

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 703

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO THE HOMEOWNER'S ASSOCIATION ACT; REPEALING SECTION 45-810, IDAHO CODE, RELATING TO HOMEOWNER'S ASSOCIATION LIENS; REPEALING SECTION 55-115, IDAHO CODE, RELATING TO PROHIBITED CONDUCT BY HOMEOWNER'S ASSOCIATIONS; REPEALING SECTION 55-116, IDAHO CODE, RELATING TO HOMEOWNER'S ASSOCIATIONS; AMENDING TITLE 55, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 32, TITLE 55, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR THE ADMINISTRATION OF AN INCORPORATED OR UNINCORPORATED HOMEOWNER'S ASSOCIATION, TO PROVIDE FOR DISCLOSURE OF FEES AND FINANCIAL DISCLOSURES BY A HOMEOWNER'S ASSOCIATION, TO PROVIDE FOR VIOLATIONS, DUE PROCESS AND NOTICE, LIMITATIONS ON FINES, AND ATTORNEY'S FEES, TO PROVIDE FOR HOMEOWNER'S ASSOCIATION LIENS, TO ESTABLISH PROVISIONS REGARDING SOLAR PANELS, TO ESTABLISH PROVISIONS REGARDING POLITICAL SIGNS, TO ESTABLISH PROVISIONS REGARDING FLAGS, AND TO PROHIBIT CERTAIN CONDUCT REGARDING RENTAL RESTRICTIONS; AMENDING SECTION 42-1311, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section [45-810](#), Idaho Code, be, and the same is hereby repealed.

SECTION 2. That Section [55-115](#), Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Section [55-116](#), Idaho Code, be, and the same is hereby repealed.

SECTION 4. That Title 55, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 32, Title 55, Idaho Code, and to read as follows:

CHAPTER 32
HOMEOWNER'S ASSOCIATION ACT

55-3201. SHORT TITLE. This chapter shall be known and may be cited as the "Homeowner's Association Act."

55-3202. LEGISLATIVE INTENT. An increasing number of Idahoans reside within homeowner's associations. To protect the rights of current and subsequent property owners within a homeowner's association, it is the intent of the legislature to ensure the transparent operation and inclusive management of these associations, balancing the rights of all owners within home-

owner's associations to promote harmony and respect for community standards and to protect the rights of individuals and neighbors in the community.

55-3203. DEFINITIONS. As used in this chapter:

(1) "Board" means the entity that has the duty of governing the homeowner's association and may be referred to as a board of directors, executive board, or any other such similar name.

(2) "Financial disclosure" means the accounting records of the organization that are kept, disclosed, and made available for inspection in accordance with part 11, chapter 30, title 30, Idaho Code, and the governing documents of the homeowner's association.

(3) "Governing documents" means a written instrument by which the homeowner's association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the homeowner's association. "Governing documents" includes but is not limited to articles of incorporation, bylaws, a plat, rules of the homeowner's association, and any declaration of covenants, conditions, and restrictions.

(4) "Homeowner's association" means any incorporated or unincorporated association:

(a) In which membership is based upon owning or possessing an interest in real property; and

(b) That has the authority, pursuant to recorded covenants, bylaws, or other governing documents, to assess and record liens against the real property of its members.

(5) "Member" or "membership" means any person or entity owning or possessing an interest in residential real property or a lot within the physical boundaries of an established homeowner's association.

55-3204. ADMINISTRATION OF AN INCORPORATED OR UNINCORPORATED HOMEOWNER'S ASSOCIATION. (1) Board meetings must be open to the members of the homeowner's association and any representative or agent designated in a signed writing by a member to represent the member.

(2) An executive session at which members of the homeowner's association are excluded may be held upon a majority vote of the board for the following purposes:

(a) To consider matters of personnel, hiring, bid review, or contract negotiation;

(b) To consider records that are not subject to disclosure under part 11, chapter 30, title 30, Idaho Code;

(c) To consult with an attorney for the purpose of obtaining legal advice. The mere presence of legal counsel at a board meeting shall not justify entering into executive session;

(d) To discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; or

(e) To discuss sensitive matters related to an individual member's property or assessments, such as violations or delinquent assessments.

(3) All homeowner's associations, whether incorporated or unincorporated, shall:

(a) Hold a meeting of the membership each calendar year. Such meeting may be conducted in person or, with the approval of a simple major-

1 ity of the members, be conducted through an electronic or hybrid meeting
2 model;

3 (b) Be governed by the provisions of sections 30-30-501 and 30-30-505,
4 Idaho Code, as those provisions relate to notice of meetings of the
5 homeowner's association. The board may adopt a process for members to
6 choose to receive notice of any meeting of the homeowner's association
7 by electronic means rather than by mail. All dates and information of
8 the notice must remain the same as a mail notice;

9 (c) Take minutes from all meetings of the homeowner's association, in-
10 cluding membership meetings and board meetings, and preserve such min-
11 utes for a minimum of ten (10) years; and

12 (d) Determine and establish the amount of assessments in accordance
13 with the governing documents or, in the event the governing documents
14 do not include such language, with the approval of a majority of the
15 members of the homeowner's association.

