

By the Committee on Criminal Justice; and Senator Pizzo

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1 A bill to be entitled
2 An act relating to condominium associations; amending
3 s. 718.111, F.S.; revising criminal penalties relating
4 to the acceptance of things or services of value or
5 kickbacks; revising the documents required to be
6 included with accounting records; requiring an
7 association to maintain official records in a
8 specified manner; revising requirements for the
9 creation of a rebuttable presumption relating to the
10 provision of records; authorizing an association to
11 direct certain persons to the association's website to
12 fulfill certain obligations relating to the inspection
13 of records; providing criminal penalties for certain
14 violations relating to official association records;
15 defining the term "repeatedly"; requiring certain
16 associations to post copies of certain documents on
17 the association's website by a specified date;
18 revising criminal penalties relating to the use of
19 association debit cards; defining the term "lawful
20 obligation of the association"; creating s. 718.129,
21 F.S.; providing criminal penalties for fraudulent
22 voting activities related to association elections;
23 providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraphs (a) and (d) of subsection (1),
28 paragraphs (a), (b), (c), and (g) of subsection (12), and
29 paragraph (b) of subsection (15) of section 718.111, Florida

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30 Statutes, are amended to read:

31 718.111 The association.—

32 (1) CORPORATE ENTITY.—

33 (a) The operation of the condominium shall be by the
34 association, which must be a Florida corporation for profit or a
35 Florida corporation not for profit. However, any association
36 which was in existence on January 1, 1977, need not be
37 incorporated. The owners of units shall be shareholders or
38 members of the association. The officers and directors of the
39 association have a fiduciary relationship to the unit owners. It
40 is the intent of the Legislature that nothing in this paragraph
41 shall be construed as providing for or removing a requirement of
42 a fiduciary relationship between any manager employed by the
43 association and the unit owners. An officer, director, or
44 manager may not solicit, offer to accept, or accept any thing or
45 service of value or kickback for which consideration has not
46 been provided for his or her own benefit or that of his or her
47 immediate family, from any person providing or proposing to
48 provide goods or services to the association. Any such officer,
49 director, or manager who knowingly so solicits, offers to
50 accept, or accepts any thing or service of value or kickback
51 commits a felony of the third degree, punishable as provided in
52 s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil
53 penalty pursuant to s. 718.501(1)(d) and, if applicable, a
54 criminal penalty as provided in paragraph (d). However, this
55 paragraph does not prohibit an officer, director, or manager
56 from accepting services or items received in connection with
57 trade fairs or education programs. An association may operate
58 more than one condominium.

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59 (d) As required by s. 617.0830, an officer, director, or
60 agent shall discharge his or her duties in good faith, with the
61 care an ordinarily prudent person in a like position would
62 exercise under similar circumstances, and in a manner he or she
63 reasonably believes to be in the interests of the association.
64 An officer, director, or agent shall be liable for monetary
65 damages as provided in s. 617.0834 if such officer, director, or
66 agent breached or failed to perform his or her duties and the
67 breach of, or failure to perform, his or her duties constitutes
68 a violation of criminal law as provided in s. 617.0834;
69 constitutes a transaction from which the officer or director
70 derived an improper personal benefit, either directly or
71 indirectly; or constitutes recklessness or an act or omission
72 that was in bad faith, with malicious purpose, or in a manner
73 exhibiting wanton and willful disregard of human rights, safety,
74 or property. ~~Forgery of a ballot envelope or voting certificate
75 used in a condominium association election is punishable as
76 provided in s. 831.01, the theft or embezzlement of funds of a
77 condominium association is punishable as provided in s. 812.014,
78 and the destruction of or the refusal to allow inspection or
79 copying of an official record of a condominium association that
80 is accessible to unit owners within the time periods required by
81 general law in furtherance of any crime is punishable as
82 tampering with physical evidence as provided in s. 918.13 or as
83 obstruction of justice as provided in chapter 843. An officer or
84 director charged by information or indictment with a crime
85 referenced in this paragraph must be removed from office, and
86 the vacancy shall be filled as provided in s. 718.112(2)(d)2.
87 until the end of the officer's or director's period of~~

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88 suspension or the end of his or her term of office, whichever
89 occurs first. If a criminal charge is pending against the
90 officer or director, he or she may not be appointed or elected
91 to a position as an officer or a director of any association and
92 may not have access to the official records of any association,
93 except pursuant to a court order. However, if the charges are
94 resolved without a finding of guilt, the officer or director
95 must be reinstated for the remainder of his or her term of
96 office, if any.

