

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; amending s. 720.303, F.S.; increasing
9 certain fines; providing a cause of action for a
10 member against a community association manager or
11 management firm under certain circumstances;
12 authorizing related fines; prohibiting reimbursement
13 to a community association manager or management firm
14 for certain fines; requiring the community association
15 manager, the management firm, or the association to
16 annually provide a specified report beginning on a
17 specified date, and to resubmit the report under
18 certain circumstances to the Division of Florida
19 Condominiums, Timeshares, and Mobile Homes; revising
20 the dates by which the Department of Business and
21 Professional Regulation must meet certain reporting
22 requirements; extending the scheduled expiration of
23 specified statutory text; 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 the
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 association; amending s.
29 | 720.311, F.S.; providing presuit mediation for
30 | election and recall disputes; providing for binding
31 | arbitration by the department for certain disputes
32 | between a parcel owner and a homeowners' association;
33 | authorizing mediation or arbitration by a mediator or
34 | arbitrator, respectively, who has been certified by a
35 | county court; creating s. 720.318, F.S.; requiring the
36 | department to provide training and educational
37 | programs for homeowners' association members,
38 | directors, and officers; providing that the training
39 | 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 a
43 | current list of approved programs and providers and to
44 | make the list available to homeowners' associations in
45 | a reasonable and cost-effective manner; creating s.
46 | 720.319, F.S.; authorizing the department to enforce
47 | and ensure compliance with the Homeowners' Association
48 | Act and specified rules; providing the department
49 | jurisdiction to investigate complaints relating to
50 | homeowners' associations; requiring homeowners'
51 | associations to pay a specified fee to cover the
52 | administrative and operational costs of the

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53 department; prohibiting the department from imposing
54 the fee under certain circumstances; amending s.
55 720.401, F.S.; requiring a seller of a parcel to
56 provide a prospective buyer with specified association
57 documents under certain circumstances; authorizing a
58 prospective buyer to terminate a contract for purchase
59 within a specified timeframe under certain
60 circumstances; amending s. 720.402, F.S.; providing a
61 cause of action against developers by nondeveloper
62 members of a homeowners' association or the
63 homeowners' association; providing an effective date.
64

65 Be It Enacted by the Legislature of the State of Florida:
66

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

69 718.509 Division of Florida Condominiums, Timeshares, and
70 Mobile Homes Trust Fund.—

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

76 Section 2. Paragraph (b) of subsection (5) and subsection
77 (13) of section 720.303, Florida Statutes, are amended to read:

78 720.303 Association powers and duties; meetings of board;

79 | official records; budgets; financial reporting; association
80 | funds; recalls.—

81 | (5) INSPECTION AND COPYING OF RECORDS.—The official
82 | records shall be maintained within the state for at least 7
83 | years and shall be made available to a parcel owner for
84 | inspection or photocopying within 45 miles of the community or
85 | within the county in which the association is located within 10
86 | business days after receipt by the board or its designee of a
87 | written request. This subsection may be complied with by having
88 | a copy of the official records available for inspection or
89 | copying in the community or, at the option of the association,
90 | by making the records available to a parcel owner electronically
91 | via the Internet or by allowing the records to be viewed in
92 | electronic format on a computer screen and printed upon request.
93 | If the association has a photocopy machine available where the
94 | records are maintained, it must provide parcel owners with
95 | copies on request during the inspection if the entire request is
96 | limited to no more than 25 pages. An association shall allow a
97 | member or his or her authorized representative to use a portable
98 | device, including a smartphone, tablet, portable scanner, or any
99 | other technology capable of scanning or taking photographs, to
100 | make an electronic copy of the official records in lieu of the
101 | association's providing the member or his or her authorized
102 | representative with a copy of such records. The association may
103 | not charge a fee to a member or his or her authorized
104 | representative for the use of a portable device.

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

121 (13) REPORTING REQUIREMENT.—The community association
 122 manager or management firm, or the association when there is no
 123 community association manager or management firm, must submit a
 124 ~~shall~~ report to the division by November 22, 2016 ~~2013~~, and each
 125 year thereafter, in a manner and form prescribed by the
 126 division.

- 127 (a) The report must ~~shall~~ include the association's:
 128 1. Legal name.
 129 2. Federal employer identification number.
 130 3. Mailing and physical addresses.

131 4. Total number of parcels.

132 5. Total amount of revenues and expenses from the
133 association's annual budget.

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

137 1. Legal name.

138 2. Mailing address.

139 3. Total number of parcels owned on the date of reporting.

