

By Senator Garcia

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1                                   A bill to be entitled  
2       An act relating to homeowners' associations; amending  
3       s. 720.303, F.S.; prohibiting an association from  
4       hiring an attorney who represents the management  
5       company of the association; requiring the association  
6       to maintain bids for materials, equipment, or services  
7       as part of the official records; providing that a  
8       renter of property in a community operated by an  
9       association has a right to inspect and copy the  
10      association's bylaws and rules; providing requirements  
11      relating to the posting of specified documents on an  
12      association's website; requiring an association to  
13      provide members with a copy of the most recent annual  
14      financial report or a written notice detailing how to  
15      obtain such report; prohibiting an association and its  
16      officers, directors, employees, and agents from using  
17      a debit card issued in the name of the association, or  
18      billed directly to the association, for the payment of  
19      any association expense; providing that the use of  
20      such debit card for any expense that is not a lawful  
21      obligation of the association may be prosecuted as  
22      credit card fraud; deleting a provision requiring the  
23      board to certify written ballots or agreements to  
24      recall a director or directors; requiring certain  
25      directors to turn over all records and property of the  
26      association in his or her possession within a certain  
27      timeframe; requiring a director to turn all records  
28      and property of the association over to the board  
29      within 10 business days if a recall is deemed

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30 effective due to the failure to duly notice and hold a  
31 board meeting within a specified timeframe; conforming  
32 provisions to changes made by the act; amending s.  
33 720.3033, F.S.; prohibiting an officer, director, or  
34 manager from soliciting, offering to accept, or  
35 accepting a kickback for which consideration has not  
36 been provided; providing criminal penalties; requiring  
37 that an officer or director charged with certain  
38 crimes be removed from office; providing requirements  
39 for filling the vacancy left by such removal;  
40 prohibiting such officer or director from being  
41 appointed or elected to a position with any  
42 association or having access to official association  
43 records while a criminal charge is pending; providing  
44 an exception; requiring an officer or director to be  
45 reinstated for the remainder of his or her term if the  
46 charges are resolved without a finding of guilt;  
47 amending s. 720.305, F.S.; providing requirements  
48 relating to the suspension of voting rights of unit  
49 owners and members; amending s. 720.306, F.S.;

50 providing board member term limits; conforming a  
51 cross-reference; amending s. 720.3085, F.S.;

52 prohibiting specified parties from purchasing a unit  
53 at a foreclosure sale resulting from an association's  
54 foreclosure of association lien for unpaid assessments  
55 or from taking a title by deed in lieu of foreclosure;  
56 amending s. 720.309, F.S.; prohibiting an association  
57 from employing or contracting with service providers  
58 owned or operated by specified persons; prohibiting

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59 certain parties from purchasing a parcel at a  
 60 foreclosure sale resulting from the association's  
 61 foreclosure of association lien for unpaid assessments  
 62 or from taking a deed in lieu of a foreclosure;  
 63 authorizing a contract with a specific party to be  
 64 canceled by a majority vote of the parcel owners under  
 65 certain circumstances; creating s. 720.3095, F.S.;  
 66 providing requirements and procedures relating to  
 67 conflicts of interest; defining the term "relative";  
 68 amending s. 720.311, F.S.; conforming a cross-  
 69 reference; providing an effective date.

70  
 71 Be It Enacted by the Legislature of the State of Florida:

72  
 73 Section 1. Present subsections (9) through (12) of section  
 74 720.303, Florida Statutes, are redesignated as subsections (10)  
 75 through (13), respectively, a new subsection (9) is added to  
 76 that section, and subsections (1), (4), (5), and (7) and  
 77 paragraphs (b), (c), and (d), and present paragraphs (f), (i),  
 78 and (l) of present subsection (10), are amended, to read:

79 720.303 Association powers and duties; meetings of board;  
 80 official records; budgets; financial reporting; association  
 81 funds; recalls.—

82 (1) POWERS AND DUTIES.—An association that ~~which~~ operates a  
 83 community as defined in s. 720.301, ~~must be operated by an~~  
 84 ~~association that is~~ a Florida corporation. After October 1,  
 85 1995, the association must be incorporated and the initial  
 86 governing documents must be recorded in the official records of  
 87 the county in which the community is located. An association may

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88 operate more than one community. The officers and directors of  
89 an association have a fiduciary relationship to the members who  
90 are served by the association. The powers and duties of an  
91 association include those set forth in this chapter and, except  
92 as expressly limited or restricted in this chapter, those set  
93 forth in the governing documents. After control of the  
94 association is obtained by members other than the developer, the  
95 association may institute, maintain, settle, or appeal actions  
96 or hearings in its name on behalf of all members concerning  
97 matters of common interest to the members, including, but not  
98 limited to, the common areas; roof or structural components of a  
99 building, or other improvements for which the association is  
100 responsible; mechanical, electrical, or plumbing elements  
101 serving an improvement or building for which the association is  
102 responsible; representations of the developer pertaining to any  
103 existing or proposed commonly used facility; and protesting ad  
104 valorem taxes on commonly used facilities. The association may  
105 defend actions in eminent domain or bring inverse condemnation  
106 actions. Before commencing litigation against any party in the  
107 name of the association involving amounts in controversy in  
108 excess of \$100,000, the association must obtain the affirmative  
109 approval of a majority of the voting interests at a meeting of  
110 the membership at which a quorum has been attained. An  
111 association may not hire an attorney who represents the  
112 management company of the association. This subsection does not  
113 limit any statutory or common-law right of any individual member  
114 or class of members to bring any action without participation by  
115 the association. A member does not have authority to act for the  
116 association by virtue of being a member. An association may have

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117 more than one class of members and may issue membership  
118 certificates. An association of 15 or fewer parcel owners may  
119 enforce only the requirements of those deed restrictions  
120 established prior to the purchase of each parcel upon an  
121 affected parcel owner or owners.

