

Committee Substitute for
Committee Substitute for Senate Bill No. 2984

An act relating to condominium and community associations; amending s. 718.110, F.S.; providing for the applicability of amendments restricting certain rights of unit owners; amending s. 718.111, F.S.; providing immunity from liability for certain information provided by associations to prospective purchasers or lienholders under certain circumstances; amending s. 768.1325, F.S.; providing immunity from civil liability for community associations that provide automated defibrillator devices under certain circumstances; prohibiting insurers from requiring associations to purchase medical malpractice coverage as a condition of issuing other coverage; prohibiting insurers from excluding from coverage under a general liability policy damages resulting from the use of an automated external defibrillator device; amending ss. 718.112 and 719.1055, F.S.; revising notification and voting procedures with respect to any vote to forego retrofitting of the common areas of condominiums and cooperatives with fire sprinkler systems; amending s. 718.503, F.S.; requiring unit owners who are not developers to provide a specific question and answer disclosure document to certain prospective purchasers; creating s. 720.403, F.S.; providing legislative intent relating to the revival of governance of a community; creating s. 720.404, F.S.; providing eligibility to revive governance documents; specifying prerequisites to reviving governance documents; creating s. 720.405, F.S.; requiring the formation of an organizing committee; providing for membership; providing duties and responsibilities of the organizing committee; directing the organizing committee to prepare certain documents; providing for the contents of the documents; providing for a vote of the eligible parcel owners; creating s. 720.406, F.S.; directing the organizing committee to file certain documents with the Department of Community Affairs; specifies the content of the submission to the department; requiring the department to approve or disapprove the request to revive the governance documents within a specified time period; creating s. 720.407, F.S.; requiring the organizing committee to file and record certain documents within a specified time period; directing the organizing committee to give all affected parcel owners a copy of the documents filed and recorded; providing for judicial determination of the effects of revived covenants on parcels; providing for effects of such a judicial determination; amending s. 718.103, F.S.; providing that certain governmental entities are not developers for certain purposes; amending s. 720.301, F.S.; defining the terms “department,” “division,” and “member”; amending s. 720.302, F.S.; prescribing a legislative purpose of providing alternative dispute resolution procedures for disputes involving elections and recalls; providing acts that constitute crimes; providing penalties; amending s. 720.303, F.S.; prescribing the right of an association to enforce deed restrictions; prescribing rights of members and parcel owners to attend and

address association board meetings and to have items placed on an agenda; prescribing additional requirements for notice of meetings; providing for additional materials to be maintained as records; providing additional requirements and limitations with respect to inspecting and copying records; providing requirements with respect to financial statements; providing procedures for recall of directors; amending s. 720.304, F.S.; prescribing owners' rights with respect to flag display; prohibiting certain lawsuits against parcel owners; providing penalties; allowing a parcel owner to construct a ramp for a parcel resident who has a medical need for a ramp; providing conditions; allowing the display of a security-services sign; amending s. 720.305, F.S.; providing that a fine by an association cannot become a lien against a parcel; providing for attorney's fees in actions to recover fines; creating s. 720.3055, F.S.; prescribing requirements for contracts for products and services; amending s. 720.306, F.S.; providing for notice of and right to speak at member meetings; requiring election disputes between a member and an association to be submitted to mandatory binding arbitration; amending s. 720.311, F.S.; expanding requirements and guidelines with respect to alternative dispute resolution; providing requirements for mediation and arbitration; providing for training and education programs; transferring, renumbering, and amending s. 689.26, F.S.; modifying the disclosure form that a prospective purchaser must receive before a contract for sale; providing that certain contracts are voidable for a specified period; requiring that a purchaser provide written notice of cancellation; transferring and renumbering s. 689.265, F.S., relating to required financial reports of certain residential subdivision developers; amending s. 498.025, F.S., relating to the disposition of subdivided lands; conforming cross-references; creating s. 720.402, F.S.; providing remedies for publication of false and misleading information; amending s. 34.01, F.S.; providing jurisdiction of disputes involving homeowners' associations; amending ss. 316.00825, 558.002, F.S.; conforming cross-references; providing for internal organization of ch. 720, F.S.; providing for severability; amending s. 190.012, F.S.; providing for the enforcement of deed restrictions in certain circumstances; amending s. 190.046, F.S.; providing for additional dissolution procedures; amending s. 190.006, F.S.; specifying procedures for selecting a chair at the initial landowners' meeting; specifying requirements for proxy voting; requiring notice of landowners' elections; specifying the terms of certain supervisors; providing for nonpartisan elections; specifying the time that resident supervisors assume office; authorizing the supervisor of elections to designate seat numbers for resident supervisors of the board; providing procedures for filing qualifying papers; allowing candidates the option of paying a filing fee to qualify for the election; specifying payment requirements; specifying the number of petition signatures required to qualify for the election; requiring the county canvassing board to certify the results of resident elections; providing effective dates.

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

Section 1. Subsection (13) is added to section 718.110, Florida Statutes, to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(13) Any amendment restricting unit owners' rights relating to the rental of units applies only to unit owners who consent to the amendment and unit owners who purchase their units after the effective date of that amendment.

Section 2. Paragraph (e) of subsection (12) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(e)~~1.~~ The association or its authorized agent ~~is shall~~ not be required to provide a prospective purchaser or lienholder with information about the condominium or the association other than information or documents required by this chapter to be made available or disclosed. The association or its authorized agent ~~may shall be entitled to~~ charge a reasonable fee to the prospective purchaser, lienholder, or the current unit owner for ~~its time in~~ providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, ~~if the provided that such~~ fee ~~does shall~~ not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the ~~association's~~ response.

2. An association and its authorized agent are not liable for providing such information in good faith pursuant to a written request if the person providing the information includes a written statement in substantially the following form: "The responses herein are made in good faith and to the best of my ability as to their accuracy."

Section 3. Subsection (3) of section 768.1325, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

768.1325 Cardiac Arrest Survival Act; immunity from civil liability.—

(3) Notwithstanding any other provision of law to the contrary, and except as provided in subsection (4), any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim of the perceived medical emergency, is immune from civil liability for any harm resulting from the use or attempted use of such device. In addition, any person who acquired the device, including, but not limited to, a community association organized under chapter 617, chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723, is immune from such liability, if the harm was not due to the failure of such acquirer of the device to:

(a) Notify the local emergency medical services medical director of the most recent placement of the device within a reasonable period of time after the device was placed;

(b) Properly maintain and test the device; or

(c) Provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if:

1. The employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

2. The period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the device and the occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

(6) An insurer may not require an acquirer of an automated external defibrillator device which is a community association organized under chapter 617, chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 to purchase medical malpractice liability coverage as a condition of issuing any other coverage carried by the association, and an insurer may not exclude damages resulting from the use of an automated external defibrillator device from coverage under a general liability policy issued to an association.

Section 4. Paragraphs (f) and (l) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(f) Annual budget.—

1. The proposed annual budget of common expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached thereto shall show amounts budgeted therefor. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and deferred maintenance. These accounts shall include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other item for which

the deferred maintenance expense or replacement cost exceeds \$10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. However, prior to turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote to waive the reserves or reduce the funding of reserves for the first 2 fiscal years of the association's operation, beginning with the fiscal year in which the initial declaration is recorded, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves, and no such result is achieved or a quorum is not attained, the reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Prior to turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association shall not vote to use reserves for purposes other than that for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. ~~In a multicondominium association,~~ The only voting interests which are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question.

