



March 17, 2015

ENGROSSED HOUSE BILL No. 1286

DIGEST OF HB 1286 (Updated March 12, 2015 3:56 pm - DI 55)

Citations Affected: IC 32-21; IC 32-25; IC 32-25.5.

Synopsis: Condominium associations and homeowners associations. Requires the seller of a property that is subject to a homeowners association to make certain disclosures to the purchaser. Requires that a condominium declaration contain provisions allowing the co-owners to amend the declaration. Provides that the percentage of the votes required to amend a condominium's bylaws may not exceed 75%. Requires that the minutes of a condominium board's meetings be made available to a co-owner of the condominium for inspection upon request. Makes a provision under which a condominium's common areas can be conveyed or encumbered only with the votes of at least 95% of the condominium unit apply to all condominiums, not merely to one condominium located on a certain lake in a certain township. Establishes a procedure for the resolution of grievances involving a
(Continued next page)

Effective: July 1, 2015.

Burton, Slager, Truitt, Moseley
(SENATE SPONSOR — BUCK)

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

January 27, 2015, amended, reported — Do Pass.

February 2, 2015, read second time, amended, ordered engrossed.

February 3, 2015, engrossed. Read third time, passed. Yeas 97, nays 0.

SENATE ACTION

February 24, 2015, read first time and referred to Committee on Commerce & Technology.

March 16, 2015, amended, reported favorably — Do Pass.

EH 1286—LS 7283/DI 75



Digest Continued

procedure before legal proceedings can begin. Requires the inclusion of grievance resolution provisions in the condominium instruments of a condominium. Requires a homeowners association or a member of the board to retain for at least two years after receipt, and during that period to make available to a member of the homeowners association at the member's request, any written or electronic communication received by the homeowners association or board member that relates to a financial transaction of the homeowners association and that is not otherwise excepted from disclosure under law. Requires that the minutes of a homeowners association board's meetings be made available to a member of the homeowners association upon request. Provides that if a homeowners association initiates communication with any member about another member's lot, the association must give a copy of the communication to the member whose lot is the subject of the communication. Requires that the governing documents of a homeowners association contain provisions allowing the homeowners to amend the governing documents. Provides that the percentage of the votes required to amend the governing documents may not exceed 75%. Provides that certain requirements must be met in order for a proxy to be used at a homeowners association meeting. Authorizes the attorney general to bring an action against the board of a homeowners association or a member for: (1) misappropriation of the association's funds; (2) use of the board member's position to commit fraud or a criminal act; (3) the illegal exercise of a proxy; or (4) a violation concerning the association budget or the availability of records to members. Authorizes the court to impose a civil penalty of no more than \$500 in certain cases. Establishes a procedure for the resolution of grievances involving a homeowners association through negotiation, mediation, or arbitration, and requires that an attempt be made to resolve a claim through this procedure before legal proceedings can begin. Requires the inclusion of grievance resolution provisions in a homeowners association's governing documents.



March 17, 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.

ENGROSSED 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**

EH 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 at least ninety-five**
 6 **percent (95%) of the co-owners to convey common areas or**
 7 **to dissolve 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 32-25-8-2.5 IS ADDED TO THE INDIANA CODE
30 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
31 1, 2015]: **Sec. 2.5. The minutes of meetings of the board of directors**
32 **of a condominium, including the annual meeting, must be made**
33 **available to a co-owner of the condominium for inspection upon**
34 **request. The requesting co-owner may make a request to inspect**
35 **the minutes:**

36 (1) in person;

37 (2) in writing; or

38 (3) by electronic mail.

39 **The association of co-owners may charge the requesting co-owner**
40 **a reasonable copying fee if the co-owner requests a written copy of**
41 **the minutes.**

42 SECTION 5. IC 32-25-8.5 IS ADDED TO THE INDIANA CODE



1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2015]:

3 **Chapter 8.5. Grievance Resolution**

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

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

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

10 (1) **A claim arising out of, or relating to, the interpretation,**
11 **application, or enforcement of the condominium instruments.**

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

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

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

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

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

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

22 (1) **A claim by the association of co-owners for assessments or**
23 **dues and any action by the association to collect assessments**
24 **or dues.**

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

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

29 (B) **when an emergency condition exists that jeopardizes**
30 **the health or safety of any of the residents within the**
31 **condominium community.**

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

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

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

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

42 (B) **which was resolved by a judicial determination in favor**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

of one (1) of the parties.

