

1                                   A bill to be entitled  
 2           An act relating to the Division of Florida  
 3           Condominiums, Timeshares, and Mobile Homes; amending  
 4           s. 215.32, F.S.; exempts Division of Florida  
 5           Condominiums, Timeshares, and Mobile Homes Trust Fund  
 6           from provision authorizing Legislature, in General  
 7           Appropriations Act, to transfer unappropriated cash  
 8           balances from specified trust funds to Budget  
 9           Stabilization Fund and General Revenue Fund; amending  
 10          s. 718.111, F.S.; revising criminal penalties relating  
 11          to the acceptance of things or services of value or  
 12          kickbacks; providing criminal penalties for certain  
 13          violations relating to official association records;  
 14          defining the term "repeatedly"; revising criminal  
 15          penalties relating to the use of association debit  
 16          cards; defining the term "lawful obligation of the  
 17          association"; creating s. 718.129, F.S.; providing  
 18          criminal penalties for fraudulent voting activities  
 19          related to association elections; providing an  
 20          effective date.

21  
 22   Be It Enacted by the Legislature of the State of Florida:

23  
 24           Section 1. Paragraph (b) of subsection (2) of section  
 25   215.32, Florida Statutes, is amended to read:

26 |           215.32 State funds; segregation.—

27 |           (2) The source and use of each of these funds shall be as  
28 | follows:

29 |           (b)1. The trust funds shall consist of moneys received by  
30 | the state which under law or under trust agreement are  
31 | segregated for a purpose authorized by law. The state agency or  
32 | branch of state government receiving or collecting such moneys  
33 | is responsible for their proper expenditure as provided by law.  
34 | Upon the request of the state agency or branch of state  
35 | government responsible for the administration of the trust fund,  
36 | the Chief Financial Officer may establish accounts within the  
37 | trust fund at a level considered necessary for proper  
38 | accountability. Once an account is established, the Chief  
39 | Financial Officer may authorize payment from that account only  
40 | upon determining that there is sufficient cash and releases at  
41 | the level of the account.

42 |           2. In addition to other trust funds created by law, to the  
43 | extent possible, each agency shall use the following trust funds  
44 | as described in this subparagraph for day-to-day operations:

45 |           a. Operations or operating trust fund, for use as a  
46 | depository for funds to be used for program operations funded by  
47 | program revenues, with the exception of administrative  
48 | activities when the operations or operating trust fund is a  
49 | proprietary fund.

50 |           b. Operations and maintenance trust fund, for use as a

51 depository for client services funded by third-party payors.

52 c. Administrative trust fund, for use as a depository for  
53 funds to be used for management activities that are departmental  
54 in nature and funded by indirect cost earnings and assessments  
55 against trust funds. Proprietary funds are excluded from the  
56 requirement of using an administrative trust fund.

57 d. Grants and donations trust fund, for use as a  
58 depository for funds to be used for allowable grant or donor  
59 agreement activities funded by restricted contractual revenue  
60 from private and public nonfederal sources.

61 e. Agency working capital trust fund, for use as a  
62 depository for funds to be used pursuant to s. 216.272.

63 f. Clearing funds trust fund, for use as a depository for  
64 funds to account for collections pending distribution to lawful  
65 recipients.

66 g. Federal grant trust fund, for use as a depository for  
67 funds to be used for allowable grant activities funded by  
68 restricted program revenues from federal sources.

69  
70 To the extent possible, each agency must adjust its internal  
71 accounting to use existing trust funds consistent with the  
72 requirements of this subparagraph. If an agency does not have  
73 trust funds listed in this subparagraph and cannot make such  
74 adjustment, the agency must recommend the creation of the  
75 necessary trust funds to the Legislature no later than the next

76 | scheduled review of the agency's trust funds pursuant to s.  
77 | 215.3206.

78 |       3. All such moneys are hereby appropriated to be expended  
79 | in accordance with the law or trust agreement under which they  
80 | were received, subject always to the provisions of chapter 216  
81 | relating to the appropriation of funds and to the applicable  
82 | laws relating to the deposit or expenditure of moneys in the  
83 | State Treasury.

84 |       4.a. Notwithstanding any provision of law restricting the  
85 | use of trust funds to specific purposes, unappropriated cash  
86 | balances from selected trust funds may be authorized by the  
87 | Legislature for transfer to the Budget Stabilization Fund and  
88 | General Revenue Fund in the General Appropriations Act.

