

# The 2000 Florida Statutes

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## CHAPTER 720 HOMEOWNERS' ASSOCIATIONS

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**720.301 Definitions.** --As used in ss. 720.301-720.312, the term:

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

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

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

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

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

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

(5) "Developer" means a person or entity that:

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

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

(6) "Governing documents" means:

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

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

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

(8) "Member" means a member of an association, and may include, but is not limited to, a parcel owner or an association representing parcel owners or a combination thereof.

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

(a) Which is capable of separate conveyance; and

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

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

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

(10) "Parcel owner" means the record owner of legal title to a parcel.

(11) "Voting interest" means the voting rights distributed to the members of the homeowners' association, pursuant to the governing documents.

**History.**--s. 33, ch. 92-49; s. 52, ch. 95-274; s. 4, ch. 99-382; s. 44, ch. 2000-258.

**Note.**--Former s. 617.301.

**720.302 Purposes, scope, and application.**--

(1) The purposes of ss. 720.301-720.312 are to give statutory recognition to corporations that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.

(2) The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.312 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

(3) Sections 720.301-720.312 do not apply to:

(a) A community that is composed of property primarily intended for commercial, industrial, or other nonresidential use; or

(b) The commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use.

(4) Sections 720.301-720.312 do not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721; or to any nonmandatory association formed under chapter 723.

**History.**--s. 34, ch. 92-49; s. 53, ch. 95-274; s. 45, ch. 2000-258.

**Note.**--Former s. 617.302.

**720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting.**--

(1) **POWERS AND DUTIES.**--An association which operates a community as defined in s. 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community. The officers and directors of an association have a fiduciary relationship to the members who are served by the association. The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents. A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates.

(2) **BOARD MEETINGS.**--A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice or provision of a schedule of board meetings. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

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

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

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

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

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

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

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

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

(g) A current roster of all members and their mailing addresses and parcel identifications.

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

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

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

1. Accurate, itemized, and detailed records of all receipts and expenditures.
2. A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
3. All tax returns, financial statements, and financial reports of the association.
4. Any other records that identify, measure, record, or communicate financial information.

(5) INSPECTION AND COPYING OF RECORDS.--The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community.

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

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

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

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

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

- (a) Financial statements presented in conformity with generally accepted accounting principles; or

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

1. The amount of receipts and expenditures by classification; and
2. The beginning and ending cash balances of the association.

(8) ASSOCIATION FUNDS; COMMINGLING.--

(a) All association funds held by a developer shall be maintained separately in the association's name. Reserve and operating funds of the association shall not be commingled prior to turnover except the association may jointly invest reserve funds; however, such jointly invested funds must be accounted for separately.

(b) No developer in control of a homeowners' association shall commingle any association funds with his or her funds or with the funds of any other homeowners' association or community association.

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

**History.**--s. 35, ch. 92-49; s. 54, ch. 95-274; s. 1, ch. 97-311; s. 1, ch. 98-261; s. 46, ch. 2000-258.

**Note.**--Former s. 617.303.

#### **720.304 Right of owners to peaceably assemble.--**

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

(2) Any owner prevented from exercising rights guaranteed by subsection (1) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any homeowners' association document or rule that operates to deprive the owner of such rights.

**History.**--s. 36, ch. 92-49; s. 51, ch. 2000-258.

**Note.**--Former s. 617.304.

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

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

- (a) The association;

- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This section does not deprive any person of any other available right or remedy.

(2) If the governing documents so provide, an association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and may levy reasonable fines, not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate unless otherwise provided in the governing documents.

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

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

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

(3) If the governing documents so provide, an association may suspend the voting rights of a member for the nonpayment of regular annual assessments that are delinquent in excess of 90 days.