(1) Certificate of compliance.—There shall be a provision that a certificate of compliance from a licensed electrical contractor or electrician may be accepted by the association's board as evidence of compliance of the condominium units with the applicable fire and life safety code. Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, an association, condominium, or unit owner is not obligated to retrofit the common elements or units of a residential condominium with a fire sprinkler system or other engineered lifesafety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered lifesafety system by the

affirmative vote of two-thirds of all voting interests in the affected condominium. However, a condominium association may not vote to forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term “high-rise building” means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term “common areas” means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

1. A vote to forego retrofitting may ~~not be obtained by general proxy or limited proxy or by a ballot, but shall be obtained by a vote~~ personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the condominium is located. The association shall mail, hand deliver, or electronically transmit to provide each unit owner written notice at least 14 days prior to such membership meeting in which of the vote to forego retrofitting of the required fire sprinkler system is to take place, in at least 16-point bold type, by certified mail, within 20 days after the association’s vote. Within 30 days after the association’s opt-out vote, notice of the results of the opt-out vote shall be mailed, hand delivered, or electronically transmitted to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

2. As part of the information collected annually from condominiums, the division shall require condominium associations to report the membership vote and recording of a certificate under this subsection and, if retrofitting has been undertaken, the per-unit cost of such work. The division shall annually report to the Division of State Fire Marshal of the Department of Financial Services the number of condominiums that have elected to forego retrofitting.

Section 5. Paragraph (a) of subsection (5) of section 719.1055, Florida Statutes, is amended to read:

719.1055 Amendment of cooperative documents; alteration and acquisition of property.—

(5) Notwithstanding the provisions of chapter 633 or of any other code, statute, ordinance, administrative rule, or regulation, or any interpretation of the foregoing, a cooperative or unit owner is not obligated to retrofit the common elements or units of a residential cooperative with a fire sprinkler system or other engineered life safety system in a building that has been certified for occupancy by the applicable governmental entity, if the unit owners have voted to forego such retrofitting and engineered life safety

system by the affirmative vote of two-thirds of all voting interests in the affected cooperative. However, a cooperative may not forego the retrofitting with a fire sprinkler system of common areas in a high-rise building. For purposes of this subsection, the term “high-rise building” means a building that is greater than 75 feet in height where the building height is measured from the lowest level of fire department access to the floor of the highest occupiable story. For purposes of this subsection, the term “common areas” means any enclosed hallway, corridor, lobby, stairwell, or entryway. In no event shall the local authority having jurisdiction require completion of retrofitting of common areas with a sprinkler system before the end of 2014.

(a) A vote to forego retrofitting may ~~not be obtained by general proxy or limited proxy or by a ballot, but shall be obtained by a vote~~ personally cast at a duly called membership meeting, or by execution of a written consent by the member, and shall be effective upon the recording of a certificate attesting to such vote in the public records of the county where the cooperative is located. The association shall mail, hand deliver, or electronically transmit to provide each unit owner written notice at least 14 days prior to such membership meeting in which of the vote to forego retrofitting of the required fire sprinkler system is to take place, in at least 16-point bold type, by certified mail, within 20 days after the association’s vote. Within 30 days after the association’s opt-out vote, notice of the results of the opt-out vote shall be mailed, hand delivered, or electronically transmitted to all unit owners. Evidence of compliance with this 30-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. After such notice is provided to each owner, a copy of such notice shall be provided by the current owner to a new owner prior to closing and shall be provided by a unit owner to a renter prior to signing a lease.

Section 6. Subsection (2) of section 718.503, Florida Statutes, is amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter shall comply with the provisions of this subsection prior to the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller’s expense, to a current copy of the declaration of condominium, articles of incorporation of the association, bylaws, and rules of the association, and a copy of the financial information required by s. 718.111, and the document entitled “Frequently Asked Questions and Answers” required by s. 718.504.

(b) If a person licensed under part I of chapter 475 provides to or otherwise obtains for a prospective purchaser the documents described in this subsection, the person is not liable for any error or inaccuracy contained in the documents.

(c) Each contract entered into after July 1, 1992, for the resale of a residential unit shall contain in conspicuous type either:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION OF THE ASSOCIATION, BYLAWS AND, RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; or

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE DECLARATION OF CONDOMINIUM, ARTICLES OF INCORPORATION, BYLAWS AND, RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF SO REQUESTED IN WRITING. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES THE DECLARATION, ARTICLES OF INCORPORATION, BYLAWS, AND RULES OF THE ASSOCIATION, AND A COPY OF THE MOST RECENT YEAR-END FINANCIAL INFORMATION AND FREQUENTLY ASKED QUESTIONS AND ANSWERS DOCUMENT IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

Section 7. Section 720.403, Florida Statutes, is created to read:

720.403 Preservation of residential communities; revival of declaration of covenants.—

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Local Government Comprehensive Planning and Land Development Regulation Act, homeowners are encouraged to preserve existing residential communities, promote available and affordable housing, protect structural and aesthetic elements of their residential community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the residential community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

(2) In order to preserve a residential community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the homeowners' association for the community upon approval by the parcel owners to be governed thereby as provided in this act, and upon approval of the declaration and the other governing documents for the association by the Department of Community Affairs in a manner consistent with this act.

Section 8. Section 720.404, Florida Statutes, is created to read:

720.404 Eligible residential communities; requirements for revival of declaration.—Parcel owners in a community are eligible to seek approval from the Department of Community Affairs to revive a declaration of covenants under this act if all of the following requirements are met:

(1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;

(2) The revived declaration must be approved in the manner provided in s. 720.405(6); and

(3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:

(a) Have an effective term of longer duration than the term of the previous declaration;

(b) Omit restrictions contained in the previous declaration;

(c) Govern fewer than all of the parcels governed by the previous declaration;

(d) Provide for amendments to the declaration and other governing documents; and

(e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.

Section 9. Section 720.405, Florida Statutes, is created to read:

720.405 Organizing committee; parcel owner approval.—

(1) The proposal to revive a declaration of covenants and a homeowners' association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(2) The organizing committee shall prepare or cause to be prepared the complete text of the proposed revised declaration of covenants to be submitted to the parcel owners for approval. The proposed revised documents must identify each parcel that is to be subject to the governing documents by its legal description, and by the name of the parcel owner or the person in whose name the parcel is assessed on the last completed tax assessment roll of the county at the time when the proposed revised declaration is submitted for approval by the parcel owners.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived homeowners' association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(4) The proposed revised declaration and other governing documents for the community shall:

(a) Provide that the voting interest of each parcel owner shall be the same as the voting interest of the parcel owner under the previous governing documents;

(b) Provide that the proportional-assessment obligations of each parcel owner shall be the same as proportional-assessment obligations of the parcel owner under the previous governing documents;

(c) Contain the same respective amendment provisions as the previous governing documents or, if there were no amendment provisions in the previous governing document, amendment provisions that require approval of not less than two-thirds of the affected parcel owners;

(d) Contain no covenants that are more restrictive on the affected parcel owners than the covenants contained in the previous governing documents, except as permitted under s. 720.402(3); and

(e) Comply with the other requirements for a declaration of covenants and other governing documents as specified in this chapter.

(5) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the homeowners' association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the homeowners' association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the

votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in the state.

Section 10. Section 720.406, Florida Statutes, is created to read:

720.406 Department of Community Affairs; submission; review and determination.—

(1) No later than 60 days after the date the proposed revived declaration and other governing documents are approved by the affected parcel owners, the organizing committee or its designee must submit the proposed revived governing documents and supporting materials to the Department of Community Affairs to review and determine whether to approve or disapprove of the proposal to preserve the residential community. The submission to the department must include:

(a) The full text of the proposed revived declaration of covenants and articles of incorporation and bylaws of the homeowners' association;

(b) A verified copy of the previous declaration of covenants and other previous governing documents for the community, including any amendments thereto;

(c) The legal description of each parcel to be subject to the revived declaration and other governing documents and a plat or other graphic depiction of the affected properties in the community;

(d) A verified copy of the written consents of the requisite number of the affected parcel owners approving the revived declaration and other governing documents or, if approval was obtained by a vote at a meeting of affected parcel owners, verified copies of the notice of the meeting, attendance, and voting results;

(e) An affidavit by a current or former officer of the association or by a member of the organizing committee verifying that the requirements for the revived declaration set forth in s. 720.404 have been satisfied; and

(f) Such other documentation that the organizing committee believes is supportive of the policy of preserving the residential community and operating, managing, and maintaining the infrastructure, aesthetic character, and common areas serving the residential community.

