

CHAPTER 98-261

Committee Substitute for Committee Substitute for House Bill No. 3193

An act relating to homeowners' associations; amending s. 617.303, F.S.; prohibiting the commingling of certain funds; amending s. 617.307, F.S.; revising language with respect to the transition of homeowners' association control in a community; providing a list of required documents which must be provided to the board by the developer; creating s. 617.3075, F.S.; providing for prohibited clauses in homeowners' association documents; amending s. 689.26, F.S.; revising language with respect to disclosure to prospective purchasers; providing for the cancellation of certain contracts; providing for the inclusion of information on certain amenities; providing an effective date.

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

Section 1. Subsection (8) of section 617.303, Florida Statutes, is renumbered as subsection (9), and a new subsection (8) is added to said section to read:

617.303 Association powers and duties; meetings of board; official records; budgets; financial reporting.—

(8) ASSOCIATION FUNDS; COMMINGLING.—

(a) All association funds held by a developer shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled prior to turnover except the association may jointly invest reserve funds; however, such jointly invested funds must be accounted for separately.

(b) No developer in control of a homeowners' association shall commingle any association funds with his or her funds or with the funds of any other homeowners' association or community association.

Section 2. Subsection (1) of section 617.307, Florida Statutes, is amended, subsection (3) of said section is renumbered as subsection (4), and a new subsection (3) is added to said section, to read:

617.307 Transition of homeowners' association control in a community.—With respect to homeowners' associations as defined in s. 617.301:

(1) Members other than the developer are entitled to elect at least a majority of the members of the board of directors of the homeowners' association when the earlier of the following events occurs:

(a) Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members; or

(b) Such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.

(c) For purposes of this section, the term “members other than the developer” shall not include builders, contractors, or others who purchase a parcel for the purpose of constructing improvements thereon for resale.

(3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners’ association, the developer shall, at the developer’s expense, within no more than 90 days deliver the following documents to the board:

- (a) All deeds to common property owned by the association.
- (b) The original of the association’s declarations of covenants and restrictions.
- (c) A certified copy of the articles of incorporation of the association.
- (d) A copy of the bylaws.
- (e) The minute books, including all minutes.
- (f) The books and records of the association.
- (g) Policies, rules, and regulations, if any, which have been adopted.
- (h) Resignations of directors who are required to resign because the developer is required to relinquish control of the association.
- (i) The financial records of the association from the date of incorporation through the date of turnover.
- (j) All association funds and control thereof.
- (k) All tangible property of the association.
- (l) A copy of all contracts which may be in force with the association as one of the parties.
- (m) A list of the names and addresses and telephone numbers of all contractors, subcontractors, or others in the current employ of the association.
- (n) Any and all insurance policies in effect.
- (o) Any permits issued to the association by governmental entities.
- (p) Any and all warranties in effect.
- (q) A roster of current homeowners and their addresses and telephone numbers and section and lot numbers.

(r) Employment and service contracts in effect.

(s) All other contracts in effect to which the association is a party.

Section 3. Section 617.3075, Florida Statutes, is created to read:

617.3075 Prohibited clauses in homeowners' association documents.—

(1) It is hereby declared that the public policy of this state prohibits the inclusion or enforcement of certain types of clauses in homeowners' association documents, including declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association, which either have the effect of or provide that:

(a) A developer has the unilateral ability and right to make changes to the homeowners' association documents after the transition of homeowners' association control in a community from the developer to the nondeveloper members, as set forth in s. 617.307, has occurred.

(b) A homeowners' association is prohibited or restricted from filing a lawsuit against the developer, or the homeowners' association is otherwise effectively prohibited or restricted from bringing a lawsuit against the developer.

(c) After the transition of homeowners' association control in a community from the developer to the nondeveloper members, as set forth in s. 617.307, has occurred, a developer is entitled to cast votes in an amount that exceeds one vote per residential lot.

Such clauses are hereby declared null and void as against the public policy of this state.

(2) The public policy described in subsection (1) prohibits the inclusion or enforcement of such clauses created on or after the effective date of this section.

Section 4. Subsection (1) of section 689.26, Florida Statutes, is amended to read:

689.26 Prospective purchasers subject to association membership requirement; disclosure required.—

(1) A prospective parcel owner in a community must be presented a disclosure summary before executing the contract for sale. The disclosure summary must be in a form substantially similar to the following form:

DISCLOSURE SUMMARY
FOR
(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT IN A LIEN ON YOUR PROPERTY.

5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. (If such obligation exists, then the amount of the current obligation shall be set forth.)

6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.

7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS.

8. THESE DOCUMENTS ARE MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

DATE:

PURCHASER:
PURCHASER:

The disclosure must be supplied by the developer, or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary required by s. 689.26.

Section 5. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval May 28, 1998.

Filed in Office Secretary of State May 27, 1998.