

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
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.

59

60 Be It Enacted by the Legislature of the State of Florida:

61

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

64 718.509 Division of Florida Condominiums, Timeshares, and
65 Mobile Homes Trust Fund.—

66 (1) There is created within the State Treasury the
67 Division of Florida Condominiums, Timeshares, and Mobile Homes
68 Trust Fund to be used for the administration and operation of
69 this chapter and chapters 718, 719, 720, 721, and 723 by the
70 division.

71 Section 2. Paragraph (b) of subsection (5) of section
72 720.303, Florida Statutes, is amended, and, notwithstanding the
73 repeal of subsection (13) of that section, which occurred on
74 July 1, 2016, subsection (13) of that section is revived,
75 reenacted, and amended, to read:

76 720.303 Association powers and duties; meetings of board;
77 official records; budgets; financial reporting; association
78 funds; recalls.—

79 (5) INSPECTION AND COPYING OF RECORDS.—The official
80 records shall be maintained within the state for at least 7
81 years and shall be made available to a parcel owner for
82 inspection or photocopying within 45 miles of the community or
83 within the county in which the association is located within 10
84 business days after receipt by the board or its designee of a
85 written request. This subsection may be complied with by having
86 a copy of the official records available for inspection or
87 copying in the community or, at the option of the association,
88 by making the records available to a parcel owner electronically
89 via the Internet or by allowing the records to be viewed in
90 electronic format on a computer screen and printed upon request.
91 If the association has a photocopy machine available where the
92 records are maintained, it must provide parcel owners with
93 copies on request during the inspection if the entire request is
94 limited to no more than 25 pages. An association shall allow a
95 member or his or her authorized representative to use a portable
96 device, including a smartphone, tablet, portable scanner, or any
97 other technology capable of scanning or taking photographs, to
98 make an electronic copy of the official records in lieu of the
99 association's providing the member or his or her authorized
100 representative with a copy of such records. The association may

101 not charge a fee to a member or his or her authorized
102 representative for the use of a portable device.

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

119 (13) REPORTING REQUIREMENT.—The community association
120 manager or management firm, or the association when there is no
121 community association manager or management firm, must submit a
122 ~~shall~~ report to the division by November 22, 2018 ~~2013~~, and each
123 year thereafter, in a manner and form prescribed by the
124 division.

125 (a) The report must ~~shall~~ include the association's:

- 126 1. Legal name.
127 2. Federal employer identification number.
128 3. Mailing and physical addresses.
129 4. Total number of parcels.
130 5. Total amount of revenues and expenses from the
131 association's annual budget.

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

- 135 1. Legal name.
136 2. Mailing address.
137 3. Total number of parcels owned on the date of reporting.

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

146 (d) By October 1, 2018 ~~2013~~, the department shall
147 establish and implement a registration system through an
148 Internet website that provides for the reporting requirements of
149 paragraphs (a) and (b).

150 (e) The department shall prepare an annual report of the

151 data reported pursuant to this subsection and present it to the
152 Governor, the President of the Senate, and the Speaker of the
153 House of Representatives by December 1, 2018 ~~2013~~, and each year
154 thereafter.

155 (f) The division shall adopt rules pursuant to ss.
156 120.536(1) and 120.54 to implement the provisions of this
157 subsection.

158 (g) This subsection shall expire on July 1, 2028 ~~2016~~,
159 unless reenacted by the Legislature.

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

162 720.305 Obligations of members; remedies at law or in
163 equity; levy of fines and suspension of use rights.-

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

176 prevailing party is entitled to reasonable attorney fees and
177 costs from the nonprevailing party as determined by the court.

178 (a) An association may suspend, for a reasonable period of
179 time, the right of a member, or a member's tenant, guest, or
180 invitee, to use common areas and facilities for the failure of
181 the owner of the parcel or its occupant, licensee, or invitee to
182 comply with any provision of the declaration, the association
183 bylaws, or reasonable rules of the association. This paragraph
184 does not apply to that portion of common areas used to provide
185 access or utility services to the parcel. A suspension may not
186 prohibit an owner or tenant of a parcel from having vehicular
187 and pedestrian ingress to and egress from the parcel, including,
188 but not limited to, the right to park.

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

201 fine or suspension by mail or hand delivery to the parcel owner
 202 and, if applicable, to any tenant, licensee, or invitee of the
 203 parcel owner.

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

206 720.307 Transition of association control in a community.—
 207 With respect to homeowners' associations:

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

212 (a) For a homeowners' association consisting of fewer than
 213 100 lots, the passage of 3 months after 75 percent of the
 214 parcels in all phases of the community which will ultimately be
 215 operated by the homeowners' association have been conveyed to
 216 members.

217 (b) For a homeowners' association consisting of fewer than
 218 200 lots, the passage of 10 years after the governing documents
 219 of the homeowners' association are filed with the local
 220 government.