Sec. 6. As used in this chapter, "legal proceedings" refers to either of the following:

- (1) An action maintained in a court.
- (2) An administrative proceeding initiated under an applicable law.

Sec. 7. As used in this chapter, "party" refers to any of the following:

- (1) The association of co-owners.
- (2) A co-owner.
- (3) The board.

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

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

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

Sec. 11. A claimant shall 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 condominium instruments 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. 12. (a) This section applies if a respondent has requested a meeting under section 11 of this chapter not later than ten (10) business days after the date of the notice of the claim given under section 11 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



1 appropriate or necessary. If the respondent agrees to take
 2 corrective action, the claimant must provide the respondent and
 3 the respondent's agents with full access to the property to take and
 4 complete corrective action.

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

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

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

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

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

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

17 Sec. 14. If an impasse is reached and:

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

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

21 the claimant may begin legal proceedings.

22 Sec. 15. (a) This section applies if a claim is settled through
 23 negotiation, mediation, or arbitration.

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

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

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

32 (1) court costs;

33 (2) attorney's fees; and

34 (3) all other reasonable costs incurred in enforcing the
 35 settlement agreement.

36 Sec. 16. A release or discharge of a respondent from liability to
 37 the claimant with respect to the claim does not release or discharge
 38 the respondent with respect to any other person who is not a party
 39 to the claim.

40 Sec. 17. The board, on behalf of the association of co-owners,
 41 and without the consent of the co-owners, may do any of the
 42 following:



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

3 **(2) Execute settlement agreements, waivers, releases of claims,**
 4 **or any other document resulting from application of this**
 5 **chapter.**

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

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

- 12 (1) A homeowners association established after June 30, 2009.
 13 (2) A homeowners association established before July 1, 2009:
 14 (A) if a majority of the members of the homeowners
 15 association elect to be governed by this article; or
 16 (B) if the number of members required by the homeowners
 17 association's governing documents elect to be governed by this
 18 article if a different number of members other than the number
 19 established in clause (A) is required by the governing
 20 documents.

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

- 23 ~~(1) IC 32-25.5-3-3(g) through IC 32-25.5-3-3(m). apply to all~~
 24 ~~homeowners associations:~~
 25 **(2) IC 32-25.5-3-9.**
 26 **(3) IC 32-25.5-3-10.**
 27 **(4) IC 32-25.5-4.**
 28 **(5) IC 32-25.5-5.**

29 SECTION 7. IC 32-25.5-2-3, AS ADDED BY P.L.167-2009,
 30 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2015]: Sec. 3. "Governing documents" includes **the**
 32 **following:**

- 33 (1) The articles of incorporation and bylaws of a homeowners
 34 association and all adopted amendments to the articles of
 35 incorporation and bylaws. ~~and~~
 36 (2) Any applicable **covenants filed with the office of the county**
 37 **recorder of the applicable county recorder, whether contained**
 38 **in a declaration of covenants, contained in conditions and**
 39 **restrictions (or similarly titled document), or contained within**
 40 **a plat.**

