

1 A bill to be entitled
2 An act relating to community associations; providing a
3 short title; amending s. 718.111, F.S.; prohibiting
4 association funds and reserves from being used by
5 specified persons or entities for certain reasons;
6 requiring the board of each association to designate
7 an official recordkeeper for the association;
8 authorizing the board to provide powers and duties to
9 the recordkeeper if necessary; removing obsolete
10 language; requiring certain information be posted on
11 the association's website or application and the
12 Department of State's website; amending ss. 718.1224
13 and 720.304, F.S.; prohibiting reserves from being
14 used in prosecuting SLAPP suits; amending ss. 718.501
15 and 720.302, F.S.; providing the Division of Florida
16 Condominiums, Timeshares, and Mobile Homes with
17 certain jurisdiction; requiring the division to
18 forward certain complaints to the Department of Law
19 Enforcement; requiring the division to review
20 complaints within a specified timeframe and take
21 specified actions; amending s. 720.303, F.S.;
22 providing criminal penalties for certain actions by an
23 officer, director, or agent of the association;
24 requiring certain officers or directors be removed
25 from office for a certain time period under certain

26 | circumstances; specifying how a vacancy on the board
27 | must be filled; providing restrictions on certain
28 | officers and directors; specifying when an officer or
29 | director may be reinstated; requiring the governing
30 | documents of an association be amended in order to
31 | modify or restrict parcel use; requiring an
32 | association to maintain designated mailing and e-mail
33 | addresses as official records; specifying what
34 | constitutes a designated address; making conforming
35 | changes; requiring the board of each association to
36 | designate an official recordkeeper for the
37 | association; authorizing the board to provide powers
38 | and duties to the recordkeeper if necessary; requiring
39 | certain information be posted on the association's and
40 | the Department of State's websites; revising the
41 | confidentiality of certain official records;
42 | conforming cross-references; prohibiting association
43 | funds and reserves from being used by specified
44 | persons or entities for certain reasons; amending s.
45 | 720.305, F.S.; restricting certain attorney fees and
46 | fines; specifying the types of violations for which an
47 | association may levy fines; providing a maximum fine
48 | amount; prohibiting fines from being aggregated;
49 | revising amount of notice the board of administration
50 | must give a parcel owner before imposing a fine or

51 suspension; specifying where such notice must be
52 delivered; providing requirements for such notice;
53 authorizing parcel owners to attend certain hearings
54 by telephone or other electronic means; expanding
55 duties of a specified committee; requiring a specified
56 notice after a hearing; specifying how fines,
57 suspensions, attorney fees, and costs are determined;
58 requiring a detailed accounting of amounts due to the
59 association be given to certain persons within a
60 certain timeframe upon written request; providing for
61 a complete waiver of a violation under certain
62 circumstances; specifying the priority of payments
63 made by a parcel owner to an association; prohibiting
64 the accrual of attorney fees and costs after a
65 specified time; authorizing certain persons to request
66 a hearing to dispute certain fees and costs; providing
67 for the waiver of certain fines or suspensions;
68 requiring certain fines, fees, or other costs be paid
69 by an association; conforming provisions to changes
70 made by the act; amending s. 720.306, F.S.; requiring
71 that the governing documents of an association be
72 amended to modify or restrict parcel use; amending s.
73 720.3085, F.S.; specifying the priority of payments
74 made by a parcel owner to an association; prohibiting
75 an association from bringing an action to foreclose a

76 | lien against a parcel; providing that such lien stays
 77 | on the parcel until the lien is paid, settled, or
 78 | released; requiring a certain actions be brought in
 79 | the same lawsuit; conforming cross-references;
 80 | amending s. 720.311, F.S.; providing the division with
 81 | certain jurisdiction; requiring the division to
 82 | forward certain complaints to the Department of Law
 83 | Enforcement; requiring the division to review
 84 | complaints within a specified timeframe and take
 85 | specified actions; revising which disputes require
 86 | presuit mediation; revising the timeframe for a
 87 | responding party to respond to a demand for presuit
 88 | mediation; amending s. 720.402, F.S.; prohibiting
 89 | reserve funds from being used in the defense of
 90 | certain actions; creating s. 943.71, F.S.; authorizing
 91 | the Department of Law Enforcement to investigate
 92 | certain complaints relating to community associations
 93 | and their boards of administration, officers, or
 94 | directors; providing an effective date.

95 |
 96 | Be It Enacted by the Legislature of the State of Florida:

97 |
 98 | Section 1. This act may be cited as the "Community
 99 | Associations Bill of Rights."

100 | Section 2. Paragraphs (b) and (g) of subsection (12) of

101 section 718.111, Florida Statutes, are amended and paragraph (g)
 102 is added to subsection (3) of that section, to read:

103 718.111 The association.—

104 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,
 105 SUE, AND BE SUED; CONFLICT OF INTEREST.—

106 (g) Association funds and reserve funds may not be used by
 107 a developer, the association, or elected board members to defend
 108 a civil or criminal action, an administrative proceeding, or an
 109 arbitration proceeding or to pay for attorney fees relating to
 110 such action or proceeding, even when the subject of the action
 111 or proceeding concerns the operation of the developer-controlled
 112 association.

113 (12) OFFICIAL RECORDS.—

114 (b)1. The board of each community association shall
 115 appoint an association member as a recordkeeper whose
 116 responsibility is to maintain the official records of the
 117 association during the time period of his or her appointment.
 118 The board must specify the duration of such appointment and may
 119 grant the recordkeeper additional authority as needed. The name
 120 and contact information of the recordkeeper must be displayed on
 121 the association's website or application as required under
 122 paragraph (g) and the Department of State website.

123 2. The official records specified in subparagraphs (a)1.-
 124 6. must be permanently maintained from the inception of the
 125 association. Bids for work to be performed or for materials,

126 equipment, or services must be maintained for at least 1 year
127 after receipt of the bid. All other official records must be
128 maintained within the state for at least 7 years, unless
129 otherwise provided by general law. The records of the
130 association shall be made available to a unit owner within 45
131 miles of the condominium property or within the county in which
132 the condominium property is located within 10 working days after
133 receipt of a written request by the board or its designee.
134 However, such distance requirement does not apply to an
135 association governing a timeshare condominium. This paragraph
136 may be complied with by having a copy of the official records of
137 the association available for inspection or copying on the
138 condominium property or association property, or the association
139 may offer the option of making the records available to a unit
140 owner electronically via the Internet or by allowing the records
141 to be viewed in electronic format on a computer screen and
142 printed upon request. The association is not responsible for the
143 use or misuse of the information provided to an association
144 member or his or her authorized representative in compliance
145 with this chapter unless the association has an affirmative duty
146 not to disclose such information under this chapter.

147 (g)1. ~~By January 1, 2019,~~ An association managing a
148 condominium with 150 or more units which does not contain
149 timeshare units shall post digital copies of the documents
150 specified in subparagraph 2. on its website or make such

151 documents available through an application that can be
152 downloaded on a mobile device. The name and contact information
153 of the association's recordkeeper must be displayed on the
154 association's website or application.

155 a. The association's website or application must be:

156 (I) An independent website, application, or web portal
157 wholly owned and operated by the association; or

158 (II) A website, application, or web portal operated by a
159 third-party provider with whom the association owns, leases,
160 rents, or otherwise obtains the right to operate a web page,
161 subpage, web portal, collection of subpages or web portals, or
162 an application which is dedicated to the association's
163 activities and on which required notices, records, and documents
164 may be posted or made available by the association.

165 b. The association's website or application must be
166 accessible through the Internet and must contain a subpage, web
167 portal, or other protected electronic location that is
168 inaccessible to the general public and accessible only to unit
169 owners and employees of the association.

170 c. Upon a unit owner's written request, the association
171 must provide the unit owner with a username and password and
172 access to the protected sections of the association's website or
173 application which contain any notices, records, or documents
174 that must be electronically provided.

175 2. A current copy of the following documents must be

176 | posted in digital format on the association's website or
177 | application:

178 | a. The recorded declaration of condominium of each
179 | condominium operated by the association and each amendment to
180 | each declaration.

181 | b. The recorded bylaws of the association and each
182 | amendment to the bylaws.

183 | c. The articles of incorporation of the association, or
184 | other documents creating the association, and each amendment to
185 | the articles of incorporation or other documents. The copy
186 | posted pursuant to this sub-subparagraph must be a copy of the
187 | articles of incorporation filed with the Department of State.

188 | d. The rules of the association.

189 | e. A list of all executory contracts or documents to which
190 | the association is a party or under which the association or the
191 | unit owners have an obligation or responsibility and, after
192 | bidding for the related materials, equipment, or services has
193 | closed, a list of bids received by the association within the
194 | past year. Summaries of bids for materials, equipment, or
195 | services which exceed \$500 must be maintained on the website or
196 | application for 1 year. In lieu of summaries, complete copies of
197 | the bids may be posted.