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

125 (a) Copies of any plans, specifications, permits, and  
126 warranties related to improvements constructed on the common  
127 areas or other property that the association is obligated to  
128 maintain, repair, or replace.

129 (b) A copy of the bylaws of the association and of each  
130 amendment to the bylaws.

131 (c) A copy of the articles of incorporation of the  
132 association and of each amendment thereto.

133 (d) A copy of the declaration of covenants and a copy of  
134 each amendment thereto.

135 (e) A copy of the current rules of the homeowners'  
136 association.

137 (f) The minutes of all meetings of the board of directors  
138 and of the members, which minutes must be retained for at least  
139 7 years.

140 (g) A current roster of all members and their mailing  
141 addresses and parcel identifications. The association shall also  
142 maintain the e-mail ~~electronic mailing~~ addresses and the numbers  
143 designated by members for receiving notice sent by electronic  
144 transmission of those members consenting to receive notice by  
145 electronic transmission. The e-mail ~~electronic mailing~~ addresses

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146 and numbers provided by parcel ~~unit~~ owners to receive notice by  
147 electronic transmission shall be removed from association  
148 records when consent to receive notice by electronic  
149 transmission is revoked. However, the association is not liable  
150 for an erroneous disclosure of the e-mail ~~electronic mail~~  
151 address or the number for receiving electronic transmission of  
152 notices.

153 (h) All of the association's insurance policies or a copy  
154 thereof, which policies must be retained for at least 7 years.

155 (i) A current copy of all contracts to which the  
156 association is a party, including, without limitation, any  
157 management agreement, lease, or other contract under which the  
158 association has any obligation or responsibility. Bids received  
159 by the association for work to be performed must also be  
160 considered official records and must be kept for a period of 1  
161 year.

162 (j) The financial and accounting records of the  
163 association, kept according to good accounting practices. All  
164 financial and accounting records must be maintained for a period  
165 of at least 7 years. The financial and accounting records must  
166 include:

167 1. Accurate, itemized, and detailed records of all receipts  
168 and expenditures.

169 2. A current account and a periodic statement of the  
170 account for each member, designating the name and current  
171 address of each member who is obligated to pay assessments, the  
172 due date and amount of each assessment or other charge against  
173 the member, the date and amount of each payment on the account,  
174 and the balance due.

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175 3. All tax returns, financial statements, and financial  
176 reports of the association.

177 4. Any other records that identify, measure, record, or  
178 communicate financial information.

179 (k) A copy of the disclosure summary described in s.  
180 720.401(1).

181 (l) Bids for materials, equipment, or services.

182 (m)~~(l)~~ All other written records of the association not  
183 specifically included in the foregoing which are related to the  
184 operation of the association.

185 (5) INSPECTION AND COPYING OF RECORDS.—The official records  
186 shall be maintained within the state for at least 7 years and  
187 shall be made available to a parcel owner for inspection or  
188 photocopying within 45 miles of the community or within the  
189 county in which the association is located within 10 business  
190 days after receipt by the board or its designee of a written  
191 request. This subsection may be complied with by having a copy  
192 of the official records available for inspection or copying in  
193 the community or, at the option of the association, by making  
194 the records available to a parcel owner electronically via the  
195 Internet or by allowing the records to be viewed in electronic  
196 format on a computer screen and printed upon request. If the  
197 association has a photocopy machine available where the records  
198 are maintained, it must provide parcel owners with copies on  
199 request during the inspection if the entire request is limited  
200 to no more than 25 pages. An association shall allow a member or  
201 his or her authorized representative to use a portable device,  
202 including a smartphone, tablet, portable scanner, or any other  
203 technology capable of scanning or taking photographs, to make an

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204 electronic copy of the official records in lieu of the  
205 association's providing the member or his or her authorized  
206 representative with a copy of such records. The association may  
207 not charge a fee to a member or his or her authorized  
208 representative for the use of a portable device.

209 (a) The failure of an association to provide access to the  
210 records within 10 business days after receipt of a written  
211 request submitted by certified mail, return receipt requested,  
212 creates a rebuttable presumption that the association willfully  
213 failed to comply with this subsection.

214 (b) A member who is denied access to official records is  
215 entitled to the actual damages or minimum damages for the  
216 association's willful failure to comply with this subsection.  
217 The minimum damages are to be \$50 per calendar day up to 10  
218 days, the calculation to begin on the 11th business day after  
219 receipt of the written request.

