

HOUSE BILL No. 1286

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-37; IC 32-21-5-8.5; IC 32-25; IC 32-25.5.

Synopsis: Homeowners associations; condominiums. Requires that certain disclosures must be made relating to the sale of property subject to a homeowners association. Describes conditions under which a condominium declaration may be amended. Describes analogous conditions under which the governing documents of a homeowners association may be amended. Removes a geographic restriction on the application of a provision relating to the consent necessary for the co-owners of a condominium to convey common areas and facilities. Establishes a procedure to resolve certain disputes between a co-owner and a condominium association. Establishes an analogous procedure to resolve disputes between a member and a homeowners association. Provides that certain requirements must be met for a proxy to be valid if used at a meeting of a homeowners association. Reorganizes certain statutes relating to homeowners associations. Repeals certain statutes that are reorganized. Establishes the homeowners association study committee. Requires the study committee to study homeowners associations in Indiana, including mediation or arbitration of disputes involving homeowners associations and members of homeowners associations. Provides that the law establishing the committee expires January 1, 2017.

Effective: July 1, 2015.

Burton

January 13, 2015, read first time and referred to Committee on Government and Regulatory Reform.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1286



A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 2-5-37 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]:
4 **Chapter 37. Homeowners Association Study Committee**
5 **Sec. 1. As used in this chapter, "committee" refers to the**
6 **homeowners association study committee established by section 2**
7 **of this chapter.**
8 **Sec. 2. The homeowners association study committee is**
9 **established.**
10 **Sec. 3. The committee consists of the following members:**
11 **(1) Four (4) members of the house appointed by the speaker.**
12 **Not more than two (2) members appointed under this**
13 **subdivision may be members of the same political party.**
14 **(2) Four (4) members of the senate appointed by the president**
15 **pro tempore. Not more than two (2) members appointed**



1 under this subdivision may be members of the same political
2 party.

3 **Sec. 4. The chairman of the legislative council shall appoint the**
4 **committee's chair.**

5 **Sec. 5. IC 2-5-1.2 applies to the committee.**

6 **Sec. 6. The committee shall study homeowners associations in**
7 **Indiana, including the use of mediation or arbitration of disputes**
8 **involving homeowners associations and members of homeowners**
9 **associations.**

10 **Sec. 7. This chapter expires January 1, 2017.**

11 SECTION 2. IC 32-21-5-8.5 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2015]: **Sec. 8.5. (a) This section applies to all transfers of title to**
14 **property after June 30, 2015.**

15 **(b) The definitions in IC 32-25.5-2 apply in this section.**

16 **(c) As used in this section, "property" refers to real property**
17 **covered by the governing documents of a homeowners association.**

18 **(d) As used in this section, "purchaser" refers to a person who**
19 **purchases property.**

20 **(e) The following must be provided by the seller to a purchaser**
21 **not later than ten (10) days before the sale of the property closes:**

22 **(1) A disclosure that the property is in a community governed**
23 **by a homeowners association.**

24 **(2) A copy of the recorded governing documents.**

25 **(3) A statement indicating whether there are assessments and**
26 **the amount of any assessments.**

27 **(4) The following information about a board member,**
28 **homeowners association agent, or other person who has a**
29 **contract with the homeowners association to provide any**
30 **management services for the homeowners association:**

31 **(A) The name.**

32 **(B) The business or home address.**

33 **(f) A homeowners association or agent of a homeowners**
34 **association providing a statement of unpaid assessments or other**
35 **charges of the homeowners association relating to the property**
36 **may charge not more than two hundred fifty dollars (\$250) for the**
37 **statement.**

38 **(g) The failure to provide any of the documents listed in**
39 **subsection (e) does not limit or prevent enforcement of the**
40 **governing documents by the homeowners association.**

41 SECTION 3. IC 32-25-7-7 IS ADDED TO THE INDIANA CODE
42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2015]: **Sec. 7. The declaration must contain a provision allowing the co-owners to amend the declaration at any time, from time to time, subject to the following:**

(1) The declarant's consent to an amendment may be required if:

(A) the declarant owns one (1) or more units within the condominium; and

(B) not more than seven (7) years have passed since the original governing documents were first recorded.