198 | f. The annual budget required by s. 718.112(2)(f) and any
199 | proposed budget to be considered at the annual meeting.

200 | g. The financial report required by subsection (13) and

201 any monthly income or expense statement to be considered at a
202 meeting.

203 h. The certification of each director required by s.
204 718.112(2)(d)4.b.

205 i. All contracts or transactions between the association
206 and any director, officer, corporation, firm, or association
207 that is not an affiliated condominium association or any other
208 entity in which an association director is also a director or
209 officer and financially interested.

210 j. Any contract or document regarding a conflict of
211 interest or possible conflict of interest as provided in ss.
212 468.436(2)(b)6. and 718.3027(3).

213 k. The notice of any unit owner meeting and the agenda for
214 the meeting, as required by s. 718.112(2)(d)3., no later than 14
215 days before the meeting. The notice must be posted in plain view
216 on the front page of the website or application, or on a
217 separate subpage of the website or application labeled "Notices"
218 which is conspicuously visible and linked from the front page.
219 The association must also post on its website or application any
220 document to be considered and voted on by the owners during the
221 meeting or any document listed on the agenda at least 7 days
222 before the meeting at which the document or the information
223 within the document will be considered.

224 l. Notice of any board meeting, the agenda, and any other
225 document required for the meeting as required by s.

226 718.112(2)(c), which must be posted no later than the date
 227 required for notice under s. 718.112(2)(c).

228 m. The inspection reports described in ss. 553.899 and
 229 718.301(4)(p) and any other inspection report relating to a
 230 structural or life safety inspection of condominium property.

231 n. The association's most recent structural integrity
 232 reserve study, if applicable.

233 3. The association shall ensure that the information and
 234 records described in paragraph (c), which are not allowed to be
 235 accessible to unit owners, are not posted on the association's
 236 website or application. If protected information or information
 237 restricted from being accessible to unit owners is included in
 238 documents that are required to be posted on the association's
 239 website or application, the association shall ensure the
 240 information is redacted before posting the documents.

241 Notwithstanding the foregoing, the association or its agent is
 242 not liable for disclosing information that is protected or
 243 restricted under this paragraph unless such disclosure was made
 244 with a knowing or intentional disregard of the protected or
 245 restricted nature of such information.

246 4. The failure of the association to post information
 247 required under subparagraph 2. is not in and of itself
 248 sufficient to invalidate any action or decision of the
 249 association's board or its committees.

250 Section 3. Subsection (4) of section 718.1224, Florida

251 Statutes, is amended to read:

252 718.1224 Prohibition against SLAPP suits.—

253 (4) Condominium associations may not expend association
 254 funds or reserve funds in prosecuting a SLAPP suit against a
 255 condominium unit owner.

256 Section 4. Subsection (1) of section 718.501, Florida
 257 Statutes, is amended to read:

258 718.501 Authority, responsibility, and duties of Division
 259 of Florida Condominiums, Timeshares, and Mobile Homes.—

260 (1) The division may enforce and ensure compliance with
 261 this chapter and rules relating to the development,
 262 construction, sale, lease, ownership, operation, and management
 263 of residential condominium units and complaints related to the
 264 procedural completion of milestone inspections under s. 553.899.
 265 In performing its duties, the division has complete jurisdiction
 266 to investigate complaints and enforce compliance with respect to
 267 associations that are still under developer control or the
 268 control of a bulk assignee or bulk buyer pursuant to part VII of
 269 this chapter and complaints against developers, bulk assignees,
 270 or bulk buyers involving improper turnover or failure to
 271 turnover, pursuant to s. 718.301. However, after turnover has
 272 occurred, the division has jurisdiction to investigate
 273 complaints related only to financial issues, elections, and the
 274 maintenance of and unit owner access to association records
 275 under s. 718.111(12), and the procedural completion of

HB919

2023

276 structural integrity reserve studies under s. 718.112(2)(g). If
277 the division receives a complaint alleging criminal activity,
278 whether before or after turnover of the association, the
279 division must forward the complaint to the Department of Law
280 Enforcement.

281 (a)1. The division must, within 72 hours after receiving a
282 complaint, review the complaint and determine whether the
283 complaint, on its face, alleges any criminal activity. If the
284 division determines that a complaint contains allegations of
285 criminal activity, the division shall forward the complaint to
286 the Department of Law Enforcement for investigation. The
287 division is responsible for investigating all portions of the
288 complaint that do not allege criminal activity.

289 2. The division may make necessary public or private
290 investigations within or outside the ~~this~~ state to determine
291 whether any person has violated this chapter or any rule or
292 order hereunder, to aid in the enforcement of this chapter, or
293 to aid in the adoption of rules or forms.

294 ~~3.2.~~ The division may submit any official written report,
295 worksheet, or other related paper, or a duly certified copy
296 thereof, compiled, prepared, drafted, or otherwise made by and
297 duly authenticated by a financial examiner or analyst to be
298 admitted as competent evidence in any hearing in which the
299 financial examiner or analyst is available for cross-examination
300 and attests under oath that such documents were prepared as a

301 result of an examination or inspection conducted pursuant to
302 this chapter.

303 (b) The division may require or permit any person to file
304 a statement in writing, under oath or otherwise, as the division
305 determines, as to the facts and circumstances concerning a
306 matter to be investigated.

307 (c) For the purpose of any investigation under this
308 chapter, the division director or any officer or employee
309 designated by the division director may administer oaths or
310 affirmations, subpoena witnesses and compel their attendance,
311 take evidence, and require the production of any matter which is
312 relevant to the investigation, including the existence,
313 description, nature, custody, condition, and location of any
314 books, documents, or other tangible things and the identity and
315 location of persons having knowledge of relevant facts or any
316 other matter reasonably calculated to lead to the discovery of
317 material evidence. Upon the failure by a person to obey a
318 subpoena or to answer questions propounded by the investigating
319 officer and upon reasonable notice to all affected persons, the
320 division may apply to the circuit court for an order compelling
321 compliance.

322 (d) Notwithstanding any remedies available to unit owners
323 and associations, if the division has reasonable cause to
324 believe that a violation of ~~any provision of~~ this chapter or
325 related rule has occurred, the division may institute

326 enforcement proceedings in its own name against any developer,
 327 bulk assignee, bulk buyer, association, officer, or member of
 328 the board of administration, or its assignees or agents, as
 329 follows:

330 1. The division may permit a person whose conduct or
 331 actions may be under investigation to waive formal proceedings
 332 and enter into a consent proceeding whereby orders, rules, or
 333 letters of censure or warning, whether formal or informal, may
 334 be entered against the person.

335 2. The division may issue an order requiring the
 336 developer, bulk assignee, bulk buyer, association, developer-
 337 designated officer, or developer-designated member of the board
 338 of administration, developer-designated assignees or agents,
 339 bulk assignee-designated assignees or agents, bulk buyer-
 340 designated assignees or agents, community association manager,
 341 or community association management firm to cease and desist
 342 from the unlawful practice and take such affirmative action as
 343 in the judgment of the division carry out the purposes of this
 344 chapter. If the division finds that a developer, bulk assignee,
 345 bulk buyer, association, officer, or member of the board of
 346 administration, or its assignees or agents, is violating or is
 347 about to violate ~~any provision of~~ this chapter, any rule adopted
 348 or order issued by the division, or any written agreement
 349 entered into with the division, and presents an immediate danger
 350 to the public requiring an immediate final order, it may issue

351 an emergency cease and desist order reciting with particularity
352 the facts underlying such findings. The emergency cease and
353 desist order is effective for 90 days. If the division begins
354 nonemergency cease and desist proceedings, the emergency cease
355 and desist order remains effective until the conclusion of the
356 proceedings under ss. 120.569 and 120.57.

357 3. If a developer, bulk assignee, or bulk buyer fails to
358 pay any restitution determined by the division to be owed, plus
359 any accrued interest at the highest rate permitted by law,
360 within 30 days after expiration of any appellate time period of
361 a final order requiring payment of restitution or the conclusion
362 of any appeal thereof, whichever is later, the division must
363 bring an action in circuit or county court on behalf of any
364 association, class of unit owners, lessees, or purchasers for
365 restitution, declaratory relief, injunctive relief, or any other
366 available remedy. The division may also temporarily revoke its
367 acceptance of the filing for the developer to which the
368 restitution relates until payment of restitution is made.

369 4. The division may petition the court for appointment of
370 a receiver or conservator. If appointed, the receiver or
371 conservator may take action to implement the court order to
372 ensure the performance of the order and to remedy any breach
373 thereof. In addition to all other means provided by law for the
374 enforcement of an injunction or temporary restraining order, the
375 circuit court may impound or sequester the property of a party

376 defendant, including books, papers, documents, and related
377 records, and allow the examination and use of the property by
378 the division and a court-appointed receiver or conservator.

