

By the Committee on Regulated Industries; and Senator Rodriguez

580-03527-23

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1 A bill to be entitled
2 An act relating to homeowners' associations; providing
3 a short title; amending s. 720.303, F.S.; requiring
4 certain officers or directors of an association to be
5 removed from office under certain circumstances;
6 specifying how a vacancy on the association board must
7 be filled; providing restrictions on certain officers
8 and directors; specifying when an officer or director
9 is required to be reinstated; requiring an association
10 to maintain designated addresses as official records;
11 specifying what constitutes a designated address;
12 conforming provisions to changes made by the act;
13 prohibiting certain funds from being comingled with
14 other association funds; authorizing a member to
15 request an accounting from an association under
16 certain circumstances; requiring an association to
17 provide such accounting and remit unused funds to the
18 member within specified timeframes; amending s.
19 720.3033, F.S.; providing criminal and civil penalties
20 for certain actions by officers, directors, or
21 managers of an association; requiring directors and
22 officers of the association to disclose certain
23 activity and relationships to the association within a
24 specified timeframe; creating a rebuttable presumption
25 of a conflict of interest if certain acts occur;
26 amending s. 720.305, F.S.; restricting certain
27 attorney fees and fines; specifying the types of
28 violations for which an association may levy fines;
29 specifying where certain notice must be delivered;

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30 providing requirements for such notice; authorizing
31 parcel owners to attend certain hearings by telephone
32 or other electronic means; requiring a specified
33 notice after a hearing; conforming provisions to
34 changes made by the act; creating s. 720.3065, F.S.;
35 providing criminal penalties for certain fraudulent
36 voting activities; providing an effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. This act may be cited as the "Homeowners'
41 Associations Bill of Rights."

42 Section 2. Subsection (1) and paragraph (g) of subsection
43 (4) of section 720.303, Florida Statutes, are amended, and
44 paragraph (d) is added to subsection (8) of that section, to
45 read:

46 720.303 Association powers and duties; meetings of board;
47 official records; budgets; financial reporting; association
48 funds; recalls.—

49 (1) POWERS AND DUTIES.—

50 (a) An association which operates a community as defined in
51 s. 720.301~~7~~ must be operated by an association that is a Florida
52 corporation. After October 1, 1995, the association must be
53 incorporated and the initial governing documents must be
54 recorded in the official records of the county in which the
55 community is located. An association may operate more than one
56 community.

57 (b)1. The officers and directors of an association have a
58 fiduciary relationship to the members who are served by the

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59 association.

60 2. An officer or a director charged by information or
61 indictment with any of the following crimes must be removed from
62 office, and the vacancy must be filled as provided in s.
63 720.306(9) until the end of the officer's or director's period
64 of suspension or the end of his or her term of office, whichever
65 occurs first:

66 a. Forgery of a ballot envelope or voting certificate used
67 in a homeowners' association election as provided in s. 831.01.

68 b. Theft or embezzlement of funds of a homeowners'
69 association as provided in s. 812.014.

70 c. Destruction of or the refusal to allow inspection or
71 copying of an official record of a homeowners' association that
72 is accessible to parcel owners within the time periods required
73 by general law in furtherance of any crime. Such act constitutes
74 tampering with physical evidence as provided in s. 918.13.

75 d. Obstruction of justice under chapter 843.

76 3. If a criminal charge is pending against the officer or
77 director, he or she may not be appointed or elected to a
78 position as an officer or a director of any association and may
79 not have access to the official records of any association,
80 except pursuant to a court order. However, if the charges are
81 resolved without a finding of guilt, the officer or director
82 must be reinstated for the remainder of his or her term of
83 office, if any.

84 (c) The powers and duties of an association include those
85 set forth in this chapter and, except as expressly limited or
86 restricted in this chapter, those set forth in the governing
87 documents.