220 (c) The association may adopt reasonable written rules  
221 governing the frequency, time, location, notice, records to be  
222 inspected, and manner of inspections, but may not require a  
223 parcel owner to demonstrate any proper purpose for the  
224 inspection, state any reason for the inspection, or limit a  
225 parcel owner's right to inspect records to less than one 8-hour  
226 business day per month. The association may impose fees to cover  
227 the costs of providing copies of the official records, including  
228 the costs of copying and the costs required for personnel to  
229 retrieve and copy the records if the time spent retrieving and  
230 copying the records exceeds one-half hour and if the personnel  
231 costs do not exceed \$20 per hour. Personnel costs may not be  
232 charged for records requests that result in the copying of 25 or



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233 fewer pages. The association may charge up to 25 cents per page  
234 for copies made on the association's photocopier. If the  
235 association does not have a photocopy machine available where  
236 the records are kept, or if the records requested to be copied  
237 exceed 25 pages in length, the association may have copies made  
238 by an outside duplicating service and may charge the actual cost  
239 of copying, as supported by the vendor invoice. The association  
240 shall maintain an adequate number of copies of the recorded  
241 governing documents, to ensure their availability to members and  
242 prospective members. Notwithstanding this paragraph, the  
243 following records are not accessible to members or parcel  
244 owners:

245 1. Any record protected by the lawyer-client privilege as  
246 described in s. 90.502 and any record protected by the work-  
247 product privilege, including, but not limited to, a record  
248 prepared by an association attorney or prepared at the  
249 attorney's express direction which reflects a mental impression,  
250 conclusion, litigation strategy, or legal theory of the attorney  
251 or the association and which was prepared exclusively for civil  
252 or criminal litigation or for adversarial administrative  
253 proceedings or which was prepared in anticipation of such  
254 litigation or proceedings until the conclusion of the litigation  
255 or proceedings.

256 2. Information obtained by an association in connection  
257 with the approval of the lease, sale, or other transfer of a  
258 parcel.

259 3. Personnel records of association or management company  
260 employees, including, but not limited to, disciplinary, payroll,  
261 health, and insurance records. For purposes of this

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262 subparagraph, the term "personnel records" does not include  
263 written employment agreements with an association or management  
264 company employee or budgetary or financial records that indicate  
265 the compensation paid to an association or management company  
266 employee.

267 4. Medical records of parcel owners or community residents.

268 5. Social security numbers, driver license numbers, credit  
269 card numbers, e-mail ~~electronic mailing~~ addresses, telephone  
270 numbers, facsimile numbers, emergency contact information, any  
271 addresses for a parcel owner other than as provided for  
272 association notice requirements, and other personal identifying  
273 information of any person, excluding the person's name, parcel  
274 designation, mailing address, and property address.

275 Notwithstanding the restrictions in this subparagraph, an  
276 association may print and distribute to parcel owners a  
277 directory containing the name, parcel address, and all telephone  
278 numbers of each parcel owner. However, an owner may exclude his  
279 or her telephone numbers from the directory by so requesting in  
280 writing to the association. An owner may consent in writing to  
281 the disclosure of other contact information described in this  
282 subparagraph. The association is not liable for the disclosure  
283 of information that is protected under this subparagraph if the  
284 information is included in an official record of the association  
285 and is voluntarily provided by an owner and not requested by the  
286 association.

287 6. Any electronic security measure that is used by the  
288 association to safeguard data, including passwords.

289 7. The software and operating system used by the  
290 association which allows the manipulation of data, even if the

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291 owner owns a copy of the same software used by the association.  
292 The data is part of the official records of the association.

293 (d) The association or its authorized agent is not required  
294 to provide a prospective purchaser or lienholder with  
295 information about the residential subdivision or the association  
296 other than information or documents required by this chapter to  
297 be made available or disclosed. The association or its  
298 authorized agent may charge a reasonable fee to the prospective  
299 purchaser or lienholder or the current parcel owner or member  
300 for providing good faith responses to requests for information  
301 by or on behalf of a prospective purchaser or lienholder, other  
302 than that required by law, if the fee does not exceed \$150 plus  
303 the reasonable cost of photocopying and any attorney fees  
304 incurred by the association in connection with the response.

305 (e) A renter of property in a community operated by the  
306 association has a right to inspect and copy the association's  
307 bylaws and rules.

308 (f)1. By July 1, 2019, an association with 150 or more  
309 parcels shall post digital copies of the documents specified in  
310 subparagraph 2. on its website.

311 a. The association's website must be:

312 (I) An independent website or web portal wholly owned and  
313 operated by the association; or

314 (II) A website or web portal operated by a third-party  
315 provider from whom the association owns, leases, rents, or  
316 otherwise obtains the right to operate a web page, subpage, web  
317 portal, or collection of subpages or web portals dedicated to  
318 the association's activities and on which required notices,  
319 records, and documents may be posted by the association.

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320       b. The association's website must be accessible through the  
321 Internet and must contain a subpage, web portal, or other  
322 protected electronic location that is inaccessible to the  
323 general public and accessible only to parcel owners and  
324 employees of the association.

325       c. Upon a parcel owner's written request, the association  
326 must provide the parcel owner with a username and password and  
327 access to the protected sections of the association's website  
328 which contain any notices, records, or documents that must be  
329 electronically provided.

330       2. Current copies of the following documents must be posted  
331 in digital format on the association's website:

332       a. The recorded declaration of covenants and each amendment  
333 to each declaration.

334       b. The recorded bylaws of the association and each  
335 amendment to the bylaws.

336       c. The articles of incorporation of the association, or  
337 other documents creating the association, and each amendment  
338 thereto. The copy posted pursuant to this sub-subparagraph must  
339 be a copy of the articles of incorporation filed with the  
340 Department of State.

341       d. The rules of the association.

342       e. Any management agreement, lease, or other contract to  
343 which the association is a party or under which the association  
344 or the parcel owners have an obligation or responsibility.  
345 Summaries of bids for materials, equipment, or services must be  
346 maintained on the website for 1 year.