(2) The consent of the co-owners to the amendment has been obtained as evidenced by either of the following:

(A) The vote of the co-owners at a meeting called for the purpose of considering the amendment.

(B) A written instrument signed by the co-owners.

The declaration may not require that the consent of more than seventy-five percent (75%) of the co-owners is required for consent under this subdivision.

(3) The consent of the eligible mortgage holders, as defined in the governing documents. The consent of an eligible mortgage holder must be indicated in a written instrument signed by the mortgage holder. However, a mortgage holder is considered to have consented to a proposed amendment if the mortgage holder does not respond to a written request for consent within thirty (30) days after the mortgage holder receives the request. The governing documents may not require that the consent of more than seventy-five percent (75%) of the eligible mortgage holders is required for consent under this subdivision.

(4) Notwithstanding subdivisions (1) through (3), the declaration may require the approval of ninety-five percent (95%) of the co-owners to convey common areas or to dissolve the condominium.

SECTION 4. IC 32-25-8-2, AS AMENDED BY P.L.119-2012, SECTION 163, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. The bylaws must provide for the following:

(1) With respect to the board of directors:

(A) the election of the board from among the co-owners;

(B) the number of persons constituting the board;

(C) the expiration of the terms of at least one-third (1/3) of the directors annually;

(D) the powers and duties of the board, including whether the



- 1 board may engage the services of a manager or managing
 2 agent;
 3 (E) the compensation, if any, of the directors; and
 4 (F) the method of removal from office of directors.
- 5 (2) The method of calling meetings of the co-owners and the
 6 percentage, if other than a majority of co-owners, that constitutes
 7 a quorum.
- 8 (3) The election from among the board of directors of a president,
 9 who shall preside over the meetings of:
 10 (A) the board of directors; and
 11 (B) the association of co-owners.
- 12 (4) The election of a secretary, who shall keep the minute book in
 13 which resolutions shall be recorded.
- 14 (5) The election of a treasurer, who shall keep the financial
 15 records and books of account.
- 16 (6) The maintenance, repair, and replacement of the common
 17 areas and facilities and payments for that maintenance, repair, and
 18 replacement, including the method of approving payment
 19 vouchers.
- 20 (7) The manner of collecting from each condominium owner the
 21 owner's share of the common expenses.
- 22 (8) The designation and removal of personnel necessary for the
 23 maintenance, repair, and replacement of the common areas and
 24 facilities.
- 25 (9) The method of adopting and of amending administrative rules
 26 governing the details of the operation and use of the common
 27 areas and facilities.
- 28 (10) The restrictions on and requirements respecting the use and
 29 maintenance of the condominium units and the use of the
 30 common areas and facilities that are:
 31 (A) not set forth in the declaration; and
 32 (B) designed to prevent unreasonable interference with the use
 33 of their respective units and of the common areas and facilities
 34 by the several co-owners.
- 35 (11) The percentage of votes required to amend the bylaws. **The**
 36 **percentage may not exceed seventy-five percent (75%).**
- 37 (12) ~~This subdivision applies only to a condominium located on~~
 38 ~~the shore of a lake located in a township with a population of~~
 39 ~~more than three thousand (3,000) but less than three thousand one~~
 40 ~~hundred (3,100) located in a county having a population of more~~
 41 ~~than forty-seven thousand (47,000) but less than forty-seven~~
 42 ~~thousand five hundred (47,500): A statement of the percentage of~~



1 votes by the condominium unit owners required to convey or
 2 encumber part or all of the common areas and facilities. A
 3 statement under this subdivision may not allow less than
 4 ninety-five percent (95%) of the condominium unit owners, or
 5 less than ninety-five percent (95%) of the owners of condominium
 6 units not owned by the declarant, to convey or encumber part or
 7 all of the common areas and facilities. If the bylaws do not
 8 include a statement under this subdivision, IC 32-25-4-3.5
 9 applies.