97 (12) OFFICIAL RECORDS.—

98 (a) From the inception of the association, the association
99 shall maintain each of the following items, if applicable, which
100 constitutes the official records of the association:

101 1. A copy of the plans, permits, warranties, and other
102 items provided by the developer pursuant to s. 718.301(4).

103 2. A photocopy of the recorded declaration of condominium
104 of each condominium operated by the association and each
105 amendment to each declaration.

106 3. A photocopy of the recorded bylaws of the association
107 and each amendment to the bylaws.

108 4. A certified copy of the articles of incorporation of the
109 association, or other documents creating the association, and
110 each amendment thereto.

111 5. A copy of the current rules of the association.

112 6. A book or books that contain the minutes of all meetings
113 of the association, the board of administration, and the unit
114 owners.

115 7. A current roster of all unit owners and their mailing
116 addresses, unit identifications, voting certifications, and, if

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117 known, telephone numbers. The association shall also maintain
118 the e-mail addresses and facsimile numbers of unit owners
119 consenting to receive notice by electronic transmission. The e-
120 mail addresses and facsimile numbers are not accessible to unit
121 owners if consent to receive notice by electronic transmission
122 is not provided in accordance with sub-subparagraph (c)3.e.
123 However, the association is not liable for an inadvertent
124 disclosure of the e-mail address or facsimile number for
125 receiving electronic transmission of notices.

126 8. All current insurance policies of the association and
127 condominiums operated by the association.

128 9. A current copy of any management agreement, lease, or
129 other contract to which the association is a party or under
130 which the association or the unit owners have an obligation or
131 responsibility.

132 10. Bills of sale or transfer for all property owned by the
133 association.

134 11. Accounting records for the association and separate
135 accounting records for each condominium that the association
136 operates. Any person who knowingly or intentionally defaces or
137 destroys such records, or who knowingly or intentionally fails
138 to create or maintain such records, with the intent of causing
139 harm to the association or one or more of its members, is
140 personally subject to a civil penalty pursuant to s.

141 718.501(1)(d). The accounting records must include, but are not
142 limited to:

143 a. Accurate, itemized, and detailed records of all receipts
144 and expenditures.

145 b. A current account and a monthly, bimonthly, or quarterly

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146 statement of the account for each unit designating the name of
147 the unit owner, the due date and amount of each assessment, the
148 amount paid on the account, and the balance due.

149 c. All audits, reviews, accounting statements, and
150 financial reports of the association or condominium.

151 d. All contracts for work to be performed. Bids for work to
152 be performed are also considered official records and must be
153 maintained by the association.

154 e. All bank statements, canceled checks, and credit card
155 statements.

156 f. All invoices, transaction receipts, deposit slips, or
157 other underlying documentation that substantiates any receipt or
158 expenditure of funds by the association.

159 12. Ballots, sign-in sheets, voting proxies, and all other
160 papers and electronic records relating to voting by unit owners,
161 which must be maintained for 1 year from the date of the
162 election, vote, or meeting to which the document relates,
163 notwithstanding paragraph (b).

164 13. All rental records if the association is acting as
165 agent for the rental of condominium units.

166 14. A copy of the current question and answer sheet as
167 described in s. 718.504.

168 15. All other written records of the association not
169 specifically included in the foregoing which are related to the
170 operation of the association.

171 16. A copy of the inspection report as described in s.
172 718.301(4)(p).

173 17. Bids for materials, equipment, or services.