347       f. The annual budget required by paragraph (6) (a) and any  
348 proposed budget to be considered at the annual meeting.

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349 g. The financial report required by subsection (7) and any  
350 proposed financial report to be considered at a meeting.

351 h. The written certification or educational certificate of  
352 each director required by s. 720.3033(1) (a).

353 i. All contracts or transactions between the association  
354 and any director, officer, corporation, firm, or association  
355 that is not an affiliated homeowners' association or any other  
356 entity in which an association director is also a director or  
357 officer and financially interested.

358 j. Any contract or document regarding a conflict of  
359 interest or possible conflict of interest as provided in ss.  
360 468.436(2) and 720.3033(2).

361 k. The notice of any member meeting and the agenda for the  
362 meeting, as required by subparagraph (2) (c)1., no later than 7  
363 days before the meeting. The notice must be posted in plain view  
364 on the front page of the website, or on a separate subpage of  
365 the website labeled "Notices" which is conspicuously visible and  
366 linked from the front page. The association must also post on  
367 its website any document to be considered and voted on by the  
368 owners during the meeting or any document listed on the agenda  
369 at least 7 days before the meeting at which the document or the  
370 information in the document will be considered.

371 1. Notice of any board meeting, the agenda, and any other  
372 document required for the meeting as required by paragraph  
373 (2) (c), which must be posted no later than the date required for  
374 notice pursuant to paragraph (2) (c).

375 3. The association shall ensure that the information and  
376 records described in this subsection, which are not permitted to  
377 be accessible to parcel owners, are not posted on the

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378 association's website. If protected information or information  
379 restricted from being accessible to parcel owners is included in  
380 documents that are required to be posted on the association's  
381 website, the association must ensure the information is redacted  
382 before posting the documents online.

383 (7) FINANCIAL REPORTING.—Within 90 days after the end of  
384 the fiscal year, or annually on the date provided in the bylaws,  
385 the association shall prepare and complete, or contract with a  
386 third party for the preparation and completion of, a financial  
387 report for the preceding fiscal year. Within 21 days after the  
388 final financial report is completed by the association or  
389 received from the third party, but not later than 120 days after  
390 the end of the fiscal year or other date as provided in the  
391 bylaws, the association shall, within the time limits set forth  
392 in subsection (5), provide each member with a copy of the most  
393 recent annual financial report or a written notice that a copy  
394 of the most recent financial report will be mailed or hand  
395 delivered to the member without charge and within 5 business  
396 days after receipt of a written request from the member ~~is~~  
397 ~~available upon request at no charge to the member.~~ Financial  
398 reports shall be prepared as follows:

399 (a) An association that meets the criteria of this  
400 paragraph shall prepare or cause to be prepared a complete set  
401 of financial statements in accordance with generally accepted  
402 accounting principles as adopted by the Board of Accountancy.  
403 The financial statements shall be based upon the association's  
404 total annual revenues, as follows:

405 1. An association with total annual revenues of \$150,000 or  
406 more, but less than \$300,000, shall prepare compiled financial

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407 statements.

408       2. An association with total annual revenues of at least  
409 \$300,000, but less than \$500,000, shall prepare reviewed  
410 financial statements.

411       3. An association with total annual revenues of \$500,000 or  
412 more shall prepare audited financial statements.

413       (b)1. An association with total annual revenues of less  
414 than \$150,000 shall prepare a report of cash receipts and  
415 expenditures.

416       2. A report of cash receipts and disbursement must disclose  
417 the amount of receipts by accounts and receipt classifications  
418 and the amount of expenses by accounts and expense  
419 classifications, including, but not limited to, the following,  
420 as applicable: costs for security, professional, and management  
421 fees and expenses; taxes; costs for recreation facilities;  
422 expenses for refuse collection and utility services; expenses  
423 for lawn care; costs for building maintenance and repair;  
424 insurance costs; administration and salary expenses; and  
425 reserves if maintained by the association.

426       (c) If 20 percent of the parcel owners petition the board  
427 for a level of financial reporting higher than that required by  
428 this section, the association shall duly notice and hold a  
429 meeting of members within 30 days of receipt of the petition for  
430 the purpose of voting on raising the level of reporting for that  
431 fiscal year. Upon approval of a majority of the total voting  
432 interests of the parcel owners, the association shall prepare or  
433 cause to be prepared, shall amend the budget or adopt a special  
434 assessment to pay for the financial report regardless of any  
435 provision to the contrary in the governing documents, and shall

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436 provide within 90 days of the meeting or the end of the fiscal  
437 year, whichever occurs later:

438 1. Compiled, reviewed, or audited financial statements, if  
439 the association is otherwise required to prepare a report of  
440 cash receipts and expenditures;

441 2. Reviewed or audited financial statements, if the  
442 association is otherwise required to prepare compiled financial  
443 statements; or

444 3. Audited financial statements if the association is  
445 otherwise required to prepare reviewed financial statements.

446 (d) If approved by a majority of the voting interests  
447 present at a properly called meeting of the association, an  
448 association may prepare or cause to be prepared:

449 1. A report of cash receipts and expenditures in lieu of a  
450 compiled, reviewed, or audited financial statement;

451 2. A report of cash receipts and expenditures or a compiled  
452 financial statement in lieu of a reviewed or audited financial  
453 statement; or

454 3. A report of cash receipts and expenditures, a compiled  
455 financial statement, or a reviewed financial statement in lieu  
456 of an audited financial statement.

