

By Senator Baxley

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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

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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.

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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

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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

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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

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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

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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

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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~~

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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.

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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~~

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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.

(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

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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

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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,

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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.

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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.