(2) No later than 60 days after receiving the submission, the department must determine whether the proposed revived declaration of covenants and other governing documents comply with the requirements of this act.

(a) If the department determines that the proposed revived declaration and other governing documents comply with the act and have been approved by the parcel owners as required by this act, the department shall notify the organizing committee in writing of its approval.

(b) If the department determines that the proposed revived declaration and other governing documents do not comply with this act or have not been approved as required by this act, the department shall notify the organizing

committee in writing that it does not approve the governing documents and shall state the reasons for the disapproval.

Section 11. Section 720.407, Florida Statutes, is created to read:

720.407 Recording; notice of recording; applicability and effective date.—

(1) No later than 30 days after receiving approval from the department, the organizing committee shall file the articles of incorporation of the association with the Division of Corporations of the Department of State if the articles have not been previously filed with the division.

(2) No later than 30 days after receiving approval from the division, the president and secretary of the association shall execute the revived declaration and other governing documents approved by the department in the name of the association and have the documents recorded with the clerk of the circuit court in the county where the affected parcels are located.

(3) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the homeowners' association, the letter of approval by the department, and the legal description of each affected parcel of property. For purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction and the parcel owners named in the revived declaration are deemed to be and shall be indexed as the grantors in the title transaction.

(4) Immediately after recording the documents, a complete copy of all of the approved recorded documents must be mailed or hand delivered to the owner of each affected parcel. The revived declaration and other governing documents shall be effective upon recordation in the public records with respect to each affected parcel subject thereto, regardless of whether the particular parcel owner approved the revived declaration. Upon recordation, the revived declaration shall replace and supersede the previous declaration with respect to all affected parcels then governed by the previous declaration and shall have the same record priority as the superseded previous declaration. With respect to any affected parcels that had ceased to be governed by the previous declaration as of the recording date, the revived declaration may not have retroactive effect with respect to the parcel and shall take priority with respect to the parcel as of the recording date.

(5) With respect to any parcel that has ceased to be governed by a previous declaration of covenants as of the effective date of this act, the parcel owner may commence an action within one year after the effective date of this act for a judicial determination that the previous declaration did not govern that parcel as of the effective date of this act and that any revival of such declaration as to that parcel would unconstitutionally deprive the parcel owner of rights or property. A revived declaration that is implemented pursuant to this act shall not apply to or affect the rights of the respective parcel owner recognized by any court order or judgment in any such action commenced within one year after the effective date of this act, and any such rights so recognized may not be subsequently altered by a

revived declaration implemented under this act without the consent of the affected property owner.

Section 12. Subsection (16) of section 718.103, Florida Statutes, is amended to read:

718.103 Definitions.—As used in this chapter, the term:

(16) “Developer” means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy, nor does it include a cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion. A state, county, or municipal entity is not a developer for any purposes under this act when it is acting as a lessor and not otherwise named as a developer in the association.

Section 13. Section 720.301, Florida Statutes, is amended to read:

720.301 Definitions.—As used in ss. 720.301-720.501 ~~ss. 720.301-720.312~~, the term:

(1) “Assessment” or “amenity fee” means a sum or sums of money payable to the association, to the developer or other owner of common areas, or to recreational facilities and other properties serving the parcels by the owners of one or more parcels as authorized in the governing documents, which if not paid by the owner of a parcel, can result in a lien against the parcel.

(2) “Common area” means all real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members, including, regardless of whether title has been conveyed to the association:

(a) Real property the use of which is dedicated to the association or its members by a recorded plat; or

(b) Real property committed by a declaration of covenants to be leased or conveyed to the association.

(3) “Community” means the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term “community” includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto.

(4) “Declaration of covenants,” or “declaration,” means a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

(5) “Department” means the Department of Business and Professional Regulation.

~~(6)~~(5) “Developer” means a person or entity that:

(a) Creates the community served by the association; or

(b) Succeeds to the rights and liabilities of the person or entity that created the community served by the association, provided that such is evidenced in writing.

(7) “Division” means the Division of Florida Land Sales, Condominiums, and Mobile Homes in the Department of Business and Professional Regulation.

~~(8)~~(6) “Governing documents” means:

(a) The recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; and

(b) The articles of incorporation and bylaws of the homeowners’ association, and any duly adopted amendments thereto.

~~(9)~~(7) “Homeowners’ association” or “association” means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term “homeowners’ association” does not include a community development district or other similar special taxing district created pursuant to statute.

~~(10)~~(8) “Member” means a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof, and shall include any person or entity obligated by the governing documents to pay an assessment or amenity fee.

~~(11)~~(9) “Parcel” means a platted or unplatted lot, tract, unit, or other subdivision of real property within a community, as described in the declaration:

(a) Which is capable of separate conveyance; and

(b) Of which the parcel owner, or an association in which the parcel owner must be a member, is obligated:

1. By the governing documents to be a member of an association that serves the community; and

2. To pay to the homeowners’ association assessments that, if not paid, may result in a lien.

~~(12)~~(10) “Parcel owner” means the record owner of legal title to a parcel.

(13)(11) “Voting interest” means the voting rights distributed to the members of the homeowners’ association, pursuant to the governing documents.

Section 14. Subsection (2) of section 720.302, Florida Statutes, is amended to read:

720.302 Purposes, scope, and application.—

(2) The Legislature recognizes that it is not in the best interest of homeowners’ associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners’ associations. However, in accordance with s. 720.311, the Legislature finds that homeowners’ associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners’ associations and members thereof before the effective date of this act and that ~~ss. 720.301-720.501~~ ss. 720.301-720.312 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

Section 15. Section 720.303, Florida Statutes, is amended to read:

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

(1) POWERS AND DUTIES.—An association which operates a community as defined in s. 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community. The officers and directors of an association have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents. After control of the association is obtained by members ~~unit owners~~ other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of \$100,000, the association must obtain the affirmative approval of a majority of the

voting interests at a meeting of the membership at which a quorum has been attained. This subsection does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association. A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates. An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

(2) BOARD MEETINGS.—

(a) A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege.

(b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the members is inapplicable to meetings between the board or a committee and the association's attorney, with respect to meetings of the board held for the purpose of discussing personnel matters.

(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice

and the agenda. The bylaws or amended bylaws may provide for giving notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless a written notice of the meeting is provided to all members at least 14 days before the meeting, which notice includes a statement that assessments will be considered at the meeting and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which rules that regulate the use of parcels in the community may be adopted, amended, or revoked must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting. A written notice concerning changes to the rules that regulate the use of parcels in the community must include a statement that changes to the rules regarding the use of parcels will be considered at the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(d) If 20 percent of the total voting interests petition the board to address an item of business, the board shall at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda. The board shall give all members notice of the meeting at which the petitioned item shall be addressed in accordance with the 14-day notice requirement pursuant to subparagraph 2. Each member shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition.

(3) MINUTES.—Minutes of all meetings of the members of an association and of the board of directors of an association must be maintained in written form or in another form that can be converted into written form within a reasonable time. A vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes.

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

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

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

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

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

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

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

(g) A current roster of all members and their mailing addresses and parcel identifications. The association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

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

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

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

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

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

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

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

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

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

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this subsection.