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88 (d) After control of the association is obtained by members
89 other than the developer, the association may institute,
90 maintain, settle, or appeal actions or hearings in its name on
91 behalf of all members concerning matters of common interest to
92 the members, including, but not limited to, the common areas;
93 roof or structural components of a building, or other
94 improvements for which the association is responsible;
95 mechanical, electrical, or plumbing elements serving an
96 improvement or building for which the association is
97 responsible; representations of the developer pertaining to any
98 existing or proposed commonly used facility; and protesting ad
99 valorem taxes on commonly used facilities. The association may
100 defend actions in eminent domain or bring inverse condemnation
101 actions. Before commencing litigation against any party in the
102 name of the association involving amounts in controversy in
103 excess of \$100,000, the association must obtain the affirmative
104 approval of a majority of the voting interests at a meeting of
105 the membership at which a quorum has been attained. This
106 paragraph subsection does not limit any statutory or common-law
107 right of any individual member or class of members to bring any
108 action without participation by the association.

109 (e) A member does not have authority to act for the
110 association by virtue of being a member. An association may have
111 more than one class of members and may issue membership
112 certificates.

113 (f) An association of 15 or fewer parcel owners may enforce
114 only the requirements of those deed restrictions established
115 prior to the purchase of each parcel upon an affected parcel
116 owner or owners.

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117 (4) OFFICIAL RECORDS.—The association shall maintain each
118 of the following items, when applicable, which constitute the
119 official records of the association:

120 (g) A current roster of all members and their designated
121 mailing addresses and parcel identifications. A member's
122 designated mailing address is the member's property address,
123 unless the member has sent written notice to the association
124 requesting that a different mailing address be used for all
125 required notices. The association shall also maintain the e-mail
126 electronic mailing addresses and the facsimile numbers
127 designated by members for receiving notice sent by electronic
128 transmission of those members consenting to receive notice by
129 electronic transmission. A member's e-mail address is the e-mail
130 address the member provided when consenting in writing to
131 receiving notice by electronic transmission, unless the member
132 has sent written notice to the association requesting that a
133 different e-mail address be used for all required notices. The
134 e-mail electronic mailing addresses and facsimile numbers
135 provided by members ~~unit owners~~ to receive notice by electronic
136 transmission must ~~shall~~ be removed from association records when
137 the member revokes consent to receive notice by electronic
138 transmission ~~is revoked~~. However, the association is not liable
139 for an erroneous disclosure of the e-mail ~~electronic mail~~
140 address or the facsimile number for receiving electronic
141 transmission of notices.

142 (8) ASSOCIATION FUNDS; COMMINGLING.—

143 (d) If an association collects a deposit from a member for
144 any reason, including to pay for expenses that may be incurred
145 as a result of construction on a member's parcel, such funds

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146 must be maintained separately and may not be comingled with any
147 other association funds. Upon completion of the member's
148 construction project, or other reason for which the deposit was
149 collected, the member may request an accounting from the
150 association of his or her funds that were deposited, and the
151 association must provide such accounting to the member within 7
152 days after receiving the member's request. An association must
153 remit payment of any unused funds to the member within 30 days
154 after receiving notice that the member's construction project,
155 or other reason for which the deposit was collected, is
156 complete.

157 Section 3. Subsection (3) of section 720.3033, Florida
158 Statutes, is amended, and subsection (6) is added to that
159 section, to read:

160 720.3033 Officers and directors.—

161 (3) An officer, a director, or a manager may not solicit,
162 offer to accept, or accept any thing ~~good~~ or service of value
163 for which consideration has not been provided for his or her
164 benefit or for the benefit of a member of his or her immediate
165 family from any person providing or proposing to provide goods
166 or services to the association. An officer, a director, or a
167 manager who knowingly solicits, offers to accept, or accepts any
168 thing or service of value or kickback for which consideration
169 has not been provided for his or her own benefit or that of his
170 or her immediate family, from any person providing or proposing
171 to provide goods or services to the association is subject to a
172 civil penalty under s. 718.501(1)(d) and, if applicable, a
173 criminal penalty as provided in s. 718.111(1)(d). If the board
174 finds that an officer or a director has violated this

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175 subsection, the board shall immediately remove the officer or
176 director from office. The vacancy shall be filled according to
177 law until the end of the officer's or director's term of office.
178 However, an officer, a director, or a manager may accept food to
179 be consumed at a business meeting with a value of less than \$25
180 per individual or a service or good received in connection with
181 trade fairs or education programs.