41 SECTION 8. IC 32-25.5-3-3, AS AMENDED BY P.L.231-2013,
 42 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 JULY 1, 2015]; Sec. 3. (a) A homeowners association shall prepare an
2 annual budget.
- 3 (b) The annual budget must reflect:
- 4 (1) the estimated revenues and expenses for the budget year; and
5 (2) the estimated surplus or deficit as of the end of the current
6 budget year.
- 7 (c) The homeowners association shall provide each member of the
8 homeowners association with:
- 9 (1) a:
- 10 (A) copy of the proposed annual budget; or
11 (B) written notice that a copy of the proposed annual budget
12 is available upon request at no charge to the member; and
13 (2) a written notice of the amount of any increase or decrease in
14 a regular annual assessment paid by the members that would
15 occur if the proposed annual budget is approved;
- 16 before the homeowners association meeting held under subsection (d).
- 17 (d) Subject to subsection (f), a homeowners association budget must
18 be approved at a meeting of the homeowners association members by
19 a majority of the members of the homeowners association in attendance
20 at a meeting called and conducted in accordance with the requirements
21 of the homeowners association's governing documents.
- 22 (e) For purposes of this section, a member of a homeowners
23 association is considered to be in attendance at a meeting if the
24 member attends:
- 25 (1) in person;
26 (2) by proxy; or
27 (3) by any other means allowed under:
- 28 (A) state law; or
29 (B) the governing documents of the homeowners association.
- 30 (f) If the number of members of the homeowners association in
31 attendance at a meeting held under subsection (d) does not constitute
32 a quorum as defined in the governing documents of the homeowners
33 association, the board may adopt an annual budget for the homeowners
34 association for the ensuing year in an amount that does not exceed one
35 hundred percent (100%) of the amount of the last approved
36 homeowners association annual budget. However, the board may adopt
37 an annual budget for the homeowners association for the ensuing year
38 in an amount that does not exceed one hundred ten percent (110%) of
39 the amount of the last approved homeowners association annual budget
40 if the governing documents of the homeowners association allow the
41 board to adopt an annual budget under this subsection for the ensuing
42 year in an amount that does not exceed one hundred ten percent



1 (110%) of the amount of the last approved homeowners association
2 annual budget.

3 (g) Subject to subsection (k):

4 (1) the financial records, including all contracts, invoices, bills,
5 receipts, and bank records, of a homeowners association must be
6 available for inspection by each member of the homeowners
7 association upon written request; **and**

8 **(2) the minutes of meetings of the homeowners association**
9 **board, including the annual meeting, must be available to a**
10 **member of the homeowners association for inspection upon**
11 **the homeowners association member's request, which may be**
12 **submitted:**

13 (A) in person;

14 (B) in writing; or

15 (C) by electronic mail.

16 A written request for inspection must identify with reasonable
17 particularity the information being requested. A member's ability to
18 inspect records under this section shall not be unreasonably denied or
19 conditioned upon provision of an appropriate purpose for the request.

20 **The homeowners association may charge a reasonable fee for the**
21 **copying of a record requested under this subsection if the**
22 **homeowners association member requests a written copy of the**
23 **record.**

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

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

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

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

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

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

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

42 available to the owner of a lot or home.



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

- 3 (1) Unexecuted contracts.
4 (2) Records regarding contract negotiations.
5 (3) Information regarding an individual member's association
6 account to a person who is not a named party on the account.
7 (4) Any ~~other~~ information that is prohibited from release under
8 state or federal law. ~~or~~
9 (5) Any records that were created more than two (2) years before
10 the request.

11 **Except as otherwise provided in this article (including subsection**
12 **(j) and this subsection), other applicable law, or the governing**
13 **documents of the homeowners association, a homeowners**
14 **association is not required to retain a record of a written or**
15 **electronic communication for any specific period of time. However,**
16 **a homeowners association or a member of the board of a**
17 **homeowners association shall retain for at least two (2) years after**
18 **receipt, and during that period shall make available to a member**
19 **of the homeowners association at the member's request, any**
20 **written or electronic communication received by the homeowners**
21 **association or board member that relates to a financial transaction**
22 **of the homeowners association and that is not otherwise excepted**
23 **from disclosure under this article or other applicable law.**

24 (l) Nothing in this chapter:

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

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

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



1 (4) The total amount of the fee charged by the homeowners
 2 association for a search may not exceed two hundred dollars
 3 (\$200).

4 SECTION 9. IC 32-25.5-3-6 IS REPEALED [EFFECTIVE JULY
 5 1, 2015]. Sec. 6: The governing documents must include grievance
 6 resolution procedures that apply to all members of the homeowners
 7 association and the board.

8 SECTION 10. IC 32-25.5-3-8 IS REPEALED [EFFECTIVE JULY
 9 1, 2015]. Sec. 8: (a) The attorney general may bring an action against
 10 a board or an individual member of a board of a homeowners
 11 association if the attorney general finds that:

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

14 (2) a board member has knowingly or intentionally used the board
 15 member's position on the board to commit fraud or a criminal act
 16 against the association or the association's members.

