots~~.

75 5. The recall petition must ~~agreement in writing or ballot~~
76 ~~shall~~ list at least as many possible replacement directors as
77 there are directors subject to removal ~~the recall~~, when at least
78 a majority of the board is sought to be removed from office. In
79 the duly noticed referendum, all members with a voting interest
80 ~~recalled; the person executing the recall instrument~~ may vote
81 for as many replacement candidates as there are directors
82 subject to removal ~~the recall~~.

83 (c)1. If the declaration, articles of incorporation, or
84 bylaws specifically provide, the members may also recall and
85 remove a board director or directors by a vote taken at a
86 meeting. If so provided in the governing documents, a special
87 meeting of the members to recall a director or directors of the

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88 board of administration may be called by 10 percent of the
89 parcel owners whose parcels are the homesteads of such owners
90 ~~voting interests~~ giving notice of the meeting as required for a
91 meeting of members, and the notice shall state the purpose of
92 the meeting. Electronic transmission may not be used as a method
93 of giving notice of a meeting called in whole or in part for
94 this purpose.

95 2. The board shall duly notice and hold a board meeting
96 within 5 ~~full~~ business days after the adjournment of the member
97 meeting to recall one or more directors. At the meeting, the
98 board shall certify the recall, in which case such member or
99 members shall be recalled effective immediately and shall turn
100 over to the board within 5 ~~full~~ business days any and all
101 records and property of the association in their possession, or
102 shall proceed as set forth in paragraph (d).

103 (d) If the board determines not to certify the recall
104 petition ~~written agreement or written ballots~~ to recall a
105 director or directors of the board or does not certify the
106 recall by a vote at a meeting, the board shall, within 5 ~~full~~
107 business days after the meeting, file with the department a
108 petition for binding arbitration under ~~pursuant to~~ the
109 applicable procedures in ss. 718.112(2)(j) and 718.1255 and the
110 rules adopted thereunder. For the purposes of this section, the
111 members who voted at the meeting or who initiated ~~executed~~ the
112 recall petition ~~agreement in writing~~ shall constitute one party
113 under the petition for arbitration. If the arbitrator certifies
114 the recall as to any director or directors of the board, the
115 recall will be effective upon mailing of the final order of
116 arbitration to the association. The director or directors so

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117 recalled shall deliver to the board any and all records of the
118 association in their possession within 5 ~~full~~ business days
119 after the effective date of the recall.

120 (e) If a vacancy occurs on the board as a result of a
121 recall and less than a majority of the board directors are
122 removed, the vacancy may be filled by the affirmative vote of a
123 majority of the remaining directors, notwithstanding any
124 provision to the contrary contained in this subsection or in the
125 association documents. If vacancies occur on the board as a
126 result of a recall and a majority or more of the board directors
127 are removed, the vacancies shall be filled by members voting in
128 favor of the recall. ~~;~~ If removal is at a meeting, any vacancies
129 shall be filled by the members at the meeting. If the recall
130 occurred by a recall petition ~~agreement in writing or by written~~
131 ~~ballot~~, members may vote for replacement directors in the same
132 instrument in accordance with procedural rules adopted by the
133 division, which rules need not be consistent with this
134 subsection.

135 (f) If the board fails to duly notice and hold a board
136 meeting within 5 ~~full~~ business days after the closing date for
137 submitting ballots in the referendum ~~service of an agreement in~~
138 ~~writing~~ or within 5 ~~full~~ business days after the adjournment of
139 the member recall meeting, the recall is ~~shall be deemed~~
140 effective and the board directors so recalled shall immediately
141 turn over to the board all records and property of the
142 association.

143 (g) If the board fails to duly notice and hold the required
144 meeting or fails to file the required petition, the parcel unit
145 owner representative may file a petition under ~~pursuant to~~ s.

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146 718.1255 challenging the board's failure to act. The petition
147 must be filed within 60 days after the expiration of the
148 applicable 5-~~full~~-business-day period. The review of a petition
149 under this paragraph is limited to the sufficiency of service on
150 the board and the facial validity of the recall petition ~~written~~
151 ~~agreement~~ or ballots filed.

152 (h) If a director who is removed fails to relinquish his or
153 her office or turn over records as required under this section,
154 the circuit court in the county where the association maintains
155 its principal office may, upon the petition of the association,
156 summarily order the director to relinquish his or her office and
157 turn over all association records upon application of the
158 association.

159 (i) The minutes of the board meeting at which the board
160 decides whether to certify the recall are an official
161 association record. The minutes must record the date and time of
162 the meeting, the decision of the board, and the vote count taken
163 on each board member subject to the recall. In addition, when
164 the board decides not to certify the recall, as to each vote
165 rejected, the minutes must identify the parcel number and the
166 specific reason for each such rejection.

167 (j) When the recall of more than one board director is
168 sought, the recall petition ~~written agreement~~, ballot, or vote
169 at a meeting shall provide for a separate vote for each board
170 director sought to be recalled.

171 (k) A board member who has been recalled may file a
172 petition under ~~pursuant to~~ ss. 718.112(2)(j) and 718.1255 and
173 the rules adopted challenging the validity of the recall. The
174 petition must be filed within 60 days after the recall is ~~deemed~~

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175 certified or otherwise effective under paragraph (f). The
176 association and the parcel ~~unit~~ owner representative shall be
177 named as respondents.

178 (1) The division may not accept for filing a ~~recall~~
179 petition, whether filed under ~~pursuant to~~ paragraph (b),
180 paragraph (c), paragraph (g), or paragraph (k) and regardless of
181 whether the recall was certified, when there are 60 or fewer
182 days until the scheduled reelection of the board member sought
183 to be recalled or when 60 or fewer days have not elapsed since
184 the election of the board member sought to be recalled.

185 Section 3. This act shall take effect July 1, 2020.