



January 27, 2015

HOUSE BILL No. 1286

DIGEST OF HB 1286 (Updated January 27, 2015 1:43 pm - DI 87)

Citations Affected: IC 32-21; 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. Provides that if a homeowners association initiates communication with any member about another member's lot, the homeowners association must give a copy of that communication to the other member whose lot is the subject of the communication. 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.

Effective: July 1, 2015.

Burton, Slager, Truitt, Moseley

January 13, 2015, read first time and referred to Committee on Government and Regulatory Reform.
January 27, 2015, amended, reported — Do Pass.

HB 1286—LS 7283/DI 75



January 27, 2015

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 32-21-5-8.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]: **Sec. 8.5. (a) This section applies to all transfers of title to**
4 **property after June 30, 2015.**
5 **(b) The definitions in IC 32-25.5-2 apply in this section.**
6 **(c) As used in this section, "property" refers to real property**
7 **covered by the governing documents of a homeowners association.**
8 **(d) As used in this section, "purchaser" refers to a person who**
9 **purchases property.**
10 **(e) The following must be provided by the seller to a purchaser**
11 **not later than ten (10) days before the sale of the property closes:**
12 **(1) A disclosure that the property is in a community governed**
13 **by a homeowners association.**
14 **(2) A copy of the recorded governing documents.**
15 **(3) A statement indicating whether there are assessments and**

HB 1286—LS 7283/DI 75



1 the amount of any assessments.

2 (4) The following information about a board member,
3 homeowners association agent, or other person who has a
4 contract with the homeowners association to provide any
5 management services for the homeowners association:

6 (A) The name.

7 (B) The business or home address.

8 (f) A homeowners association or agent of a homeowners
9 association providing a statement of unpaid assessments or other
10 charges of the homeowners association relating to the property
11 may charge not more than two hundred fifty dollars (\$250) for the
12 statement.

13 (g) The failure to provide any of the documents listed in
14 subsection (e) does not limit or prevent enforcement of the
15 governing documents by the homeowners association.

16 SECTION 2. IC 32-25-7-7 IS ADDED TO THE INDIANA CODE
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
18 1, 2015]: Sec. 7. The declaration must contain a provision allowing
19 the co-owners to amend the declaration at any time, from time to
20 time, subject to the following:

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

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

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

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

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

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

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

35 (3) The consent of the eligible mortgage holders, as defined in
36 the governing documents. The consent of an eligible mortgage
37 holder must be indicated in a written instrument signed by the
38 mortgage holder. However, a mortgage holder is considered
39 to have consented to a proposed amendment if the mortgage
40 holder does not respond to a written request for consent
41 within thirty (30) days after the mortgage holder receives the
42 request. The governing documents may not require that the



1 **consent of more than seventy-five percent (75%) of the**
 2 **eligible mortgage holders is required for consent under this**
 3 **subdivision.**

4 **(4) Notwithstanding subdivisions (1) through (3), the**
 5 **declaration may require the approval of ninety-five percent**
 6 **(95%) of the co-owners to convey common areas or to dissolve**
 7 **the condominium.**

8 SECTION 3. IC 32-25-8-2, AS AMENDED BY P.L.119-2012,
 9 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2015]: Sec. 2. The bylaws must provide for the
 11 following:

- 12 (1) With respect to the board of directors:
- 13 (A) the election of the board from among the co-owners;
- 14 (B) the number of persons constituting the board;
- 15 (C) the expiration of the terms of at least one-third (1/3) of the
- 16 directors annually;
- 17 (D) the powers and duties of the board, including whether the
- 18 board may engage the services of a manager or managing
- 19 agent;
- 20 (E) the compensation, if any, of the directors; and
- 21 (F) the method of removal from office of directors.
- 22 (2) The method of calling meetings of the co-owners and the
- 23 percentage, if other than a majority of co-owners, that constitutes
- 24 a quorum.
- 25 (3) The election from among the board of directors of a president,
- 26 who shall preside over the meetings of:
- 27 (A) the board of directors; and
- 28 (B) the association of co-owners.
- 29 (4) The election of a secretary, who shall keep the minute book in
- 30 which resolutions shall be recorded.
- 31 (5) The election of a treasurer, who shall keep the financial
- 32 records and books of account.
- 33 (6) The maintenance, repair, and replacement of the common
- 34 areas and facilities and payments for that maintenance, repair, and
- 35 replacement, including the method of approving payment
- 36 vouchers.
- 37 (7) The manner of collecting from each condominium owner the
- 38 owner's share of the common expenses.
- 39 (8) The designation and removal of personnel necessary for the
- 40 maintenance, repair, and replacement of the common areas and
- 41 facilities.
- 42 (9) The method of adopting and of amending administrative rules



1 governing the details of the operation and use of the common
2 areas and facilities.