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

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not impose a requirement that a parcel owner demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside vendor and may charge the actual cost of copying. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them. Notwithstanding the provisions of this paragraph, the following records shall not be accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression,

conclusion, litigation strategy, or legal theory of the attorney or the association and was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

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

3. Disciplinary, health, insurance, and personnel records of the association's employees.

4. Medical records of parcel owners or community residents.

(6) BUDGETS.—The association shall prepare an annual budget. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(7) FINANCIAL REPORTING.—The association shall prepare an annual financial report within 60 days after the close of the fiscal year. The association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows ~~The financial report must consist of either:~~

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

1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements. ~~Financial statements presented in conformity with generally accepted accounting principles; or~~

(b) ~~A financial report of actual receipts and expenditures, cash basis, which report must show:~~

1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures. The amount of receipts and expenditures by classification; and

2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise. The beginning and ending cash balances of the association.

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

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

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

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

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

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

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

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

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

(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.

(c) Association funds may not be used by a developer to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the developer or directors appointed to the association board by the developer, even when the subject of the action or proceeding concerns the operation of the developer-controlled association.

(9) APPLICABILITY.—Sections 617.1601-617.1604 do not apply to a homeowners' association in which the members have the inspection and copying rights set forth in this section.

(10) RECALL OF DIRECTORS.—

(a)1. Regardless of any provision to the contrary contained in the governing documents, subject to the provisions of s. 720.307 regarding transition of association control, any member of the board or directors may be recalled and removed from office with or without cause by a majority of the total voting interests.

2. When the governing documents, including the declaration, articles of incorporation, or bylaws, provide that only a specific class of members is entitled to elect a board director or directors, only that class of members may vote to recall those board directors so elected.

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

2. The board shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing or written ballots. At the meeting, the board shall either certify the written ballots or written agreement to recall a director or directors of the board, in which case such director or directors shall be recalled effective immediately and shall turn over to the board within 5 full business days any and all records and property of the association in their possession, or proceed as described in paragraph (d).

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

4. Any rescission or revocation of a member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered

to the association before the association is served with the written recall agreements or ballots.

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

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

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

(d) If the board determines not to certify the written agreement or written ballots to recall a director or directors of the board or does not certify the recall by a vote at a meeting, the board shall, within 5 full business days after the meeting, file with the department a petition for binding arbitration pursuant to the applicable procedures in ss. 718.1255 and 718.112(2)(j) and the rules adopted thereunder. For the purposes of this section, the members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any director or directors of the board, the recall will be effective upon mailing of the final order of arbitration to the association. The director or directors so recalled shall deliver to the board any and all records of the association in their possession within 5 full business days after the effective date of the recall.

(e) If a vacancy occurs on the board as a result of a recall and less than a majority of the board directors are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection or in the association documents. If vacancies occur on the board as a result of a recall and a majority or more of the board directors are removed, the vacancies shall be filled by members voting in favor of the recall; if removal is at a meeting, any vacancies shall be filled by the members at the meeting. If the recall occurred by agreement in writing or by written ballot, members may vote for replacement directors in the same instrument in accordance with procedural rules adopted by the division, which rules need not be consistent with this subsection.

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

(g) If a director who is removed fails to relinquish his or her office or turn over records as required under this section, the circuit court in the county where the association maintains its principal office may, upon the petition of the association, summarily order the director to relinquish his or her office and turn over all association records upon application of the association.

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

(i) When the recall of more than one board director is sought, the written agreement, ballot, or vote at a meeting shall provide for a separate vote for each board director sought to be recalled.

Section 16. Section 720.304, Florida Statutes, is amended to read:

720.304 Right of owners to peaceably assemble; display of flag; SLAPP suits prohibited.—

(1) All common areas and recreational facilities serving any homeowners' association shall be available to parcel owners in the homeowners' association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. No entity or entities shall unreasonably restrict any parcel owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(2) Any homeowner may display one portable, removable United States flag or official flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful manner portable, removable official flags, not larger than 4½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless of any declaration rules or requirements dealing with flags or decorations.

(3) Any owner prevented from exercising rights guaranteed by subsection (1) or subsection (2) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable

adjudication, the court shall enjoin the enforcement of any provision contained in any homeowners' association document or rule that operates to deprive the owner of such rights.

(4) It is the intent of the Legislature to protect the right of parcel owners to exercise their rights as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP" suits, have occurred when a member is sued by individuals or business organization due to a parcel-owner member's appearance and presentation before a governmental entity on matters related to the homeowners' association. However, it is the public policy of this state that business organizations and individuals not engage in such suits, because such actions are inconsistent with the right of parcel owners to participate in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by business organizations and individuals against parcel owners who address matters concerning their homeowners' association will preserve this fundamental state policy, preserve the constitutional rights of parcel owners, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(a) A business organization or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a parcel owner without merit and solely because the parcel owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(b) A parcel owner sued by a business organization or individual in violation of this section has a right to an expeditious resolution of a claim that the suit violates this section. A parcel owner may petition the court for an order dismissing the action or granting final judgment in favor of that parcel owner. The petitioner may file a motion for summary judgment, with supplemental affidavits, seeking a determination that the business organization's or individual's lawsuit has been brought in violation of this section. The business organization or individual must thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the response. The court may award the parcel owner actual damages arising from the violation of this section. A court may award treble damages to a prevailing parcel owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(c) Homeowners' associations may not expend association funds in prosecuting a SLAPP suit against a parcel owner.

(5)(a) Any parcel owner may construct an access ramp if a resident or occupant of the parcel has a medical necessity or disability that requires a ramp for egress and ingress under the following conditions:

1. The ramp must be as unobtrusive as possible, be designed to blend in aesthetically as practicable, and be reasonably sized to fit the intended use.

2. Plans for the ramp must be submitted in advance to the homeowners' association. The association may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces.

(b) The parcel owner must submit to the association an affidavit from a physician attesting to the medical necessity or disability of the resident or occupant of the parcel requiring the access ramp. Certification used for s. 320.0848 shall be sufficient to meet the affidavit requirement.

(6) Any parcel owner may display a sign of reasonable size provided by a contractor for security services within 10 feet of any entrance to the home.

Section 17. Subsection (2) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights; failure to fill sufficient number of vacancies on board of directors to constitute a quorum; appointment of receiver upon petition of any member.—

(2) If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents. A fine shall not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the nonprevailing party as determined by the court.

(a) A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(b) The requirements of this subsection do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the governing documents.

(c) Suspension of common-area-use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

Section 18. Section 720.3055, Florida Statutes, is created to read:

720.3055 Contracts for products and services; in writing; bids; exceptions.—

(1) All contracts as further described in this section or any contract that is not to be fully performed within 1 year after the making thereof for the purchase, lease, or renting of materials or equipment to be used by the association in accomplishing its purposes under this chapter or the governing documents, and all contracts for the provision of services, shall be in writing. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the association that exceeds 10 percent of the total annual budget of the association, including reserves, the association must obtain competitive bids for the materials, equipment, or services. Nothing contained in this section shall be construed to require the association to accept the lowest bid.

(2)(a)1. Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, engineering, and landscape architect services are not subject to the provisions of this section.

2. A contract executed before October 1, 2004, and any renewal thereof, is not subject to the competitive bid requirements of this section. If a contract was awarded under the competitive bid procedures of this section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the board to cancel the contract on 30 days' notice. Materials, equipment, or services provided to an association under a local government franchise agreement by a franchise holder are not subject to the competitive bid requirements of this section. A contract with a manager, if made by a competitive bid, may be made for up to 3 years. An association whose declaration or bylaws provide for competitive bidding for services may operate under the provisions of that declaration or bylaws in lieu of this section if those provisions are not less stringent than the requirements of this section.

(b) Nothing contained in this section is intended to limit the ability of an association to obtain needed products and services in an emergency.

(c) This section does not apply if the business entity with which the association desires to enter into a contract is the only source of supply within the county serving the association.

