

1 A bill to be entitled
2 An act relating to community association managers;
3 creating s. 468.430, F.S.; providing a short title;
4 amending s. 468.431, F.S.; revising definitions;
5 amending s. 468.4315, F.S.; renaming the Regulatory
6 Council of Community Association Managers as the Board
7 of Community Association Managers; revising and
8 providing responsibilities relating to the board;
9 amending s. 468.432, F.S.; revising provisions
10 relating to the licensure of community association
11 managers and community association management firms;
12 amending s. 468.433, F.S.; revising requirements for
13 licensure by examination; conforming provisions to
14 changes made by the act; amending s. 468.4336, F.S.;
15 conforming provisions to changes made by the act;
16 amending s. 468.4337, F.S.; revising requirements for
17 continuing education and license renewal; amending s.
18 468.4338, F.S.; conforming provisions to changes made
19 by the act; amending s. 468.435, F.S.; revising
20 provisions relating to fees; amending s. 468.436,
21 F.S.; revising provisions relating to disciplinary
22 proceedings; conforming provisions to changes made by
23 the act; amending s. 468.4365, F.S.; revising
24 provisions relating to the availability of
25 disciplinary records and proceedings; amending s.
26 468.438, F.S.; making an editorial change; providing

27 | an effective date.

28 |

29 | Be It Enacted by the Legislature of the State of Florida:

30 |

31 | Section 1. Section 468.430, Florida Statutes, is created
32 | to read:

33 | 468.430 Short title.—This part may be cited as the
34 | "Community Association Management Act."

35 | Section 2. Section 468.431, Florida Statutes, is amended
36 | to read:

37 | 468.431 Definitions.—As used in this part:

38 | (1)~~(5)~~ "Board" ~~"Council"~~ means the Board ~~Regulatory~~
39 | ~~Council~~ of Community Association Managers.

40 | (2)~~(1)~~ "Community association" or "association" means a
41 | residential homeowner, condominium, cooperative, or timeshare
42 | ~~homeowners'~~ association in which membership is a condition of
43 | ownership of a unit ~~that in a planned unit development, or of a~~
44 | ~~lot for a home or a mobile home, or of a townhouse, villa,~~
45 | ~~condominium, cooperative, or other residential unit which is~~
46 | part of a residential development scheme and ~~which~~ is authorized
47 | to impose a fee which may become a lien on the parcel.

48 | (3)~~(2)~~ "Community association management" means any of the
49 | following practices requiring substantial specialized knowledge,
50 | judgment, and managerial skill when done for remuneration ~~and~~
51 | ~~when the association or associations served contain more than 10~~
52 | ~~units or have an annual budget or budgets in excess of \$100,000:~~

53 | controlling or disbursing funds of a community association,
54 | preparing budgets or other financial documents for a community
55 | association, assisting in the noticing or conduct of community
56 | association meetings, determining the number of days required
57 | for statutory notices, determining amounts due to the
58 | association, collecting amounts due to the association before
59 | the filing of a civil action, calculating the votes required for
60 | a quorum or to approve a proposition or amendment, completing
61 | forms related to the management of a community association ~~that~~
62 | ~~have been~~ created by statute or by a state agency, drafting
63 | meeting notices and agendas, calculating and preparing
64 | certificates of assessment and estoppel certificates, responding
65 | to requests for certificates of assessment and estoppel
66 | certificates, negotiating monetary or performance terms of a
67 | contract subject to approval by an association, drafting
68 | prearbitration demands, coordinating or performing maintenance
69 | for real or personal property and other related routine services
70 | involved in the operation of a community association, providing
71 | services as described in s. 468.433(3), and complying with the
72 | association's governing documents and the requirements of law as
73 | necessary to perform such practices. A person who performs
74 | clerical or ministerial functions under the direct supervision
75 | and control of a licensed manager or ~~who~~ is charged only with
76 | performing the maintenance of a community association and ~~who~~
77 | does not assist in any of the management services described in
78 | this subsection is not required to be licensed under this part.