3 (10) The restrictions on and requirements respecting the use and
4 maintenance of the condominium units and the use of the
5 common areas and facilities that are:

6 (A) not set forth in the declaration; and

7 (B) designed to prevent unreasonable interference with the use
8 of their respective units and of the common areas and facilities
9 by the several co-owners.

10 (11) The percentage of votes required to amend the bylaws. **The**
11 **percentage may not exceed seventy-five percent (75%).**

12 (12) ~~This subdivision applies only to a condominium located on~~
13 ~~the shore of a lake located in a township with a population of~~
14 ~~more than three thousand (3,000) but less than three thousand one~~
15 ~~hundred (3,100) located in a county having a population of more~~
16 ~~than forty-seven thousand (47,000) but less than forty-seven~~
17 ~~thousand five hundred (47,500).~~ A statement of the percentage of
18 votes by the condominium unit owners required to convey or
19 encumber part or all of the common areas and facilities. A
20 statement under this subdivision may not allow less than
21 ninety-five percent (95%) of the condominium unit owners, or
22 less than ninety-five percent (95%) of the owners of condominium
23 units not owned by the declarant, to convey or encumber part or
24 all of the common areas and facilities. If the bylaws do not
25 include a statement under this subdivision, IC 32-25-4-3.5
26 applies.

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

29 SECTION 4. IC 32-25-8.5 IS ADDED TO THE INDIANA CODE
30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2015]:

32 **Chapter 8.5. Grievance Resolution**

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

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

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

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

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



- 1 **(3) A claim relating to the maintenance of the condominium.**
- 2 **(4) Any other claim, grievance, or dispute among the parties**
- 3 **involving the condominium.**
- 4 **(b) The term does not include an exempt claim.**
- 5 **Sec. 4. As used in this chapter, "claimant" refers to a party who**
- 6 **has a claim against another party.**
- 7 **Sec. 5. As used in this chapter, "exempt claim" refers to any of**
- 8 **the following claims or actions:**
- 9 **(1) A claim by the association of co-owners for assessments or**
- 10 **dues and any action by the association to collect assessments**
- 11 **or dues.**
- 12 **(2) An action by a party to obtain a temporary restraining**
- 13 **order or equivalent emergency equitable relief:**
- 14 **(A) to maintain the status quo and preserve the party's**
- 15 **ability to enforce the condominium instruments; or**
- 16 **(B) when an emergency condition exists that jeopardizes**
- 17 **the health or safety of any of the residents within the**
- 18 **condominium community.**
- 19 **(3) A suit to which an applicable statute of limitations would**
- 20 **expire within the notice period. This subdivision does not**
- 21 **apply if a party against which the claim is made agrees to toll**
- 22 **the statute of limitations as to the claim for the period**
- 23 **reasonably necessary to comply with this chapter.**
- 24 **(4) A dispute that is subject to mediation, arbitration, or other**
- 25 **alternate dispute resolution under applicable law, contract,**
- 26 **warranty agreement, or other instrument.**
- 27 **(5) A claim that is substantively identical to a claim:**
- 28 **(A) that was previously addressed by the parties; or**
- 29 **(B) which was resolved by a judicial determination in favor**
- 30 **of one (1) of the parties.**
- 31 **Sec. 6. As used in this chapter, "legal proceedings" refers to**
- 32 **either of the following:**
- 33 **(1) An action maintained in a court.**
- 34 **(2) An administrative proceeding initiated under an**
- 35 **applicable law.**
- 36 **Sec. 7. As used in this chapter, "party" refers to any of the**
- 37 **following:**
- 38 **(1) The association of co-owners.**
- 39 **(2) A co-owner.**
- 40 **(3) The board.**
- 41 **Sec. 8. As used in this chapter, "respondent" refers to the party**
- 42 **against whom a claimant has a claim.**



