

CHAPTER 2013-218

Committee Substitute for House Bill No. 7119

An act relating to homeowners' associations; amending s. 468.436, F.S.; providing grounds for disciplinary actions against community association managers; amending s. 720.303, F.S.; requiring official records to be maintained within a specified distance of the association for a specified time; authorizing associations to maintain such records online; requiring associations to allow a member to use a portable device to make an electronic copy of the official records and prohibiting associations from charging a fee for such an electronic copy; removing provisions allowing the association to charge fees for personnel costs related to records access; requiring budgets to designate permissible uses of reserve accounts; requiring a community association manager, or the association in the absence of a community association manager, to report certain information to the Division of Florida Condominiums, Timeshares, and Mobile Homes; providing an expiration date for the reporting requirements; creating s. 720.3033, F.S.; requiring association directors to file with the association secretary written certification that they have read certain association documents, will uphold the documents, and will uphold their fiduciary responsibility to the members; providing for an educational certificate in lieu of written certification; providing that such certification is valid while the director is on the board; providing penalties for failure to file such certification; requiring the association to retain such certification for 5 years; requiring the board to follow specified procedures relating to contracts or transactions between the association and certain entities; providing for disclosure of the contract or transaction to members; providing for the cancellation of such contract or transaction under certain circumstances; prohibiting any association officer, director, or manager from soliciting or receiving certain personal benefits from any person providing or offering to provide goods or services to the association; providing for removal from office for violations; providing an exception; providing for the removal of any director or officer charged with a felony theft or embezzlement offense involving association funds or property; providing for the reinstatement of such person under certain circumstances; prohibiting a member with pending criminal charges from certain positions; requiring the association to maintain insurance or a bond to cover funds that will be in the custody of the association or its management agent; providing a definition; authorizing an association to waive the requirement of obtaining an insurance policy or fidelity bond under certain conditions; amending s. 720.306, F.S.; requiring the association to provide copies of amendments to the governing documents to members under certain conditions; revising procedures for the election of directors; amending s. 720.307, F.S.; providing additional circumstances for authorizing members to elect a majority of association board members; providing circumstances under which members other than the developer are authorized to elect a specified number of members to the board of

directors; amending s. 720.3075, F.S.; providing public policy regarding amendments to governing documents in associations under developer control; amending s. 720.3085, F.S.; defining the term “previous owner” to exclude certain associations from provisions relating to the liability of previous owners of parcels for unpaid assessments; limiting a present owner’s liability for certain assessments; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended to read:

468.436 Disciplinary proceedings.—

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of any provision of this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

7. Violating any provision of chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

Section 2. Subsection (5) and paragraph (d) of subsection (6) of section 720.303, Florida Statutes, are amended, and subsection (13) is added to that section, to read:

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

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within

10 business days after receipt by the board or its designee of a written request 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 or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. 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. The association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for such use of a portable device.

(a) The failure of an association to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, 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 require a parcel owner to 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 may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 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 duplicating service vendor or association management company personnel and may charge the actual cost of copying, as supported by the vendor invoice including any reasonable costs involving personnel fees and charges at an hourly rate for vendor or employee time to cover administrative costs to the vendor or association. The association shall maintain an

adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not 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, a 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 which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

3. Personnel records of the association's employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. However, an owner may consent in writing to the disclosure of protected information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(d) The association or its authorized agent is not required to provide a prospective purchaser or lienholder with information about the residential subdivision 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 charge a reasonable fee to the prospective purchaser or lienholder or the current parcel owner or member for 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 fee does not exceed \$150 plus the reasonable cost of photocopying and any attorney's fees incurred by the association in connection with the response.

(6) BUDGETS.—

(d) An association is deemed to have provided for reserve accounts if reserve accounts have been initially established by the developer or if the membership of the association affirmatively elects to provide for reserves. If reserve accounts are established by the developer, the budget must designate the components for which the reserve accounts may be used. If reserve accounts are not initially provided by the developer, the membership of the association may elect to do so upon the affirmative approval of a majority of the total voting interests of the association. Such approval may be obtained by vote of the members at a duly called meeting of the membership or by the written consent of a majority of the total voting interests of the association. The approval action of the membership must state that reserve accounts shall be provided for in the budget and must designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall include the required reserve accounts in the budget in the next fiscal year following the approval and each year thereafter. Once established as provided in this subsection, the reserve accounts must be funded or maintained or have their funding waived in the manner provided in paragraph (f).

(13) REPORTING REQUIREMENT.—The community association manager or management firm, or the association when there is no community association manager or management firm, shall report to the division by November 22, 2013, in a manner and form prescribed by the division.

(a) The report shall include the association's:

1. Legal name.
2. Federal employer identification number.
3. Mailing and physical addresses.
4. Total number of parcels.
5. Total amount of revenues and expenses from the association's annual budget.