89 |       b. This subparagraph does not apply to trust funds  
90 | required by federal programs or mandates; trust funds  
91 | established for bond covenants, indentures, or resolutions whose  
92 | revenues are legally pledged by the state or public body to meet  
93 | debt service or other financial requirements of any debt  
94 | obligations of the state or any public body; the Division of  
95 | Licensing Trust Fund in the Department of Agriculture and  
96 | Consumer Services; the State Transportation Trust Fund; the  
97 | trust fund containing the net annual proceeds from the Florida  
98 | Education Lotteries; the Florida Retirement System Trust Fund;  
99 | trust funds under the management of the State Board of Education  
100 | or the Board of Governors of the State University System, where

101 such trust funds are for auxiliary enterprises, self-insurance,  
 102 and contracts, grants, and donations, as those terms are defined  
 103 by general law; trust funds that serve as clearing funds or  
 104 accounts for the Chief Financial Officer or state agencies;  
 105 trust funds that account for assets held by the state in a  
 106 trustee capacity as an agent or fiduciary for individuals,  
 107 private organizations, or other governmental units; the Division  
 108 of Florida Condominiums, Timeshares, and Mobile Homes Trust  
 109 Fund; and other trust funds authorized by the State  
 110 Constitution.

111 Section 2. Paragraphs (a) and (d) of subsection (1),  
 112 paragraph (c) of subsection (12), and paragraph (b) of  
 113 subsection (15) of section 718.111, Florida Statutes, are  
 114 amended to read:

115 718.111 The association.—

116 (1) CORPORATE ENTITY.—

117 (a) The operation of the condominium shall be by the  
 118 association, which must be a Florida corporation for profit or a  
 119 Florida corporation not for profit. However, any association  
 120 which was in existence on January 1, 1977, need not be  
 121 incorporated. The owners of units shall be shareholders or  
 122 members of the association. The officers and directors of the  
 123 association have a fiduciary relationship to the unit owners. It  
 124 is the intent of the Legislature that nothing in this paragraph  
 125 shall be construed as providing for or removing a requirement of

126 a fiduciary relationship between any manager employed by the  
127 association and the unit owners. An officer, director, or  
128 manager may not solicit, offer to accept, or accept any thing or  
129 service of value or kickback for which consideration has not  
130 been provided for his or her own benefit or that of his or her  
131 immediate family, from any person providing or proposing to  
132 provide goods or services to the association. Any such officer,  
133 director, or manager who knowingly so solicits, offers to  
134 accept, or accepts any thing or service of value or kickback  
135 commits a felony of the third degree, punishable as provided in  
136 s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil  
137 penalty pursuant to s. 718.501(1)(d) and, if applicable, a  
138 criminal penalty as provided in paragraph (d). However, this  
139 paragraph does not prohibit an officer, director, or manager  
140 from accepting services or items received in connection with  
141 trade fairs or education programs. An association may operate  
142 more than one condominium.

143 (d) As required by s. 617.0830, an officer, director, or  
144 agent shall discharge his or her duties in good faith, with the  
145 care an ordinarily prudent person in a like position would  
146 exercise under similar circumstances, and in a manner he or she  
147 reasonably believes to be in the interests of the association.  
148 An officer, director, or agent shall be liable for monetary  
149 damages as provided in s. 617.0834 if such officer, director, or  
150 agent breached or failed to perform his or her duties and the

151 breach of, or failure to perform, his or her duties constitutes  
152 a violation of criminal law as provided in s. 617.0834;  
153 constitutes a transaction from which the officer or director  
154 derived an improper personal benefit, either directly or  
155 indirectly; or constitutes recklessness or an act or omission  
156 that was in bad faith, with malicious purpose, or in a manner  
157 exhibiting wanton and willful disregard of human rights, safety,  
158 or property. ~~Forgery of a ballot envelope or voting certificate~~  
159 ~~used in a condominium association election is punishable as~~  
160 ~~provided in s. 831.01, the theft or embezzlement of funds of a~~  
161 ~~condominium association is punishable as provided in s. 812.014,~~  
162 ~~and the destruction of or the refusal to allow inspection or~~  
163 ~~copying of an official record of a condominium association that~~  
164 ~~is accessible to unit owners within the time periods required by~~  
165 ~~general law in furtherance of any crime is punishable as~~  
166 ~~tampering with physical evidence as provided in s. 918.13 or as~~  
167 ~~obstruction of justice as provided in chapter 843. An officer or~~  
168 director charged by information or indictment with a crime  
169 referenced in this paragraph must be removed from office, and  
170 the vacancy shall be filled as provided in s. 718.112(2)(d)2.  
171 until the end of the officer's or director's period of  
172 suspension or the end of his or her term of office, whichever  
173 occurs first. If a criminal charge is pending against the  
174 officer or director, he or she may not be appointed or elected  
175 to a position as an officer or a director of any association and

176 | may not have access to the official records of any association,  
177 | except pursuant to a court order. However, if the charges are  
178 | resolved without a finding of guilt, the officer or director  
179 | must be reinstated for the remainder of his or her term of  
180 | office, if any.