79 (4)~~(3)~~ "Community association management firm" means a
 80 corporation, limited liability company, partnership, trust,
 81 association, sole proprietorship, or other similar organization
 82 engaging in the business of community association management for
 83 the purpose of providing any of the services described in
 84 subsection (3) ~~(2)~~.

85 (5)~~(4)~~ "Community association manager" means a natural
 86 person ~~who is~~ licensed pursuant to this part to perform
 87 community association management services.

88 (6) "Department" means the Department of Business and
 89 Professional Regulation.

90 Section 3. Section 468.4315, Florida Statutes, is amended
 91 to read:

92 468.4315 Board ~~Regulatory Council~~ of Community Association
 93 Managers.—

94 (1) The Board ~~Regulatory Council~~ of Community Association
 95 Managers is created within the department and shall consist of
 96 seven members appointed by the Governor and confirmed by the
 97 Senate. Members of the board serving on or before July 1, 2016,
 98 shall continue as members of the board consistent with the
 99 provisions of this section.

100 (a) Five members of the board ~~council~~ shall be licensed
 101 community association managers, one of whom may be a community
 102 association manager employed by a timeshare managing entity as
 103 described in ss. 468.438 and 721.13, who have held an active
 104 license for at least 5 years. The remaining two board ~~council~~

105 members shall be residents of this state, must not be or ever
 106 have been connected with the business of community association
 107 management, and are ~~shall~~ not ~~be~~ prohibited from serving because
 108 the member is ~~or has been~~ a resident, unit owner, or board
 109 member of a community association.

110 (b) The Governor shall appoint members for staggered terms
 111 of 4 years. Such members shall serve until their successors are
 112 appointed. Members' service on the board ~~council~~ shall begin
 113 upon appointment and shall continue until their successor is
 114 appointed or they are removed because of two unexcused absences
 115 or resignation ~~successors are appointed.~~

116 (2) The board ~~council~~ may adopt rules relating to the
 117 licensure examination, continuing education requirements,
 118 continuing education providers, fees, and professional practice
 119 standards. The board may adopt rules pursuant to ss. 120.536(1)
 120 and 120.54 to implement the provisions of this part or chapter
 121 455 conferring duties upon it and to assist the department in
 122 carrying out the duties and authorities conferred upon the
 123 department by this part.

124 ~~(3) To the extent the council is authorized to exercise~~
 125 ~~functions otherwise exercised by a board pursuant to chapter~~
 126 ~~455, the provisions of chapter 455 and s. 20.165 relating to~~
 127 ~~regulatory boards shall apply, including, but not limited to,~~
 128 ~~provisions relating to board rules and the accountability and~~
 129 ~~liability of board members. All proceedings and actions of the~~
 130 ~~council are subject to the provisions of chapter 120. In~~

131 ~~addition, the provisions of chapter 455 and s. 20.165 shall~~
 132 ~~apply to the department in carrying out the duties and~~
 133 ~~authorities conferred upon the department by this part.~~

134 (3)~~(4)~~ The board ~~council~~ may establish a public education
 135 program relating to professional community association
 136 management.

137 (4)~~(5)~~ Members of the board ~~council~~ shall serve without
 138 compensation but are entitled to receive per diem and travel
 139 expenses pursuant to s. 112.061 while carrying out business
 140 approved by the board, the chair of the board, or the division
 141 between meetings ~~council~~.

142 (5)~~(6)~~ The responsibilities of the board ~~council~~ shall
 143 include, but are not ~~be~~ limited to:

144 (a) Receiving input regarding issues of concern with
 145 respect to community association management and recommendations
 146 for changes in applicable laws.

147 (b) Reviewing, evaluating, and advising the division
 148 concerning revisions and adoption of rules affecting community
 149 association management and associations.

150 (c) Recommending improvements, if needed, in the education
 151 programs offered by the division.