174 (b) The official records specified in subparagraphs (a)1.-

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175 6. must be permanently maintained from the inception of the
176 association. All other official records must be maintained
177 within the state for at least 7 years, unless otherwise provided
178 by general law. The official records must be maintained in an
179 organized manner that facilitates inspection of the records by a
180 unit owner. The obligation to maintain official records includes
181 the obligation to obtain and recreate those records to the
182 fullest extent possible in the event that the records are lost,
183 destroyed, or otherwise unavailable. The records of the
184 association shall be made available to a unit owner within 45
185 miles of the condominium property or within the county in which
186 the condominium property is located within 10 working days after
187 receipt of a written request by the board or its designee.
188 However, such distance requirement does not apply to an
189 association governing a timeshare condominium. This paragraph
190 may be complied with by having a copy of the official records of
191 the association available for inspection or copying on the
192 condominium property or association property, or the association
193 may offer the option of making the records available to a unit
194 owner electronically via the Internet or by allowing the records
195 to be viewed in electronic format on a computer screen and
196 printed upon request. The association is not responsible for the
197 use or misuse of the information provided to an association
198 member or his or her authorized representative pursuant to the
199 compliance requirements of this chapter unless the association
200 has an affirmative duty not to disclose such information
201 pursuant to this chapter.

202 (c)1. The official records of the association are open to
203 inspection by any association member or the authorized

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204 representative of such member at all reasonable times. The right
205 to inspect the records includes the right to make or obtain
206 copies, at the reasonable expense, if any, of the member or
207 authorized representative of such member. A renter of a unit has
208 a right to inspect and copy the association's bylaws and rules.
209 The association may adopt reasonable rules regarding the
210 frequency, time, location, notice, and manner of record
211 inspections and copying. The failure of an association to
212 provide the records within 10 working days after receipt of a
213 written request that complies with the association's document
214 inspection rule creates a rebuttable presumption that the
215 association willfully failed to comply with this paragraph. A
216 unit owner who is denied access to official records is entitled
217 to the actual damages or minimum damages for the association's
218 willful failure to comply. Minimum damages are \$50 per calendar
219 day for up to 10 days, beginning on the 11th working day after
220 receipt of the written request that complies with the
221 association's document inspection rule. The failure to permit
222 inspection entitles any person prevailing in an enforcement
223 action to recover reasonable attorney fees from the person in
224 control of the records who, directly or indirectly, knowingly
225 denied access to the records. If the requested records are
226 posted on an association's website, the association may fulfill
227 its obligations as provided under this paragraph by directing to
228 the website all persons authorized to request access to official
229 records pursuant to this paragraph.

230 2. Any director or member of the board or association or a
231 community association manager who knowingly, willfully, and
232 repeatedly violates subparagraph 1. commits a misdemeanor of the

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233 second degree, punishable as provided in s. 775.082 or s.
234 775.083. For the purposes of this subparagraph, the term
235 "repeatedly" means two or more violations within a 12-month
236 period.

237 ~~3.2.~~ Any person who knowingly or intentionally defaces or
238 destroys accounting records that are required by this chapter to
239 be maintained during the period for which such records are
240 required to be maintained, or who knowingly or intentionally
241 fails to create or maintain accounting records that are required
242 to be created or maintained, with the intent of causing harm to
243 the association or one or more of its members, commits a
244 misdemeanor of the first degree, punishable as provided in s.
245 775.082 or s. 775.083 ~~is personally subject to a civil penalty~~
246 ~~pursuant to s. 718.501(1)(d).~~

247 4. Any person who willfully and knowingly refuses to
248 release or otherwise produce association records with the intent
249 to avoid or escape detection, arrest, trial, or punishment for
250 the commission of a crime, or to assist another person with such
251 avoidance or escape, commits a felony of the third degree,
252 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

253 ~~5.3.~~ The association shall maintain an adequate number of
254 copies of the declaration, articles of incorporation, bylaws,
255 and rules, and all amendments to each of the foregoing, as well
256 as the question and answer sheet as described in s. 718.504 and
257 year-end financial information required under this section, on
258 the condominium property to ensure their availability to unit
259 owners and prospective purchasers, and may charge its actual
260 costs for preparing and furnishing these documents to those
261 requesting the documents. An association shall allow a member or

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262 his or her authorized representative to use a portable device,
263 including a smartphone, tablet, portable scanner, or any other
264 technology capable of scanning or taking photographs, to make an
265 electronic copy of the official records in lieu of the
266 association's providing the member or his or her authorized
267 representative with a copy of such records. The association may
268 not charge a member or his or her authorized representative for
269 the use of a portable device. Notwithstanding this paragraph,
270 the following records are not accessible to unit owners:

271 a. Any record protected by the lawyer-client privilege as
272 described in s. 90.502 and any record protected by the work-
273 product privilege, including a record prepared by an association
274 attorney or prepared at the attorney's express direction, which
275 reflects a mental impression, conclusion, litigation strategy,
276 or legal theory of the attorney or the association, and which
277 was prepared exclusively for civil or criminal litigation or for
278 adversarial administrative proceedings, or which was prepared in
279 anticipation of such litigation or proceedings until the
280 conclusion of the litigation or proceedings.