457 (9) DEBIT CARDS.-

458 (a) An association and its officers, directors, employees,  
459 and agents may not use a debit card issued in the name of the  
460 association, or billed directly to the association, for the  
461 payment of any association expense.

462 (b) Use of a debit card issued in the name of the  
463 association, or billed directly to the association, for any  
464 expense that is not a lawful obligation of the association may



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465 be prosecuted as credit card fraud pursuant to s. 817.61.

466 (11)~~(10)~~ RECALL OF DIRECTORS.—

467 (b)1. Board directors may be recalled by an agreement in  
468 writing or by written ballot without a membership meeting. The  
469 agreement in writing or the written ballots, or a copy thereof,  
470 shall be served on the association by certified mail or by  
471 personal service in the manner authorized by chapter 48 and the  
472 Florida Rules of Civil Procedure.

473 2. The board shall duly notice and hold a meeting of the  
474 board within 5 full business days after receipt of the agreement  
475 in writing or written ballots. ~~At the meeting, the board shall~~  
476 ~~either certify the written ballots or written agreement to~~  
477 ~~recall a director or directors of the board, in which case Such~~  
478 director or directors shall be recalled effective immediately  
479 and shall turn over to the board within 10 ~~5~~ full business days  
480 after the vote ~~any and~~ all records and property of the  
481 association in their possession, ~~or proceed as described in~~  
482 ~~paragraph (d).~~

483 3. When it is determined by the department pursuant to  
484 binding arbitration proceedings that an initial recall effort  
485 was defective, written recall agreements or written ballots used  
486 in the first recall effort and not found to be defective may be  
487 reused in one subsequent recall effort. However, in no event is  
488 a written agreement or written ballot valid for more than 120  
489 days after it has been signed by the member.

490 4. Any rescission or revocation of a member's written  
491 recall ballot or agreement must be in writing and, in order to  
492 be effective, must be delivered to the association before the  
493 association is served with the written recall agreements or

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494 ballots.

495         5. The agreement in writing or ballot must ~~shall~~ list at  
496 least as many possible replacement directors as there are  
497 directors subject to the recall, when at least a majority of the  
498 board is sought to be recalled; the person executing the recall  
499 instrument may vote for as many replacement candidates as there  
500 are directors subject to the recall.

501         (c)1. If the declaration, articles of incorporation, or  
502 bylaws specifically provide, the members may also recall and  
503 remove a board director or directors by a vote taken at a  
504 meeting. If so provided in the governing documents, a special  
505 meeting of the members to recall a director or directors of the  
506 board of administration may be called by 10 percent of the  
507 voting interests giving notice of the meeting as required for a  
508 meeting of members, and the notice shall state the purpose of  
509 the meeting. Electronic transmission may not be used as a method  
510 of giving notice of a meeting called in whole or in part for  
511 this purpose.

512         2. The board shall duly notice and hold a board meeting  
513 within 5 full business days after the adjournment of the member  
514 meeting to recall one or more directors. At the meeting, the  
515 board shall certify the recall, in which case such member or  
516 members shall be recalled effective immediately and shall turn  
517 over to the board within 5 full business days any and all  
518 records and property of the association in their possession, ~~or~~  
519 ~~shall proceed as set forth in paragraph (d).~~

520         ~~(d) If the board determines not to certify the written~~  
521 ~~agreement or written ballots to recall a director or directors~~  
522 ~~of the board or does not certify the recall by a vote at a~~

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523 ~~meeting, the board shall, within 5 full business days after the~~  
524 ~~meeting, file with the department a petition for binding~~  
525 ~~arbitration pursuant to the applicable procedures in ss.~~  
526 ~~718.112(2) (j) and 718.1255 and the rules adopted thereunder. For~~  
527 ~~the purposes of this section, the members who voted at the~~  
528 ~~meeting or who executed the agreement in writing shall~~  
529 ~~constitute one party under the petition for arbitration. If the~~  
530 ~~arbitrator certifies the recall as to any director or directors~~  
531 ~~of the board, the recall will be effective upon mailing of the~~  
532 ~~final order of arbitration to the association. The director or~~  
533 ~~directors so recalled shall deliver to the board any and all~~  
534 ~~records of the association in their possession within 5 full~~  
535 ~~business days after the effective date of the recall.~~

536 (e)~~(f)~~ If the board fails to duly notice and hold a board  
537 meeting within 5 full business days after service of an  
538 agreement in writing or within 5 full business days after the  
539 adjournment of the member recall meeting, the recall shall be  
540 deemed effective and the board directors so recalled shall  
541 immediately turn over to the board within 10 full business days  
542 after the vote all records and property of the association.

543 ~~(i) The minutes of the board meeting at which the board~~  
544 ~~decides whether to certify the recall are an official~~  
545 ~~association record. The minutes must record the date and time of~~  
546 ~~the meeting, the decision of the board, and the vote count taken~~  
547 ~~on each board member subject to the recall. In addition, when~~  
548 ~~the board decides not to certify the recall, as to each vote~~  
549 ~~rejected, the minutes must identify the parcel number and the~~  
550 ~~specific reason for each such rejection.~~

551 (j)~~(l)~~ The division may not accept for filing a recall

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552 petition, whether filed pursuant to paragraph (b), paragraph  
553 (c), paragraph (f) ~~(g)~~, or paragraph (i) ~~(k)~~ and regardless of  
554 whether the recall was certified, when there are 60 or fewer  
555 days until the scheduled reelection of the board member sought  
556 to be recalled or when 60 or fewer days have not elapsed since  
557 the election of the board member sought to be recalled.