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

19 (1) Issue an injunction.

20 (2) Order the board member to make restitution to the
 21 homeowners association or to a member.

22 (3) Order a board member to be removed from the board.

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

26 SECTION 11. IC 32-25.5-3-9 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2015]: Sec. 9. The governing documents must
 29 contain a provision allowing the owners to amend the governing
 30 documents at any time, from time to time, subject to the following:

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

33 (A) the declarant owns one (1) or more units within the
 34 subdivision; and

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

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

39 (A) The vote of the owners at a meeting duly called for the
 40 purpose of considering the amendment.

41 (B) A written instrument signed by the owners.

42 The governing documents may not require that the consent of



1 more than seventy-five percent (75%) of the owners is
2 required for consent under this subdivision.

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

14 (4) Notwithstanding subdivisions (1) through (3), the
15 governing documents may require the approval of at least
16 ninety-five percent (95%) of the owners to convey common
17 areas or to dissolve the plan of governance for the
18 homeowners association.

19 SECTION 12. IC 32-25.5-3-10 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2015]: **Sec. 10. (a) This section applies to a**
22 **proxy given by a member of a homeowners association.**

23 (b) A proxy that does not comply with this subsection is void. A
24 proxy must include all the following:

- 25 (1) The name and address of the member giving the proxy.
- 26 (2) The name of the individual empowered to exercise the
27 member's proxy.
- 28 (3) The date on which the proxy is given.
- 29 (4) The date of the meeting for which the proxy is given.
- 30 (5) The member's signature.
- 31 (6) An affirmation under the penalties for perjury that the
32 individual signing the proxy has the authority to grant the
33 proxy to the individual named in the proxy to exercise the
34 member's proxy.

35 (c) A member may state in a proxy that the proxy is limited in
36 its use to specific matters described in the proxy.

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

42 (e) A member may create and use a proxy form designed by the



1 member if the form complies with the requirements of subsection
2 (b).

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

5 SECTION 13. IC 32-25.5-4 IS ADDED TO THE INDIANA CODE
6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2015]:

8 **Chapter 4. Attorney General Actions**

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

13 (1) The association's funds have been knowingly or
14 intentionally misappropriated or diverted by a board
15 member.

16 (2) A board member has knowingly or intentionally used the
17 board member's position on the board to commit fraud or a
18 criminal act against the association or the association's
19 members.

20 (3) A proxy was exercised in violation of IC 32-25.5-3-10.

21 (4) A violation of IC 32-25.5-3-3 has occurred.

22 **Sec. 2. (a)** A court in which an action is brought under this
23 chapter may do the following:

24 (1) Issue an injunction.

25 (2) Order the board member to make restitution to the
26 homeowners association or to a member of the homeowners
27 association.

28 (3) Order a board member to be removed from the board.

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

32 (5) Impose a civil penalty on a member of the board of a
33 homeowners association determined by the court to have
34 taken an action described in section 1(1) or 1(2) of this
35 chapter.

36 (b) A civil penalty imposed under subsection (a)(5) may not
37 exceed five hundred dollars (\$500) for each action described in
38 section 1(1) or 1(2) of this chapter that the board member is
39 determined by the court to have taken. The proceeds of a civil
40 penalty imposed under subsection (a)(5) shall be deposited in the
41 state general fund.

42 SECTION 14. IC 32-25.5-5 IS ADDED TO THE INDIANA CODE



1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2015]:

3 **Chapter 5. Grievance Resolution**

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

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

8 (1) A claim arising out of or relating to the interpretation,
9 application, or enforcement of the governing documents.

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

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

13 (4) Any other claim, grievance, or dispute among the parties
14 involving the subdivision or the homeowners association.

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

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

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

20 (1) A claim by the homeowners association for assessments or
21 dues and any action by the association to collect assessments
22 or dues.

23 (2) An action by a party to obtain a temporary restraining
24 order or equivalent emergency equitable relief:

25 (A) to maintain the status quo and preserve the party's
26 ability to enforce the governing documents; or

27 (B) when an emergency condition exists that jeopardizes
28 the health or safety of any of the residents within the
29 community governed by the homeowners association.