379 5. The division may apply to the circuit court for an
380 order of restitution whereby the defendant in an action brought
381 under subparagraph 4. is ordered to make restitution of those
382 sums shown by the division to have been obtained by the
383 defendant in violation of this chapter. At the option of the
384 court, such restitution is payable to the conservator or
385 receiver appointed under subparagraph 4. or directly to the
386 persons whose funds or assets were obtained in violation of this
387 chapter.

388 6. The division may impose a civil penalty against a
389 developer, bulk assignee, or bulk buyer, or association, or its
390 assignee or agent, for any violation of this chapter or related
391 rule. The division may impose a civil penalty individually
392 against an officer or board member who willfully and knowingly
393 violates this chapter, an adopted rule, or a final order of the
394 division; may order the removal of such individual as an officer
395 or from the board of administration or as an officer of the
396 association; and may prohibit such individual from serving as an
397 officer or on the board of a community association for a period
398 of time. The term "willfully and knowingly" means that the
399 division informed the officer or board member that his or her
400 action or intended action violates this chapter, a rule adopted

401 under this chapter, or a final order of the division and that
402 the officer or board member refused to comply with the
403 requirements of this chapter, a rule adopted under this chapter,
404 or a final order of the division. The division, before
405 initiating formal agency action under chapter 120, must afford
406 the officer or board member an opportunity to voluntarily
407 comply, and an officer or board member who complies within 10
408 days is not subject to a civil penalty. A penalty may be imposed
409 on the basis of each day of continuing violation, but the
410 penalty for any offense may not exceed \$5,000. The division
411 shall adopt, by rule, penalty guidelines applicable to possible
412 violations or to categories of violations of this chapter or
413 rules adopted by the division. The guidelines must specify a
414 meaningful range of civil penalties for each such violation of
415 the statute and rules and must be based upon the harm caused by
416 the violation, upon the repetition of the violation, and upon
417 such other factors deemed relevant by the division. For example,
418 the division may consider whether the violations were committed
419 by a developer, bulk assignee, or bulk buyer, or owner-
420 controlled association, the size of the association, and other
421 factors. The guidelines must designate the possible mitigating
422 or aggravating circumstances that justify a departure from the
423 range of penalties provided by the rules. It is the legislative
424 intent that minor violations be distinguished from those which
425 endanger the health, safety, or welfare of the condominium

426 residents or other persons and that such guidelines provide
427 reasonable and meaningful notice to the public of likely
428 penalties that may be imposed for proscribed conduct. This
429 subsection does not limit the ability of the division to
430 informally dispose of administrative actions or complaints by
431 stipulation, agreed settlement, or consent order. All amounts
432 collected shall be deposited with the Chief Financial Officer to
433 the credit of the Division of Florida Condominiums, Timeshares,
434 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
435 bulk buyer fails to pay the civil penalty and the amount deemed
436 to be owed to the association, the division shall issue an order
437 directing that such developer, bulk assignee, or bulk buyer
438 cease and desist from further operation until such time as the
439 civil penalty is paid or may pursue enforcement of the penalty
440 in a court of competent jurisdiction. If an association fails to
441 pay the civil penalty, the division shall pursue enforcement in
442 a court of competent jurisdiction, and the order imposing the
443 civil penalty or the cease and desist order is not effective
444 until 20 days after the date of such order. Any action commenced
445 by the division shall be brought in the county in which the
446 division has its executive offices or in the county where the
447 violation occurred.

448 7. If a unit owner presents the division with proof that
449 the unit owner has requested access to official records in
450 writing by certified mail, and that after 10 days the unit owner

HB919

2023

451 again made the same request for access to official records in
452 writing by certified mail, and that more than 10 days has
453 elapsed since the second request and the association has still
454 failed or refused to provide access to official records as
455 required by this chapter, the division shall issue a subpoena
456 requiring production of the requested records where the records
457 are kept pursuant to s. 718.112.

458 8. In addition to subparagraph 6., the division may seek
459 the imposition of a civil penalty through the circuit court for
460 any violation for which the division may issue a notice to show
461 cause under paragraph (r). The civil penalty shall be at least
462 \$500 but no more than \$5,000 for each violation. The court may
463 also award to the prevailing party court costs and reasonable
464 attorney fees and, if the division prevails, may also award
465 reasonable costs of investigation.

466 (e) The division may prepare and disseminate a prospectus
467 and other information to assist prospective owners, purchasers,
468 lessees, and developers of residential condominiums in assessing
469 the rights, privileges, and duties pertaining thereto.

470 (f) The division may adopt rules to administer and enforce
471 this chapter.

472 (g) The division shall establish procedures for providing
473 notice to an association and the developer, bulk assignee, or
474 bulk buyer during the period in which the developer, bulk
475 assignee, or bulk buyer controls the association if the division

476 is considering the issuance of a declaratory statement with
477 respect to the declaration of condominium or any related
478 document governing such condominium community.

479 (h) The division shall furnish each association that pays
480 the fees required by paragraph (2)(a) a copy of this chapter, as
481 amended, and the rules adopted thereto on an annual basis.

482 (i) The division shall annually provide each association
483 with a summary of declaratory statements and formal legal
484 opinions relating to the operations of condominiums which were
485 rendered by the division during the previous year.

486 (j) The division shall provide training and educational
487 programs for condominium association board members and unit
488 owners. The training may, in the division's discretion, include
489 web-based electronic media and live training and seminars in
490 various locations throughout the state. The division may review
491 and approve education and training programs for board members
492 and unit owners offered by providers and shall maintain a
493 current list of approved programs and providers and make such
494 list available to board members and unit owners in a reasonable
495 and cost-effective manner.

496 (k) The division shall maintain a toll-free telephone
497 number accessible to condominium unit owners.

498 (l) The division shall develop a program to certify both
499 volunteer and paid mediators to provide mediation of condominium
500 disputes. The division shall provide, upon request, a list of

501 such mediators to any association, unit owner, or other
502 participant in alternative dispute resolution proceedings under
503 s. 718.1255 requesting a copy of the list. The division shall
504 include on the list of volunteer mediators only the names of
505 persons who have received at least 20 hours of training in
506 mediation techniques or who have mediated at least 20 disputes.
507 In order to become initially certified by the division, paid
508 mediators must be certified by the Supreme Court to mediate
509 court cases in county or circuit courts. However, the division
510 may adopt, by rule, additional factors for the certification of
511 paid mediators, which must be related to experience, education,
512 or background. Any person initially certified as a paid mediator
513 by the division must, in order to continue to be certified,
514 comply with the factors or requirements adopted by rule.

515 (m) If a complaint is made, the division must conduct its
516 inquiry with due regard for the interests of the affected
517 parties. Within 30 days after receipt of a complaint, the
518 division shall acknowledge the complaint in writing and notify
519 the complainant whether the complaint is within the jurisdiction
520 of the division and whether additional information is needed by
521 the division from the complainant. The division shall conduct
522 its investigation and, within 90 days after receipt of the
523 original complaint or of timely requested additional
524 information, take action upon the complaint. However, the
525 failure to complete the investigation within 90 days does not

HB919

2023

526 prevent the division from continuing the investigation,
527 accepting or considering evidence obtained or received after 90
528 days, or taking administrative action if reasonable cause exists
529 to believe that a violation of this chapter or a rule has
530 occurred. If an investigation is not completed within the time
531 limits established in this paragraph, the division shall, on a
532 monthly basis, notify the complainant in writing of the status
533 of the investigation. When reporting its action to the
534 complainant, the division shall inform the complainant of any
535 right to a hearing under ss. 120.569 and 120.57. The division
536 may adopt rules regarding the submission of a complaint against
537 an association.

538 (n) Condominium association directors, officers, and
539 employees; condominium developers; bulk assignees, bulk buyers,
540 and community association managers; and community association
541 management firms have an ongoing duty to reasonably cooperate
542 with the division in any investigation under this section. The
543 division shall refer to local law enforcement authorities any
544 person whom the division believes has altered, destroyed,
545 concealed, or removed any record, document, or thing required to
546 be kept or maintained by this chapter with the purpose to impair
547 its verity or availability in the department's investigation.

548 (o) The division may:

549 1. Contract with agencies in the ~~this~~ state or other
550 jurisdictions to perform investigative functions; or

551 2. Accept grants-in-aid from any source.

552 (p) The division shall cooperate with similar agencies in
553 other jurisdictions to establish uniform filing procedures and
554 forms, public offering statements, advertising standards, and
555 rules and common administrative practices.

556 (q) The division shall consider notice to a developer,
557 bulk assignee, or bulk buyer to be complete when it is delivered
558 to the address of the developer, bulk assignee, or bulk buyer
559 currently on file with the division.

560 (r) In addition to its enforcement authority, the division
561 may issue a notice to show cause, which must provide for a
562 hearing, upon written request, in accordance with chapter 120.