221 (c) For a homeowners' association consisting of 200 or
 222 more lots, the earlier of the passage of 20 years after the
 223 governing documents of the homeowners' association are filed
 224 with the local government or 3 months after 90 percent of the
 225 parcels in all phases of the community which will ultimately be

226 operated by the homeowners' association have been conveyed to
 227 members. ~~Three months after 90 percent of the parcels in all~~
 228 ~~phases of the community that will ultimately be operated by the~~
 229 ~~homeowners' association have been conveyed to members;~~

230 (d)(e) Abandonment by the developer, or the developer's
 231 failure ~~Upon the developer abandoning or deserting its~~
 232 ~~responsibility~~ to maintain and complete the amenities or
 233 infrastructure as disclosed in the governing documents. There is
 234 a rebuttable presumption that the developer has abandoned and
 235 deserted the property if the developer has unpaid assessments or
 236 guaranteed amounts under s. 720.308 for a period of more than 2
 237 years. ~~†~~

238 (e)(d) Upon the developer Filing by the developer of a
 239 petition seeking protection under chapter 7 of the federal
 240 Bankruptcy Code. ~~†~~

241 (f)(e) Loss of ~~Upon the developer losing~~ title to the
 242 property by the developer through a foreclosure action or the
 243 transfer of a deed in lieu of foreclosure, unless the successor
 244 owner has accepted an assignment of developer rights and
 245 responsibilities first arising after the date of such
 246 assignment. ~~† or~~

247 (g)(f) Appointment of ~~Upon~~ a receiver for the developer
 248 ~~being appointed~~ by a circuit court, if the receiver is ~~and not~~
 249 ~~being~~ discharged within 30 days after such appointment, unless
 250 the court determines within 30 days after such appointment that

251 transfer of control would be detrimental to the association or
252 its members.

253 (h)-(b) Conveyance of another ~~Such other~~ percentage of the
254 parcels ~~has been conveyed~~ to members, or the occurrence of such
255 other date or event ~~has occurred~~, as provided ~~is set forth~~ in
256 the governing documents in order to comply with the requirements
257 of any governmentally chartered entity with regard to the
258 mortgage financing of parcels.†

259

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

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

266 720.311 Dispute resolution.—

267 (1) The Legislature finds that alternative dispute
268 resolution has made progress in reducing court dockets and
269 trials and in offering a more efficient, cost-effective option
270 to litigation. The filing of any petition for arbitration or the
271 serving of a demand for presuit mediation as provided for in
272 this section shall toll the applicable statute of limitations.
273 Any recall dispute filed with the department pursuant to s.
274 720.303(10) shall be conducted by the department in accordance
275 with the provisions of ss. 718.112(2)(j) and 718.1255 and the

276 rules adopted by the division. In addition, the department shall
277 conduct mandatory binding arbitration of election disputes
278 between a member and an association pursuant to s. 718.1255 and
279 rules adopted by the division. ~~Neither Election disputes and nor~~
280 ~~recall disputes are eligible for presuit mediation; these~~
281 ~~disputes shall be arbitrated by the department.~~ At the request
282 of the parcel owner or homeowners' association, the department
283 shall provide binding arbitration in disputes involving
284 covenants, restrictions, rule enforcement, and duties to
285 maintain and make safe pursuant to the declaration of covenants,
286 rules and regulations, and other governing documents; disputes
287 involving assessments; and disputes involving the official
288 records of the homeowners' association. At the conclusion of the
289 proceeding, the department shall charge the parties a fee in an
290 amount adequate to cover all costs and expenses incurred by the
291 department in conducting the proceeding. Initially, the
292 petitioner shall remit a filing fee of at least \$200 to the
293 department. The fees paid to the department shall become a
294 recoverable cost in the arbitration proceeding, and the
295 prevailing party in an arbitration proceeding shall recover its
296 reasonable costs and attorney ~~attorney's~~ fees in an amount found
297 reasonable by the arbitrator. The department shall adopt rules
298 to effectuate the purposes of this section.

299 (2)

300 (d) A mediator or arbitrator shall be authorized to

HB 377

2018

301 | conduct mediation or arbitration under this section only if he
302 | or she has been certified as a county court or circuit court
303 | civil mediator or arbitrator, respectively, pursuant to the
304 | requirements established by the Florida Supreme Court.

305 | Settlement agreements resulting from mediation do ~~shall~~ not have
306 | precedential value in proceedings involving parties other than
307 | those participating in the mediation to support either a claim
308 | or defense in other disputes.