10 (13) Other provisions consistent with this article considered
 11 necessary for the administration of the property.

12 SECTION 5. IC 32-25-8.5 IS ADDED TO THE INDIANA CODE
 13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2015]:

15 **Chapter 8.5. Grievance Resolution**

16 **Sec. 1. This chapter does not apply to an exempt claim unless the**
 17 **parties agree that this chapter is applicable to the exempt claim.**

18 **Sec. 2. As used in this chapter, "board" refers to the board of**
 19 **directors of an association of co-owners of a condominium.**

20 **Sec. 3. (a) As used in this chapter, "claim" refers to any of the**
 21 **following:**

22 **(1) A claim arising out of, or relating to, the interpretation,**
 23 **application, or enforcement of the governing documents.**

24 **(2) A claim relating to the rights or duties of the association of**
 25 **co-owners or the board under the condominium instruments.**

26 **(3) A claim relating to the maintenance of the condominium.**

27 **(4) Any other claim, grievance, or dispute among the parties**
 28 **involving the condominium.**

29 **(b) The term does not include an exempt claim.**

30 **Sec. 4. As used in this chapter, "claimant" refers to a party who**
 31 **has a claim against another party.**

32 **Sec. 5. As used in this chapter, "exempt claim" refers to any of**
 33 **the following claims or actions:**

34 **(1) A claim by the association of co-owners for assessments or**
 35 **dues and any action by the association to collect assessments**
 36 **or dues.**

37 **(2) An action by a party to obtain a temporary restraining**
 38 **order or equivalent emergency equitable relief:**

39 **(A) to maintain the status quo and preserve the party's**
 40 **ability to enforce the condominium instruments; or**

41 **(B) when an emergency condition exists that jeopardizes**
 42 **the health or safety of any of the residents within the**



- 1 condominium community.
- 2 (3) A suit to which an applicable statute of limitations would
- 3 expire within the notice period. This subdivision does not
- 4 apply if a party against which the claim is made agrees to toll
- 5 the statute of limitations as to the claim for the period
- 6 reasonably necessary to comply with this chapter.
- 7 (4) A dispute that is subject to mediation, arbitration, or other
- 8 alternate dispute resolution under applicable law, contract,
- 9 warranty agreement, or other instrument.
- 10 (5) A claim that is substantively identical to a claim:
- 11 (A) that was previously addressed by the parties; or
- 12 (B) which was resolved by a judicial determination in favor
- 13 of one (1) of the parties.
- 14 Sec. 6. As used in this chapter, "legal proceedings" refers to
- 15 either of the following:
- 16 (1) An action maintained in a court.
- 17 (2) An administrative proceeding initiated under an
- 18 applicable law.
- 19 Sec. 7. As used in this chapter, "party" refers to any of the
- 20 following:
- 21 (1) The association of co-owners.
- 22 (2) A co-owner.
- 23 (3) The board.
- 24 Sec. 8. As used in this chapter, "respondent" refers to the party
- 25 against whom a claimant has a claim.
- 26 Sec. 9. The condominium instruments must include grievance
- 27 resolution procedures that apply to all members of the association
- 28 of co-owners and the board.
- 29 Sec. 10. A claimant may not begin legal proceedings seeking
- 30 redress or resolution of a claim until the claimant has complied
- 31 with the procedures described in this chapter.
- 32 Sec. 11. A claimant shall provide notice of the claim to the
- 33 respondent, stating plainly and concisely the following
- 34 information:
- 35 (1) The nature of the claim, including the date, time, location,
- 36 persons involved, and the respondent's role in the claim.
- 37 (2) The basis of the claim, including the provision of the
- 38 condominium instruments or other authority out of which the
- 39 claim arises.
- 40 (3) What the claimant wants the respondent to do or not to do
- 41 to resolve the claim.
- 42 (4) That the respondent has a right to meet with the claimant,



1 if the respondent makes a written request for a meeting.