563 (s) The division shall submit to the Governor, the
564 President of the Senate, the Speaker of the House of
565 Representatives, and the chairs of the legislative
566 appropriations committees an annual report that includes, but
567 need not be limited to, the number of training programs provided
568 for condominium association board members and unit owners, the
569 number of complaints received by type, the number and percent of
570 complaints acknowledged in writing within 30 days and the number
571 and percent of investigations acted upon within 90 days in
572 accordance with paragraph (m), and the number of investigations
573 exceeding the 90-day requirement. The annual report must also
574 include an evaluation of the division's core business processes
575 and make recommendations for improvements, including statutory

576 | changes. The report shall be submitted by September 30 following
 577 | the end of the fiscal year.

578 | Section 5. Subsection (2) of section 720.302, Florida
 579 | Statutes, is amended and subsection (6) is added to that section
 580 | to read:

581 | 720.302 Purposes, scope, and application; jurisdiction of
 582 | the division.—

583 | (2) The Legislature recognizes that it is not in the best
 584 | interest of homeowners' associations or the individual
 585 | association members thereof to create or impose a bureau or
 586 | other agency of state government to regulate the affairs of
 587 | homeowners' associations. However, in accordance with s.
 588 | 720.311, the Legislature finds that homeowners' associations and
 589 | their individual members will benefit from an expedited
 590 | alternative process for resolution of election and recall
 591 | disputes and presuit mediation of other disputes involving
 592 | covenant enforcement and authorizes the department to hear,
 593 | administer, and determine these disputes as more fully set forth
 594 | in this chapter. Further, the Legislature recognizes that
 595 | certain contract rights have been created for the benefit of
 596 | homeowners' associations and members thereof before the
 597 | effective date of this act and that ss. 720.301-720.407 are not
 598 | intended to impair such contract rights, including, but not
 599 | limited to, the rights of the developer to complete the
 600 | community as initially contemplated. Finally, the Legislature

601 recognizes that it is in the best interests of homeowners'
 602 associations and the individual association members thereof that
 603 complaints involving criminal activity be investigated
 604 thoroughly.

605 (6) The division has jurisdiction to accept and review
 606 complaints alleging criminal activity, whether before or after
 607 turnover of the association, and shall follow the procedures
 608 under s. 720.311(1)(b).

609 Section 6. Subsection (1), paragraphs (g) and (m) of
 610 subsection (4), subsection (5), and paragraph (c) of subsection
 611 (8) of section 720.303, Florida Statutes, are amended to read:

612 720.303 Association powers and duties; meetings of board;
 613 official records; budgets; financial reporting; association
 614 funds; recalls.—

615 (1) POWERS AND DUTIES.—

616 (a) An association which operates a community as defined
 617 in s. 720.301, must be operated by an association that is a
 618 Florida corporation. After October 1, 1995, the association must
 619 be incorporated and the initial governing documents must be
 620 recorded in the official records of the county in which the
 621 community is located. An association may operate more than one
 622 community.

623 (b) The officers and directors of an association have a
 624 fiduciary relationship to the members who are served by the
 625 association. As required by s. 617.0830, an officer or a

HB 919

2023

626 director shall discharge his or her duties in good faith, with
627 the care an ordinarily prudent person in a like position would
628 exercise under similar circumstances, and in a manner he or she
629 reasonably believes to be in the interests of the association.
630 An officer or a director is liable for monetary damages as
631 provided in s. 617.0834 if such officer or director breached or
632 failed to perform his or her duties and the breach of, or
633 failure to perform, his or her duties constitutes a violation of
634 criminal law as provided in s. 617.0834; constitutes a
635 transaction from which the officer or director derived an
636 improper personal benefit, either directly or indirectly; or
637 constitutes recklessness or an act or omission that was in bad
638 faith, with malicious purpose, or in a manner exhibiting wanton
639 and willful disregard of human rights, safety, or property.
640 Forgery of a ballot envelope or voting certificate used in a
641 homeowners' association election is punishable as provided in s.
642 831.01, the theft or embezzlement of funds of a homeowners'
643 association is punishable as provided in s. 812.014, and the
644 destruction of or the refusal to allow inspection or copying of
645 an official record of a homeowners' association that is
646 accessible to parcel owners within the time periods required by
647 general law in furtherance of any crime is punishable as
648 tampering with physical evidence as provided in s. 918.13 or as
649 obstruction of justice as provided in chapter 843. An officer or
650 a director charged by information or indictment with a crime

HB919

2023

651 referenced in this paragraph must be removed from office, and
652 the vacancy must be filled as provided in s. 720.306(9) until
653 the end of the officer's or director's period of suspension or
654 the end of his or her term of office, whichever occurs first. If
655 a criminal charge is pending against the officer or director, he
656 or she may not be appointed or elected to a position as an
657 officer or a director of any association and may not have access
658 to the official records of any association, except pursuant to a
659 court order. However, if the charges are resolved without a
660 finding of guilt, the officer or director must be reinstated for
661 the remainder of his or her term of office, if any.

662 (c) The powers and duties of an association include those
663 set forth in this chapter and, except as expressly limited or
664 restricted in this chapter, those set forth in the governing
665 documents. An association may not modify or restrict the use of
666 a parcel without amending its governing documents.

667 (d) After control of the association is obtained by
668 members other than the developer, the association may institute,
669 maintain, settle, or appeal actions or hearings in its name on
670 behalf of all members concerning matters of common interest to
671 the members, including, but not limited to, the common areas;
672 roof or structural components of a building, or other
673 improvements for which the association is responsible;
674 mechanical, electrical, or plumbing elements serving an
675 improvement or building for which the association is

676 responsible; representations of the developer pertaining to any
677 existing or proposed commonly used facility; and protesting ad
678 valorem taxes on commonly used facilities. The association may
679 defend actions in eminent domain or bring inverse condemnation
680 actions. Before commencing litigation against any party in the
681 name of the association involving amounts in controversy in
682 excess of \$100,000, the association must obtain the affirmative
683 approval of a majority of the voting interests at a meeting of
684 the membership at which a quorum has been attained. This
685 paragraph subsection does not limit any statutory or common-law
686 right of any individual member or class of members to bring any
687 action without participation by the association.

688 (e) A member does not have authority to act for the
689 association by virtue of being a member. An association may have
690 more than one class of members and may issue membership
691 certificates.

692 (f) An association of 15 or fewer parcel owners may
693 enforce only the requirements of those deed restrictions
694 established prior to the purchase of each parcel upon an
695 affected parcel owner or owners.

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

699 (g) A current roster of all members and their designated
700 mailing addresses and parcel identifications. A member's

HB919

2023

701 designated mailing address is the member's property address,
702 unless the member has sent written notice to the association
703 requesting that a different mailing address be used for all
704 required notices. The association shall also maintain the e-mail
705 electronic mailing addresses and the facsimile numbers
706 designated by members for receiving notice sent by electronic
707 transmission of those members consenting to receive notice by
708 electronic transmission. A member's e-mail address is the e-mail
709 address the member provided when consenting in writing to
710 receiving notice by electronic transmission unless the member
711 has sent written notice to the association requesting that a
712 different e-mail address be used for all required notices. The
713 e-mail ~~electronic mailing~~ addresses and facsimile numbers
714 provided by members ~~unit owners~~ to receive notice by electronic
715 transmission must ~~shall~~ be removed from association records when
716 the member revokes consent to receive notice by electronic
717 transmission ~~is revoked~~. However, the association is not liable
718 for an erroneous disclosure of the e-mail ~~electronic mail~~
719 address or the facsimile number for receiving electronic
720 transmission of notices.

721 (m) All affirmative acknowledgments made pursuant to s.
722 720.3085(4)(c)3 ~~s. 720.3085(3)(c)3~~.

723 (5) INSPECTION AND COPYING OF RECORDS.—The board of each
724 homeowners' association shall appoint an association member as a
725 recordkeeper whose responsibility is to maintain the official

726 records of the association during the time period of his or her
727 appointment. The board must specify the duration of such
728 appointment and may grant the recordkeeper additional authority
729 as needed. The name and contact information of the recordkeeper
730 must be displayed on the association's website and the
731 Department of State website. The official records shall be
732 maintained within the state for at least 7 years and shall be
733 made available to a parcel owner for inspection or photocopying
734 within 45 miles of the community or within the county in which
735 the association is located within 10 business days after receipt
736 by the board or its designee of a written request. This
737 subsection may be complied with by having a copy of the official
738 records available for inspection or copying in the community or,
739 at the option of the association, by making the records
740 available to a parcel owner electronically via the Internet or
741 by allowing the records to be viewed in electronic format on a
742 computer screen and printed upon request. If the association has
743 a photocopy machine available where the records are maintained,
744 it must provide parcel owners with copies on request during the
745 inspection if the entire request is limited to no more than 25
746 pages. An association shall allow a member or his or her
747 authorized representative to use a portable device, including a
748 smartphone, tablet, portable scanner, or any other technology
749 capable of scanning or taking photographs, to make an electronic
750 copy of the official records in lieu of the association's

HB919

2023

751 providing the member or his or her authorized representative
752 with a copy of such records. The association may not charge a
753 fee to a member or his or her authorized representative for the
754 use of a portable device.