16 (4) A board of a homeowner's association may not use its power to adopt
17 rules governing the common property to expand the provisions of the restric-
18 tive covenants as they relate to a member's property.

19 (5) All homeowner's associations, whether incorporated or unincorpo-
20 rated, shall be governed by sections 30-30-502 and 30-30-608, Idaho Code,
21 as those sections relate to the removal of a board member and the process of
22 calling a special meeting for such removal.

23 (6) Unincorporated homeowner's associations shall be governed by by-
24 laws that provide for at least the following:

25 (a) A requirement that the homeowner's association holds at least one
26 (1) meeting each calendar year;

27 (b) A requirement that notice of any meeting of the homeowner's associ-
28 ation be published and distributed to all members of the homeowner's as-
29 sociation;

30 (c) A requirement that the minutes of all homeowner's association meet-
31 ings be taken and preserved;

32 (d) A method of adopting and amending fees; and

33 (e) A provision that no fees or assessments of the homeowner's asso-
34 ciation may be increased unless a majority of all members of the home-
35 owner's association vote in favor of the increase.

36 (7) If a homeowner's association violates any of the provisions of this
37 chapter and a member prevails in a legal action to protect his rights, the
38 member shall be entitled to an award of reasonable attorney's fees.

39 55-3205. DISCLOSURE OF FEES AND FINANCIAL DISCLOSURES. (1) A home-
40 owner's association or its agent must provide a member and the member's
41 agent, if any, a statement of the member's account no more than five (5)
42 business days after a request by the member or the member's agent is received
43 by the manager, president, board member, or other agent of the homeowner's
44 association, or any combination thereof. The statement of account must in-
45 clude, at a minimum, the amount of annual charges against the property, the
46 date when said amounts are due, and any unpaid assessments or other charges
47 due and owing from such member at the time of the request. The homeowner's
48 association will be bound by the amounts set forth within the statement of
49 account.

1 (2) On or before January 1 of each year, a homeowner's association or
2 its agent must provide its members a disclosure of fees that will be charged
3 to a member in connection with any transfer of ownership of his property.
4 Fees imposed by a homeowner's association for the calendar year following
5 the disclosure of fees may not exceed the amount set forth on the annual dis-
6 closure, and no surcharge or additional fees may be charged to any member in
7 connection with any transfer of ownership of his property. No fees may be
8 charged for expeditiously providing a member's statement of account as set
9 forth in this section.

10 (3) A homeowner's association or its agent must provide a member and the
11 member's agent, if any, an up-to-date financial disclosure no more than ten
12 (10) business days after a request by the member or the member's agent is re-
13 ceived by the manager, president, board member, or other agent of the home-
14 owner's association, or any combination thereof.

15 (4) Within sixty (60) days of the close of the fiscal year, a home-
16 owner's association or its agent must provide all members of the organi-
17 zation, and the member's agent, if any, with an up-to-date and reconciled
18 financial disclosure for the fiscal year.

19 55-3206. VIOLATIONS -- DUE PROCESS AND NOTICE -- LIMITATION ON FINES
20 -- ATTORNEY'S FEES. (1) No fine may be imposed for a violation of the
21 covenants and restrictions pursuant to the rules or regulations of a home-
22 owner's association unless the authority to impose a fine is clearly set
23 forth in the covenants and restrictions. A majority vote by the board is
24 required before any fine may be imposed on a member for a violation of any
25 covenants and restrictions pursuant to the rules and regulations of the
26 homeowner's association. Written notice must be provided to the member at
27 least thirty (30) days prior to a meeting at which a vote to impose a fine on
28 the member is to be held. Service of the notice must be by personal service or
29 certified mail.

30 (2) In the event the member begins resolving the violation prior to a
31 meeting held pursuant to subsection (1) of this section, no fine may be im-
32 posed as long as the member continues to address the violation in good faith
33 until fully resolved.

34 (3) No portion of any fine may be used to increase the remuneration of
35 any board member or agent of the board.

36 (4) Except as may otherwise be provided in this subsection, nothing in
37 this section is intended to affect any statute, rule, covenant, bylaw, pro-
38 vision, or clause that may allow for the recovery of attorney's fees. Attor-
39 ney's fees and costs may not accrue or be assessed or collected by the home-
40 owner's association until the homeowner's association has complied with the
41 requirements of this section and the member has failed to address the vio-
42 lation as set forth in subsection (2) of this section. A court of competent
43 jurisdiction may determine the reasonableness of attorney's fees and costs
44 assessed against a member. In an action to determine the reasonableness of
45 attorney's fees and costs assessed by the homeowner's association against a
46 member, the court may award reasonable attorney's fees and costs to the pre-
47 vailing party.

