

1 A bill to be entitled
2 An act relating to homeowners' associations; providing
3 a short title; amending s. 720.303, F.S.; requiring
4 certain officers or directors of an association be
5 removed from office under certain circumstances;
6 specifying how a vacancy on the board must be filled;
7 providing restrictions on certain officers and
8 directors; specifying when an officer or director may
9 be reinstated; requiring an association to maintain
10 designated addresses as official records; specifying
11 what constitutes a designated address; making
12 conforming changes; prohibiting certain funds from
13 being comingled with other association funds;
14 authorizing a member to request an accounting from an
15 association under certain circumstances; requiring an
16 association to provide such accounting and remit
17 unused funds to the member within specified
18 timeframes; amending s. 720.3033, F.S.; providing
19 criminal and civil penalties for certain actions by
20 officers, directors, or managers of an association;
21 requiring directors and officers of the association to
22 disclose certain activity to the association within a
23 specified time frame; creating a rebuttable
24 presumption of a conflict of interest if certain acts
25 occur; amending s. 720.305, F.S.; restricting certain

26 attorney fees and fines; specifying the types of
27 violations for which an association may levy fines;
28 providing a maximum aggregate fine amount; prohibiting
29 a fine from becoming a lien on a parcel; revising
30 amount of notice the board of administration must give
31 a parcel owner before imposing a fine or suspension;
32 specifying where such notice must be delivered;
33 providing requirements for such notice; authorizing
34 parcel owners to attend certain hearings by telephone
35 or other electronic means; expanding duties of a
36 specified committee; requiring a specified notice
37 after a hearing; specifying how fines, suspensions,
38 attorney fees, and costs are determined; requiring a
39 detailed accounting of amounts due to the association
40 be given to certain persons within a certain timeframe
41 upon written request; providing for a complete waiver
42 of a violation under certain circumstances; specifying
43 the priority of payments made by a parcel owner to an
44 association; prohibiting the accrual of attorney fees
45 and costs after a specified time; authorizing certain
46 persons to request a hearing to dispute certain fees
47 and costs; providing for the waiver of certain fines
48 or suspensions; requiring certain fines, fees, or
49 other costs be paid by an association; conforming
50 provisions to changes made by the act; creating s.

51 720.3065, F.S.; providing criminal penalties for
52 certain fraudulent voting activities; providing an
53 effective date.

54
55 Be It Enacted by the Legislature of the State of Florida:

56
57 Section 1. This act may be cited as the "Homeowners'
58 Associations Bill of Rights."

59 Section 2. Subsection (1) and paragraph (g) of subsection
60 (4) of section 720.303, Florida Statutes, are amended, and
61 paragraph (d) is added to subsection (8) of that section, to
62 read:

63 720.303 Association powers and duties; meetings of board;
64 official records; budgets; financial reporting; association
65 funds; recalls.—

66 (1) POWERS AND DUTIES.—

67 (a) An association which operates a community as defined
68 in s. 720.301, must be operated by an association that is a
69 Florida corporation. After October 1, 1995, the association must
70 be incorporated and the initial governing documents must be
71 recorded in the official records of the county in which the
72 community is located. An association may operate more than one
73 community.

74 (b)1. The officers and directors of an association have a
75 fiduciary relationship to the members who are served by the

76 association.

77 2. An officer or a director charged by information or
78 indictment with one of the following crimes must be removed from
79 office, and the vacancy must be filled as provided in s.
80 720.306(9) until the end of the officer's or director's period
81 of suspension or the end of his or her term of office, whichever
82 occurs first:

83 a. Forgery of a ballot envelope or voting certificate used
84 in a homeowners' association election as provided in s. 831.01.

85 b. Theft or embezzlement of funds of a homeowners'
86 association as provided in s. 812.014.

87 c. Destruction of or the refusal to allow inspection or
88 copying of an official record of a homeowners' association that
89 is accessible to parcel owners within the time periods required
90 by general law in furtherance of any crime is tampering with
91 physical evidence as provided in s. 918.13.