(d) Nothing contained in this section shall excuse a party contracting to provide maintenance or management services from compliance with s. 720.309.

Section 19. Present subsections (5) through (8) of section 720.306, Florida Statutes, are renumbered as subsections (7) through (10), respectively, present subsection (7) is amended, and new subsections (5) and (6) are added to that section to read:

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

(5) NOTICE OF MEETINGS.—The bylaws shall provide for giving notice to members of all member meetings, and if they do not do so shall be deemed to provide the following: The association shall give all parcel owners and members actual notice of all membership meetings, which shall be mailed, delivered, or electronically transmitted to the members not less than 14 days prior to the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed upon execution among the official records of the association. In addition to mailing, delivering, or electronically transmitting the notice of any meeting, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the association. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda.

(6) RIGHT TO SPEAK.—Members and parcel owners have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. Notwithstanding any provision to the contrary in the governing documents or any rules adopted by the board or by the membership, a member and a parcel owner have the right to speak for at least 3 minutes on any item, provided that the member or parcel owner submits a written request to speak prior to the meeting. The association may adopt written reasonable rules governing the frequency, duration, and other manner of member and parcel owner statements, which rules must be consistent with this paragraph.

(9)(7) ELECTIONS.—Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings shall be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division.

Section 20. Section 720.311, Florida Statutes, is amended to read:

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for mediation or arbitration provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.1255 and 718.112(2)(j) and the rules adopted by the division. In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant

to s. 718.1255 and rules adopted by the division. Neither election disputes nor recall disputes are eligible for mediation; these disputes shall be arbitrated by the department. At the conclusion of the proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(2)(a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be filed with the department for mandatory mediation before the dispute is filed in court. Mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. An arbitrator or judge may not consider any information or evidence arising from the mediation proceeding except in a proceeding to impose sanctions for failure to attend a mediation session. Persons who are not parties to the dispute may not attend the mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation set forth in s. 720.303. The department shall conduct the proceedings through the use of department mediators or refer the disputes to private mediators who have been duly certified by the department as provided in paragraph (c). The parties shall share the costs of mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise. If a department mediator is used, the department may charge such fee as is necessary to pay expenses of the mediation, including, but not limited to, the salary and benefits of the mediator and any travel expenses incurred. The petitioner shall initially file with the department upon filing the disputes, a filing fee of \$200, which shall be used to defray the costs of the mediation. At the conclusion of the mediation, the department shall charge to the parties, to be shared equally unless otherwise agreed by the parties, such further fees as are necessary to fully reimburse the department for all expenses incurred in the mediation.

(b) If mediation as described in paragraph (a) is not successful in resolving all issues between the parties, the parties may file the unresolved dispute in a court of competent jurisdiction or elect to enter into binding or nonbinding arbitration pursuant to the procedures set forth in s. 718.1255 and rules adopted by the division, with the arbitration proceeding to be conducted by a department arbitrator or by a private arbitrator certified by the department. If all parties do not agree to arbitration proceedings following an unsuccessful mediation, any party may file the dispute in court. A

final order resulting from nonbinding arbitration is final and enforceable in the courts if a complaint for trial de novo is not filed in a court of competent jurisdiction within 30 days after entry of the order.

(c) The department shall develop a certification and training program for private mediators and private arbitrators which shall emphasize experience and expertise in the area of the operation of community associations. A mediator or arbitrator shall be certified by the department only if he or she has attended at least 20 hours of training in mediation or arbitration, as appropriate, and only if the applicant has mediated or arbitrated at least 10 disputes involving community associations within 5 years prior to the date of the application, or has mediated or arbitrated 10 disputes in any area within 5 years prior to the date of application and has completed 20 hours of training in community association disputes. In order to be certified by the department, any mediator must also be certified by the Florida Supreme Court. The department may conduct the training and certification program within the department or may contract with an outside vendor to perform the training or certification. The expenses of operating the training and certification and training program shall be paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection and by the training fees.

(d) The mediation procedures provided by this subsection may be used by a Florida corporation responsible for the operation of a community in which the voting members are parcel owners or their representatives, in which membership in the corporation is not a mandatory condition of parcel ownership, or which is not authorized to impose an assessment that may become a lien on the parcel.

(3) The department shall develop an education program to assist homeowners, associations, board members, and managers in understanding and increasing awareness of the operation of homeowners' associations pursuant to chapter 720 and in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Such education program may include the development of pamphlets and other written instructional guides, the holding of classes and meetings by department employees or outside vendors, as the department determines, and the creation and maintenance of a website containing instructional materials. The expenses of operating the education program shall be initially paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection. At any time after the filing in a court of competent jurisdiction of a complaint relating to a dispute under ss. 720.301-720.312, the court may order that the parties enter mediation or arbitration procedures.

Section 21. Section 689.26, Florida Statutes, is transferred, renumbered as section 720.401, Florida Statutes, and amended to read:

720.401 ~~689.26~~ Prospective purchasers subject to association membership requirement; disclosure required; covenants; assessments; contract cancellation voidability.—

(1)(a) 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 (~~WILL~~) (~~WILL NOT~~) 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 (~~WILL~~) (~~WILL NOT~~) BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$... PER YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$... PER

4. YOU MAY (~~WILL~~) (~~WILL NOT~~) BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

5.4. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A LIEN ON YOUR PROPERTY.

6.5. THERE MAY BE (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 APPLICABLE, THE CURRENT AMOUNT IS \$... PER (~~If such obligation exists, then the amount of the current obligation shall be set forth.~~)

7.6. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE, IF NO MANDATORY ASSOCIATION EXISTS, PARCEL OWNERS.

8.7. 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 BEFORE PURCHASING PROPERTY.

9.8. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE

COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

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 this section.

(b) Each contract entered into for the sale of property governed by covenants subject to disclosure required by this section must contain in conspicuous type a clause that states:

IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401 689.26, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE, THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

(c) If the disclosure summary is not provided to a prospective purchaser before the purchaser executes a contract for the sale of property governed by covenants that are subject to disclosure pursuant to this section, the purchaser may void the contract by delivering to the seller or the seller's agent or representative written notice canceling the contract within 3 days after receipt of the disclosure summary or prior to closing, whichever occurs first. This right may not be waived by the purchaser but terminates at closing. A contract that does not conform to the requirements of this subsection is voidable at the option of the purchaser prior to closing.

(2) This section does not apply to any association regulated under chapter 718, chapter 719, chapter 721, or chapter 723 or to a subdivider registered under chapter 498; and also does not apply if disclosure regarding the association is otherwise made in connection with the requirements of chapter 718, chapter 719, chapter 721, or chapter 723.

Section 22. Section 689.265, Florida Statutes, is transferred and renumbered as section 720.3086, Florida Statutes, to read:

720.3086 689.265 Financial report.—In a residential subdivision in which the owners of lots or parcels must pay mandatory maintenance or amenity fees to the subdivision developer or to the owners of the common areas, recreational facilities, and other properties serving the lots or parcels, the developer or owner of such areas, facilities, or properties shall make

public, within 60 days following the end of each fiscal year, a complete financial report of the actual, total receipts of mandatory maintenance or amenity fees received by it, and an itemized listing of the expenditures made by it from such fees, for that year. Such report shall be made public by mailing it to each lot or parcel owner in the subdivision, by publishing it in a publication regularly distributed within the subdivision, or by posting it in prominent locations in the subdivision. This section does not apply to amounts paid to homeowner associations pursuant to chapter 617, chapter 718, chapter 719, chapter 721, or chapter 723, or to amounts paid to local governmental entities, including special districts.