152 (6) The board may freely consult with the Division of
 153 Common Interest Communities of the Department of Business and
 154 Professional Regulation and the Community Association Living
 155 Study Council to coordinate efforts for regulatory and
 156 legislative improvements.

157 Section 4. Section 468.432, Florida Statutes, is amended
 158 to read:

159 468.432 Licensure of community association managers and
 160 community association management firms; exceptions.—

161 (1) A person shall not manage or hold herself or himself
 162 out to the public as being able to manage a community
 163 association in this state unless she or he is licensed by the
 164 department in accordance with the provisions of this part.
 165 However, nothing in this part prohibits any person licensed in
 166 this state under any other law or court rule from engaging in
 167 the profession for which she or he is licensed.

168 (2) ~~As of January 1, 2009,~~ A community association
 169 management firm ~~or other similar organization responsible for~~
 170 ~~the management of more than 10 units or a budget of \$100,000 or~~
 171 ~~greater~~ shall not engage, or hold itself out to the public as
 172 being able to engage, in the business of community association
 173 management in this state unless it is licensed by the department
 174 as a community association management firm in accordance with
 175 the provisions of this part.

176 (a) A community association management firm ~~or other~~
 177 ~~similar organization~~ desiring to be licensed as a community
 178 association management firm shall apply to the department on a
 179 form approved by the department, together with the application
 180 and licensure fees required by s. 468.435(1)(a) and (c). Each
 181 community association management firm applying for licensure
 182 under this subsection must be actively registered with the

183 Secretary of State and authorized to do business in this state.

184 (b) Each applicant shall designate on its application a
 185 licensed community association manager who shall be required to
 186 respond to all inquiries from and investigations by the
 187 department or division.

188 (c) Each licensed community association management firm
 189 shall notify the department within 30 days after any change of
 190 information contained in the application upon which licensure is
 191 based.

192 (d) Community association manager licenses shall expire on
 193 September 30 of even-numbered years and must be renewed every 2
 194 years. An application for renewal shall be accompanied by the
 195 renewal of license fee as required by s. 468.435(1) (d).

196 ~~(e)~~ Community association management firm licenses
 197 shall expire on September 30 of odd-numbered years and shall be
 198 renewed every 2 years. An application for renewal shall be
 199 accompanied by the renewal fee as required by s. 468.435(1) (d).

200 ~~(f)~~ The department shall license each applicant whom
 201 the department certifies as meeting the requirements of this
 202 subsection.

203 ~~(g)~~ If the license of at least one individual active
 204 community association manager member is not in force, the
 205 license of the community association management firm or other
 206 similar organization is suspended ~~annulled~~ automatically during
 207 that time.

208 ~~(h)~~ Any community association management firm or other

209 similar organization agrees by being licensed that it will
 210 employ only licensed persons in the direct provision of
 211 community association management services as defined ~~described~~
 212 in s. 468.431(4) ~~468.431(3)~~.

213 Section 5. Section 468.433, Florida Statutes, is amended
 214 to read:

215 468.433 Licensure by examination.—

216 (1) A person desiring to be licensed as a community
 217 association manager shall apply to the department to take the
 218 licensure examination. Each applicant must file a complete set
 219 of fingerprints ~~that have been~~ taken by an authorized law
 220 enforcement officer, which set of fingerprints shall be
 221 submitted to the Department of Law Enforcement ~~for state~~
 222 ~~processing~~ and ~~to~~ the Federal Bureau of Investigation for
 223 ~~federal~~ processing. The cost of processing shall be borne by the
 224 applicant.

225 (2) The department shall examine each applicant who must
 226 be ~~is~~ at least 18 years of age, who has successfully completed
 227 all prelicensure education requirements, and who the department
 228 certifies is of good moral character.

229 (a) Good moral character means a personal history of
 230 honesty, fairness, and respect for the rights of others and for
 231 the laws of this state and nation.