(4) If an association fails to fill vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws, any member may apply to the circuit court that has jurisdiction over the community served by the association for the appointment of a receiver to manage the affairs of the association. At least 30 days before applying to the circuit court, the member shall mail to the association, by certified or registered mail, and post, in a conspicuous place on the property of the community served by the association, a notice describing the intended action, giving the association 30 days to fill the vacancies. If during such time the association fails to fill a sufficient number of vacancies so that a quorum can be assembled, the member may proceed with the petition. If a receiver is appointed, the homeowners' association shall be responsible for the salary of the receiver, court costs, attorney's fees, and all other expenses of the receivership. The receiver has all the powers and duties of a duly constituted board of directors and shall serve until the association fills a sufficient number of vacancies on the board so that a quorum can be assembled.

**History.**--s. 37, ch. 92-49; s. 55, ch. 95-274; s. 2, ch. 97-311; s. 51, ch. 2000-258.

**Note.**--Former s. 617.305.

**720.306 Meetings of members; voting and election procedures; amendments.--**

(1) QUORUM; AMENDMENTS.--

(a) Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members shall be 30 percent of the total voting interests. Unless otherwise provided in this chapter or in the articles of incorporation or bylaws, decisions that require a vote of the members must be made by the concurrence of at least a majority of the voting interests present, in person or by proxy, at a meeting at which a quorum has been attained.

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association.

(c) Unless otherwise provided in the governing documents as originally recorded, an amendment may not affect vested rights unless the record owner of the affected parcel and all record owners of liens on the affected parcels join in the execution of the amendment.

(2) ANNUAL MEETING.--The association shall hold a meeting of its members annually for the transaction of any and all proper business at a time, date, and place stated in, or fixed in accordance with, the bylaws. The election of directors, if one is required to be held, must be held at, or in conjunction with, the annual meeting or as provided in the governing documents.

(3) SPECIAL MEETINGS.--Special meetings must be held when called by the board of directors or, unless a different percentage is stated in the governing documents, by at least 10 percent of the total voting interests of the association. Business conducted at a special meeting is limited to the purposes described in the notice of the meeting.

(4) CONTENT OF NOTICE.--Unless law or the governing documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(5) ADJOURNMENT.--Unless the bylaws require otherwise, adjournment of an annual or special meeting to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to s. 720.303(2). Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under <sup>1</sup>s. 617.0707, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

(6) PROXY VOTING.--The members have the right, unless otherwise provided in this subsection or in the governing documents, to vote in person or by proxy. To be valid, a proxy must be dated, must state the date, time, and place of the meeting for which it was given, and must be signed by the authorized person who executed the proxy. A proxy is effective only for the specific meeting for which it was originally given, as the meeting may lawfully be adjourned and reconvened from time to time, and automatically expires 90 days after the date of the meeting for which it was originally given. A proxy is revocable at any time at the pleasure of the person who executes it. If the proxy form expressly so provides, any proxy holder may appoint, in writing, a substitute to act in his or her place.

(7) ELECTIONS.--Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. All members of the association shall be eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held. Except as otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters.

(8) RECORDING.--Any parcel owner may tape record or videotape meetings of the board of directors and meetings of the members. The board of directors of the association may adopt reasonable rules governing the taping of meetings of the board and the membership.

**History.**--s. 38, ch. 92-49; s. 56, ch. 95-274; s. 4, ch. 96-343; s. 1718, ch. 97-102; s. 47, ch. 2000-258.

<sup>1</sup>**Note.**--Section 617.0707 does not exist.

**Note.**--Former s. 617.306.

**720.307 Transition of association control in a community.**--With respect to homeowners' associations:

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

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

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

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

(2) The developer is entitled to elect at least one member of the board of directors of the homeowners' association as long as the developer holds for sale in the ordinary course of business at least 5 percent of the parcels in all phases of the community. After the developer relinquishes control of the homeowners' association, the developer may exercise the right to vote any developer-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the homeowners' association or selecting the majority of the members of the board of directors.

(3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:

(a) All deeds to common property owned by the association.

(b) The original of the association's declarations of covenants and restrictions.

(c) A certified copy of the articles of incorporation of the association.

(d) A copy of the bylaws.