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

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

152 (e) The department shall prepare an annual report of the
153 data reported pursuant to this subsection and present it to the
154 Governor, the President of the Senate, and the Speaker of the
155 House of Representatives by December 1, 2016 ~~2013~~, and each year
156 thereafter.

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157 (f) The division shall adopt rules pursuant to ss.
158 120.536(1) and 120.54 to implement the provisions of this
159 subsection.

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

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

164 720.305 Obligations of members; remedies at law or in
165 equity; levy of fines and suspension of use rights.—

166 (2) The association may levy reasonable fines. A fine may
167 not exceed \$100 per violation against any member or any member's
168 tenant, guest, or invitee for the failure of the owner of the
169 parcel or its occupant, licensee, or invitee to comply with any
170 provision of the declaration, the association bylaws, or
171 reasonable rules of the association unless otherwise provided in
172 the governing documents. A fine may be levied by the board for
173 each day of a continuing violation, with a single notice and
174 opportunity for hearing, except that the fine may not exceed
175 \$1,000 in the aggregate unless otherwise provided in the
176 governing documents. A fine ~~of less than \$1,000~~ may not become a
177 lien against a parcel. In any action to recover a fine, the
178 prevailing party is entitled to reasonable attorney fees and
179 costs from the nonprevailing party as determined by the court.

180 (a) An association may suspend, for a reasonable period of
181 time, the right of a member, or a member's tenant, guest, or
182 invitee, to use common areas and facilities for the failure of

183 the owner of the parcel or its occupant, licensee, or invitee to
184 comply with any provision of the declaration, the association
185 bylaws, or reasonable rules of the association. This paragraph
186 does not apply to that portion of common areas used to provide
187 access or utility services to the parcel. A suspension may not
188 prohibit an owner or tenant of a parcel from having vehicular
189 and pedestrian ingress to and egress from the parcel, including,
190 but not limited to, the right to park.

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

206 Section 4. Subsection (1) of section 720.307, Florida
207 Statutes, is amended to read:

208 720.307 Transition of association control in a community.—

209 With respect to homeowners' associations:

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

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

219 (b) For a homeowners' association consisting of fewer than
 220 200 lots, the passage of 10 years after the governing documents
 221 of the homeowners' association are filed with the local
 222 government.

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

232 (h) ~~(b)~~ Conveyance of another ~~Such other~~ percentage of the
 233 parcels ~~has been conveyed~~ to members, or the occurrence of such
 234 other date or event ~~has occurred~~, as is set forth in the

235 governing documents in order to comply with the requirements of
 236 any governmentally chartered entity with regard to the mortgage
 237 financing of parcels.†

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

246 (e)(d) Upon the developer Filing by the developer of a
 247 petition seeking protection under chapter 7 of the federal
 248 Bankruptcy Code.†

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

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

261
 262 For purposes of this section, the term "members other than the
 263 developer" does ~~shall~~ not include builders, contractors, or
 264 others who purchase a parcel for the purpose of constructing
 265 improvements ~~thereon~~ for resale.

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

268 720.311 Dispute resolution.—

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

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287 maintain and make safe pursuant to the declaration of covenants,
288 rules and regulations, and other governing documents; disputes
289 involving assessments; and disputes involving the official
290 records of the homeowners' association. At the conclusion of the
291 proceeding, the department shall charge the parties a fee in an
292 amount adequate to cover all costs and expenses incurred by the
293 department in conducting the proceeding. Initially, the
294 petitioner shall remit a filing fee of at least \$200 to the
295 department. The fees paid to the department shall become a
296 recoverable cost in the arbitration proceeding, and the
297 prevailing party in an arbitration proceeding shall recover its
298 reasonable costs and attorney ~~attorney's~~ fees in an amount found
299 reasonable by the arbitrator. The department shall adopt rules
300 to effectuate the purposes of this section.

301 (2)

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

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

313 720.318 Training and educational programs.—The department
314 shall provide training and educational programs for homeowners'
315 association members, directors, and officers. At the
316 department's discretion, the training and educational programs
317 may include web-based electronic media, live training, and
318 seminars in various locations throughout the state. The
319 department may review and approve training and educational
320 programs for members, directors, and officers of homeowners'
321 associations which are offered by providers. The department
322 shall maintain a current list of approved programs and providers
323 and shall make such list available to homeowners' associations
324 in a reasonable and cost-effective manner.