1 **Sec. 9. The condominium instruments must include grievance**
 2 **resolution procedures that apply to all members of the association**
 3 **of co-owners and the board.**

4 **Sec. 10. A claimant may not begin legal proceedings seeking**
 5 **redress or resolution of a claim until the claimant has complied**
 6 **with the procedures described in this chapter.**

7 **Sec. 11. A claimant shall provide notice of the claim to the**
 8 **respondent, stating plainly and concisely the following**
 9 **information:**

10 (1) **The nature of the claim, including the date, time, location,**
 11 **persons involved, and the respondent's role in the claim.**

12 (2) **The basis of the claim, including the provision of the**
 13 **condominium instruments or other authority out of which the**
 14 **claim arises.**

15 (3) **What the claimant wants the respondent to do or not to do**
 16 **to resolve the claim.**

17 (4) **That the respondent has a right to meet with the claimant,**
 18 **if the respondent makes a written request for a meeting.**

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

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

25 (b) **The claimant and the respondent shall meet in person to**
 26 **resolve the claim by good faith negotiation, at the time and place**
 27 **agreed to by the claimant and the respondent.**

28 (c) **During the meeting, the parties must have full access to the**
 29 **property that is the subject of the claim to inspect the property, if**
 30 **appropriate or necessary. If the respondent agrees to take**
 31 **corrective action, the claimant must provide the respondent and**
 32 **the respondent's agents with full access to the property to take and**
 33 **complete corrective action.**

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

35 (1) **the respondent does not request a meeting under section 11**
 36 **of this chapter;**

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

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

41 (b) **Either party may, not later than ten (10) days after an**
 42 **impasse is reached, request in writing that the other party submit**



1 the claim to mediation or binding arbitration.

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

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

- 5 (1) neither party requests mediation or arbitration; or
6 (2) mediation or arbitration does not result in a settlement of
7 the claim;

8 the claimant may begin legal proceedings.

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

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

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

16 (d) If a party who begins legal proceedings under subsection (c)
17 prevails in those legal proceedings, the party is entitled to recover
18 from the other party:

- 19 (1) court costs;
20 (2) attorney's fees; and
21 (3) all other reasonable costs incurred in enforcing the
22 settlement agreement.

23 **Sec. 16. A release or discharge of a respondent from liability to
24 the claimant with respect to the claim does not release or discharge
25 the respondent with respect to any other person who is not a party
26 to the claim.**

27 **Sec. 17. The board, on behalf of the association of co-owners,
28 and without the consent of the co-owners, may do any of the
29 following:**

- 30 (1) Negotiate settlements of claims or legal proceedings under
31 this chapter.
32 (2) Execute settlement agreements, waivers, releases of claims,
33 or any other document resulting from application of this
34 chapter.

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

38 SECTION 5. IC 32-25.5-1-1, AS AMENDED BY P.L.231-2013,
39 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
40 JULY 1, 2015]: Sec. 1. (a) This article applies to the following:

- 41 (1) A homeowners association established after June 30, 2009.
42 (2) A homeowners association established before July 1, 2009:



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

3 (B) if the number of members required by the homeowners
4 association's governing documents elect to be governed by this
5 article if a different number of members other than the number
6 established in clause (A) is required by the governing
7 documents.

8 ~~IC 32-25.5-3-8 applies~~ **The following apply** to all homeowners
9 associations:

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

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

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

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

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

16 SECTION 6. IC 32-25.5-2-3, AS ADDED BY P.L.167-2009,
17 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2015]: Sec. 3. "Governing documents" includes **the**
19 **following:**

20 (1) The articles of incorporation and bylaws of a homeowners
21 association and all adopted amendments to the articles of
22 incorporation and bylaws. ~~and~~

23 (2) Any applicable **covenants filed with the office of the county**
24 **recorder of the applicable county recorder, whether contained**
25 **in a declaration of covenants, contained in conditions and**
26 **restrictions (or similarly titled document), or contained within**
27 **a plat.**

28 SECTION 7. IC 32-25.5-3-3, AS AMENDED BY P.L.231-2013,
29 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2015]: Sec. 3. (a) A homeowners association shall prepare an
31 annual budget.