92 d. Obstruction of justice under chapter 843.

93 3. If a criminal charge is pending against the officer or
94 director, he or she may not be appointed or elected to a
95 position as an officer or a director of any association and may
96 not have access to the official records of any association,
97 except pursuant to a court order. However, if the charges are
98 resolved without a finding of guilt, the officer or director
99 must be reinstated for the remainder of his or her term of
100 office, if any.

101 (c) The powers and duties of an association include those
102 set forth in this chapter and, except as expressly limited or
103 restricted in this chapter, those set forth in the governing
104 documents.

105 (d) After control of the association is obtained by
106 members other than the developer, the association may institute,
107 maintain, settle, or appeal actions or hearings in its name on
108 behalf of all members concerning matters of common interest to
109 the members, including, but not limited to, the common areas;
110 roof or structural components of a building, or other
111 improvements for which the association is responsible;
112 mechanical, electrical, or plumbing elements serving an
113 improvement or building for which the association is
114 responsible; representations of the developer pertaining to any
115 existing or proposed commonly used facility; and protesting ad
116 valorem taxes on commonly used facilities. The association may
117 defend actions in eminent domain or bring inverse condemnation
118 actions. Before commencing litigation against any party in the
119 name of the association involving amounts in controversy in
120 excess of \$100,000, the association must obtain the affirmative
121 approval of a majority of the voting interests at a meeting of
122 the membership at which a quorum has been attained. This
123 paragraph ~~subsection~~ does not limit any statutory or common-law
124 right of any individual member or class of members to bring any
125 action without participation by the association.

126 (e) A member does not have authority to act for the
 127 association by virtue of being a member. An association may have
 128 more than one class of members and may issue membership
 129 certificates.

130 (f) An association of 15 or fewer parcel owners may
 131 enforce only the requirements of those deed restrictions
 132 established prior to the purchase of each parcel upon an
 133 affected parcel owner or owners.

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

137 (g) A current roster of all members and their designated
 138 mailing addresses and parcel identifications. A member's
 139 designated mailing address is the member's property address,
 140 unless the member has sent written notice to the association
 141 requesting that a different mailing address be used for all
 142 required notices. The association shall also maintain the e-mail
 143 electronic mailing addresses and the facsimile numbers
 144 designated by members for receiving notice sent by electronic
 145 transmission of those members consenting to receive notice by
 146 electronic transmission. A member's e-mail address is the e-mail
 147 address the member provided when consenting in writing to
 148 receiving notice by electronic transmission unless the member
 149 has sent written notice to the association requesting that a
 150 different e-mail address be used for all required notices. The

151 e-mail ~~electronic mailing~~ addresses and facsimile numbers
152 provided by members ~~unit owners~~ to receive notice by electronic
153 transmission must ~~shall~~ be removed from association records when
154 the member revokes consent to receive notice by electronic
155 transmission ~~is revoked~~. However, the association is not liable
156 for an erroneous disclosure of the e-mail ~~electronic mail~~
157 address or the facsimile number for receiving electronic
158 transmission of notices.

159 (8) ASSOCIATION FUNDS; COMMINGLING.—

160 (d) If an association collects a deposit from a member for
161 any reason, including to pay for expenses that may be incurred
162 as a result of construction on a member's parcel, such funds
163 must be maintained separately and may not be comingled with any
164 other association funds. Upon completion of the member's
165 construction project, or other reason for which the deposit was
166 collected, the member may request an accounting from the
167 association of his or her funds that were deposited and the
168 association must provide such accounting to the member within 7
169 days after the member's request. An association must remit
170 payment of any and all unused funds to the member within 30 days
171 after receiving notice that the member's construction project,
172 or other reason for which the deposit was collected, is
173 complete.