182 (6) (a) Directors and officers of an association that are
183 appointed by the developer must disclose to the association
184 their relationship to the developer each calendar year in which
185 they serve as a director or an officer. Directors and officers
186 appointed by the developer must disclose any other activity that
187 may reasonably be construed to be a conflict of interest
188 pursuant to paragraph (b).

189 (b) Directors and officers must disclose to the association
190 any activity that may be reasonably construed to be a conflict
191 of interest at least 14 days before voting on an issue or
192 entering into a contract that is the subject of the conflict. A
193 rebuttable presumption of a conflict of interest exists if any
194 of the following acts occur without prior disclosure to the
195 association:

196 1. A director or an officer, or a relative of a director or
197 an officer, enters into a contract for goods or services with
198 the association.

199 2. A director or an officer, or a relative of a director or
200 an officer, holds an interest in a corporation, limited
201 liability company, partnership, limited liability partnership,
202 or other business entity that conducts business with the
203 association or proposes to enter into a contract or other

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204 transaction with the association.

205 Section 4. Subsections (1), (2), and (5) of section
206 720.305, Florida Statutes, are amended to read:

207 720.305 Obligations of members; remedies at law or in
208 equity; levy of fines and suspension of use rights.—

209 (1) Each member and the member's tenants, guests, and
210 invitees, and each association, are governed by, and must comply
211 with, this chapter, the governing documents of the community,
212 and the rules of the association. Actions at law or in equity,
213 or both, to redress alleged failure or refusal to comply with
214 these provisions may be brought by the association or by any
215 member against:

216 (a) The association;

217 (b) A member;

218 (c) Any director or officer of an association who willfully
219 and knowingly fails to comply with these provisions; and

220 (d) Any tenants, guests, or invitees occupying a parcel or
221 using the common areas.

222

223 The prevailing party in any such litigation is entitled to
224 recover reasonable attorney fees and costs as provided in
225 paragraph (2) (e). A member prevailing in an action between the
226 association and the member under this section, in addition to
227 recovering his or her reasonable attorney fees, may recover
228 additional amounts as determined by the court to be necessary to
229 reimburse the member for his or her share of assessments levied
230 by the association to fund its expenses of the litigation. This
231 relief does not exclude other remedies provided by law. This
232 section does not deprive any person of any other available right

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233 or remedy.

234 (2) An association may levy reasonable fines for violations
235 of the declaration, association's bylaws, or reasonable rules of
236 the association. A fine may not exceed \$100 per violation
237 against any member or any member's tenant, guest, or invitee for
238 the failure of the owner of the parcel or its occupant,
239 licensee, or invitee to comply with any provision of the
240 declaration, the association bylaws, or reasonable rules of the
241 association unless otherwise provided in the governing
242 documents. A fine may be levied by the board for each day of a
243 continuing violation, with a single notice and opportunity for
244 hearing, except that the fine may not exceed \$1,000 in the
245 aggregate unless otherwise provided in the governing documents.
246 A fine of less than \$1,000 may not become a lien against a
247 parcel. In any action to recover a fine, the prevailing party is
248 entitled to reasonable attorney fees and costs from the
249 nonprevailing party as determined by the court.

250 (a) An association may suspend, for a reasonable period of
251 time, the right of a member, or a member's tenant, guest, or
252 invitee, to use common areas and facilities for the failure of
253 the owner of the parcel or its occupant, licensee, or invitee to
254 comply with any provision of the declaration, the association
255 bylaws, or reasonable rules of the association. This paragraph
256 does not apply to that portion of common areas used to provide
257 access or utility services to the parcel. A suspension may not
258 prohibit an owner or tenant of a parcel from having vehicular
259 and pedestrian ingress to and egress from the parcel, including,
260 but not limited to, the right to park.