325 Section 7. Section 720.319, Florida Statutes, is created
326 to read:

327 720.319 Authority of the department.—

328 (1) The department may enforce and ensure compliance with
329 this chapter and rules relating to records access, financial
330 management, and elections of homeowners' associations and may
331 investigate any complaint made to the department against a
332 homeowners' association.

333 (2) Homeowners' associations must pay to the department an
334 annual fee of \$2 per lot to cover the department's
335 administrative and operational costs in complying with this
336 chapter. The fee must be submitted to the department with the
337 annual report required under s. 720.303(13) and deposited into
338 the Division of Florida Condominiums, Timeshares, and Mobile

339 Homes Trust Fund. However, the department may not impose this
340 fee when it has determined, based on the long-range estimates of
341 such revenue, that the funds collected exceed those required to
342 cover such costs.

343 Section 8. Present subsection (2) of section 720.401,
344 Florida Statutes, is redesignated as subsection (3), and a new
345 subsection (2) is added to that section, to read:

346 720.401 Prospective purchasers subject to association
347 membership requirement; disclosure required; covenants;
348 assessments; contract cancellation.—

349 (2) A seller of a parcel for which membership in a
350 homeowners' association is a condition of ownership must provide
351 a prospective buyer with the association's governing documents,
352 including the declaration of covenants, articles and bylaws,
353 rules and regulations, and operating budget for the current
354 year, and any amendment to such documents. The seller must
355 provide the prospective buyer with such documents at least 7
356 days before closing. The prospective buyer may terminate the
357 contract for purchase within 3 days after receipt of such
358 documents.

359 Section 9. Section 720.402, Florida Statutes, is amended
360 to read:

361 720.402 Publication of false and misleading information;
362 developer's use of homeowners' association fund prohibited.—

363 (1) Any person who, in reasonable reliance upon any
364 material statement or information that is false or misleading

365 and published by or under authority from the developer in
366 advertising and promotional materials, including, but not
367 limited to, a contract of purchase, the declaration of
368 covenants, exhibits to a declaration of covenants, brochures,
369 and newspaper advertising, pays anything of value toward the
370 purchase of a parcel in a community located in this state has a
371 cause of action to rescind the contract or collect damages from
372 the developer for his or her loss before the closing of the
373 transaction. After the closing of the transaction, the purchaser
374 has a cause of action against the developer for damages under
375 this section from the time of closing until 1 year after the
376 date upon which the last of the events described in paragraphs
377 (a) through (d) occurs:

- 378 (a) The closing of the transaction;
- 379 (b) The issuance by the applicable governmental authority
380 of a certificate of occupancy or other evidence of sufficient
381 completion of construction of the purchaser's residence to allow
382 lawful occupancy of the residence by the purchaser. In counties
383 or municipalities in which certificates of occupancy or other
384 evidences of completion sufficient to allow lawful occupancy are
385 not customarily issued, for the purpose of this section,
386 evidence of lawful occupancy shall be deemed to be given or
387 issued upon the date that such lawful occupancy of the residence
388 may be allowed under prevailing applicable laws, ordinances, or
389 statutes;
- 390 (c) The completion by the developer of the common areas

391 and such recreational facilities, whether or not the same are
 392 common areas, which the developer is obligated to complete or
 393 provide under the terms of the written contract, governing
 394 documents, or written agreement for purchase or lease of the
 395 parcel; or

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

402 (2) (a) A nondeveloper parcel owner has a cause of action
 403 against the developer for damages resulting from the developer's
 404 abandonment or failure of his or her responsibility to maintain
 405 and complete amenities or infrastructure disclosed in the
 406 governing documents, written contract, or written agreement for
 407 purchase of the parcel.

408 (b) A nondeveloper parcel owner has a cause of action
 409 against the developer for the developer's failure to perform or
 410 comply with any duty or obligation required under the governing
 411 documents, written contract, or written agreement for purchase
 412 of the parcel.

413 (3) A developer may not use association funds for any
 414 purpose not specifically authorized in a homeowners' association
 415 budget adopted in accordance with the governing documents and s.
 416 720.303. Any use of association funds by a developer in

417 violation of this section is actionable by a nondeveloper parcel
418 owner or the homeowners' association. This subsection is
419 intended to clarify existing law and applies to all homeowners'
420 associations existing on July 1, 2016 and created thereafter.

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

424 (5)~~(2)~~ In any action for relief under this section, the
425 prevailing party may recover reasonable attorney ~~attorney's~~
426 fees. A developer may not expend association funds in the
427 defense of any suit under this section.

428 Section 10. This act shall take effect July 1, 2016.