2 (5) The name and address of the person from whom the
3 respondent must request a meeting under subdivision (4).

4 **Sec. 12. (a)** This section applies if a respondent has requested a
5 meeting under section 11 of this chapter not later than ten (10)
6 business days after the date of the notice of the claim given under
7 section 11 of this chapter.

8 (b) The claimant and the respondent shall meet in person to
9 resolve the claim by good faith negotiation, at the time and place
10 agreed to by the claimant and the respondent.

11 (c) During the meeting, the parties must have full access to the
12 property that is the subject of the claim to inspect the property, if
13 appropriate or necessary. If the respondent agrees to take
14 corrective action, the claimant must provide the respondent and
15 the respondent's agents with full access to the property to take and
16 complete corrective action.

17 **Sec. 13. (a)** The parties are considered to be at an impasse if:

18 (1) the respondent does not request a meeting under section 11
19 of this chapter;

20 (2) either party fails to attend a meeting agreed upon under
21 section 12 of this chapter; or

22 (3) the parties are unable to settle the claim at a meeting held
23 under section 12 of this chapter.

24 (b) Either party may, not later than ten (10) days after an
25 impasse is reached, request in writing that the other party submit
26 the claim to mediation or binding arbitration.

27 (c) The party making the request under subsection (b) is
28 responsible for the costs of the mediator or arbitrator.

29 **Sec. 14.** If an impasse is reached and:

30 (1) neither party requests mediation or arbitration; or

31 (2) mediation or arbitration does not result in a settlement of
32 the claim;

33 the claimant may begin legal proceedings.

34 **Sec. 15. (a)** This section applies if a claim is settled through
35 negotiation, mediation, or arbitration.

36 (b) The settlement of the claim must be documented in a written
37 agreement signed by each of the parties.

38 (c) If a party fails to abide by the settlement agreement signed
39 under subsection (b), the other party may begin legal proceedings
40 without again complying with this chapter.

41 (d) If a party who begins legal proceedings under subsection (c)
42 prevails in those legal proceedings, the party is entitled to recover



1 **from the other party:**

2 **(1) court costs;**

3 **(2) attorney's fees; and**

4 **(3) all other reasonable costs incurred in enforcing the**
5 **settlement agreement.**

6 **Sec. 16. A release or discharge of a respondent from liability to**
7 **the claimant with respect to the claim does not release or discharge**
8 **the respondent with respect to any other person who is not a party**
9 **to the claim.**

10 **Sec. 17. The board, on behalf of the association of co-owners,**
11 **and without the consent of the co-owners, may do any of the**
12 **following:**

13 **(1) Negotiate settlements of claims or legal proceedings under**
14 **this chapter.**

15 **(2) Execute settlement agreements, waivers, releases of claims,**
16 **or any other document resulting from application of this**
17 **chapter.**

18 **Sec. 18. Except as otherwise provided in this chapter, each party**
19 **shall bear its own costs for application of this chapter, including**
20 **attorney's fees.**

21 SECTION 6. IC 32-25.5-1-1, AS AMENDED BY P.L.231-2013,
22 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
23 JULY 1, 2015]: Sec. 1. (a) This article applies to the following:

24 (1) A homeowners association established after June 30, 2009.

25 (2) A homeowners association established before July 1, 2009:

26 (A) if a majority of the members of the homeowners
27 association elect to be governed by this article; or

28 (B) if the number of members required by the homeowners
29 association's governing documents elect to be governed by this
30 article if a different number of members other than the number
31 established in clause (A) is required by the governing
32 documents.