755 (a) The failure of an association to provide access to the
756 records within 10 business days after receipt of a written
757 request submitted by certified mail, return receipt requested,
758 creates a rebuttable presumption that the association willfully
759 failed to comply with this subsection.

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

766 (c) The association may adopt reasonable written rules
767 governing the frequency, time, location, notice, records to be
768 inspected, and manner of inspections, but may not require a
769 parcel owner to demonstrate any proper purpose for the
770 inspection, state any reason for the inspection, or limit a
771 parcel owner's right to inspect records to less than one 8-hour
772 business day per month. The association may impose fees to cover
773 the costs of providing copies of the official records, including
774 the costs of copying and the costs required for personnel to
775 retrieve and copy the records if the time spent retrieving and

HB919

2023

776 copying the records exceeds one-half hour and if the personnel
777 costs do not exceed \$20 per hour. Personnel costs may not be
778 charged for records requests that result in the copying of 25 or
779 fewer pages. The association may charge up to 25 cents per page
780 for copies made on the association's photocopier. If the
781 association does not have a photocopy machine available where
782 the records are kept, or if the records requested to be copied
783 exceed 25 pages in length, the association may have copies made
784 by an outside duplicating service and may charge the actual cost
785 of copying, as supported by the vendor invoice. The association
786 shall maintain an adequate number of copies of the recorded
787 governing documents, to ensure their availability to members and
788 prospective members. Notwithstanding this paragraph, the
789 following records are not accessible to members or parcel
790 owners:

791 1. Any record protected by the lawyer-client privilege as
792 described in s. 90.502 and any record protected by the work-
793 product privilege, including, but not limited to, a record
794 prepared by an association attorney or prepared at the
795 attorney's express direction which reflects a mental impression,
796 conclusion, litigation strategy, or legal theory of the attorney
797 or the association and which was prepared exclusively for civil
798 or criminal litigation or for adversarial administrative
799 proceedings or which was prepared in anticipation of such
800 litigation or proceedings until the conclusion of the litigation

HB919

2023

801 or proceedings.

802 2. Information obtained by an association in connection
803 with the approval of the lease, sale, or other transfer of a
804 parcel, but only to the extent the record contains protected
805 personal identifying information or any other information that
806 is protected by applicable state or federal privacy laws. Any
807 such protected information must be redacted from the records by
808 the association and the redacted records must be made available
809 to a parcel owner for inspection or photocopying if requested.

810 3. Information an association obtains in a gated community
811 in connection with guests' visits to parcel owners or community
812 residents.

813 4. Personnel records of association or management company
814 employees, including, but not limited to, disciplinary, payroll,
815 health, and insurance records. For purposes of this
816 subparagraph, the term "personnel records" does not include
817 written employment agreements with an association or management
818 company employee or budgetary or financial records that indicate
819 the compensation paid to an association or management company
820 employee.

821 5. Medical records of parcel owners or community
822 residents.

823 6. Social security numbers, driver license numbers, credit
824 card numbers, e-mail ~~electronic mailing~~ addresses, telephone
825 numbers, facsimile numbers, emergency contact information, any

HB919

2023

826 addresses for a parcel owner other than as provided for
827 association notice requirements, and other personal identifying
828 information of any person, excluding the person's name, parcel
829 designation, mailing address, and property address.
830 Notwithstanding the restrictions in this subparagraph, an
831 association may print and distribute to parcel owners a
832 directory containing the name, parcel address, and all telephone
833 numbers of each parcel owner. However, an owner may exclude his
834 or her telephone numbers from the directory by so requesting in
835 writing to the association. An owner may consent in writing to
836 the disclosure of other contact information described in this
837 subparagraph. The association is not liable for the disclosure
838 of information that is protected under this subparagraph if the
839 information is included in an official record of the association
840 and is voluntarily provided by an owner and not requested by the
841 association.

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

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

848 9. All affirmative acknowledgments made pursuant to s.
849 720.3085(4)(c)3. ~~s. 720.3085(3)(c)3.~~

850 (d) The association or its authorized agent is not

HB 919

2023

851 required to provide a prospective purchaser or lienholder with
852 information about the residential subdivision or the association
853 other than information or documents required by this chapter to
854 be made available or disclosed. The association or its
855 authorized agent may charge a reasonable fee to the prospective
856 purchaser or lienholder or the current parcel owner or member
857 for providing good faith responses to requests for information
858 by or on behalf of a prospective purchaser or lienholder, other
859 than that required by law, if the fee does not exceed \$150 plus
860 the reasonable cost of photocopying and any attorney fees
861 incurred by the association in connection with the response.

862 (8) ASSOCIATION FUNDS; COMMINGLING.—

863 (c) Association funds and reserve funds may not be used by
864 a developer, the association, or elected board members to defend
865 a civil or criminal action, administrative proceeding, or
866 arbitration proceeding or to pay attorney fees relating to such
867 action or proceeding ~~that has been filed against the developer~~
868 ~~or directors appointed to the association board by the~~
869 ~~developer~~, even when the subject of the action or proceeding
870 concerns the operation of the developer-controlled association.

871 Section 7. Paragraph (d) of subsection (4) of section
872 720.304, Florida Statutes, is amended to read:

873 720.304 Right of owners to peaceably assemble; display of
874 flag; SLAPP suits prohibited.—

875 (4) It is the intent of the Legislature to protect the

876 right of parcel owners to exercise their rights to instruct
 877 their representatives and petition for redress of grievances
 878 before the various governmental entities of this state as
 879 protected by the First Amendment to the United States
 880 Constitution and s. 5, Art. I of the State Constitution. The
 881 Legislature recognizes that "Strategic Lawsuits Against Public
 882 Participation" or "SLAPP" suits, as they are typically called,
 883 have occurred when members are sued by individuals, business
 884 entities, or governmental entities arising out of a parcel
 885 owner's appearance and presentation before a governmental entity
 886 on matters related to the homeowners' association. However, it
 887 is the public policy of this state that government entities,
 888 business organizations, and individuals not engage in SLAPP
 889 suits because such actions are inconsistent with the right of
 890 parcel owners to participate in the state's institutions of
 891 government. Therefore, the Legislature finds and declares that
 892 prohibiting such lawsuits by governmental entities, business
 893 entities, and individuals against parcel owners who address
 894 matters concerning their homeowners' association will preserve
 895 this fundamental state policy, preserve the constitutional
 896 rights of parcel owners, and assure the continuation of
 897 representative government in this state. It is the intent of the
 898 Legislature that such lawsuits be expeditiously disposed of by
 899 the courts.

900 (d) Homeowners' associations may not expend association

901 funds or reserve funds in prosecuting a SLAPP suit against a
 902 parcel owner.

903 Section 8. Subsections (1), (2), and (5) of section
 904 720.305, Florida Statutes, are amended, and subsection (7) is
 905 added to that section to read:

906 720.305 Obligations of members; remedies at law or in
 907 equity; levy of fines and suspension of use rights.—

908 (1) Each member and the member's tenants, guests, and
 909 invitees, and each association, are governed by, and must comply
 910 with, this chapter, the governing documents of the community,
 911 and the rules of the association. Actions at law or in equity,
 912 or both, to redress alleged failure or refusal to comply with
 913 these provisions may be brought by the association or by any
 914 member against:

915 (a) The association;

916 (b) A member;

917 (c) Any director or officer of an association who
 918 willfully and knowingly fails to comply with these provisions;
 919 and

920 (d) Any tenants, guests, or invitees occupying a parcel or
 921 using the common areas.

922

923 The prevailing party in any such litigation is entitled to
 924 recover reasonable attorney fees and costs as provided in
 925 paragraph (2) (e). A member prevailing in an action between the

HB919

2023

926 association and the member under this section, in addition to
927 recovering his or her reasonable attorney fees, may recover
928 additional amounts as determined by the court to be necessary to
929 reimburse the member for his or her share of assessments levied
930 by the association to fund its expenses of the litigation. This
931 relief does not exclude other remedies provided by law. This
932 section does not deprive any person of any other available right
933 or remedy.