(e) The minute books, including all minutes.

(f) The books and records of the association.

(g) Policies, rules, and regulations, if any, which have been adopted.

- (h) Resignations of directors who are required to resign because the developer is required to relinquish control of the association.
  - (i) The financial records of the association from the date of incorporation through the date of turnover.
  - (j) All association funds and control thereof.
  - (k) All tangible property of the association.
  - (l) A copy of all contracts which may be in force with the association as one of the parties.
  - (m) A list of the names and addresses and telephone numbers of all contractors, subcontractors, or others in the current employ of the association.
  - (n) Any and all insurance policies in effect.
  - (o) Any permits issued to the association by governmental entities.
  - (p) Any and all warranties in effect.
  - (q) A roster of current homeowners and their addresses and telephone numbers and section and lot numbers.
  - (r) Employment and service contracts in effect.
  - (s) All other contracts in effect to which the association is a party.
- (4) This section does not apply to a homeowners' association in existence on the effective date of this act, or to a homeowners' association, no matter when created, if such association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereof.

**History.**--s. 57, ch. 95-274; s. 2, ch. 98-261; s. 48, ch. 2000-258.

**Note.**--Former s. 617.307.

**720.3075 Prohibited clauses in association documents.**--

- (1) It is declared that the public policy of this state prohibits the inclusion or enforcement of certain types of clauses in homeowners' association documents, including declaration of covenants, articles of incorporation, bylaws, or any other document of the association which binds members of the association, which either have the effect of or provide that:
- (a) A developer has the unilateral ability and right to make changes to the homeowners' association documents after the transition of homeowners' association control in a community from the developer to the nondeveloper members, as set forth in s. 720.307, has occurred.
  - (b) A homeowners' association is prohibited or restricted from filing a lawsuit against the developer, or the homeowners' association is otherwise effectively prohibited or restricted from bringing a lawsuit against the developer.

(c) After the transition of homeowners' association control in a community from the developer to the nondeveloper members, as set forth in s. 720.307, has occurred, a developer is entitled to cast votes in an amount that exceeds one vote per residential lot.

Such clauses are declared null and void as against the public policy of this state.

(2) The public policy described in subsection (1) prohibits the inclusion or enforcement of such clauses created on or after the effective date of s. 3, chapter 98-261, Laws of Florida.

(3) Homeowners' association documents, including declarations of covenants, articles of incorporation, or bylaws, may not preclude the display of one United States flag by property owners. However, the flag must be displayed in a respectful way and may be subject to reasonable standards for size, placement, and safety, as adopted by the homeowners' association, consistent with Title 36 U.S.C. chapter 10 and any local ordinances.

**History.**--s. 3, ch. 98-261; s. 49, ch. 2000-258; s. 47, ch. 2000-302.

**Note.**--Former s. 617.3075.

**720.308 Assessments and charges.**--For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof. Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors. While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association. This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereto.

**History.**--s. 58, ch. 95-274; s. 51, ch. 2000-258.

**Note.**--Former s. 617.308.

**720.309 Agreements entered into by the association.**--Any grant or reservation made by any document, and any contract with a term in excess of 10 years made by an association before control of the association is turned over to the members other than the developer, which provide for operation, maintenance, or management of the association or common areas must be fair and reasonable.

**History.**--s. 59, ch. 95-274; s. 51, ch. 2000-258.

**Note.**--Former s. 617.309.

**720.31 Recreational leaseholds; right to acquire; escalation clauses.**--

(1) Any lease of recreational or other commonly used facilities serving a community, which lease is entered into by the association or its members before control of the homeowners' association is turned over to the members other than the developer, must provide as follows:

(a) That the facilities may not be offered for sale unless the homeowners' association has the option to purchase the facilities, provided the homeowners' association meets the price and terms and conditions of the facility owner by executing a contract with the facility owner within 90 days, unless agreed to otherwise, from the date of mailing of the notice by the facility owner to the homeowners' association. If the facility owner offers the facilities for sale, he or she shall notify the homeowners' association in writing stating the price and the terms and conditions of sale.

