

By Senator Garcia

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

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

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

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

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

70

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

72

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

311 a. The association's website must be:

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

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

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

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

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

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

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

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

341 d. The rules of the association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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407 statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

457 (9) DEBIT CARDS.-

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

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

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

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

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

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

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

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

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494 ballots.

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

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

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

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

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

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

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

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

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

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

562 720.3033 Officers and directors.—

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

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

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

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

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

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

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

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

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

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

647 (9) ELECTIONS AND BOARD VACANCIES.—

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

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

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668 the time of the vacancy.

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

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

688 720.3085 Payment for assessments; lien claims.—

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

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

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

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

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

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

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

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

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

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

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755 enforce payment by the parcel owners receiving such services.

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

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

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

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

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

792 720.3095 Conflicts of interest.-

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

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

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

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

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

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

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

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

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

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