32 (b) The annual budget must reflect:

33 (1) the estimated revenues and expenses for the budget year; and

34 (2) the estimated surplus or deficit as of the end of the current
35 budget year.

36 (c) The homeowners association shall provide each member of the
37 homeowners association with:

38 (1) a:

39 (A) copy of the proposed annual budget; or

40 (B) written notice that a copy of the proposed annual budget
41 is available upon request at no charge to the member; and

42 (2) a written notice of the amount of any increase or decrease in



- 1 a regular annual assessment paid by the members that would
2 occur if the proposed annual budget is approved;
3 before the homeowners association meeting held under subsection (d).
- 4 (d) Subject to subsection (f), a homeowners association budget must
5 be approved at a meeting of the homeowners association members by
6 a majority of the members of the homeowners association in attendance
7 at a meeting called and conducted in accordance with the requirements
8 of the homeowners association's governing documents.
- 9 (e) For purposes of this section, a member of a homeowners
10 association is considered to be in attendance at a meeting if the
11 member attends:
- 12 (1) in person;
 - 13 (2) by proxy; or
 - 14 (3) by any other means allowed under:
 - 15 (A) state law; or
 - 16 (B) the governing documents of the homeowners association.
- 17 (f) If the number of members of the homeowners association in
18 attendance at a meeting held under subsection (d) does not constitute
19 a quorum as defined in the governing documents of the homeowners
20 association, the board may adopt an annual budget for the homeowners
21 association for the ensuing year in an amount that does not exceed one
22 hundred percent (100%) of the amount of the last approved
23 homeowners association annual budget. However, the board may adopt
24 an annual budget for the homeowners association for the ensuing year
25 in an amount that does not exceed one hundred ten percent (110%) of
26 the amount of the last approved homeowners association annual budget
27 if the governing documents of the homeowners association allow the
28 board to adopt an annual budget under this subsection for the ensuing
29 year in an amount that does not exceed one hundred ten percent
30 (110%) of the amount of the last approved homeowners association
31 annual budget.
- 32 (g) Subject to subsection (k), the financial records, including all
33 contracts, invoices, bills, receipts, and bank records, of a homeowners
34 association must be available for inspection by each member of the
35 homeowners association upon written request. A written request for
36 inspection must identify with reasonable particularity the information
37 being requested. A member's ability to inspect records under this
38 section shall not be unreasonably denied or conditioned upon provision
39 of an appropriate purpose for the request.
- 40 (h) **Subject to subsections (j) and (k)**, if there is a dispute between
41 a homeowner and a homeowners association, the officers of the
42 homeowners association must make all communications concerning the



1 dispute available to the homeowner.

2 (i) **Subject to subsections (j) and (k), the following apply:**

3 (1) A homeowners association shall make all communications and
4 information concerning a lot available to the owner of the lot or
5 a home on the lot.

6 (2) **If a homeowners association initiates communication with
7 any member about another member's lot, the homeowners
8 association must give a copy of that communication to the
9 other member whose lot is the subject of the communication.**

10 (j) ~~Notwithstanding subsections (h) and (i);~~ A homeowners
11 association is not required to make:

12 (1) communications between the homeowners association and the
13 legal counsel of the homeowners association; and

14 (2) other communications or attorney work product prepared in
15 anticipation of litigation;

16 available to the owner of a lot or home.

17 (k) A homeowners association is not required to make available to
18 a member for inspection **any of the following:**

19 (1) Unexecuted contracts.

20 (2) Records regarding contract negotiations.

21 (3) Information regarding an individual member's association
22 account to a person who is not a named party on the account.

23 (4) Any ~~other~~ information that is prohibited from release under
24 state or federal law. ~~or~~

25 (5) Any records that were created more than two (2) years before
26 the request. **Except as otherwise provided in this article, other
27 applicable law, or the governing documents, this subdivision
28 does not require a homeowners association to maintain any
29 record for any specific period of time. However, except as
30 provided in subsection (j) or this subsection, if a homeowners
31 association has a document, the document must be disclosed
32 to a member at the member's request.**

33 (l) Nothing in this chapter:

34 (1) abrogates or eliminates provisions in homeowners association
35 agreements that permit or require additional disclosure or
36 inspection rights not required by this chapter; or

37 (2) prevents a homeowners association from agreeing to make
38 disclosures or to provide inspection rights not required by this
39 chapter.