934 (2) An association may levy reasonable fines for
935 violations of the declaration, association's bylaws, or
936 reasonable rules of the association. A fine may not exceed \$100
937 per violation against any member or any member's tenant, guest,
938 or invitee for the failure of the owner of the parcel or its
939 occupant, licensee, or invitee to comply with any provision of
940 the declaration, the association bylaws, or reasonable rules of
941 the association unless otherwise provided in the governing
942 documents; however, a fine may not exceed \$1,000 per violation.
943 ~~A fine may be levied by the board for each day of a continuing~~
944 ~~violation, with a single notice and opportunity for hearing,~~
945 ~~except that the fine may not exceed \$1,000 in the aggregate~~
946 ~~unless otherwise provided in the governing documents.~~ A fine of
947 less than \$1,000 or less may not become a lien against a parcel
948 and fines may not be aggregated to create a lien against a
949 parcel. In any action to recover a fine, the prevailing party is
950 entitled to reasonable attorney fees and costs from the

951 nonprevailing party as provided in paragraph (e) ~~determined by~~
 952 ~~the court.~~

953 (a) An association may suspend, for a reasonable period of
 954 time, the right of a member, or a member's tenant, guest, or
 955 invitee, to use common areas and facilities for the failure of
 956 the owner of the parcel or its occupant, licensee, or invitee to
 957 comply with any provision of the declaration, the association
 958 bylaws, or reasonable rules of the association. This paragraph
 959 does not apply to that portion of common areas used to provide
 960 access or utility services to the parcel. A suspension may not
 961 prohibit an owner or tenant of a parcel from having vehicular
 962 and pedestrian ingress to and egress from the parcel, including,
 963 but not limited to, the right to park.

964 (b) A fine or suspension levied for a violation by the
 965 board of administration may not be imposed unless the board
 966 first provides at least 30 ~~14~~ days' notice to the parcel owner
 967 at his or her designated mailing or e-mail address in the
 968 association's official records and, if applicable, any occupant,
 969 licensee, or invitee of the parcel owner, sought to be fined or
 970 suspended and ~~an opportunity for~~ a hearing before a committee of
 971 at least three members appointed by the board who are not
 972 officers, directors, or employees of the association, or the
 973 spouse, parent, child, brother, or sister of an officer,
 974 director, or employee. The notice must include a description of
 975 the alleged violation, the specific action required to cure such

HB919

2023

976 violation, and the date and location of the hearing. A parcel
977 owner has the right to attend a hearing by telephone or other
978 electronic means.

979 (c) If the committee, by majority vote, does not approve a
980 proposed fine or suspension, the proposed fine or suspension may
981 not be imposed. If the committee, by majority vote, determines
982 that a violation does not exist then no other action may be
983 taken related to that alleged violation. The role of the
984 committee is limited to determining whether a violation exists
985 and whether to approve ~~confirm~~ or reject the fine or suspension
986 levied by the board.

987 (d) After the hearing, the committee shall provide written
988 notice to the parcel owner at his or her designated mailing or
989 e-mail address in the association's official records and, if
990 applicable, any occupant, licensee, or invitee of the parcel
991 owner, of the committee's findings related to the violation,
992 including any applicable fines or suspensions that the committee
993 approved or rejected, and how the parcel owner or any occupant,
994 licensee, or invitee of the parcel owner may cure the violation.

995 (e) Fines, suspensions, attorney fees, and costs are
996 imposed as follows:

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

1000 2. If a violation is found and the proposed fine or

1001 suspension levied by the board is approved by the committee, the
 1002 committee must decide, by majority vote, a date that the fine
 1003 payment is due, which date must be at least 30 days after
 1004 delivery of the written notice required in paragraph (d).

1005 3. If a violation is found and the proposed fine or
 1006 suspension levied by the board is approved by the committee, but
 1007 the violation is cured within 30 days after delivery of the
 1008 written notice required in paragraph (d), the fine must be
 1009 reduced by 50 percent, any applicable suspensions must be
 1010 lifted, and attorney fees and costs may not be awarded.

1011 4. If a violation is found and the proposed fine or
 1012 suspension levied by the board is approved by the committee and
 1013 the violation is not cured or the fine is not paid within 30
 1014 days after delivery of the written notice required in paragraph
 1015 (d), reasonable attorney fees and costs may be awarded to the
 1016 association.

1017 (f) A parcel owner or any occupant, licensee, or invitee
 1018 of the parcel owner may, at any time, make a written request for
 1019 a detailed accounting of any amounts he or she owes to the
 1020 association and the board shall provide such information within
 1021 10 days after receipt of the written request. Failure by the
 1022 board to respond to a written request for a detailed accounting
 1023 constitutes a complete waiver of the violation.

1024 (g) Upon receipt of a payment for any outstanding fines
 1025 from a parcel owner or any occupant, licensee, or invitee of the

HB919

2023

1026 parcel owner, the board must apply the payment first to the fine
1027 before satisfying any other amounts due to the association.
1028 Attorney fees and costs may not continue to accrue after a
1029 parcel owner or any occupant, licensee, or invitee of the parcel
1030 owner pays the fine.

1031 (h) A parcel owner or any occupant, licensee, or invitee
1032 of the parcel owner may request a hearing before the board to
1033 dispute the reasonableness of the attorney fees and costs
1034 awarded to the association 5 days after notice of the approved
1035 fine is provided to the parcel owner and, if applicable, to any
1036 occupant, licensee, or invitee of the parcel owner. The
1037 association must provide written notice of such fine or
1038 suspension by mail or hand delivery to the parcel owner and, if
1039 applicable, to any occupant, licensee, or invitee of the parcel
1040 owner.

1041 (5) All suspensions imposed under ~~pursuant to~~ subsection
1042 (3) or subsection (4) must be approved at a properly noticed
1043 board meeting. Upon approval, the board association must send
1044 written notice to ~~notify~~ the parcel owner and, if applicable,
1045 the parcel's occupant, licensee, or invitee by mail or hand
1046 delivery to the parcel owner's designated mailing or e-mail
1047 address in the association's official records.

1048 (7) The failure of the association or committee to comply
1049 with this section constitutes a waiver of all fines or
1050 suspensions imposed or proposed for a violation. Any fines,

HB919

2023

1051 fees, or other costs incurred by a parcel owner or any occupant,
1052 licensee, or invitee of the parcel owner which is related to a
1053 fine that is waived under this subsection must also be waived or
1054 paid by the association if such fine, fee, or other cost is not
1055 waivable.

1056 Section 9. Paragraph (c) of subsection (1) of section
1057 720.306, Florida Statutes, is amended to read:

1058 720.306 Meetings of members; voting and election
1059 procedures; amendments.—

1060 (1) QUORUM; AMENDMENTS.—

1061 (c) An association may not modify or restrict the use of a
1062 parcel without amending its governing documents. Unless
1063 otherwise provided in the governing documents as originally
1064 recorded or permitted by this chapter or chapter 617, an
1065 amendment may not materially and adversely alter the
1066 proportionate voting interest appurtenant to a parcel or
1067 increase the proportion or percentage by which a parcel shares
1068 in the common expenses of the association unless the record
1069 parcel owner and all record owners of liens on the parcels join
1070 in the execution of the amendment. For purposes of this section,
1071 a change in quorum requirements is not an alteration of voting
1072 interests. The merger or consolidation of one or more
1073 associations under a plan of merger or consolidation under part
1074 I of chapter 607 or chapter 617 is not a material or adverse
1075 alteration of the proportionate voting interest appurtenant to a

1076 parcel.

1077 Section 10. Subsections (1) through (8) of section
 1078 720.3085, Florida Statutes, are renumbered as subsections (2)
 1079 through (9), respectively, paragraph (c) of present subsection
 1080 (1), present subsection (5), and paragraph (a) of present
 1081 subsection (8) are amended, and a new subsection (1) is added to
 1082 that section, to read:

1083 720.3085 Priority of payments; payment for assessments;
 1084 lien claims.-

1085 (1) An association must apply payments made by a parcel
 1086 owner first to any outstanding amounts due as designated by the
 1087 parcel owner on the payment instrument or otherwise in writing.
 1088 If the parcel owner does not designate on the payment instrument
 1089 or in writing to which outstanding amount the payment is for,
 1090 the association must apply the payment to the parcel owner's
 1091 outstanding amounts in the following order:

- 1092 (a) Regularly occurring assessments.
- 1093 (b) Special assessments.
- 1094 (c) Fines.
- 1095 (d) Interest.
- 1096 (e) Other fees or costs charged by the association to the
 1097 parcel owner, including attorney fees and costs.

1098 (2)~~(1)~~ When authorized by the governing documents, the
 1099 association has a lien on each parcel to secure the payment of
 1100 assessments and other amounts provided for by this section.

HB919

2023

1101 Except as otherwise set forth in this section, the lien is
1102 effective from and shall relate back to the date on which the
1103 original declaration of the community was recorded. However, as
1104 to first mortgages of record, the lien is effective from and
1105 after recording of a claim of lien in the public records of the
1106 county in which the parcel is located. This subsection does not
1107 bestow upon any lien, mortgage, or certified judgment of record
1108 on July 1, 2008, including the lien for unpaid assessments
1109 created in this section, a priority that, by law, the lien,
1110 mortgage, or judgment did not have before July 1, 2008.