(b) If a contract between the facility owner and the association is not executed within such 90-day period, unless extended by mutual agreement, then, unless the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his or her notice to the homeowners' association, he or she has no further obligations under this subsection, and his or her only obligation shall be as set forth in subsection (2).

(c) If the facility owner thereafter elects to offer the facilities at a price lower than the price specified in his or her notice to the homeowners' association, the homeowners' association will have an additional 10 days to meet the price and terms and condition of the facility owner by executing a contract.

(2) If a facility owner receives a bona fide offer to purchase the facilities that he or she intends to consider or make a counteroffer to, his or her only obligations shall be to notify the homeowners' association that he or she has received an offer, to disclose the price and material terms and conditions upon which he or she would consider selling the facilities, and to consider any offer made by the homeowners' association. The facility owner shall be under no obligation to sell to the homeowners' association or to interrupt or delay other negotiations, and he or she shall be free at any time to execute a contract for the sale of the facilities to a party or parties other than the homeowners' association.

(3)(a) As used in subsections (1) and (2), the term "notify" means the placing of a notice in the United States mail addressed to the president of the homeowners' association. Each such notice shall be deemed to have been given upon the deposit of the notice in the United States mail.

(b) As used in subsection (1), the term "offer" means any solicitation by the facility owner directed to the general public.

(4) This section does not apply to:

(a) Any sale or transfer to a person who would be included within the table of descent and distribution if the facility owner were to die intestate.

(b) Any transfer by gift, devise, or operation of law.

(c) Any transfer by a corporation to an affiliate. As used herein, the term "affiliate" means any shareholder of the transferring corporation; any corporation or entity owned or controlled, directly or indirectly, by the transferring corporation; or any other corporation or entity owned or controlled, directly or indirectly, by any shareholder of the transferring corporation.

(d) Any transfer to a governmental or quasi-governmental entity.

(e) Any conveyance of an interest in the facilities incidental to the financing of such facilities.

(f) Any conveyance resulting from the foreclosure of a mortgage, deed of trust, or other instrument encumbering the facilities or any deed given in lieu of such foreclosure.

- (g) Any sale or transfer between or among joint tenants in common owning the facilities.
- (h) The purchase of the facilities by a governmental entity under its powers of eminent domain.
- (5)(a) The Legislature declares that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases for recreational facilities, land, or other commonly used facilities that serve residential communities, and such clauses are hereby declared void. For purposes of this section, an escalation clause is any clause in a lease which provides that the rental rate under the lease or agreement is to increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.
- (b) This public policy prohibits the inclusion of such escalation clauses in leases entered into after the effective date of this amendment.
- (c) This section is inapplicable:
1. If the lessor is the Federal Government, this state, any political subdivision of this state, or any agency of a political subdivision of this state; or
  2. To a homeowners' association that is in existence on the effective date of this act, or to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereto.

**History.**--s. 60, ch. 95-274; s. 107, ch. 97-102; s. 51, ch. 2000-258.

**Note.**--Former s. 617.31.

**720.311 Dispute resolution.**--The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. At any time after the filing in a court of competent jurisdiction of a complaint relating to a dispute under ss. 720.301-720.312, the court may order that the parties enter mediation or arbitration procedures.

**History.**--s. 61, ch. 95-274; s. 50, ch. 2000-258.

**Note.**--Former s. 617.311.

**720.312 Declaration of covenants; survival after tax deed or foreclosure.**--All provisions of a declaration of covenants relating to a parcel that has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or master's deed, or upon the foreclosure of an assessment, a certificate or lien, a tax deed, tax certificate, or tax lien, to the same extent that they would be enforceable against a voluntary grantee of title to the parcel immediately before the delivery of the tax deed or master's deed or immediately before the foreclosure.

**History.**--s. 62, ch. 95-274; s. 51, ch. 2000-258.

**Note.**--Former s. 617.312.