40 (m) A homeowners association may not charge a fee for the first
41 hour required to search for a record in response to a written request
42 submitted under this chapter. A homeowners association may charge



1 a search fee for any time that exceeds one (1) hour. The following
 2 provisions apply if a homeowners association charges a search fee:

3 (1) The homeowners association shall charge an hourly fee that
 4 does not exceed thirty-five dollars (\$35) per hour.

5 (2) The homeowners association may charge the fee only for time
 6 that the person making the search actually spends in searching for
 7 the record.

8 (3) The homeowners association shall prorate the fee to reflect
 9 any search time of less than one (1) hour.

10 (4) The total amount of the fee charged by the homeowners
 11 association for a search may not exceed two hundred dollars
 12 (\$200).

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

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

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

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

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

28 (1) Issue an injunction:

29 (2) Order the board member to make restitution to the
 30 homeowners association or to a member:

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

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

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

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

42 (A) the declarant owns one (1) or more units within the



- 1 subdivision; and
- 2 (B) not more than seven (7) years have passed since the
- 3 original governing documents were first recorded.
- 4 (2) The consent of the owners to the amendment has been
- 5 obtained as evidenced by either of the following:
- 6 (A) The vote of the owners at a meeting duly called for the
- 7 purpose of considering the amendment.
- 8 (B) A written instrument signed by the owners.
- 9 The governing documents may not require that the consent of
- 10 more than seventy-five percent (75%) of the owners is
- 11 required for consent under this subdivision.
- 12 (3) The consent of the eligible mortgage holders, as defined in
- 13 the governing documents. The consent of an eligible mortgage
- 14 holder must be indicated in a written instrument signed by the
- 15 mortgage holder. However, a mortgage holder is considered
- 16 to have consented to a proposed amendment if the mortgage
- 17 holder does not respond to a written request for consent
- 18 within thirty (30) days after the mortgage holder receives the
- 19 request. The governing documents may not require that the
- 20 consent of more than seventy-five percent (75%) of the
- 21 eligible mortgage holders is required for consent under this
- 22 subdivision.
- 23 (4) Notwithstanding subdivisions (1) through (3), the
- 24 governing documents may require the approval of ninety-five
- 25 percent (95%) of the owners to convey common areas or to
- 26 dissolve the plan of governance for the homeowners
- 27 association.
- 28 SECTION 11. IC 32-25.5-3-10 IS ADDED TO THE INDIANA
- 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 30 [EFFECTIVE JULY 1, 2015]: Sec. 10. (a) This section applies to a
- 31 proxy given by a member of a homeowners association.
- 32 (b) A proxy that does not comply with this subsection is void. A
- 33 proxy must include all the following:
- 34 (1) The name and address of the member giving the proxy.
- 35 (2) The name of the individual empowered to exercise the
- 36 member's proxy.
- 37 (3) The date on which the proxy is given.
- 38 (4) The date of the meeting for which the proxy is given.
- 39 (5) The member's signature.
- 40 (6) An affirmation under the penalties for perjury that the
- 41 individual signing the proxy has the authority to grant the
- 42 proxy to the individual named in the proxy to exercise the



- 1 member's proxy.
- 2 (c) A member may state in a proxy that the proxy is limited in
3 its use to specific matters described in the proxy.
- 4 (d) A member may give a proxy for the meeting referred to in
5 subsection (b)(4) and any continuation of that meeting, if the proxy
6 states that it expires on a stated date that may not be more than
7 one hundred eighty (180) days after the date on which the proxy is
8 given.
- 9 (e) A member may create and use a proxy form designed by the
10 member if the form complies with the requirements of subsection
11 (b).
- 12 (f) A proxy, or a copy of the proxy, that is exercised for any
13 purpose at a meeting must be kept with the records of the meeting.
- 14 SECTION 12. IC 32-25.5-4 IS ADDED TO THE INDIANA CODE
15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2015]:
- 17 **Chapter 4. Attorney General Actions**
- 18 **Sec. 1. The attorney general may bring an action against a**
19 **board of a homeowners association or an individual member of a**
20 **board of a homeowners association if the attorney general finds**
21 **that any of the following apply:**
- 22 (1) The association's funds have been knowingly or
23 intentionally misappropriated or diverted by a board
24 member.
- 25 (2) A board member has knowingly or intentionally used the
26 board member's position on the board to commit fraud or a
27 criminal act against the association or the association's
28 members.
- 29 (3) A proxy was exercised in violation of IC 32-25.5-3-10.
- 30 (4) A violation of IC 32-25.5-3-3 has occurred.
- 31 **Sec. 2. A court in which an action is brought under this chapter**
32 **may do the following:**
- 33 (1) Issue an injunction.
- 34 (2) Order the board member to make restitution to the
35 homeowners association or to a member of the homeowners
36 association.
- 37 (3) Order a board member to be removed from the board.
- 38 (4) Order a board member to reimburse the state for the
39 reasonable costs of the attorney general's investigation and
40 prosecution of the violation.
- 41 SECTION 13. IC 32-25.5-5 IS ADDED TO THE INDIANA CODE
42 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE



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JULY 1, 2015]:

Chapter 5. Grievance Resolution

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

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

- (1) A claim arising out of or relating to the interpretation, application, or enforcement of the governing documents.**
- (2) A claim relating to the rights or duties of the association of co-owners or the board under the governing documents.**
- (3) A claim relating to the maintenance of the subdivision.**
- (4) Any other claim, grievance, or dispute among the parties involving the subdivision or the homeowners association.**

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

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

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

- (1) A claim by the homeowners association for assessments or dues and any action by the association to collect assessments or dues.**
- (2) An action by a party to obtain a temporary restraining order or equivalent emergency equitable relief:**
 - (A) to maintain the status quo and preserve the party's ability to enforce the governing documents; or**
 - (B) when an emergency condition exists that jeopardizes the health or safety of any of the residents within the community governed by the homeowners association.**
- (3) A suit to which an applicable statute of limitations would expire within the notice period. This subdivision does not apply if a party against which the claim is made agrees to toll the statute of limitations as to the claim for the period reasonably necessary to comply with this chapter.**
- (4) A dispute that is subject to mediation, arbitration, or other alternate dispute resolution under applicable law, contract, warranty agreement, or other instrument.**
- (5) A claim that is substantively identical to a claim:**
 - (A) that was previously addressed by the parties; or**
 - (B) that was resolved by a judicial determination in favor of one (1) of the parties.**

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



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- (1) An action maintained in a court.
 - (2) An administrative proceeding initiated under an applicable law.
- Sec. 6. As used in this chapter, "party" refers to any of the following:
- (1) The homeowners association.
 - (2) A member of the homeowners association.
 - (3) The board.

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

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

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

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

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

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

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

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



1 complete corrective action.

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

3 (1) the respondent does not request a meeting under section 10
4 of this chapter;

5 (2) either party fails to attend a meeting agreed upon under
6 section 11 of this chapter; or

7 (3) the parties are unable to settle the claim at a meeting held
8 under section 11 of this chapter.

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

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

14 **Sec. 13. If an impasse is reached and:**

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

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

18 the claimant may begin legal proceedings.

19 **Sec. 14. (a) This section applies if a claim is settled through**
20 **negotiation, mediation, or arbitration.**

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

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

26 (d) If a party who begins legal proceedings under subsection (c)
27 prevails in those legal proceedings, the party is entitled to recover
28 from the other party:

29 (1) court costs;

30 (2) attorney's fees; and

31 (3) all other reasonable costs incurred in enforcing the
32 settlement agreement.

33 **Sec. 15. A release or discharge of a respondent from liability to**
34 **the claimant with respect to the claim does not release or discharge**
35 **the respondent with respect to any other person who is not a party**
36 **to the claim.**

37 **Sec. 16. The board, on behalf of the homeowners association,**
38 **and without the consent of the members of the homeowners**
39 **association, may do any of the following:**

40 (1) Negotiate settlements of claims or legal proceedings under
41 this chapter.

42 (2) Execute settlement agreements, waivers, releases of claims,



1 or any other documents resulting from application of this
2 chapter.

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



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1286, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 15.

Page 2, delete lines 1 through 10.

Page 9, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 7. IC 32-25.5-3-3, AS AMENDED BY P.L.231-2013, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 3. (a) A homeowners association shall prepare an annual budget.