33 (b) ~~IC 32-25.5-3-8 applies~~ **The following apply** to all homeowners
34 associations:

35 ~~(e) (1) IC 32-25.5-3-3(g) through IC 32-25.5-3-3(m). apply to all~~
36 ~~homeowners associations.~~

37 **(2) IC 32-25.5-3-9.**

38 **(3) IC 32-25.5-3-10.**

39 **(4) IC 32-25.5-4.**

40 **(5) IC 32-25.5-5.**

41 SECTION 7. IC 32-25.5-2-3, AS ADDED BY P.L.167-2009,
42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2015]: Sec. 3. "Governing documents" includes **the**
 2 **following:**

3 (1) The articles of incorporation and bylaws of a homeowners
 4 association and all adopted amendments to the articles of
 5 incorporation and bylaws. **and**

6 (2) Any applicable **covenants filed with the office of the county**
 7 **recorder of the applicable county recorder, whether contained**
 8 **in a declaration of covenants, contained in conditions and**
 9 **restrictions (or similarly titled document), or contained within**
 10 **a plat.**

11 SECTION 8. IC 32-25.5-3-6 IS REPEALED [EFFECTIVE JULY
 12 1, 2015]. Sec. 6: The governing documents must include grievance
 13 resolution procedures that apply to all members of the homeowners
 14 association and the board:

15 SECTION 9. IC 32-25.5-3-8 IS REPEALED [EFFECTIVE JULY
 16 1, 2015]. Sec. 8: (a) The attorney general may bring an action against
 17 a board or an individual member of a board of a homeowners
 18 association if the attorney general finds that:

19 (1) the association's funds have been knowingly or intentionally
 20 misappropriated or diverted by a board member; or

21 (2) a board member has knowingly or intentionally used the board
 22 member's position on the board to commit fraud or a criminal act
 23 against the association or the association's members:

24 (b) A court in which an action is brought under this section may do
 25 the following:

26 (1) Issue an injunction:

27 (2) Order the board member to make restitution to the
 28 homeowners association or to a member:

29 (3) Order a board member to be removed from the board:

30 (4) Order a board member to reimburse the state for the
 31 reasonable costs of the attorney general's investigation and
 32 prosecution of the violation:

33 SECTION 10. IC 32-25.5-3-9 IS ADDED TO THE INDIANA
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS
 35 [EFFECTIVE JULY 1, 2015]: **Sec. 9. The governing documents must**
 36 **contain a provision allowing the owners to amend the governing**
 37 **documents at any time, from time to time, subject to the following:**

38 (1) **The declarant's consent to an amendment may be required**
 39 **if:**

40 (A) **the declarant owns one (1) or more units within the**
 41 **subdivision; and**

42 (B) **not more than seven (7) years have passed since the**



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- original governing documents were first recorded.
- (2) The consent of the owners to the amendment has been obtained as evidenced by either of the following:
 - (A) The vote of the owners at a meeting duly called for the purpose of considering the amendment.
 - (B) A written instrument signed by the owners.
- The governing documents may not require that the consent of more than seventy-five percent (75%) of the owners is required for consent under this subdivision.
- (3) The consent of the eligible mortgage holders, as defined in the governing documents. The consent of an eligible mortgage holder must be indicated in a written instrument signed by the mortgage holder. However, a mortgage holder is considered to have consented to a proposed amendment if the mortgage holder does not respond to a written request for consent within thirty (30) days after the mortgage holder receives the request. The governing documents may not require that the consent of more than seventy-five percent (75%) of the eligible mortgage holders is required for consent under this subdivision.
- (4) Notwithstanding subdivisions (1) through (3), the governing documents may require the approval of ninety-five percent (95%) of the owners to convey common areas or to dissolve the plan of governance for the homeowners association.

SECTION 11. IC 32-25.5-3-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) This section applies to a proxy given by a member of a homeowners association.

- (b) A proxy that does not comply with this subsection is void. A proxy must include all the following:
 - (1) The name and address of the member giving the proxy.
 - (2) The name of the individual empowered to exercise the member's proxy.
 - (3) The date on which the proxy is given.
 - (4) The date of the meeting for which the proxy is given.
 - (5) The member's signature.
 - (6) An affirmation under the penalties for perjury that the individual signing the proxy has the authority to grant the proxy to the individual named in the proxy to exercise the member's proxy.
- (c) A member may state in a proxy that the proxy is limited in



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its use to specific matters described in the proxy.
(d) A member may give a proxy for the meeting referred to in subsection (b)(4) and any continuation of that meeting, if the proxy states that it expires on a stated date that may not be more than one hundred eighty (180) days after the date on which the proxy is given.