Section 23. Paragraphs (g) and (h) of subsection (2) of section 498.025, Florida Statutes, are amended to read:

498.025 Exemptions.—

(2) Except as provided in s. 498.022, the provisions of this chapter do not apply to offers or dispositions of interests in lots, parcels, or units contained in a recorded subdivision plat, or resulting from the subdivision of land in accordance with applicable local land development laws and regulations pursuant to part II of chapter 163, including lots, parcels, units, or interest vested under such part, if all of the following conditions exist:

(g) The contract for purchase or lease contains, and the subdivider complies with, the following provisions:

1. The purchaser must inspect the subdivided land prior to the execution of the contract or lease.

2. The purchaser shall have an absolute right to cancel the contract or lease for any reason whatsoever for a period of 7 business days following the date on which the contract or lease was executed by the purchaser.

3. In the event the purchaser elects to cancel within the period provided, all funds or other property paid by the purchaser shall be refunded without penalty or obligation within 20 days of the receipt of the notice of cancellation by the developer.

4. All funds or property paid by the purchaser shall be put in escrow until closing has occurred and the lease or deed has been recorded.

5. Unless otherwise timely canceled, closing shall occur within 180 days of the date of execution of the contract by the purchaser.

6. When title is conveyed, said title shall be conveyed by statutory warranty deed unencumbered by any lien or mortgage except for any first purchase money mortgage given by the purchaser and restrictions, covenants, or easements of record.

7. The subdivider presents to the purchaser the disclosure required by s. 720.401 ~~s. 689.26~~ prior to the execution of the contract or lease.

(h) The agreement for deed contains, and the subdivider complies with, the following provisions:

1. The purchaser must inspect the subdivided land prior to the execution of the agreement for deed.
2. The purchaser shall have an absolute right to cancel the agreement for deed for any reason whatsoever for a period of 7 business days following the date on which the agreement for deed was executed by the purchaser.
3. If the purchaser elects to cancel within the period provided, all funds or other property paid by the purchaser shall be refunded without penalty or obligation within 20 days after the receipt of the notice of cancellation by the developer.
4. All funds ~~or for~~ property paid by the purchaser shall be put in escrow until the agreement for deed has been recorded in the county in which the subdivision is located.
5. Unless otherwise timely canceled, the agreement for deed shall be recorded within 180 days after its execution by the purchaser.
6. Sale of lots in the subdivision shall be restricted solely to residents of the state.
7. The underlying mortgage or other ancillary documents shall contain release provisions for the individual lot purchased.
8. The subdivider presents to the purchaser the disclosure required by s. 720.401 ~~s. 689.26~~ prior to the execution of the agreement for deed.

Section 24. Section 720.402, Florida Statutes, is created to read:

720.402 Publication of false and misleading information.—

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading and published by or under authority from the developer in advertising and promotional materials, including, but not limited to, a contract of purchaser, the declaration of covenants, exhibits to a declaration of covenants, brochures, and newspaper advertising, pays anything of value toward the purchase of a parcel in a community located in this state has a cause of action to rescind the contract or collect damages from the developer for his or her loss before the closing of the transaction. After the closing of the transaction, the purchaser has a cause of action against the developer for damages under this section from the time of closing until 1 year after the date upon which the last of the events described in paragraphs (a) through (d) occur:

(a) The closing of the transaction;

(b) The issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the purchaser's residence to allow lawful occupancy of the residence by the purchaser. In counties or municipalities in which certificates of occupancy or other evidences of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed to be given or issued upon the date that such lawful

occupancy of the residence may be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common areas and such recreational facilities, whether or not the same are common areas, which the developer is obligated to complete or provide under the terms of the written contract, governing documents, or written agreement for purchase or lease of the parcel; or

(d) In the event there is not a written contract or agreement for sale or lease of the parcel, then the completion by the developer of the common areas and such recreational facilities, whether or not they are common areas, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation.

Under no circumstances may a cause of action created or recognized under this section survive for a period of more than 5 years after the closing of the transaction.

(2) In any action for relief under this section, the prevailing party may recover reasonable attorney's fees. A developer may not expend association funds in the defense of any suit under this section.

Section 25. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

- (a) In all misdemeanor cases not cognizable by the circuit courts;
- (b) Of all violations of municipal and county ordinances; ~~and~~

(c) Of all actions at law in which the matter in controversy does not exceed the sum of \$15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts. The party instituting any civil action, suit, or proceeding pursuant to this paragraph where the amount in controversy is in excess of \$5,000 shall pay to the clerk of the county court the filing fees and service charges in the same amounts and in the same manner as provided in s. 28.241; ~~and~~.

(d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

Section 26. Paragraph (a) of subsection (1) of section 316.00825, Florida Statutes, is amended to read:

316.00825 Closing and abandonment of roads; optional conveyance to homeowners' association; traffic control jurisdiction.—

(1)(a) In addition to the authority provided in s. 336.12, the governing body of the county may abandon the roads and rights-of-way dedicated in

a recorded residential subdivision plat and simultaneously convey the county's interest in such roads, rights-of-way, and appurtenant drainage facilities to a homeowners' association for the subdivision, if the following conditions have been met:

1. The homeowners' association has requested the abandonment and conveyance in writing for the purpose of converting the subdivision to a gated neighborhood with restricted public access.

2. No fewer than four-fifths of the owners of record of property located in the subdivision have consented in writing to the abandonment and simultaneous conveyance to the homeowners' association.

3. The homeowners' association is both a corporation not for profit organized and in good standing under chapter 617, and a "homeowners' association" as defined in s. 720.301(9) ~~s. 720.301(7)~~ with the power to levy and collect assessments for routine and periodic major maintenance and operation of street lighting, drainage, sidewalks, and pavement in the subdivision.

4. The homeowners' association has entered into and executed such agreements, covenants, warranties, and other instruments; has provided, or has provided assurance of, such funds, reserve funds, and funding sources; and has satisfied such other requirements and conditions as may be established or imposed by the county with respect to the ongoing operation, maintenance, and repair and the periodic reconstruction or replacement of the roads, drainage, street lighting, and sidewalks in the subdivision after the abandonment by the county.

Section 27. Subsection (2) of section 558.002, Florida Statutes, is amended to read:

558.002 Definitions.—As used in this act, the term:

(2) "Association" has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9) ~~s. 720.301(7)~~, or s. 723.025.

Section 28. The Division of Statutory Revision is requested to designate sections 720.301-720.312, Florida Statutes, as part I of chapter 720, Florida Statutes; to designate sections 720.401 and 720.402, Florida Statutes, as part II of chapter 720, Florida Statutes, and entitle that part "DISCLOSURE PRIOR TO SALE OF RESIDENTIAL PARCELS"; to designate sections 720.403-720.407 as part III of chapter 720, Florida Statutes, and entitle that part "COVENANT REVITALIZATION"; and to designate section 720.501, Florida Statutes, as part IV of chapter 720, Florida Statutes, and entitle that part "RIGHTS AND OBLIGATIONS OF DEVELOPERS."

Section 29. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 30. Subsection (4) is added to section 190.012, Florida Statutes, to read:

190.012 Special powers; public improvements and community facilities.—The district shall have, and the board may exercise, subject to the regulatory jurisdiction and permitting authority of all applicable governmental bodies, agencies, and special districts having authority with respect to any area included therein, any or all of the following special powers relating to public improvements and community facilities authorized by this act:

(4)(a) To adopt rules necessary for the district to enforce certain deed restrictions pertaining to the use and operation of real property within the district. For the purpose of this subsection, “deed restrictions” are those covenants, conditions, and restrictions contained in any applicable declarations of covenants and restrictions that govern the use and operation of real property within the district and, for which covenants, conditions, and restrictions, there is no homeowners’ association or property owner’s association having respective enforcement powers. The district may adopt by rule all or certain portions of the deed restrictions that:

1. Relate to limitations or prohibitions that apply only to external structures and are deemed by the district to be generally beneficial for the district’s landowners and for which enforcement by the district is appropriate, as determined by the district’s board of supervisors; or

2. Are consistent with the requirements of a development order or regulatory agency permit.

(b) The board may vote to adopt such rules only when all of the following conditions exist:

1. The district’s geographic area contains no homeowners’ associations as defined in s. 720.301(7);

2. The district was in existence on the effective date of this subsection, or is located within a development that consists of multiple developments of regional impact and a Florida Quality Development;

3. The majority of the board has been elected by qualified electors pursuant to the provisions of s. 190.006; and

4. The declarant in any applicable declarations of covenants and restrictions has provided the board with a written agreement that such rules may be adopted. A memorandum of the agreement shall be recorded in the public records.