181 | (12) OFFICIAL RECORDS.—

182 | (c)1. The official records of the association are open to  
183 | inspection by any association member or the authorized  
184 | representative of such member at all reasonable times. The right  
185 | to inspect the records includes the right to make or obtain  
186 | copies, at the reasonable expense, if any, of the member or  
187 | authorized representative of such member. A renter of a unit has  
188 | a right to inspect and copy the association's bylaws and rules.  
189 | The association may adopt reasonable rules regarding the  
190 | frequency, time, location, notice, and manner of record  
191 | inspections and copying. The failure of an association to  
192 | provide the records within 10 working days after receipt of a  
193 | written request creates a rebuttable presumption that the  
194 | association willfully failed to comply with this paragraph. A  
195 | unit owner who is denied access to official records is entitled  
196 | to the actual damages or minimum damages for the association's  
197 | willful failure to comply. Minimum damages are \$50 per calendar  
198 | day for up to 10 days, beginning on the 11th working day after  
199 | receipt of the written request. The failure to permit inspection  
200 | entitles any person prevailing in an enforcement action to



201 recover reasonable attorney fees from the person in control of  
202 the records who, directly or indirectly, knowingly denied access  
203 to the records.

204 2. Any director or member of the board or association who  
205 knowingly, willfully, and repeatedly violates subparagraph 1.  
206 commits a misdemeanor of the second degree, punishable as  
207 provided in s. 775.082 or s. 775.083. For the purposes of this  
208 subparagraph, the term "repeatedly" means two or more violations  
209 within a 12-month period.

210 ~~3.2.~~ Any person who knowingly or intentionally defaces or  
211 destroys accounting records that are required by this chapter to  
212 be maintained during the period for which such records are  
213 required to be maintained, or who knowingly or intentionally  
214 fails to create or maintain accounting records that are required  
215 to be created or maintained, with the intent of causing harm to  
216 the association or one or more of its members, commits a  
217 misdemeanor of the first degree, punishable as provided in s.  
218 775.082 or s. 775.083 ~~is personally subject to a civil penalty~~  
219 ~~pursuant to s. 718.501(1)(d).~~

220 4. Any person who willfully and knowingly refuses to  
221 release or otherwise produce association records with the intent  
222 to avoid or escape detection, arrest, trial, or punishment for  
223 the commission of a crime, or to assist another person with such  
224 avoidance or escape, commits a felony of the third degree,  
225 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

226        ~~5.3.~~ The association shall maintain an adequate number of  
227 copies of the declaration, articles of incorporation, bylaws,  
228 and rules, and all amendments to each of the foregoing, as well  
229 as the question and answer sheet as described in s. 718.504 and  
230 year-end financial information required under this section, on  
231 the condominium property to ensure their availability to unit  
232 owners and prospective purchasers, and may charge its actual  
233 costs for preparing and furnishing these documents to those  
234 requesting the documents. An association shall allow a member or  
235 his or her authorized representative to use a portable device,  
236 including a smartphone, tablet, portable scanner, or any other  
237 technology capable of scanning or taking photographs, to make an  
238 electronic copy of the official records in lieu of the  
239 association's providing the member or his or her authorized  
240 representative with a copy of such records. The association may  
241 not charge a member or his or her authorized representative for  
242 the use of a portable device. Notwithstanding this paragraph,  
243 the following records are not accessible to unit owners:

244        a. Any record protected by the lawyer-client privilege as  
245 described in s. 90.502 and any record protected by the work-  
246 product privilege, including a record prepared by an association  
247 attorney or prepared at the attorney's express direction, which  
248 reflects a mental impression, conclusion, litigation strategy,  
249 or legal theory of the attorney or the association, and which  
250 was prepared exclusively for civil or criminal litigation or for

251 adversarial administrative proceedings, or which was prepared in  
252 anticipation of such litigation or proceedings until the  
253 conclusion of the litigation or proceedings.