1 55-3207. HOMEOWNER'S ASSOCIATION LIENS. (1) A homeowner's associa-
 2 tion may levy an assessment against a lot for the reasonable costs incurred
 3 in the maintenance of common areas consisting of real property owned and
 4 maintained by the homeowner's association.

5 (2) (a) A homeowner's association claiming a lien under subsection (1)
 6 of this section must file a claim in the county in which the lot or some
 7 part thereof is located. The claim must contain:

8 (i) A true statement of the amount due for the unpaid assessments
 9 after deducting all just credits and offsets;

10 (ii) The name of the lot owner, or reputed owner, if known;

11 (iii) The name of the homeowner's association; and

12 (iv) A description, sufficient for identification, of the prop-
 13 erty to be charged with the lien.

14 (b) When a claim has been filed and recorded pursuant to this section
 15 and the owner of the lot subject to the claim thereafter fails to pay any
 16 assessment chargeable to such lot, then as long as the original or any
 17 subsequent unpaid assessment remains unpaid, such claim shall automat-
 18 ically accumulate the subsequent unpaid assessments without the neces-
 19 sity of further filings under this section.

20 (c) The claim must be verified by the oath of an individual having
 21 knowledge of the facts and must be recorded by the county recorder. The
 22 record will be indexed as other liens are required by law to be indexed.

23 (d) Within five (5) business days after recording a lien on the prop-
 24 erty, the homeowner's association shall serve, by personal delivery to
 25 the owner or reputed owner or by certified mail to the last known address
 26 of the owner or reputed owner, a true and correct copy of the recorded
 27 lien.

28 (3) The lien may be enforced by the board acting on behalf of the home-
 29 owner's association.

30 (4) This section does not prohibit a homeowner's association from pur-
 31 suing an action to recover sums for which subsection (1) of this section cre-
 32 ates a lien or from taking a deed in lieu of foreclosure in satisfaction of
 33 the lien.

34 (5) An action to recover a money judgment for unpaid assessments may be
 35 maintained without foreclosing or waiving the lien securing the claim for
 36 unpaid assessments. However, recovery on the action operates to satisfy the
 37 lien, or the portion thereof, for which recovery is made.

38 55-3208. SOLAR PANELS. (1) No homeowner's association may add, amend,
 39 or enforce any covenant, condition, or restriction in such a way that pro-
 40 hibits the installation of solar panels or solar collectors on the rooftop of
 41 any property or structure within the jurisdiction of the homeowner's associa-
 42 tion. A homeowner's association may, however, determine the specific loca-
 43 tion where solar panels or solar collectors may be installed on the roof as
 44 long as installation is permitted with an orientation to the south or within
 45 forty-five (45) degrees east or west of due south.

46 (2) A homeowner's association may adopt reasonable rules for the
 47 installation of solar panels or solar collectors consistent with an ap-
 48 plicable building code or to require that panels or collectors be parallel
 49 to a roofline, conform to the slope of a roof, and that any frame, support

1 bracket, or visible piping or wiring be painted to coordinate with the roof-
 2 ing material. The provisions of this subsection shall apply only to rooftops
 3 that are owned, controlled, and maintained by the homeowner.

4 55-3209. POLITICAL SIGNS. (1) Except as otherwise provided in this
 5 section, no homeowner's association may add, amend, or enforce any covenant,
 6 condition, or restriction in such a way that prohibits or has the effect of
 7 prohibiting the display of a political sign.

8 (2) A homeowner's association may adopt reasonable rules, subject to
 9 any applicable laws or ordinances, regarding the time, size, place, number,
 10 and manner of display of political signs.

11 (3) A homeowner's association may remove a political sign without lia-
 12 bility if the sign:

13 (a) Is placed within the common areas, including limited common areas,
 14 other property or improvements owned or maintained by the homeowner's
 15 association, or property owned in common by the members of the home-
 16 owner's association;

17 (b) Threatens the public health or safety;

18 (c) Violates an applicable law or ordinance; or

19 (d) Is accompanied by sound or music or if any other materials are at-
 20 tached to the political sign.

21 (4) Except as provided in subsection (3) of this section, a homeowner's
 22 association shall not remove a political sign from the property of a member
 23 or impose any fine or penalty upon the member unless it has first provided the
 24 member three (3) days' written notice that specifically identifies the rule
 25 and the nature of the violation.

26 (5) For the purpose of this chapter, "political sign" means any fixed,
 27 ground-mounted display in support of or in opposition to a candidate for of-
 28 fice or a ballot measure.