261 (b) A fine or suspension levied by the board of

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262 administration may not be imposed unless the board first
263 provides at least 14 days' notice to the parcel owner at his or
264 her designated mailing or e-mail address in the association's
265 official records and, if applicable, any occupant, licensee, or
266 invitee of the parcel owner, sought to be fined or suspended and
267 ~~an opportunity for~~ a hearing before a committee of at least
268 three members appointed by the board who are not officers,
269 directors, or employees of the association, or the spouse,
270 parent, child, brother, or sister of an officer, director, or
271 employee. The notice must include a description of the alleged
272 violation, the specific action required to cure such violation,
273 if applicable, and the date and location of the hearing. A
274 parcel owner has the right to attend a hearing by telephone or
275 other electronic means.

276 (c) If the committee, by majority vote, does not approve a
277 proposed fine or suspension, the proposed fine or suspension may
278 not be imposed. The role of the committee is limited to
279 determining whether to confirm or reject the fine or suspension
280 levied by the board.

281 (d) After the hearing, the committee shall provide written
282 notice to the parcel owner at his or her designated mailing or
283 e-mail address in the association's official records and, if
284 applicable, any occupant, licensee, or invitee of the parcel
285 owner, of the committee's findings related to the violation,
286 including any applicable fines or suspensions that the committee
287 approved or rejected, and how the parcel owner or any occupant,
288 licensee, or invitee of the parcel owner may cure the violation,
289 if applicable.

290 (e) If the proposed fine or suspension levied by the board

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291 is approved by the committee by a majority vote, the fine
292 payment is due 5 days after notice of the approved fine required
293 under paragraph (d) is provided to the parcel owner and, if
294 applicable, to any occupant, licensee, or invitee of the parcel
295 owner. The association must provide written notice of such fine
296 or suspension by mail or hand delivery to the parcel owner and,
297 if applicable, to any occupant, licensee, or invitee of the
298 parcel owner.

299 (5) All suspensions imposed under ~~pursuant to~~ subsection
300 (3) or subsection (4) must be approved at a properly noticed
301 board meeting. Upon approval, the board association must send
302 written notice to notify the parcel owner and, if applicable,
303 the parcel's occupant, licensee, or invitee by mail or hand
304 delivery to the parcel owner's designated mailing or e-mail
305 address in the association's official records.

306 Section 5. Section 720.3065, Florida Statutes, is created
307 to read:

308 720.3065 Fraudulent voting activities relating to
309 association elections; penalties.—Each of the following acts is
310 a fraudulent voting activity relating to association elections
311 and constitutes a misdemeanor of the first degree, punishable as
312 provided in s. 775.082 or s. 775.083:

313 (1) Willfully and falsely swearing to or affirming an oath
314 or affirmation, or willfully procuring another person to falsely
315 swear to or affirm an oath or affirmation, in connection with or
316 arising out of voting activities.

317 (2) Perpetrating or attempting to perpetrate, or aiding in
318 the perpetration of, fraud in connection with a vote cast, to be
319 cast, or attempted to be cast.

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320 (3) Preventing a member from voting or preventing a member
321 from voting as he or she intended by fraudulently changing or
322 attempting to change a ballot, ballot envelope, vote, or voting
323 certificate of the member.

324 (4) Menacing, threatening, or using bribery or any other
325 corruption to attempt, directly or indirectly, to influence,
326 deceive, or deter a member when the member is voting.

327 (5) Giving or promising, directly or indirectly, anything
328 of value to another member with the intent to buy the vote of
329 that member or another member or to corruptly influence that
330 member or another member in casting his or her vote. This
331 subsection does not apply to any food served which is to be
332 consumed at an election rally or a meeting or to any item of
333 nominal value which is used as an election advertisement,
334 including a campaign message designed to be worn by a member.

335 (6) Using or threatening to use, directly or indirectly,
336 force, violence, or intimidation or any tactic of coercion or
337 intimidation to induce or compel a member to vote or refrain
338 from voting in an election or on a particular ballot measure.

339 Section 6. This act shall take effect October 1, 2023.