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

35 (4) A dispute that is subject to mediation, arbitration, or other
36 alternate dispute resolution under applicable law, contract,
37 warranty agreement, or other instrument.

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

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

40 (B) that was resolved by a judicial determination in favor
41 of one (1) of the parties.

42 **Sec. 5. As used in this chapter, "legal proceedings" refers to**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

either of the following:

- (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



1 the respondent's agents with full access to the property to take and
2 complete corrective action.

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

- 4 (1) the respondent does not request a meeting under section 10
5 of this chapter;
6 (2) either party fails to attend a meeting agreed upon under
7 section 11 of this chapter; or
8 (3) the parties are unable to settle the claim at a meeting held
9 under section 11 of this chapter.

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

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

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

- 16 (1) neither party requests mediation or arbitration; or
17 (2) mediation or arbitration does not result in a settlement of
18 the claim;

19 the claimant may begin legal proceedings.

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

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

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

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

- 30 (1) court costs;
31 (2) attorney's fees; and
32 (3) all other reasonable costs incurred in enforcing the
33 settlement agreement.

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

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

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



1 **(2) Execute settlement agreements, waivers, releases of claims,**
2 **or any other documents resulting from application of this**
3 **chapter.**

4 **Sec. 17. Except as otherwise provided in this chapter, each party**
5 **shall bear its own costs for application of this chapter, including**
6 **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.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1286 be amended to read as follows:

Page 3, line 5, after "of" insert "**at least**".

Page 12, line 24, after "of" insert "**at least**".

(Reference is to HB 1286 as printed January 27, 2015.)

BURTON

COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred House Bill No. 1286, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 4. IC 32-25-8-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: **Sec. 2.5. The minutes of meetings of the board of directors of a condominium, including the annual meeting, must be made available to a co-owner of the condominium for inspection upon request. The requesting co-owner may make a request to inspect the minutes:**

- (1) in person;
- (2) in writing; or
- (3) by electronic mail.

The association of co-owners may charge the requesting co-owner a reasonable copying fee if the co-owner requests a written copy of



the minutes."

Page 4, line 40, delete "governing documents." and insert **"condominium instruments."**

Page 9, line 32, after "(k)" delete "," and insert ":

(1)"

Page 9, line 35, delete "request." and insert "request; **and**

(2) the minutes of meetings of the homeowners association board, including the annual meeting, must be available to a member of the homeowners association for inspection upon the homeowners association member's request, which may be submitted:

(A) in person;

(B) in writing; or

(C) by electronic mail."

Page 9, line 35, begin a new line blocked left beginning with "A written".

Page 9, line 39, after "request." insert **"The homeowners association may charge a reasonable fee for the copying of a record requested under this subsection if the homeowners association member requests a written copy of the record."**

Page 10, line 26, delete "Except as otherwise provided in this article, other".

Page 10, delete lines 27 through 32, begin a new line blocked left and insert:

"Except as otherwise provided in this article (including subsection (j) and this subsection), other applicable law, or the governing documents of the homeowners association, a homeowners association is not required to retain a record of a written or electronic communication for any specific period of time. However, a homeowners association or a member of the board of a homeowners association shall retain for at least two (2) years after receipt, and during that period shall make available to a member of the homeowners association at the member's request, any written or electronic communication received by the homeowners association or board member that relates to a financial transaction of the homeowners association and that is not otherwise excepted from disclosure under this article or other applicable law."

Page 13, line 31, after "Sec. 2." insert **"(a)"**.

Page 13, between lines 40 and 41, begin a new line block indented and insert:

"(5) Impose a civil penalty on a member of the board of a homeowners association determined by the court to have



taken an action described in section 1(1) or 1(2) of this chapter.

(b) A civil penalty imposed under subsection (a)(5) may not exceed five hundred dollars (\$500) for each action described in section 1(1) or 1(2) of this chapter that the board member is determined by the court to have taken. The proceeds of a civil penalty imposed under subsection (a)(5) shall be deposited in the state general fund."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1286 as reprinted February 3, 2015.)

BUCK, Chairperson

Committee Vote: Yeas 6, Nays 0.