558 Section 2. Present subsections (4) and (5) of section  
559 720.3033, Florida Statutes, are redesignated as subsections (5)  
560 and (6), respectively, a new subsection (4) is added to that  
561 section, and subsection (3) of that section is amended, to read:

562 720.3033 Officers and directors.—

563 (3) An officer, director, or manager may not solicit, offer  
564 to accept, or accept any good or service of value or kickback  
565 for which consideration has not been provided for his or her  
566 benefit or for the benefit of a member of his or her immediate  
567 family from any person providing or proposing to provide goods  
568 or services to the association. Any such officer, director, or  
569 manager who knowingly so solicits, offers to accept, or accepts  
570 any good or service of value or a kickback is subject a criminal  
571 penalty as provided in subsection (4), if applicable. If the  
572 board finds that an officer or director has violated this  
573 subsection, the board shall immediately remove the officer or  
574 director from office. The vacancy shall be filled according to  
575 law until the end of the director's term of office. However, an  
576 officer, director, or manager may accept food to be consumed at  
577 a business meeting with a value of less than \$25 per individual  
578 or a service or good received in connection with trade fairs or  
579 education programs.

580 (4) As required by s. 617.0830, an officer, director, or

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581 agent shall discharge his or her duties in good faith, with the  
582 care an ordinarily prudent person in a like position would  
583 exercise under similar circumstances, and in a manner he or she  
584 reasonably believes to be in the interests of the association.  
585 An officer, director, or agent is liable for monetary damages as  
586 provided in s. 617.0834 if such officer, director, or agent  
587 breached or failed to perform his or her duties and the breach  
588 of, or failure to perform, his or her duties constitutes a  
589 violation of criminal law as provided in s. 617.0834;  
590 constitutes a transaction from which the officer or director  
591 derived an improper personal benefit, either directly or  
592 indirectly; or constitutes recklessness or an act or omission  
593 that was in bad faith, with malicious purpose, or in a manner  
594 exhibiting wanton and willful disregard of human rights, safety,  
595 or property. Forgery of a ballot envelope or voting certificate  
596 used in a homeowners' association election is punishable as  
597 provided in s. 831.01; the theft or embezzlement of funds of a  
598 homeowners' association is punishable as provided in s. 812.014;  
599 and the destruction of or the refusal to allow inspection or  
600 copying of an official record of a homeowners' association which  
601 is required to be accessible to parcel owners within the periods  
602 required by general law in furtherance of any crime is  
603 punishable as tampering with physical evidence as provided in s.  
604 918.13 or as obstruction of justice as provided in chapter 843.  
605 An officer or director charged by information or indictment with  
606 a crime referenced in this paragraph must be removed from  
607 office, and the vacancy shall be filled according to law until  
608 the end of the officer's or director's period of suspension or  
609 the end of his or her term of office, whichever occurs first. If

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610 a criminal charge is pending against the officer or director, he  
611 or she may not be appointed or elected to a position as an  
612 officer or a director of any association and may not have access  
613 to the official records of any association, except pursuant to a  
614 court order. However, if the charges are resolved without a  
615 finding of guilt, the officer or director must be reinstated for  
616 the remainder of his or her term of office, if any.

617 Section 3. Subsection (4) of section 720.305, Florida  
618 Statutes, is amended to read:

619 720.305 Obligations of members; remedies at law or in  
620 equity; levy of fines and suspension of use rights.-

621 (4) An association may suspend the voting rights of a  
622 parcel owner or member for the nonpayment of any fee, fine, or  
623 other monetary obligation due to the association that is more  
624 than \$1,000 and more than 90 days delinquent. Proof of such  
625 obligation must be provided to the parcel owner or member at  
626 least 30 days before such suspension takes effect. A voting  
627 interest or consent right allocated to a parcel owner or member  
628 which has been suspended by the association shall be subtracted  
629 from the total number of voting interests in the association,  
630 which shall be reduced by the number of suspended voting  
631 interests when calculating the total percentage or number of all  
632 voting interests available to take or approve any action, and  
633 the suspended voting interests may ~~shall~~ not be considered for  
634 any purpose, including, but not limited to, the percentage or  
635 number of voting interests necessary to constitute a quorum, the  
636 percentage or number of voting interests required to conduct an  
637 election, or the percentage or number of voting interests  
638 required to approve an action under this chapter or pursuant to

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639 the governing documents. The notice and hearing requirements  
640 under subsection (2) do not apply to a suspension imposed under  
641 this subsection. The suspension ends upon full payment of all  
642 obligations currently due or overdue to the association.

643 Section 4. Paragraphs (a) and (c) of subsection (9) of  
644 section 720.306, Florida Statutes, are amended to read:

645 720.306 Meetings of members; voting and election  
646 procedures; amendments.—

647 (9) ELECTIONS AND BOARD VACANCIES.—

648 (a) 1. Elections of directors must be conducted in  
649 accordance with the procedures set forth in the governing  
650 documents of the association. Except as provided in paragraph  
651 (b), all members of the association are eligible to serve on the  
652 board of directors, and a member may nominate himself or herself  
653 as a candidate for the board at a meeting where the election is  
654 to be held; provided, however, that if the election process  
655 allows candidates to be nominated in advance of the meeting, the  
656 association is not required to allow nominations at the meeting.  
657 An election is not required unless more candidates are nominated  
658 than vacancies exist. Except as otherwise provided in the  
659 governing documents, boards of directors must be elected by a  
660 plurality of the votes cast by eligible voters. Any challenge to  
661 the election process must be commenced within 60 days after the  
662 election results are announced.