1111 (c) A lien against a parcel is not foreclosable and will
1112 stay on the parcel until it is paid, settled, or released. The
1113 association may not bring an action in its name to foreclose a
1114 lien for assessments in the same manner in which a mortgage of
1115 real property is foreclosed. The association ~~and~~ ~~may also~~ bring
1116 an action to recover a money judgment for the unpaid assessments
1117 without waiving any claim of lien as long as the money judgment
1118 action is brought in the same lawsuit as the claim of lien. The
1119 association is entitled to recover its reasonable attorney
1120 ~~attorney's~~ fees incurred in ~~an action to foreclose a lien or an~~
1121 action to recover a money judgment for unpaid assessments.

1122 ~~(6)(5)~~ The association may bring an action in its name to
1123 foreclose a lien for unpaid assessments secured by a lien in the
1124 same manner that a mortgage of real property is foreclosed and
1125 may also bring an action to recover a money judgment for the

1126 unpaid assessments without waiving any claim of lien. The action
 1127 to foreclose the lien may not be brought until 45 days after the
 1128 parcel owner has been provided notice of the association's
 1129 intent to foreclose and collect the unpaid amount. The notice
 1130 must be given in the manner provided in paragraph (5) (b) ~~(4) (b)~~,
 1131 and the notice may not be provided until the passage of the 45
 1132 days required in paragraph (5) (a) ~~(4) (a)~~. The notice must be in
 1133 substantially the following form:

1134
 1135 DELINQUENT ASSESSMENT
 1136

1137 This letter is to inform you a Claim of Lien has been filed
 1138 against your property because you have not paid the ... (type of
 1139 assessment)... assessment to ... (name of association).... The
 1140 association intends to foreclose the lien and collect the unpaid
 1141 amount within 45 days of this letter being provided to you.

1142
 1143 You owe the interest accruing from ... (month/year)... to the
 1144 present. As of the date of this letter, the total amount due
 1145 with interest is \$..... All costs of any action and interest
 1146 from this day forward will also be charged to your account.

1147
 1148 Any questions concerning this matter should be directed to
 1149 ... (insert name, addresses, and telephone numbers of association
 1150 representative)....

1151 (a) The association may recover any interest, late
 1152 charges, costs, and reasonable attorney ~~attorney's~~ fees incurred
 1153 in a lien foreclosure action or in an action to recover a money
 1154 judgment for the unpaid assessments.

1155 (b) The time limitations in this subsection do not apply
 1156 if the parcel is subject to a foreclosure action or forced sale
 1157 of another party, or if an owner of the parcel is a debtor in a
 1158 bankruptcy proceeding.

1159 ~~(9) (a) (8) (a)~~ If the parcel is occupied by a tenant and the
 1160 parcel owner is delinquent in paying any monetary obligation due
 1161 to the association, the association may demand that the tenant
 1162 pay to the association the subsequent rental payments and
 1163 continue to make such payments until all the monetary
 1164 obligations of the parcel owner related to the parcel have been
 1165 paid in full to the association and the association releases the
 1166 tenant or until the tenant discontinues tenancy in the parcel.

1167 1. The association must provide the tenant a notice, by
 1168 hand delivery or United States mail, in substantially the
 1169 following form:

1170
 1171 Pursuant to section 720.3085(9) ~~720.3085(8)~~, Florida
 1172 Statutes, we demand that you make your rent payments
 1173 directly to the homeowners' association and continue doing
 1174 so until the association notifies you otherwise.
 1175 Payment due the homeowners' association may be in the same

1176 form as you paid your landlord and must be sent by United
 1177 States mail or hand delivery to ...(full address)...,
 1178 payable to ...(name)....

1179 Your obligation to pay your rent to the association begins
 1180 immediately, unless you have already paid rent to your
 1181 landlord for the current period before receiving this
 1182 notice. In that case, you must provide the association
 1183 written proof of your payment within 14 days after
 1184 receiving this notice and your obligation to pay rent to
 1185 the association would then begin with the next rental
 1186 period.

1187 Pursuant to section 720.3085(9) ~~720.3085(8)~~, Florida
 1188 Statutes, your payment of rent to the association gives you
 1189 complete immunity from any claim for the rent by your
 1190 landlord.

1191
 1192 2. A tenant is immune from any claim by the parcel owner
 1193 related to the rent timely paid to the association after the
 1194 association has made written demand.

1195 Section 11. Subsection (1) and paragraphs (a) and (b) of
 1196 subsection (2) of section 720.311, Florida Statutes, are amended
 1197 to read:

1198 720.311 Dispute resolution; complaints alleging criminal
 1199 activity.-

1200 (1) (a) The Legislature finds that alternative dispute

1201 resolution has made progress in reducing court dockets and
 1202 trials and in offering a more efficient, cost-effective option
 1203 to litigation. The filing of any petition for arbitration or the
 1204 serving of a demand for presuit mediation as provided for in
 1205 this section shall toll the applicable statute of limitations.
 1206 Any recall dispute filed with the department under s.
 1207 720.303(10) shall be conducted by the department in accordance
 1208 with the provisions of ss. 718.112(2)(1) and 718.1255 and the
 1209 rules adopted by the division. In addition, the department shall
 1210 conduct binding arbitration of election disputes between a
 1211 member and an association in accordance with s. 718.1255 and
 1212 rules adopted by the division. Election disputes and recall
 1213 disputes are not eligible for presuit mediation; these disputes
 1214 must be arbitrated by the department or filed in a court of
 1215 competent jurisdiction. At the conclusion of an arbitration
 1216 proceeding, the department shall charge the parties a fee in an
 1217 amount adequate to cover all costs and expenses incurred by the
 1218 department in conducting the proceeding. Initially, the
 1219 petitioner shall remit a filing fee of at least \$200 to the
 1220 department. The fees paid to the department shall become a
 1221 recoverable cost in the arbitration proceeding, and the
 1222 prevailing party in an arbitration proceeding shall recover its
 1223 reasonable costs and attorney fees in an amount found reasonable
 1224 by the arbitrator.

1225 (b) The division must, within 72 hours after receiving a

1226 complaint, review the complaint and determine whether the
 1227 complaint, on its face, alleges any criminal activity. If the
 1228 division determines that a complaint contains allegations of
 1229 criminal activity, the division shall forward the complaint to
 1230 the Department of Law Enforcement for investigation.

1231 (c) The department shall adopt rules to implement
 1232 ~~effectuate the purposes of~~ this section.

1233 (2) (a) Disputes between an association and a parcel owner
 1234 regarding violations, fines, suspensions, or use of or changes
 1235 to the parcel or the common areas and other covenant enforcement
 1236 disputes; ~~;~~ disputes regarding amendments to the association
 1237 documents; disputes related to an alleged violation of the
 1238 governing documents and any fines related to the alleged
 1239 violation which subsequently are deemed covered assessments;
 1240 and ~~;~~ disputes regarding meetings of the board and committees
 1241 appointed by the board, membership meetings not including
 1242 election meetings, and access to the official records of the
 1243 association must ~~shall~~ be the subject of a demand for presuit
 1244 mediation served by an aggrieved party before the dispute is
 1245 filed in court. Presuit mediation proceedings must be conducted
 1246 in accordance with the applicable Florida Rules of Civil
 1247 Procedure, and these proceedings are privileged and confidential
 1248 to the same extent as court-ordered mediation. Disputes not
 1249 subject to presuit mediation under this section ~~shall not~~
 1250 include the collection of any regular or special assessment~~;~~

HB 919

2023

1251 ~~fine, or other financial obligation, including attorney's fees~~
1252 ~~and costs,~~ claimed to be due or any action to enforce a prior
1253 mediation settlement agreement between the parties. Also, in any
1254 dispute subject to presuit mediation under this section where
1255 emergency relief is required, a motion for temporary injunctive
1256 relief may be filed with the court without first complying with
1257 the presuit mediation requirements of this section. After any
1258 issues regarding emergency or temporary relief are resolved, the
1259 court may either refer the parties to a mediation program
1260 administered by the courts or require mediation under this
1261 section. An arbitrator or judge may not consider any information
1262 or evidence arising from the presuit mediation proceeding except
1263 in a proceeding to impose sanctions for failure to attend a
1264 presuit mediation session or to enforce a mediated settlement
1265 agreement. Persons who are not parties to the dispute may not
1266 attend the presuit mediation conference without the consent of
1267 all parties, except for counsel for the parties and a corporate
1268 representative designated by the association. When mediation is
1269 attended by a quorum of the board, such mediation is not a board
1270 meeting for purposes of notice and participation set forth in s.
1271 720.303. An aggrieved party shall serve on the responding party
1272 a written demand to participate in presuit mediation in
1273 substantially the following form:

1274

1275

STATUTORY OFFER TO PARTICIPATE

IN PRESUIT MEDIATION

1276
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The alleged aggrieved party,, hereby demands that, as the responding party, engage in mandatory presuit mediation in connection with the following disputes, which by statute are of a type that are subject to presuit mediation:

(List specific nature of the dispute or disputes to be mediated and the authority supporting a finding of a violation as to each dispute.)