29 55-3210. FLAGS. (1) No homeowner's association may add, amend, or en-
 30 force any covenant, condition, or restriction in such a way that prohibits or
 31 has the effect of prohibiting the display of:

32 (a) The flag of the United States of America;

33 (b) The flag of the state of Idaho;

34 (c) The POW/MIA flag; or

35 (d) An official or replica flag of any branch of the United States armed
 36 forces.

37 (2) A homeowner's association may adopt reasonable rules, subject to
 38 applicable laws or ordinances:

39 (a) That require:

40 (i) The flag of the United States of America and the flag of the
 41 state of Idaho to be displayed in accordance with 4 U.S.C. 5 et
 42 seq.;

43 (ii) A flagpole attached to a dwelling or a freestanding flagpole
 44 to be constructed of permanent, long-lasting materials with a fin-
 45 ish appropriate to the materials used in the construction of the
 46 flagpole and harmonious to the dwelling;

- 1 (iii) The display of a flag, or the location and construction of
- 2 the supporting flagpole, to comply with applicable zoning ordi-
- 3 nances, easements, and setbacks of record; and
- 4 (iv) That a displayed flag and the flagpole on which it is flown be
- 5 maintained in good condition and that any deteriorated flag or de-
- 6 teriorated or structurally unsafe flagpole be repaired, replaced,
- 7 or removed;
- 8 (b) That regulate the size, number, and location of flagpoles on which
- 9 flags are displayed, except that the regulation may not prevent the in-
- 10 stallation or erection of at least one (1) flagpole per property that:
- 11 (i) Is not more than twenty (20) feet in height and, subject to
- 12 applicable zoning ordinances, easements, and setbacks of record,
- 13 is located in the front yard of the property; or
- 14 (ii) Is attached to any portion of a residential structure owned
- 15 by the member and not maintained by the homeowner's association;
- 16 (c) That govern the size of a displayed flag;
- 17 (d) That regulate the size, location, and intensity of any lights used
- 18 to illuminate a displayed flag;
- 19 (e) That impose reasonable restrictions to abate noise caused by an ex-
- 20 ternal halyard of a flagpole; or
- 21 (f) That prohibit a member from locating a displayed flag or flagpole on
- 22 property that is:
- 23 (i) A common area, including a limited common area;
- 24 (ii) Owned or maintained by the homeowner's association; or
- 25 (iii) Owned in common by the members of the association.
- 26 (3) A member who has a front yard and who otherwise complies with any
- 27 permitted homeowner's association regulation may elect to install a flag-
- 28 pole in accordance with subsection (2) (b) of this section.
- 29 (4) A homeowner's association may not remove a flag permitted by sub-
- 30 section (1) of this section from the property of a member or impose any fine
- 31 or penalty upon the member unless it has first provided the member three (3)
- 32 days' written notice that specifically identifies the rule and the nature of
- 33 the violation.

34 55-3211. PROHIBITED CONDUCT -- RENTAL RESTRICTIONS. No homeowner's
 35 association may add, amend, or enforce any covenant, condition, or restric-
 36 tion in such a way that limits or prohibits the rental, for any amount of
 37 time, of any property, land, or structure thereon within the jurisdiction of
 38 the homeowner's association, unless expressly agreed to in writing at the
 39 time of such addition or amendment by the owner of the affected property.
 40 Nothing in this section shall be construed to prevent the enforcement of
 41 valid covenants, conditions, or restrictions limiting a property owner's
 42 right to transfer his interest in land or the structures thereon as long as
 43 that covenant, condition, or restriction applied to the property at the time
 44 the homeowner acquired his interest in the property.

45 SECTION 5. That Section 42-1311, Idaho Code, be, and the same is hereby
 46 amended to read as follows:

47 42-1311. AMOUNT AND LIEN OF ASSESSMENTS. The amount assessed against
 48 each water user, together with any penalties and interest, shall be a lien

1 upon the water user's land that is entitled to receive water from the point
2 or points of delivery in the canal or reservoir, or from the point or points
3 of diversion from waters of the state, that supplies the association's lat-
4 eral or ditch. The lien shall be recorded and collected in accordance with
5 ~~subsections (2) through (5) of section 45-810~~ section 55-3207, Idaho Code,
6 governing homeowner's association liens, except that the lien may be con-
7 tinued in force for a period of time not to exceed three (3) years and may be
8 extended not to exceed three (3) additional years. The lien provided for in
9 this section shall have priority according to its date of recordation, ex-
10 cept as to other liens described in titles 42 and 43, Idaho Code.

11 SECTION 6. An emergency existing therefor, which emergency is hereby
12 declared to exist, this act shall be in full force and effect on and after
13 July 1, 2022.