(e) A member may create and use a proxy form designed by the member if the form complies with the requirements of subsection (b).

(f) A proxy, or a copy of the proxy, that is exercised for any purpose at a meeting must be kept with the records of the meeting.

SECTION 12. IC 32-25.5-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 4. Attorney General Actions

Sec. 1. The attorney general may bring an action against a board of a homeowners association or an individual member of a board of a homeowners association if the attorney general finds that any of the following apply:

- (1) The association's funds have been knowingly or intentionally misappropriated or diverted by a board member.
- (2) A board member has knowingly or intentionally used the board member's position on the board to commit fraud or a criminal act against the association or the association's members.
- (3) A proxy was exercised in violation of IC 32-25.5-3-10.
- (4) A violation of IC 32-25.5-3-3 has occurred.

Sec. 2. A court in which an action is brought under this chapter may do the following:

- (1) Issue an injunction.
- (2) Order the board member to make restitution to the homeowners association or to a member of the homeowners association.
- (3) Order a board member to be removed from the board.
- (4) Order a board member to reimburse the state for the reasonable costs of the attorney general's investigation and prosecution of the violation.

SECTION 13. IC 32-25.5-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 5. Grievance Resolution



1 **Sec. 1. This chapter does not apply to an exempt claim unless the**
 2 **parties agree that this chapter is applicable to the exempt claim.**

3 **Sec. 2. (a) As used in this chapter, "claim" refers to any of the**
 4 **following:**

5 **(1) A claim arising out of or relating to the interpretation,**
 6 **application, or enforcement of the governing documents.**

7 **(2) A claim relating to the rights or duties of the association of**
 8 **co-owners or the board under the governing documents.**

9 **(3) A claim relating to the maintenance of the subdivision.**

10 **(4) Any other claim, grievance, or dispute among the parties**
 11 **involving the subdivision or the homeowners association.**

12 **(b) The term does not include an exempt claim.**

13 **Sec. 3. As used in this chapter, "claimant" refers to a party who**
 14 **has a claim against another party.**

15 **Sec. 4. As used in this chapter, "exempt claim" refers to any of**
 16 **the following claims or actions:**

17 **(1) A claim by the homeowners association for assessments or**
 18 **dues and any action by the association to collect assessments**
 19 **or dues.**

20 **(2) An action by a party to obtain a temporary restraining**
 21 **order or equivalent emergency equitable relief:**

22 **(A) to maintain the status quo and preserve the party's**
 23 **ability to enforce the governing documents; or**

24 **(B) when an emergency condition exists that jeopardizes**
 25 **the health or safety of any of the residents within the**
 26 **community governed by the homeowners association.**

27 **(3) A suit to which an applicable statute of limitations would**
 28 **expire within the notice period. This subdivision does not**
 29 **apply if a party against which the claim is made agrees to toll**
 30 **the statute of limitations as to the claim for the period**
 31 **reasonably necessary to comply with this chapter.**

32 **(4) A dispute that is subject to mediation, arbitration, or other**
 33 **alternate dispute resolution under applicable law, contract,**
 34 **warranty agreement, or other instrument.**

35 **(5) A claim that is substantively identical to a claim:**

36 **(A) that was previously addressed by the parties; or**

37 **(B) that was resolved by a judicial determination in favor**
 38 **of one (1) of the parties.**

39 **Sec. 5. As used in this chapter, "legal proceedings" refers to**
 40 **either of the following:**

41 **(1) An action maintained in a court.**

42 **(2) An administrative proceeding initiated under an**



1 applicable law.

2 Sec. 6. As used in this chapter, "party" refers to any of the
3 following:

- 4 (1) The homeowners association.
5 (2) A member of the homeowners association.
6 (3) The board.