309 | Section 6. Section 720.318, Florida Statutes, is created
310 | to read:

311 | 720.318 Training and educational programs.—The Department
312 | of Business and Professional Regulation shall provide training
313 | and educational programs for homeowners' association members,
314 | directors, and officers. At the department's discretion, the
315 | training and educational programs may include web-based
316 | electronic media, live training, and seminars in various
317 | locations throughout the state. The department may review and
318 | approve training and educational programs for members,
319 | directors, and officers of homeowners' associations which are
320 | offered by providers. The department shall maintain a current
321 | list of approved programs and providers and shall make such list
322 | available to homeowners' associations in a reasonable and cost-
323 | effective manner.

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

326 720.319 Authority of department.—The Department of
327 Business and Professional Regulation may enforce and ensure
328 compliance with this chapter and rules relating to records
329 access, financial management, and elections of homeowners'
330 associations and may investigate any complaint made to the
331 department against a homeowners' association.

332 Section 8. Subsection (2) of section 720.401, Florida
333 Statutes, is renumbered as subsection (3), and a new subsection
334 (2) is added to that section, to read:

335 720.401 Prospective purchasers subject to association
336 membership requirement; disclosure required; covenants;
337 assessments; contract cancellation.—

338 (2) A seller of a parcel for which membership in a
339 homeowners' association is a condition of ownership must provide
340 a prospective buyer with the association's governing documents,
341 including the declaration of covenants, articles and bylaws,
342 rules and regulations, and operating budget for the current
343 year, and any amendment to such documents. The seller must
344 provide the prospective buyer with such documents at least 7
345 days before closing. The prospective buyer may terminate the
346 contract for purchase within 3 days after receipt of such
347 documents.

348 Section 9. Section 720.402, Florida Statutes, is amended
349 to read:

350 720.402 Publication of false and misleading information;

351 developer's use of homeowners' association fund prohibited.—

352 (1) Any person who, in reasonable reliance upon any
353 material statement or information that is false or misleading
354 and published by or under authority from the developer in
355 advertising and promotional materials, including, but not
356 limited to, a contract of purchase, the declaration of
357 covenants, exhibits to a declaration of covenants, brochures,
358 and newspaper advertising, pays anything of value toward the
359 purchase of a parcel in a community located in this state has a
360 cause of action to rescind the contract or collect damages from
361 the developer for his or her loss before the closing of the
362 transaction. After the closing of the transaction, the purchaser
363 has a cause of action against the developer for damages under
364 this section from the time of closing until 1 year after the
365 date upon which the last of the events described in paragraphs
366 (a) through (d) occurs:

367 (a) The closing of the transaction;

368 (b) The issuance by the applicable governmental authority
369 of a certificate of occupancy or other evidence of sufficient
370 completion of construction of the purchaser's residence to allow
371 lawful occupancy of the residence by the purchaser. In counties
372 or municipalities in which certificates of occupancy or other
373 evidences of completion sufficient to allow lawful occupancy are
374 not customarily issued, for the purpose of this section,
375 evidence of lawful occupancy shall be deemed to be given or

376 | issued upon the date that such lawful occupancy of the residence
 377 | may be allowed under prevailing applicable laws, ordinances, or
 378 | statutes;

379 | (c) The completion by the developer of the common areas
 380 | and such recreational facilities, whether or not the same are
 381 | common areas, which the developer is obligated to complete or
 382 | provide under the terms of the written contract, governing
 383 | documents, or written agreement for purchase or lease of the
 384 | parcel; or

385 | (d) In the event there is not a written contract or
 386 | agreement for sale or lease of the parcel, then the completion
 387 | by the developer of the common areas and such recreational
 388 | facilities, whether or not they are common areas, which the
 389 | developer would be obligated to complete under any rule of law
 390 | applicable to the developer's obligation.

391 | (2) A nondeveloper parcel owner has a cause of action
 392 | against the developer for:

393 | (a) Damages resulting from the developer's abandonment or
 394 | failure of his or her responsibility to maintain and complete
 395 | amenities or infrastructure disclosed in the governing
 396 | documents, written contract, or written agreement for purchase
 397 | of the parcel.

398 | (b) The developer's failure to perform or comply with any
 399 | duty or obligation required under the governing documents,
 400 | written contract, or written agreement for purchase of the

401 parcel.

402 (3) A developer may not use association funds for a
403 purpose not specifically authorized in a homeowners' association
404 budget adopted in accordance with the governing documents and s.
405 720.303. Any use of association funds by a developer in
406 violation of this section is actionable by a nondeveloper parcel
407 owner or the homeowners' association. This subsection is
408 intended to clarify existing law and applies to all homeowners'
409 associations in existence on July 1, 2018, and created
410 thereafter.

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

414 (5)-(2) In any action for relief under this section, the
415 prevailing party may recover reasonable attorney ~~attorney's~~
416 fees. A developer may not expend association funds in the
417 defense of any suit under this section.

418 Section 10. This act shall take effect July 1, 2018.