174 Section 3. Subsection (3) of section 720.3033, Florida
175 Statutes, is amended, and subsection (6) is added to that

176 section, to read:

177 720.3033 Officers and directors.—

178 (3) An officer, a director, or a manager may not solicit,
 179 offer to accept, or accept any thing ~~good~~ or service of value
 180 for which consideration has not been provided for his or her
 181 benefit or for the benefit of a member of his or her immediate
 182 family from any person providing or proposing to provide goods
 183 or services to the association. An officer, a director, or a
 184 manager who knowingly solicits, offers to accept, or accepts any
 185 thing or service of value or kickback in an amount less than
 186 \$1,000 commits a misdemeanor of the first degree, punishable as
 187 provided in s. 775.082 or s. 775.083, or if such value or
 188 kickback is \$1,000 or more the officer, director, or manager
 189 commits a felony of the third degree, punishable as provided in
 190 s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil
 191 penalty under s. 718.501(1) (d). If the board finds that an
 192 officer or a director has violated this subsection, the board
 193 shall immediately remove the officer or director from office.
 194 The vacancy shall be filled according to law until the end of
 195 the officer's or director's term of office. However, an officer,
 196 a director, or a manager may accept food to be consumed at a
 197 business meeting with a value of less than \$25 per individual or
 198 a service or good received in connection with trade fairs or
 199 education programs.

200 (6) Directors and officers of an association must disclose

201 to the association any activity that may reasonably be construed
 202 to be a conflict of interest at least 14 days before voting on
 203 an issue or entering into a contract that is the subject of the
 204 conflict. A rebuttable presumption of a conflict of interest
 205 exists if any of the following acts occur without prior
 206 disclosure to the association:

207 (a) A director or an officer, or a relative of a director
 208 or an officer, enters into a contract for goods or services with
 209 the association.

210 (b) A director or an officer, or a relative of a director
 211 or an officer, holds an interest in a corporation, limited
 212 liability corporation, partnership, limited liability
 213 partnership, or other business entity that conducts business
 214 with the association or proposes to enter into a contract or
 215 other transaction with the association.

216 Section 4. Subsections (1), (2), and (5) of section
 217 720.305, Florida Statutes, are amended, and subsection (7) is
 218 added to that section to read:

219 720.305 Obligations of members; remedies at law or in
 220 equity; levy of fines and suspension of use rights.—

221 (1) Each member and the member's tenants, guests, and
 222 invitees, and each association, are governed by, and must comply
 223 with, this chapter, the governing documents of the community,
 224 and the rules of the association. Actions at law or in equity,
 225 or both, to redress alleged failure or refusal to comply with

226 | these provisions may be brought by the association or by any
 227 | member against:

228 | (a) The association;

229 | (b) A member;

230 | (c) Any director or officer of an association who
 231 | willfully and knowingly fails to comply with these provisions;
 232 | and

233 | (d) Any tenants, guests, or invitees occupying a parcel or
 234 | using the common areas.

235 |

236 | The prevailing party in any such litigation is entitled to
 237 | recover reasonable attorney fees and costs as provided in
 238 | paragraph (2) (e). A member prevailing in an action between the
 239 | association and the member under this section, in addition to
 240 | recovering his or her reasonable attorney fees, may recover
 241 | additional amounts as determined by the court to be necessary to
 242 | reimburse the member for his or her share of assessments levied
 243 | by the association to fund its expenses of the litigation. This
 244 | relief does not exclude other remedies provided by law. This
 245 | section does not deprive any person of any other available right
 246 | or remedy.