663 2. A board member may not serve more than four consecutive  
664 2-year terms or more than eight consecutive 1-year terms, unless  
665 approved by an affirmative vote of two-thirds of the total  
666 voting interests of the association or unless there are not  
667 enough eligible candidates to fill the vacancies on the board at

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668 the time of the vacancy.

669 (c) Any election dispute between a member and an  
670 association must be submitted to mandatory binding arbitration  
671 with the division. Such proceedings must be conducted in the  
672 manner provided by s. 718.1255 and the procedural rules adopted  
673 by the division. Unless otherwise provided in the bylaws, any  
674 vacancy occurring on the board before the expiration of a term  
675 may be filled by an affirmative vote of the majority of the  
676 remaining directors, even if the remaining directors constitute  
677 less than a quorum, or by the sole remaining director. In the  
678 alternative, a board may hold an election to fill the vacancy,  
679 in which case the election procedures must conform to the  
680 requirements of the governing documents. Unless otherwise  
681 provided in the bylaws, a board member appointed or elected  
682 under this section is appointed for the unexpired term of the  
683 seat being filled. Filling vacancies created by recall is  
684 governed by s. 720.303(11) ~~s. 720.303(10)~~ and rules adopted by  
685 the division.

686 Section 5. Paragraph (f) of subsection (1) of section  
687 720.3085, Florida Statutes, is amended to read:

688 720.3085 Payment for assessments; lien claims.—

689 (1) When authorized by the governing documents, the  
690 association has a lien on each parcel to secure the payment of  
691 assessments and other amounts provided for by this section.  
692 Except as otherwise set forth in this section, the lien is  
693 effective from and shall relate back to the date on which the  
694 original declaration of the community was recorded. However, as  
695 to first mortgages of record, the lien is effective from and  
696 after recording of a claim of lien in the public records of the



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697 county in which the parcel is located. This subsection does not  
698 bestow upon any lien, mortgage, or certified judgment of record  
699 on July 1, 2008, including the lien for unpaid assessments  
700 created in this section, a priority that, by law, the lien,  
701 mortgage, or judgment did not have before July 1, 2008.

702 (f) The association may purchase the parcel at the  
703 foreclosure sale and hold, lease, mortgage, or convey the  
704 parcel. However, a board member, manager, or management company  
705 may not purchase a parcel at a foreclosure sale resulting from  
706 the association's foreclosure of its lien for unpaid assessments  
707 or take title by deed in lieu of foreclosure.

708 Section 6. Section 720.309, Florida Statutes, is amended to  
709 read:

710 720.309 Agreements entered into by the association;  
711 conflicts of interest.-

712 (1) Any grant or reservation made by any document, and any  
713 contract that has a term greater than 10 years, that is made by  
714 an association before control of the association is turned over  
715 to the members other than the developer, and that provides for  
716 the operation, maintenance, or management of the association or  
717 common areas, must be fair and reasonable.

718 (2) If the governing documents provide for the cost of  
719 communications services as defined in s. 202.11, information  
720 services or Internet services obtained pursuant to a bulk  
721 contract shall be deemed an operating expense of the  
722 association. If the governing documents do not provide for such  
723 services, the board may contract for the services, and the cost  
724 shall be deemed an operating expense of the association but must  
725 be allocated on a per-parcel basis rather than a percentage

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726 basis, notwithstanding that the governing documents provide for  
727 other than an equal sharing of operating expenses. Any contract  
728 entered into before July 1, 2011, in which the cost of the  
729 service is not equally divided among all parcel owners may be  
730 changed by a majority of the voting interests present at a  
731 regular or special meeting of the association in order to  
732 allocate the cost equally among all parcels.

733 (a) Any contract entered into by the board may be canceled  
734 by a majority of the voting interests present at the next  
735 regular or special meeting of the association, whichever occurs  
736 first. Any member may make a motion to cancel such contract, but  
737 if no motion is made or if such motion fails to obtain the  
738 required vote, the contract shall be deemed ratified for the  
739 term expressed therein.

740 (b) Any contract entered into by the board must provide,  
741 and shall be deemed to provide if not expressly set forth  
742 therein, that a hearing-impaired or legally blind parcel owner  
743 who does not occupy the parcel with a non-hearing-impaired or  
744 sighted person, or a parcel owner who receives supplemental  
745 security income under Title XVI of the Social Security Act or  
746 food assistance as administered by the Department of Children  
747 and Families pursuant to s. 414.31, may discontinue the service  
748 without incurring disconnect fees, penalties, or subsequent  
749 service charges, and may not be required to pay any operating  
750 expenses charge related to such service for those parcels. If  
751 fewer than all parcel owners share the expenses of the  
752 communications services, information services, or Internet  
753 services, the expense must be shared by all participating parcel  
754 owners. The association may use the provisions of s. 720.3085 to

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755 enforce payment by the parcel owners receiving such services.

756 (c) A resident of any parcel, whether a tenant or parcel  
757 owner, may not be denied access to available franchised,  
758 licensed, or certificated cable or video service providers if  
759 the resident pays the provider directly for services. A resident  
760 or a cable or video service provider may not be required to pay  
761 anything of value in order to obtain or provide such service  
762 except for the charges normally paid for like services by  
763 residents of single-family homes located outside the community  
764 but within the same franchised, licensed, or certificated area,  
765 and except for installation charges agreed to between the  
766 resident and the service provider.