(b) The annual budget must reflect:

- (1) the estimated revenues and expenses for the budget year; and
- (2) the estimated surplus or deficit as of the end of the current budget year.

(c) The homeowners association shall provide each member of the homeowners association with:

(1) a:

- (A) copy of the proposed annual budget; or
- (B) written notice that a copy of the proposed annual budget is available upon request at no charge to the member; and
- (2) a written notice of the amount of any increase or decrease in a regular annual assessment paid by the members that would occur if the proposed annual budget is approved;

before the homeowners association meeting held under subsection (d).

(d) Subject to subsection (f), a homeowners association budget must be approved at a meeting of the homeowners association members by a majority of the members of the homeowners association in attendance at a meeting called and conducted in accordance with the requirements of the homeowners association's governing documents.

(e) For purposes of this section, a member of a homeowners association is considered to be in attendance at a meeting if the member attends:

- (1) in person;
- (2) by proxy; or
- (3) by any other means allowed under:
 - (A) state law; or
 - (B) the governing documents of the homeowners association.

(f) If the number of members of the homeowners association in attendance at a meeting held under subsection (d) does not constitute



a quorum as defined in the governing documents of the homeowners association, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred percent (100%) of the amount of the last approved homeowners association annual budget. However, the board may adopt an annual budget for the homeowners association for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget if the governing documents of the homeowners association allow the board to adopt an annual budget under this subsection for the ensuing year in an amount that does not exceed one hundred ten percent (110%) of the amount of the last approved homeowners association annual budget.

(g) Subject to subsection (k), the financial records, including all contracts, invoices, bills, receipts, and bank records, of a homeowners association must be available for inspection by each member of the homeowners association upon written request. A written request for inspection must identify with reasonable particularity the information being requested. A member's ability to inspect records under this section shall not be unreasonably denied or conditioned upon provision of an appropriate purpose for the request.

(h) **Subject to subsections (j) and (k)**, if there is a dispute between a homeowner and a homeowners association, the officers of the homeowners association must make all communications concerning the dispute available to the homeowner.

(i) **Subject to subsections (j) and (k), the following apply:**

(1) A homeowners association shall make all communications and information concerning a lot available to the owner of the lot or a home on the lot.

(2) **If a homeowners association initiates communication with any member about another member's lot, the homeowners association must give a copy of that communication to the other member whose lot is the subject of the communication.**

(j) ~~Notwithstanding subsections (h) and (i)~~; A homeowners association is not required to make:

(1) communications between the homeowners association and the legal counsel of the homeowners association; and

(2) other communications or attorney work product prepared in anticipation of litigation;

available to the owner of a lot or home.

(k) A homeowners association is not required to make available to a member for inspection **any of the following:**



- (1) Unexecuted contracts.
- (2) Records regarding contract negotiations.
- (3) Information regarding an individual member's association account to a person who is not a named party on the account.
- (4) Any ~~other~~ information that is prohibited from release under state or federal law. ~~or~~
- (5) Any records that were created more than two (2) years before the request. **Except as otherwise provided in this article, other applicable law, or the governing documents, this subdivision does not require a homeowners association to maintain any record for any specific period of time. However, except as provided in subsection (j) or this subsection, if a homeowners association has a document, the document must be disclosed to a member at the member's request.**

(l) Nothing in this chapter:

- (1) abrogates or eliminates provisions in homeowners association agreements that permit or require additional disclosure or inspection rights not required by this chapter; or
- (2) prevents a homeowners association from agreeing to make disclosures or to provide inspection rights not required by this chapter.

(m) A homeowners association may not charge a fee for the first hour required to search for a record in response to a written request submitted under this chapter. A homeowners association may charge a search fee for any time that exceeds one (1) hour. The following provisions apply if a homeowners association charges a search fee:

- (1) The homeowners association shall charge an hourly fee that does not exceed thirty-five dollars (\$35) per hour.
- (2) The homeowners association may charge the fee only for time that the person making the search actually spends in searching for the record.
- (3) The homeowners association shall prorate the fee to reflect any search time of less than one (1) hour.
- (4) The total amount of the fee charged by the homeowners



association for a search may not exceed two hundred dollars (\$200).".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1286 as introduced.)

MAHAN

Committee Vote: yeas 12, nays 0.