247 | (2) An association may levy reasonable fines for
 248 | violations of the declaration, association's bylaws, or
 249 | reasonable rules of the association. A fine may not exceed \$100
 250 | per violation against any member or any member's tenant, guest,

251 or invitee for the failure of the owner of the parcel or its
 252 occupant, licensee, or invitee to comply with any provision of
 253 the declaration, the association bylaws, or reasonable rules of
 254 the association unless otherwise provided in the governing
 255 documents. A fine may be levied by the board for each day of a
 256 continuing violation, with a single notice and opportunity for
 257 hearing, except that the fine may not exceed \$1,000 in the
 258 aggregate ~~unless otherwise provided in the governing documents.~~
 259 A fine ~~of less than \$1,000~~ may not become a lien against a
 260 parcel. In any action to recover a fine, the prevailing party is
 261 entitled to reasonable attorney fees and costs from the
 262 nonprevailing party as provided in paragraph (e) ~~determined by~~
 263 ~~the court.~~

264 (a) An association may suspend, for a reasonable period of
 265 time, the right of a member, or a member's tenant, guest, or
 266 invitee, to use common areas and facilities for the failure of
 267 the owner of the parcel or its occupant, licensee, or invitee to
 268 comply with any provision of the declaration, the association
 269 bylaws, or reasonable rules of the association. This paragraph
 270 does not apply to that portion of common areas used to provide
 271 access or utility services to the parcel. A suspension may not
 272 prohibit an owner or tenant of a parcel from having vehicular
 273 and pedestrian ingress to and egress from the parcel, including,
 274 but not limited to, the right to park.

275 (b) A fine or suspension levied for a violation by the

276 board of administration may not be imposed unless the board
277 first provides at least 30 ~~14~~ days' notice to the parcel owner
278 at his or her designated mailing or e-mail address in the
279 association's official records and, if applicable, any occupant,
280 licensee, or invitee of the parcel owner, sought to be fined or
281 suspended and ~~an opportunity for~~ a hearing before a committee of
282 at least three members appointed by the board who are not
283 officers, directors, or employees of the association, or the
284 spouse, parent, child, brother, or sister of an officer,
285 director, or employee. The notice must include a description of
286 the alleged violation, the specific action required to cure such
287 violation, and the date and location of the hearing. A parcel
288 owner has the right to attend a hearing by telephone or other
289 electronic means.

290 (c) If the committee, by majority vote, does not approve a
291 proposed fine or suspension, the proposed fine or suspension may
292 not be imposed. If the committee, by majority vote, determines
293 that a violation does not exist then no other action may be
294 taken related to that alleged violation. The role of the
295 committee is limited to determining whether a violation exists
296 and whether to approve ~~confirm~~ or reject the fine or suspension
297 levied by the board.

298 (d) After the hearing, the committee shall provide written
299 notice to the parcel owner at his or her designated mailing or
300 e-mail address in the association's official records and, if

301 applicable, any occupant, licensee, or invitee of the parcel
302 owner, of the committee's findings related to the violation,
303 including any applicable fines or suspensions that the committee
304 approved or rejected, and how the parcel owner or any occupant,
305 licensee, or invitee of the parcel owner may cure the violation.

306 (e) Fines, suspensions, attorney fees, and costs are
307 imposed as follows:

308 1. If a violation is found by the committee, but is cured
309 before the hearing, a fine or suspension may not be imposed and
310 attorney fees and costs may not be awarded.

311 2. If a violation is found and the proposed fine or
312 suspension levied by the board is approved by the committee, the
313 committee must decide, by majority vote, a date that the fine
314 payment is due, which date must be at least 30 days after
315 delivery of the written notice required in paragraph (d).

316 3. If a violation is found and the proposed fine or
317 suspension levied by the board is approved by the committee, but
318 the violation is cured within 30 days after delivery of the
319 written notice required in paragraph (d), the fine must be
320 reduced by 50 percent, any applicable suspensions must be
321 lifted, and attorney fees and costs may not be awarded.

322 4. If a violation is found and the proposed fine or
323 suspension levied by the board is approved by the committee and
324 the violation is not cured or the fine is not paid within 30
325 days after delivery of the written notice required in paragraph

326 (d), reasonable attorney fees and costs may be awarded to the
327 association.