254 b. Information obtained by an association in connection  
255 with the approval of the lease, sale, or other transfer of a  
256 unit.

257 c. Personnel records of association or management company  
258 employees, including, but not limited to, disciplinary, payroll,  
259 health, and insurance records. For purposes of this sub-  
260 subparagraph, the term "personnel records" does not include  
261 written employment agreements with an association employee or  
262 management company, or budgetary or financial records that  
263 indicate the compensation paid to an association employee.

264 d. Medical records of unit owners.

265 e. Social security numbers, driver license numbers, credit  
266 card numbers, e-mail addresses, telephone numbers, facsimile  
267 numbers, emergency contact information, addresses of a unit  
268 owner other than as provided to fulfill the association's notice  
269 requirements, and other personal identifying information of any  
270 person, excluding the person's name, unit designation, mailing  
271 address, property address, and any address, e-mail address, or  
272 facsimile number provided to the association to fulfill the  
273 association's notice requirements. Notwithstanding the  
274 restrictions in this sub-subparagraph, an association may print  
275 and distribute to parcel owners a directory containing the name,

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

286 f. Electronic security measures that are used by the  
287 association to safeguard data, including passwords.

288 g. The software and operating system used by the  
289 association which allow the manipulation of data, even if the  
290 owner owns a copy of the same software used by the association.  
291 The data is part of the official records of the association.

292 (15) DEBIT CARDS.—

293 (b) A person who uses ~~Use of~~ a debit card issued in the  
294 name of the association, or billed directly to the association,  
295 for any expense that is not a lawful obligation of the  
296 association commits theft under s. 812.014. For the purposes of  
297 this paragraph, a "lawful obligation of the association" means  
298 an obligation that has been properly preapproved by the board  
299 and is reflected in the meeting minutes or the written budget  
300 ~~may be prosecuted as credit card fraud pursuant to s. 817.61.~~

301 Section 3. Section 718.129, Florida Statutes, is created  
 302 to read:

303 718.129 Fraudulent voting activities related to  
 304 association elections; penalties.-

305 (1) Each of the following acts is a fraudulent voting  
 306 activity related to association elections and constitutes a  
 307 felony of the third degree, punishable as provided in s.  
 308 775.082, s. 775.083, or s. 775.084:

309 (a) Willfully and falsely swearing or affirming any oath  
 310 or affirmation, or willfully procuring another person to swear  
 311 or affirm falsely to an oath or affirmation, in connection with  
 312 or arising out of voting or elections.

313 (b) Perpetrating or attempting to perpetrate, or aiding in  
 314 the perpetration of, any fraud in connection with any vote cast,  
 315 to be cast, or attempted to be cast.

316 (c) Preventing an elector from voting, or preventing an  
 317 elector from voting as the elector intended, by fraudulently  
 318 changing or attempting to change a ballot, ballot envelope,  
 319 vote, or voting certificate of the elector.

320 (d) Using bribery, menace, threat, or any other corruption  
 321 to attempt, directly or indirectly, to influence, deceive, or  
 322 deter any elector in voting.

323 (e) Directly or indirectly giving or promising anything of  
 324 value to another person with the intent to buy the vote of that  
 325 person or another person or to corruptly influence that person

326 or another person in casting his or her vote. However, this  
327 paragraph does not apply to the serving of food to be consumed  
328 at an election rally or meeting or to any item of nominal value  
329 which is used as an election advertisement, including a campaign  
330 message designed to be worn by a person.

331 (f) Directly or indirectly using or threatening to use  
332 force, violence, or intimidation or any tactic of coercion or  
333 intimidation to induce or compel an individual to vote or  
334 refrain from voting in an election or on any particular ballot  
335 measure.

336 (2) Each of the following acts constitutes a felony of the  
337 third degree, punishable as provided in s. 775.082, s. 775.083,  
338 or s. 775.084:

339 (a) Knowingly aiding, abetting, or advising a person in  
340 the commission of a fraudulent voting activity related to  
341 association elections.

342 (b) Agreeing, conspiring, combining, or confederating with  
343 at least one other person to commit a fraudulent voting activity  
344 related to association elections.

345 (c) Having knowledge of a fraudulent voting activity  
346 related to association elections and giving any aid to the  
347 offender with intent that the offender avoid or escape  
348 detection, arrest, trial, or punishment. This paragraph does not  
349 apply to a licensed attorney giving legal advice to a client.

350 Section 4. This act shall take effect October 1, 2019.