767 (3) An association may not employ or contract with any  
768 service provider that is owned or operated by a board member or  
769 with any person who has a financial relationship with a board  
770 member or officer, or a relative within the third degree of  
771 consanguinity or affinity of a board member or officer. This  
772 subsection does not apply to a service provider in which a board  
773 member or officer, or a relative within the third degree of  
774 consanguinity or affinity of a board member or officer, owns  
775 less than 1 percent of the equity shares.

776 (4) A party contracting to provide maintenance or  
777 management services to an association managing a community after  
778 transfer of control of the association, as provided in s.  
779 720.307, may not purchase a parcel at a foreclosure sale  
780 resulting from the association's foreclosure of association lien  
781 for unpaid assessment or take a deed in lieu of a foreclosure.  
782 If 50 percent or more of the parcels in the community are owned  
783 by a party contracting to provide maintenance or management

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784 services to an association managing a parcel after transfer of  
785 control of the association, as provided in s. 720.307, or by an  
786 officer or board member of such party, the contract with the  
787 party providing maintenance or management services may be  
788 canceled by a majority vote of the parcel owners other than the  
789 contracting party or an officer or board member of such party.

790 Section 7. Section 720.3095, Florida Statutes, is created  
791 to read:

792 720.3095 Conflicts of interest.-

793 (1) Directors and officers of a board of an association and  
794 the relatives of such directors and officers must disclose to  
795 the board any activity that may reasonably be construed to be a  
796 conflict of interest. A rebuttable presumption of a conflict of  
797 interest exists if any of the following occurs without prior  
798 notice, as required in subsection (4):

799 (a) A director or an officer, or a relative of a director  
800 or an officer, enters into a contract for goods or services with  
801 the association.

802 (b) A director or an officer, or a relative of a director  
803 or an officer, holds an interest in a corporation, limited  
804 liability corporation, partnership, limited liability  
805 partnership, or other business entity that conducts business  
806 with the association or proposes to enter into a contract or  
807 other transaction with the association.

808 (2) If a director or an officer, or a relative of a  
809 director or an officer, proposes to engage in an activity that  
810 is a conflict of interest, as described in subsection (1), the  
811 proposed activity must be listed on, and all contracts and  
812 transactional documents related to the proposed activity must be

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813 attached to, the meeting agenda. If the board votes against the  
814 proposed activity, the director or officer, or the relative of  
815 the director or officer, must notify the board in writing of his  
816 or her intention not to pursue the proposed activity or to  
817 withdraw from office. If the board finds that an officer or a  
818 director has violated this subsection, the officer or director  
819 shall be deemed removed from office. The vacancy shall be filled  
820 according to general law.

821 (3) A director or an officer, or a relative of a director  
822 or an officer, who is a party to, or has an interest in, an  
823 activity that is a possible conflict of interest, as described  
824 in subsection (1), may attend the meeting at which the activity  
825 is considered by the board and is authorized to make a  
826 presentation to the board regarding the activity. After the  
827 presentation, the director or officer, or the relative of the  
828 director or officer, must leave the meeting during the  
829 discussion of, and the vote on, the activity. A director or an  
830 officer who is a party to, or has an interest in, the activity  
831 must recuse himself or herself from the vote.

832 (4) A contract entered into between a director or an  
833 officer, or a relative of a director or an officer, and the  
834 association which has not been properly disclosed as a conflict  
835 of interest or potential conflict of interest is voidable and  
836 terminates upon the filing of a written notice with the board of  
837 directors terminating the contract and which contains the  
838 consent of at least 20 percent of the voting interests of the  
839 association.

840 (5) As used in this section, the term "relative" means a  
841 relative within the third degree of consanguinity or affinity.

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842 Section 8. Subsection (1) of section 720.311, Florida  
843 Statutes, is amended to read:  
844 720.311 Dispute resolution.—  
845 (1) The Legislature finds that alternative dispute  
846 resolution has made progress in reducing court dockets and  
847 trials and in offering a more efficient, cost-effective option  
848 to litigation. The filing of any petition for arbitration or the  
849 serving of a demand for presuit mediation as provided for in  
850 this section shall toll the applicable statute of limitations.  
851 Any recall dispute filed with the department pursuant to s.  
852 720.303(11) ~~s. 720.303(10)~~ shall be conducted by the department  
853 in accordance with the provisions of ss. 718.112(2)(j) and  
854 718.1255 and the rules adopted by the division. In addition, the  
855 department shall conduct mandatory binding arbitration of  
856 election disputes between a member and an association pursuant  
857 to s. 718.1255 and rules adopted by the division. Neither  
858 election disputes nor recall disputes are eligible for presuit  
859 mediation; these disputes shall be arbitrated by the department.  
860 At the conclusion of the proceeding, the department shall charge  
861 the parties a fee in an amount adequate to cover all costs and  
862 expenses incurred by the department in conducting the  
863 proceeding. Initially, the petitioner shall remit a filing fee  
864 of at least \$200 to the department. The fees paid to the  
865 department shall become a recoverable cost in the arbitration  
866 proceeding, and the prevailing party in an arbitration  
867 proceeding shall recover its reasonable costs and attorney  
868 ~~attorney's~~ fees in an amount found reasonable by the arbitrator.  
869 The department shall adopt rules to effectuate the purposes of  
870 this section.

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Section 9. This act shall take effect July 1, 2018.