(c) Within 60 days after such rules taking effect, the district shall record a notice of rule adoption stating generally what rules were adopted and where a copy of the rules may be obtained. Districts may impose fines for violations of such rules and enforce such rules and fines in circuit court through injunctive relief.

Section 31. Section 190.046, Florida Statutes, is amended to read:

190.046 Termination, contraction, or expansion of district.—

(1) The board may petition to contract or expand the boundaries of a community development district in the following manner:

(a) The petition shall contain the same information required by s. 190.005(1)(a)1. and 8. In addition, if the petitioner seeks to expand the district, the petition shall describe the proposed timetable for construction of any district services to the area, the estimated cost of constructing the proposed services, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land use plan element of the adopted local government local comprehensive plan. If the petitioner seeks to contract the district, the petition shall describe what services and facilities are currently provided by the district to the area being removed, and the designation of the future general distribution, location, and extent of public and private uses of land proposed for the area by the future land element of the adopted local government comprehensive plan.

(b) For those districts initially established by county ordinance, the petition for ordinance amendment shall be filed with the county commission. If the land to be included or excluded is, in whole or in part, within the boundaries of a municipality, then the county commission shall not amend the ordinance without municipal approval. A public hearing shall be held in the same manner and with the same public notice as other ordinance amendments. The county commission shall consider the record of the public hearing and the factors set forth in s. 190.005(1)(e) in making its determination to grant or deny the petition for ordinance amendment.

(c) For those districts initially established by municipal ordinance pursuant to s. 190.005(2)(e), the municipality shall assume the duties of the county commission set forth in paragraph (b); however, if any of the land to be included or excluded, in whole or in part, is outside the boundaries of the municipality, then the municipality shall not amend its ordinance without county commission approval.

(d)1. For those districts initially established by administrative rule pursuant to s. 190.005(1), the petition shall be filed with the Florida Land and Water Adjudicatory Commission.

2. Prior to filing the petition, the petitioner shall pay a filing fee of \$1,500 to the county and to each municipality the boundaries of which are contiguous with or contain all or a portion of the land within the district or the proposed amendment, and submit a copy of the petition to the county and to each such municipality. In addition, if the district is not the petitioner, the petitioner shall file the petition with the district board of supervisors.

3. The county and each municipality shall have the option of holding a public hearing as provided by s. 190.005(1)(c). However, such public hearing shall be limited to consideration of the contents of the petition and whether the petition for amendment should be supported by the county or municipality.

4. The district board of supervisors shall, in lieu of a hearing officer, hold the local public hearing provided for by s. 190.005(1)(d). This local public

hearing shall be noticed in the same manner as provided in s. 190.005(1)(d). Within 45 days of the conclusion of the hearing, the district board of supervisors shall transmit to the Florida Land and Water Adjudicatory Commission the full record of the local hearing, the transcript of the hearing, any resolutions adopted by the local general-purpose governments, and its recommendation whether to grant the petition for amendment. The commission shall then proceed in accordance with s. 190.005(1)(e).

5. A rule amending a district boundary shall describe the land to be added or deleted.

(e) In all cases, written consent of all the landowners whose land is to be added to or deleted from the district shall be required. The filing of the petition for expansion or contraction by the district board of supervisors shall constitute consent of the landowners within the district other than of landowners whose land is proposed to be added to or removed from the district.

(f)1. During the existence of a district initially established by administrative rule, petitions to amend the boundaries of the district pursuant to paragraphs (a)-(e) shall be limited to a cumulative total of no more than 10 percent of the land in the initial district, and in no event shall all such petitions to amend the boundaries ever encompass more than a total of 250 acres.

2. For districts initially established by county or municipal ordinance, the limitation provided by this paragraph shall be a cumulative total of no more than 50 percent of the land in the initial district, and in no event shall all such petitions to amend the boundaries ever encompass more than a total of 500 acres.

3. Boundary expansions for districts initially established by county or municipal ordinance shall follow the procedure set forth in paragraph (b) or paragraph (c).

(g) Petitions to amend the boundaries of the district which exceed the amount of land specified in paragraph (f) shall be considered petitions to establish a new district and shall follow all of the procedures specified in s. 190.005.

(2) The district shall remain in existence unless:

(a) The district is merged with another district as provided in subsection (3);

(b) All of the specific community development systems, facilities, and services that it is authorized to perform have been transferred to a general-purpose unit of local government in the manner provided in subsections (4), (5), and (6); or

(c) The district is dissolved as provided in subsection (7), ~~or subsection (8), or subsection (9).~~

(3) The district may merge with other community development districts upon filing a petition for establishment of a community development district pursuant to s. 190.005 or may merge with any other special districts upon filing a petition for establishment of a community development district pursuant to s. 190.005. The government formed by a merger involving a community development district pursuant to this section shall assume all indebtedness of, and receive title to, all property owned by the preexisting special districts. Prior to filing said petition, the districts desiring to merge shall enter into a merger agreement and shall provide for the proper allocation of the indebtedness so assumed and the manner in which said debt shall be retired. The approval of the merger agreement by the board of supervisors elected by the electors of the district shall constitute consent of the landowners within the district.

(4) The local general-purpose government within the geographical boundaries of which the district lies may adopt a nonemergency ordinance providing for a plan for the transfer of a specific community development service from a district to the local general-purpose government. The plan must provide for the assumption and guarantee of the district debt that is related to the service by the local general-purpose government and must demonstrate the ability of the local general-purpose government to provide such service:

(a) As efficiently as the district.

(b) At a level of quality equal to or higher than the level of quality actually delivered by the district to the users of the service.

(c) At a charge equal to or lower than the actual charge by the district to the users of the service.

(5) No later than 30 days following the adoption of a transfer plan ordinance, the board of supervisors may file, in the circuit court for the county in which the local general-purpose government that adopted the ordinance is located, a petition seeking review by certiorari of the factual and legal basis for the adoption of the transfer plan ordinance.

(6) Upon the transfer of all of the community development services of the district to a general-purpose unit of local government, the district shall be terminated in accordance with a plan of termination which shall be adopted by the board of supervisors and filed with the clerk of the circuit court.

(7) If, within 5 years after the effective date of the rule or ordinance ~~establishing~~ creating the district, a landowner has not received a development permit, as defined in chapter 380, on some part or all of the area covered by the district, then the district will be automatically dissolved and a judge of the circuit court shall cause a statement to that effect to be filed in the public records.

(8) In the event the district has become inactive pursuant to s. 189.4044, the respective board of county commissioners or city commission shall be informed and it shall take appropriate action.

(9) If a district has no outstanding financial obligations and no operating or maintenance responsibilities, upon the petition of the district, the district may be dissolved by a nonemergency ordinance of the general-purpose local governmental entity that established the district or, if the district was established by rule of the Florida Land and Water Adjudicatory Commission, the district may be dissolved by repeal of such rule of the commission.

Section 32. Section 190.006, Florida Statutes, is amended to read:

190.006 Board of supervisors; members and meetings.—

(1) The board of the district shall exercise the powers granted to the district pursuant to this act. The board shall consist of five members; except as otherwise provided herein, each member shall hold office for a term of 2 years or 4 years, as provided in this section, and until a successor is chosen and qualifies. The members of the board must be residents of the state and citizens of the United States.