(b) For associations in which control of the association has not been transitioned to nondeveloper members, as set forth in s. 720.307, the report shall also include the developer's:

1. Legal name.
2. Mailing address.
3. Total number of parcels owned on the date of reporting.

(c) The reporting requirement provided in this subsection shall be a continuing obligation on each association until the required information is reported to the division.

(d) By October 1, 2013, the department shall establish and implement a registration system through an Internet website that provides for the reporting requirements of paragraphs (a) and (b).

(e) The department shall prepare an annual report of the data reported pursuant to this subsection and present it to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2013, and each year thereafter.

(f) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this subsection.

(g) This subsection shall expire on July 1, 2016, unless reenacted by the Legislature.

Section 3. Section 720.3033, Florida Statutes, is created to read:

720.3033 Officers and directors.—

(1)(a) Within 90 days after being elected or appointed to the board, each director shall certify in writing to the secretary of the association that he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Within 90 days after being elected or appointed to the board, in lieu of such written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved education provider within 1 year before or 90 days after the date of election or appointment.

(b) The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board. A director who does not timely file the written certification or educational certificate shall be suspended from the board until he or she complies with the requirement. The board may temporarily fill the vacancy during the period of suspension.

(c) The association shall retain each director's written certification or educational certificate for inspection by the members for 5 years after the

director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.

(2) If the association enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated homeowners' association, or other entity in which an association director is also a director or officer or is financially interested, the board must:

(a) Comply with the requirements of s. 617.0832.

(b) Enter the disclosures required by s. 617.0832 into the written minutes of the meeting.

(c) Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.

(d) At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the association is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

(3) An officer, director, or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the association. If the board finds that an officer or director has violated this subsection, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to law until the end of the director's term of office. However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs.

(4) A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is removed from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.

(5) The association shall maintain insurance or a fidelity bond for all persons who control or disburse funds of the association. The insurance policy or fidelity bond must cover the maximum funds that will be in the

custody of the association or its management agent at any one time. As used in this subsection, the term “persons who control or disburse funds of the association” includes, but is not limited to, persons authorized to sign checks on behalf of the association, and the president, secretary, and treasurer of the association. The association shall bear the cost of any insurance or bond. If annually approved by a majority of the voting interests present at a properly called meeting of the association, an association may waive the requirement of obtaining an insurance policy or fidelity bond for all persons who control or disburse funds of the association.

Section 4. Paragraph (b) of subsection (1) and paragraph (a) of subsection (9) of section 720.306, Florida Statutes, are amended to read:

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

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members.

(9)(a) ELECTIONS AND BOARD VACANCIES.—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 are 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; provided, however, that ~~or~~, if the election process allows candidates to be nominated voting by absentee ballot, in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist balloting. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

Section 5. Subsection (1) of section 720.307, Florida Statutes, is amended, present subsections (2) through (4) are renumbered as subsections (3) through (5), respectively, and a new subsection (2) is added to that section, to read:

720.307 Transition of association control in a community.—With respect to homeowners’ associations:

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

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

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

(c) Upon the developer abandoning or deserting its responsibility to maintain and complete the amenities or infrastructure as disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308 for a period of more than 2 years;

(d) Upon the developer filing a petition seeking protection under chapter 7 of the federal Bankruptcy Code;

(e) Upon the developer losing title to the property through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or

(f) Upon a receiver for the developer being appointed by a circuit court and not being discharged within 30 days after such appointment, unless the court determines within 30 days after such appointment that transfer of control would be detrimental to the association or its members.

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

(2) Members other than the developer are entitled to elect at least one member of the board of directors of the homeowners' association if 50 percent of the parcels in all phases of the community which will ultimately be operated by the association have been conveyed to members.

Section 6. Subsection (5) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(5) It is declared the public policy of the state that prior to transition of control of a homeowners' association in a community from the developer to the nondeveloper members, as set forth in s. 720.307, the right of the developer to amend the association's governing documents is subject to a test of reasonableness, which prohibits the developer from unilaterally making amendments to the governing documents that are arbitrary, capricious, or in bad faith; destroy the general plan of development; prejudice the rights of existing nondeveloper members to use and enjoy the benefits of common

property; or materially shift economic burdens from the developer to the existing nondeveloper members.

Section 7. Paragraph (b) of subsection (2) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(2)

(b) A parcel owner is jointly and severally liable with the previous parcel owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the present parcel owner may have to recover any amounts paid by the present owner from the previous owner. For the purposes of this paragraph, the term “previous owner” shall not include an association that acquires title to a delinquent property through foreclosure or by deed in lieu of foreclosure. The present parcel owner’s liability for unpaid assessments is limited to any unpaid assessments that accrued before the association acquired title to the delinquent property through foreclosure or by deed in lieu of foreclosure.

Section 8. This act shall take effect July 1, 2013.

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.