Pursuant to section 720.311, Florida Statutes, this demand to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the parties are required to engage in presuit mediation with a neutral third-party mediator in order to attempt to resolve this dispute without court action, and the aggrieved party demands that you likewise agree to this process. If you fail to participate in the mediation process, suit may be brought against you without further warning.

1301 The process of mediation involves a supervised
1302 negotiation process in which a trained, neutral third-
1303 party mediator meets with both parties and assists
1304 them in exploring possible opportunities for resolving
1305 part or all of the dispute. By agreeing to participate
1306 in presuit mediation, you are not bound in any way to
1307 change your position. Furthermore, the mediator has no
1308 authority to make any decisions in this matter or to
1309 determine who is right or wrong and merely acts as a
1310 facilitator to ensure that each party understands the
1311 position of the other party and that all options for
1312 reasonable settlement are fully explored.

1313
1314 If an agreement is reached, it shall be reduced to
1315 writing and becomes a binding and enforceable
1316 commitment of the parties. A resolution of one or more
1317 disputes in this fashion avoids the need to litigate
1318 these issues in court. The failure to reach an
1319 agreement, or the failure of a party to participate in
1320 the process, results in the mediator declaring an
1321 impasse in the mediation, after which the aggrieved
1322 party may proceed to court on all outstanding,
1323 unsettled disputes. If you have failed or refused to
1324 participate in the entire mediation process, you will
1325 not be entitled to recover attorney ~~attorney's~~ fees,

1326 | even if you prevail.

1327 |

1328 | The aggrieved party has selected and hereby lists five
 1329 | certified mediators who we believe to be neutral and
 1330 | qualified to mediate the dispute. You have the right
 1331 | to select any one of these mediators. The fact that
 1332 | one party may be familiar with one or more of the
 1333 | listed mediators does not mean that the mediator
 1334 | cannot act as a neutral and impartial facilitator. Any
 1335 | mediator who cannot act in this capacity is required
 1336 | ethically to decline to accept engagement. The
 1337 | mediators that we suggest, and their current hourly
 1338 | rates, are as follows:

1339 |

1340 | (List the names, addresses, telephone numbers, and
 1341 | hourly rates of the mediators. Other pertinent
 1342 | information about the background of the mediators may
 1343 | be included as an attachment.)

1344 |

1345 | You may contact the offices of these mediators to
 1346 | confirm that the listed mediators will be neutral and
 1347 | will not show any favoritism toward either party. The
 1348 | Florida Supreme Court can provide you a list of
 1349 | certified mediators.

1350 |

1351 Unless otherwise agreed by the parties, section
 1352 720.311(2)(b), Florida Statutes, requires that the
 1353 parties share the costs of presuit mediation equally,
 1354 including the fee charged by the mediator. An average
 1355 mediation may require three to four hours of the
 1356 mediator's time, including some preparation time, and
 1357 the parties would need to share equally the mediator's
 1358 fees as well as their own attorney ~~attorney's~~ fees if
 1359 they choose to employ an attorney in connection with
 1360 the mediation. However, use of an attorney is not
 1361 required and is at the option of each party. The
 1362 mediators may require the advance payment of some or
 1363 all of the anticipated fees. The aggrieved party
 1364 hereby agrees to pay or prepay one-half of the
 1365 mediator's estimated fees and to forward this amount
 1366 or such other reasonable advance deposits as the
 1367 mediator requires for this purpose. Any funds
 1368 deposited will be returned to you if these are in
 1369 excess of your share of the fees incurred.

1370
 1371 To begin your participation in presuit mediation to
 1372 try to resolve the dispute and avoid further legal
 1373 action, please sign below and clearly indicate which
 1374 mediator is acceptable to you. We will then ask the
 1375 mediator to schedule a mutually convenient time and

1376 place for the mediation conference to be held. The
 1377 mediation conference must be held within 90 days after
 1378 ~~ninety (90) days of~~ this date, unless extended by
 1379 mutual written agreement. In the event that you fail
 1380 to respond within 45 ~~20~~ days after ~~from~~ the date of
 1381 this letter, or if you fail to agree to at least one
 1382 of the mediators that we have suggested or to pay or
 1383 prepay to the mediator one-half of the costs involved,
 1384 the aggrieved party will be authorized to proceed with
 1385 the filing of a lawsuit against you without further
 1386 notice and may seek an award of attorney ~~attorney's~~
 1387 fees or costs incurred in attempting to obtain
 1388 mediation.

1389
 1390 Therefore, please give this matter your immediate
 1391 attention. By law, your response must be mailed by
 1392 certified mail, return receipt requested, and by
 1393 first-class mail to the address shown on this demand.

1394
 1395
 1396

1397
 1398 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR
 1399 AGREEMENT TO THAT CHOICE.

1400

AGREEMENT TO MEDIATE

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The undersigned hereby agrees to participate in presuit mediation and agrees to attend a mediation conducted by the following mediator or mediators who are listed above as someone who would be acceptable to mediate this dispute:

(List acceptable mediator or mediators.)

I/we further agree to pay or prepay one-half of the mediator's fees and to forward such advance deposits as the mediator may require for this purpose.

.....
Signature of responding party #1

.....
Telephone contact information

.....
Signature and telephone contact information of responding party #2 (if applicable) (if property is owned by more than one person, all owners must sign)

HB 919

2023

1426 (b) Service of the statutory demand to participate in
1427 presuit mediation is ~~shall be~~ effected by sending a letter in
1428 substantial conformity with the above form by certified mail,
1429 return receipt requested, with an additional copy being sent by
1430 regular first-class mail, to the address of the responding party
1431 as it last appears on the books and records of the association.
1432 The responding party has 45 ~~20~~ days after ~~from~~ the date of the
1433 mailing of the statutory demand to serve a response to the
1434 aggrieved party in writing. The response must ~~shall~~ be served by
1435 certified mail, return receipt requested, with an additional
1436 copy being sent by regular first-class mail, to the address
1437 shown on the statutory demand. Notwithstanding the foregoing,
1438 once the parties have agreed on a mediator, the mediator may
1439 reschedule the mediation for a date and time mutually convenient
1440 to the parties. The parties shall share the costs of presuit
1441 mediation equally, including the fee charged by the mediator, if
1442 any, unless the parties agree otherwise, and the mediator may
1443 require advance payment of its reasonable fees and costs. The
1444 failure of any party to respond to a demand or response, to
1445 agree upon a mediator, to make payment of fees and costs within
1446 the time established by the mediator, or to appear for a
1447 scheduled mediation session without the approval of the
1448 mediator, constitutes ~~shall constitute the~~ failure or refusal to
1449 participate in the mediation process and operates ~~shall operate~~
1450 as an impasse in the presuit mediation by such party, entitling

1451 the other party to proceed in court and to seek an award of the
 1452 costs and fees associated with the mediation. Additionally,
 1453 notwithstanding the provisions of any other law or document,
 1454 persons who fail or refuse to participate in the entire
 1455 mediation process may not recover attorney ~~attorney's~~ fees and
 1456 costs in subsequent litigation relating to the dispute. If any
 1457 presuit mediation session cannot be scheduled and conducted
 1458 within 90 days after the offer to participate in mediation was
 1459 filed, an impasse is ~~shall be~~ deemed to have occurred unless
 1460 both parties agree to extend this deadline.

1461 Section 12. Subsection (2) of section 720.402, Florida
 1462 Statutes, is amended to read:

1463 720.402 Publication of false and misleading information.—

1464 (2) In any action for relief under this section, the
 1465 prevailing party may recover reasonable attorney ~~attorney's~~
 1466 fees. A developer may not expend association funds or reserves
 1467 in the defense of any suit under this section.

1468 Section 13. Section 943.71, Florida Statutes, is created
 1469 to read:

1470 943.71 Powers related to community associations.—In order
 1471 to ensure that the rights of unit owners and parcel owners of
 1472 community associations are protected and violations of the law
 1473 are expeditiously resolved, the department has the authority to
 1474 investigate complaints alleging violations of general law by:

1475 (1) A condominium association and its board of

HB919

2023

1476 administration, as those terms are defined in s. 718.103(2) and
 1477 (4), respectively.

1478 (2) A cooperative association and its board of
 1479 administration, as those terms are defined in s. 719.103(2) and
 1480 (3), respectively.

1481 (3) A homeowners' association as defined in s. 720.301 and
 1482 its officers or board of directors.

1483 Section 14. This act shall take effect October 1, 2023.