(2)(a) Within 90 days following the effective date of the rule or ordinance establishing the district, there shall be held a meeting of the landowners of the district for the purpose of electing five supervisors for the district. Notice of the landowners' meeting shall be published once a week for 2 consecutive weeks in a newspaper which is in general circulation in the area of the district, the last day of such publication to be not fewer than 14 days or more than 28 days before the date of the election. The landowners, when assembled at such meeting, shall organize by electing a chair who shall conduct the meeting. The chair may be any person present at the meeting. If the chair is a landowner or proxy holder of a landowner, he or she may nominate candidates and make and second motions.

(b) At such meeting, each landowner shall be entitled to cast one vote per acre of land owned by him or her and located within the district for each person to be elected. A landowner may vote in person or by proxy in writing. Each proxy must be signed by one of the legal owners of the property for which the vote is cast and must contain the typed or printed name of the individual who signed the proxy; the street address, legal description of the property, or tax parcel identification number; and the number of authorized votes. If the proxy authorizes more than one vote, each property must be listed and the number of acres of each property must be included. The signature on a proxy need not be notarized. A fraction of an acre shall be treated as 1 acre, entitling the landowner to one vote with respect thereto. The two candidates receiving the highest number of votes shall be elected for a period of 4 years, and the three candidates receiving the next largest number of votes shall be elected for a period of 2 years, with the term of office for each successful candidate commencing upon election. The members of the first board elected by landowners shall serve their respective 4-year or 2-year terms; however, the next election by landowners shall be held on the first Tuesday in November. Thereafter, there shall be an election of supervisors for the district every 2 years in November on a date established by the board and noticed pursuant to paragraph (a). The second and subsequent landowners' election shall be announced at a public meeting of the board at least 90 days prior to the date of the landowners' meeting and shall also be

noticed pursuant to paragraph (a). Instructions on how all landowners may participate in the election, along with sample proxies, shall be provided during the board meeting that announces the landowners' meeting. The two candidates receiving the highest number of votes shall be elected to serve for a 4-year period, and the remaining candidate elected shall serve for a 2-year period.

(3)(a)1. If the board proposes to exercise the ad valorem taxing power authorized by s. 190.021, the district board shall call an election at which the members of the board of supervisors will be elected. Such election shall be held in conjunction with a primary or general election unless the district bears the cost of a special election. Each member shall be elected by the qualified electors of the district for a term of 4 years, except that, at the first such election, three members shall be elected for a period of 4 years and two members shall be elected for a period of 2 years. All elected board members must be qualified electors of the district.

2.a. Regardless of whether a district has proposed to levy ad valorem taxes, commencing 6 years after the initial appointment of members or, for a district exceeding 5,000 acres in area, 10 years after the initial appointment of members, the position of each member whose term has expired shall be filled by a qualified elector of the district, elected by the qualified electors of the district. However, for those districts established after June 21, 1991, and for those existing districts established after December 31, 1983, which have less than 50 qualified electors on June 21, 1991, sub-subparagraphs b. and d. e. shall apply.

~~b. For those districts to which this sub-subparagraph applies~~ If, in the 6th year after the initial appointment of members, or 10 years after such initial appointment for districts exceeding 5,000 acres in area, there are not at least 250 qualified electors in the district, or for a district exceeding 5,000 acres, there are not at least 500 qualified electors, members of the board shall continue to be elected by landowners.

b. After the 6th or 10th year, once a district reaches 250 or 500 qualified electors, respectively, then the ~~positions~~ position of two board members whose terms are expiring shall be filled by qualified electors of the district, elected by the qualified electors of the district for 4-year terms. ~~One of these board members shall serve a 2-year term, and the other a 4-year term.~~ The remaining board member whose term is expiring shall be elected for a 4-year term by the landowners and is not required to be a qualified elector. Thereafter, as terms expire, board members shall be qualified electors elected by qualified electors of the district for a term of 4 years.

c. Once a district qualifies to have any of its board members elected by the qualified electors of the district, the initial and all subsequent elections by the qualified electors of the district shall be held at the general election in November. The board shall adopt a resolution if necessary to implement this requirement when the board determines the number of qualified electors as required by sub-subparagraph d., to extend or reduce the terms of current board members.

d.e. On or before June 1 ~~July 15~~ of each year, the board shall determine the number of qualified electors in the district as of the immediately preceding April 15 ~~June 1~~. The board shall use and rely upon the official records maintained by the supervisor of elections and property appraiser or tax collector in each county in making this determination. Such determination shall be made at a properly noticed meeting of the board and shall become a part of the official minutes of the district.

(b) Elections of board members by qualified electors held pursuant to this subsection shall be nonpartisan and shall be conducted in the manner prescribed by law for holding general elections. Board members shall assume the office on the second Tuesday following their election.

(c) Candidates seeking election to office by qualified electors under this subsection shall conduct their campaigns in accordance with the provisions of chapter 106 and shall file qualifying papers and qualify for individual seats in accordance with s. 99.061. Candidates shall pay a qualifying fee, which shall consist of a filing fee and an election assessment or, as an alternative, shall file a petition signed by not less than 1 percent of the registered voters of the district, Candidates shall file petitions, and take the oath required in s. 99.021, with the supervisor of elections in the county affected by such candidacy. The amount of the filing fee is 3 percent of \$4,800; however, if the electors have provided for compensation pursuant to subsection (8), the amount of the filing fee is 3 percent of the maximum annual compensation so provided. The amount of the election assessment is 1 percent of \$4,800; however, if the electors have provided for compensation pursuant to subsection (8), the amount of the election assessment is 1 percent of the maximum annual compensation so provided. The filing fee and election assessment shall be distributed as provided in s. 105.031(3).

(d) The supervisor of elections shall appoint the inspectors and clerks of elections, prepare and furnish the ballots, designate polling places, and canvass the returns of the election of board members by qualified electors. ~~The county canvassing board of county commissioners shall declare and certify the results of the election.~~

(4) Members of the board shall be known as supervisors and, upon entering into office, shall take and subscribe to the oath of office as prescribed by s. 876.05. They shall hold office for the terms for which they were elected or appointed and until their successors are chosen and qualified. If, during the term of office, a vacancy occurs, the remaining members of the board shall fill the vacancy by an appointment for the remainder of the unexpired term.

(5) A majority of the members of the board constitutes a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. Action taken by the district shall be upon a vote of a majority of the members present unless general law or a rule of the district requires a greater number.

(6) As soon as practicable after each election or appointment, the board shall organize by electing one of its members as chair and by electing a secretary, who need not be a member of the board, and such other officers as the board may deem necessary.

(7) The board shall keep a permanent record book entitled "Record of Proceedings of ...(name of district)... Community Development District," in which shall be recorded minutes of all meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts. The record book shall at reasonable times be opened to inspection in the same manner as state, county, and municipal records pursuant to chapter 119. The record book shall be kept at the office or other regular place of business maintained by the board in the county or municipality in which the district is located or within the boundaries of a development of regional impact or Florida Quality Development, or combination of a development of regional impact and Florida Quality Development, which includes the district.

(8) Each supervisor shall be entitled to receive for his or her services an amount not to exceed \$200 per meeting of the board of supervisors, not to exceed \$4,800 per year per supervisor, or an amount established by the electors at referendum. In addition, each supervisor shall receive travel and per diem expenses as set forth in s. 112.061.

(9) All meetings of the board shall be open to the public and governed by the provisions of chapter 286.

Section 33. This act shall take effect upon becoming a law, except sections 1 through 16, which shall take effect October 1, 2004.

Approved by the Governor June 23, 2004.

Filed in Office Secretary of State June 23, 2004.