7 Sec. 7. As used in this chapter, "respondent" refers to the party
8 against whom a claimant has a claim.

9 Sec. 8. The governing documents must include grievance
10 resolution procedures that apply to all members of the
11 homeowners association and the board.

12 Sec. 9. A claimant may not initiate a legal proceeding seeking
13 redress or resolution of a claim until the claimant has complied
14 with the procedures described in this chapter.

15 Sec. 10. A claimant must provide notice of the claim to the
16 respondent, stating plainly and concisely the following
17 information:

- 18 (1) The nature of the claim, including the date, time, location,
19 persons involved, and the respondent's role in the claim.
20 (2) The basis of the claim, including the provision of the
21 governing documents or other authority out of which the
22 claim arises.
23 (3) What the claimant wants the respondent to do or not to do
24 to resolve the claim.
25 (4) That the respondent has a right to meet with the claimant,
26 if the respondent makes a written request for a meeting.
27 (5) The name and address of the person from whom the
28 respondent must request a meeting under subdivision (4).

29 Sec. 11. (a) This section applies if a respondent has requested a
30 meeting under section 10 of this chapter not later than ten (10)
31 business days after the date of the notice of the claim given under
32 section 10 of this chapter.

33 (b) The claimant and the respondent shall meet in person to
34 resolve the claim by good faith negotiation, at the time and place
35 agreed to by the claimant and the respondent.

36 (c) During the meeting, the parties must have full access to the
37 property that is the subject of the claim to inspect the property, if
38 appropriate or necessary. If the respondent agrees to take
39 corrective action, the claimant must provide the respondent and
40 the respondent's agents with full access to the property to take and
41 complete corrective action.

42 Sec. 12. (a) The parties are considered to be at an impasse if:



- 1 (1) the respondent does not request a meeting under section 10
2 of this chapter;
- 3 (2) either party fails to attend a meeting agreed upon under
4 section 11 of this chapter; or
- 5 (3) the parties are unable to settle the claim at a meeting held
6 under section 11 of this chapter.
- 7 (b) Either party may, not later than ten (10) days after an
8 impasse is reached, request in writing to the other party that the
9 other party submit the claim to mediation or binding arbitration.
- 10 (c) The party making the request under subsection (b) is
11 responsible for the costs of the mediator or arbitrator.
- 12 Sec. 13. If an impasse is reached and:
- 13 (1) neither party requests mediation or arbitration; or
- 14 (2) mediation or arbitration does not result in a settlement of
15 the claim;
- 16 the claimant may begin legal proceedings.
- 17 Sec. 14. (a) This section applies if a claim is settled through
18 negotiation, mediation, or arbitration.
- 19 (b) The settlement of the claim must be documented in a written
20 agreement signed by each of the parties.
- 21 (c) If a party fails to abide by the settlement agreement signed
22 under subsection (b), the other party may begin legal proceedings
23 without again complying with this chapter.
- 24 (d) If a party who begins legal proceedings under subsection (c)
25 prevails in those legal proceedings, the party is entitled to recover
26 from the other party:
- 27 (1) court costs;
- 28 (2) attorney's fees; and
- 29 (3) all other reasonable costs incurred in enforcing the
30 settlement agreement.
- 31 Sec. 15. A release or discharge of a respondent from liability to
32 the claimant with respect to the claim does not release or discharge
33 the respondent with respect to any other person who is not a party
34 to the claim.
- 35 Sec. 16. The board, on behalf of the homeowners association,
36 and without the consent of the members of the homeowners
37 association, may do any of the following:
- 38 (1) Negotiate settlements of claims or legal proceedings under
39 this chapter.
- 40 (2) Execute settlement agreements, waivers, releases of claims,
41 or any other documents resulting from application of this
42 chapter.



1 **Sec. 17. Except as otherwise provided in this chapter, each party**
2 **shall bear its own costs for application of this chapter, including**
3 **attorney's fees.**