281 b. Information obtained by an association in connection
282 with the approval of the lease, sale, or other transfer of a
283 unit.

284 c. Personnel records of association or management company
285 employees, including, but not limited to, disciplinary, payroll,
286 health, and insurance records. For purposes of this sub-
287 subparagraph, the term "personnel records" does not include
288 written employment agreements with an association employee or
289 management company, or budgetary or financial records that
290 indicate the compensation paid to an association employee.

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291 d. Medical records of unit owners.

292 e. Social security numbers, driver license numbers, credit
293 card numbers, e-mail addresses, telephone numbers, facsimile
294 numbers, emergency contact information, addresses of a unit
295 owner other than as provided to fulfill the association's notice
296 requirements, and other personal identifying information of any
297 person, excluding the person's name, unit designation, mailing
298 address, property address, and any address, e-mail address, or
299 facsimile number provided to the association to fulfill the
300 association's notice requirements. Notwithstanding the
301 restrictions in this sub-subparagraph, an association may print
302 and distribute to parcel owners a directory containing the name,
303 parcel address, and all telephone numbers of each parcel owner.
304 However, an owner may exclude his or her telephone numbers from
305 the directory by so requesting in writing to the association. An
306 owner may consent in writing to the disclosure of other contact
307 information described in this sub-subparagraph. The association
308 is not liable for the inadvertent disclosure of information that
309 is protected under this sub-subparagraph if the information is
310 included in an official record of the association and is
311 voluntarily provided by an owner and not requested by the
312 association.

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

315 g. The software and operating system used by the
316 association which allow the manipulation of data, even if the
317 owner owns a copy of the same software used by the association.
318 The data is part of the official records of the association.

319 (g)1. By January 1, 2021 ~~2019~~, an association managing a

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320 condominium with 25 ~~150~~ or more units which does not contain
321 timeshare units shall post digital copies of the documents
322 specified in subparagraph 2. on its website.

323 a. The association's website must be:

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

326 (II) A website or web portal operated by a third-party
327 provider with whom the association owns, leases, rents, or
328 otherwise obtains the right to operate a web page, subpage, web
329 portal, or collection of subpages or web portals dedicated to
330 the association's activities and on which required notices,
331 records, and documents may be posted by the association.

332 b. The association's website must be accessible through the
333 Internet and must contain a subpage, web portal, or other
334 protected electronic location that is inaccessible to the
335 general public and accessible only to unit owners and employees
336 of the association.

337 c. Upon a unit owner's written request, the association
338 must provide the unit owner with a username and password and
339 access to the protected sections of the association's website
340 that contain any notices, records, or documents that must be
341 electronically provided.

342 2. A current copy of the following documents must be posted
343 in digital format on the association's website:

344 a. The recorded declaration of condominium of each
345 condominium operated by the association and each amendment to
346 each declaration.

347 b. The recorded bylaws of the association and each
348 amendment to the bylaws.

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349 c. The articles of incorporation of the association, or
350 other documents creating the association, and each amendment
351 thereto. The copy posted pursuant to this sub-subparagraph must
352 be a copy of the articles of incorporation filed with the
353 Department of State.

354 d. The rules of the association.

355 e. A list of all executory contracts or documents to which
356 the association is a party or under which the association or the
357 unit owners have an obligation or responsibility and, after
358 bidding for the related materials, equipment, or services has
359 closed, a list of bids received by the association within the
360 past year. Summaries of bids for materials, equipment, or
361 services which exceed \$500 must be maintained on the website for
362 1 year. In lieu of summaries, complete copies of the bids may be
363 posted.

364 f. The annual budget required by s. 718.112(2)(f) and any
365 proposed budget to be considered at the annual meeting.