328 (f) A parcel owner or any occupant, licensee, or invitee
329 of the parcel owner may, at any time, make a written request for
330 a detailed accounting of any amounts he or she owes to the
331 association and the board shall provide such information within
332 10 days after receipt of the written request. Failure by the
333 board to respond to a written request for a detailed accounting
334 constitutes a complete waiver of the violation.

335 (g) Upon receipt of a payment for any outstanding fines
336 from a parcel owner or any occupant, licensee, or invitee of the
337 parcel owner, the board must apply the payment first to the fine
338 before satisfying any other amounts due to the association.
339 Attorney fees and costs may not continue to accrue after a
340 parcel owner or any occupant, licensee, or invitee of the parcel
341 owner pays the fine.

342 (h) A parcel owner or any occupant, licensee, or invitee
343 of the parcel owner may request a hearing before the board to
344 dispute the reasonableness of the attorney fees and costs
345 awarded to the association ~~5 days after notice of the approved~~
346 ~~fine is provided to the parcel owner and, if applicable, to any~~
347 ~~occupant, licensee, or invitee of the parcel owner. The~~
348 ~~association must provide written notice of such fine or~~
349 ~~suspension by mail or hand delivery to the parcel owner and, if~~
350 ~~applicable, to any occupant, licensee, or invitee of the parcel~~

351 ~~owner.~~

352 (5) All suspensions imposed under ~~pursuant to~~ subsection
 353 (3) or subsection (4) must be approved at a properly noticed
 354 board meeting. Upon approval, the board association must send
 355 written notice to notify the parcel owner and, if applicable,
 356 the parcel's occupant, licensee, or invitee by mail or hand
 357 delivery to the parcel owner's designated mailing or e-mail
 358 address in the association's official records.

359 (7) The failure of the association or committee to comply
 360 with this section constitutes a waiver of all fines or
 361 suspensions imposed or proposed for a violation. Any fines,
 362 fees, or other costs incurred by a parcel owner or any occupant,
 363 licensee, or invitee of the parcel owner which is related to a
 364 fine that is waived under this subsection must also be waived or
 365 paid by the association if such fine, fee, or other cost is not
 366 waivable.

367 Section 5. Section 720.3065, Florida Statutes, is created
 368 to read:

369 720.3065 Fraudulent voting activities relating to
 370 association elections; penalties.—Each of the following acts is
 371 a fraudulent voting activity relating to association elections
 372 and constitutes a misdemeanor of the first degree, punishable as
 373 provided in s. 775.082 or s. 775.083:

374 (1) Willfully and falsely swearing to or affirming an oath
 375 or affirmation, or willfully procuring another person to falsely

376 swear to or affirm an oath or affirmation, in connection with or
 377 arising out of voting activities.

378 (2) Perpetrating or attempting to perpetrate, or aiding in
 379 the perpetration of, fraud in connection with a vote cast, to be
 380 cast, or attempted to be cast.

381 (3) Preventing a member from voting or preventing a member
 382 from voting as he or she intended by fraudulently changing or
 383 attempting to change a ballot, ballot envelope, vote, or voting
 384 certificate of the member.

385 (4) Menacing, threatening, or using bribery or any other
 386 corruption to attempt, directly or indirectly, to influence,
 387 deceive, or deter a member when voting.

388 (5) Giving or promising, directly or indirectly, anything
 389 of value to another member with the intent to buy the vote of
 390 that member or another member or to corruptly influence that
 391 member or another member in casting his or her vote. This
 392 paragraph does not apply to any food served which is to be
 393 consumed at an election rally or a meeting or to any item of
 394 nominal value which is used as an election advertisement,
 395 including a campaign message designed to be worn by a member.

396 (6) Using or threatening to use, directly or indirectly,
 397 force, violence, or intimidation or any tactic of coercion or
 398 intimidation to induce or compel a member to vote or refrain
 399 from voting in an election or on a particular ballot measure.

400 Section 6. This act shall take effect October 1, 2023.