366 g. The financial report required by subsection (13) and any
367 monthly income or expense statement to be considered at a
368 meeting.

369 h. The certification of each director required by s.
370 718.112(2)(d)4.b.

371 i. All contracts or transactions between the association
372 and any director, officer, corporation, firm, or association
373 that is not an affiliated condominium association or any other
374 entity in which an association director is also a director or
375 officer and financially interested.

376 j. Any contract or document regarding a conflict of
377 interest or possible conflict of interest as provided in ss.

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378 468.436(2)(b)6. and 718.3027(3).

379 k. The notice of any unit owner meeting and the agenda for
380 the meeting, as required by s. 718.112(2)(d)3., no later than 14
381 days before the meeting. The notice must be posted in plain view
382 on the front page of the website, or on a separate subpage of
383 the website labeled "Notices" which is conspicuously visible and
384 linked from the front page. The association must also post on
385 its website any document to be considered and voted on by the
386 owners during the meeting or any document listed on the agenda
387 at least 7 days before the meeting at which the document or the
388 information within the document will be considered.

389 1. Notice of any board meeting, the agenda, and any other
390 document required for the meeting as required by s.
391 718.112(2)(c), which must be posted no later than the date
392 required for notice pursuant to s. 718.112(2)(c).

393 3. The association shall ensure that the information and
394 records described in paragraph (c), which are not allowed to be
395 accessible to unit owners, are not posted on the association's
396 website. If protected information or information restricted from
397 being accessible to unit owners is included in documents that
398 are required to be posted on the association's website, the
399 association shall ensure the information is redacted before
400 posting the documents online. Notwithstanding the foregoing, the
401 association or its agent is not liable for disclosing
402 information that is protected or restricted pursuant to this
403 paragraph unless such disclosure was made with a knowing or
404 intentional disregard of the protected or restricted nature of
405 such information.

406 4. The failure of the association to post information

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407 required under subparagraph 2. is not in and of itself
408 sufficient to invalidate any action or decision of the
409 association's board or its committees.

410 5. By January 1, 2021, an association managing 25 or more
411 units shall post on its website digital copies of all official
412 records subject to inspection by tenants or unit owners or their
413 authorized representatives.

414 (15) DEBIT CARDS.—

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

423 Section 2. Section 718.129, Florida Statutes, is created to
424 read:

425 718.129 Fraudulent voting activities related to association
426 elections; penalties.—

427 (1) Each of the following acts is a fraudulent voting
428 activity related to association elections and constitutes a
429 felony of the third degree, punishable as provided in s.
430 775.082, s. 775.083, or s. 775.084:

431 (a) Willfully and falsely swearing or affirming any oath or
432 affirmation, or willfully procuring another person to swear or
433 affirm falsely to an oath of affirmation, in connection with or
434 arising out of voting or elections.

435 (b) Perpetrating or attempting to perpetrate, or aiding in

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436 the perpetration of, any fraud in connection with any vote cast,
437 to be cast, or attempted to be cast.

438 (c) Preventing an elector from voting, or preventing an
439 elector from voting as the elector intended, by fraudulently
440 changing or attempting to change a ballot, ballot envelope,
441 vote, or voting certificate of the elector.

442 (d) Using bribery, menace, threat, or any other corruption
443 to attempt, directly or indirectly, to influence, deceive, or
444 deter any elector in voting.

445 (e) Directly or indirectly giving or promising anything of
446 value to another person with the intent to buy the vote of that
447 person or another person or to corruptly influence that person
448 or another person in casting his or her vote. However, this
449 paragraph does not apply to the serving of food to be consumed
450 at an election rally or meeting or to any item of nominal value
451 which is used as an election advertisement, including a campaign
452 message designed to be worn by a person.

453 (f) Directly or indirectly using or threatening to use
454 force, violence, or intimidation or any tactic of coercion or
455 intimidation to induce or compel an individual to vote or
456 refrain from voting in an election or on any particular ballot
457 measure.

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

461 (a) Knowingly aiding, abetting, or advising a person in the
462 commission of a fraudulent voting activity related to
463 association elections.

464 (b) Agreeing, conspiring, combining, or confederating with

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465 at least one other person to commit a fraudulent voting activity
466 related to association elections.

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

472 Section 3. This act shall take effect October 1, 2019.