232 (b) The department shall ~~may~~ refuse to certify an
 233 applicant ~~only~~ if:

234 1. There is a substantial connection between the lack of

235 good moral character of the applicant and the professional
236 responsibilities of a community association manager;

237 2. The finding by the department of lack of good moral
238 character is supported by clear and convincing evidence; or

239 3. The applicant is found to have provided management
240 services requiring licensure without the requisite license.

241 (c) When an applicant is found to be unqualified for a
242 license because of a lack of good moral character, the
243 department shall furnish the applicant a statement containing
244 its findings, a complete record of the evidence upon which the
245 determination was based, and a notice of the rights of the
246 applicant to a rehearing and appeal.

247 (d) The board ~~council~~ shall establish by rule the required
248 amount of prelicensure education that, ~~which~~ shall consist of
249 not more than 40 ~~24~~ hours of in-person instruction by a
250 department-approved provider and ~~which~~ shall cover all areas of
251 the examination specified in subsection (3). Such instruction
252 shall be completed within 12 months prior to the date of the
253 examination. Prelicensure education providers shall be
254 considered continuing education providers for purposes of
255 establishing provider approval fees. A licensee shall not be
256 required to comply with the continuing education requirements of
257 s. 468.4337 prior to the first license renewal. The board
258 ~~department~~ shall, by rule, set standards for exceptions to the
259 requirement of in-person instruction in cases of hardship or
260 disability.

261 (3) The board ~~council~~ shall approve an examination for
 262 licensure. The examination must demonstrate that the applicant
 263 has a fundamental ~~knowledge of state and federal laws relating~~
 264 ~~to the operation of all types of community associations and~~
 265 ~~state laws relating to corporations and nonprofit corporations,~~
 266 ~~proper preparation of community association budgets, proper~~
 267 ~~procedures for noticing and conducting community association~~
 268 ~~meetings, insurance matters relating to community associations,~~
 269 ~~and~~ management skills and knowledge of:

270 (a) State and federal laws relating to the operation of
 271 all types of community associations.

272 (b) State and federal laws relating to corporations and
 273 nonprofit corporations.

274 (c) Compliance with association governing documents and
 275 the legal requirements required to perform related practices.

276 (d) Preparing the community association budget.

277 (e) Calculating reserve requirements.

278 (f) Determining amounts due to the association and
 279 calculating and preparing certificates of assessment and
 280 estoppel certificates.

281 (g) Procedures for noticing and conducting community
 282 association meetings.

283 (h) Insurance matters relating to community associations.

284 (i) Drafting meeting notices and agendas.

285 (j) Determining the timing, method, and form of providing
 286 meeting notices.

287 (k) Determining the number of days required for statutory
 288 notices.

289 (l) Procedures for collecting amounts due to the
 290 association before filing a civil action.

291 (m) Drafting prearbitration demands.

292 (n) Determining the votes necessary for a quorum, to
 293 approve a proposition or amendment, or to take certain actions.

294 (o) Preparing, modifying, or completing forms relating to
 295 community association management that have been created by
 296 statute or a state agency.

297 (p) Coordinating or performing maintenance on real or
 298 personal property and other related routine services involved in
 299 the operation of a community association.

300 (q) Drafting a "yes" or "no" proxy voting question
 301 concerning reserves, financial reporting requirements, excess
 302 membership expenses, or adopting amendments to the documents.

303 (r) Negotiating monetary or performance contract terms
 304 subject to approval by an association.

305 (s) Drafting amendments and certificates of amendments
 306 that are recorded in the official records to declarations of
 307 covenants, bylaws, and articles of incorporation with the advice
 308 of counsel when such documents are to be voted upon by the
 309 members.

310 (t) Modifying or completing proxy forms for questions
 311 addressed at meetings.

312 (u) Providing assistance with preparing, reviewing,

313 drafting, or executing contracts.

314 (v) Determining, from county records, owners required to
 315 receive pre-lien letters.

316 (4) A community association manager is liable for damages
 317 incurred from offering incorrect advice.

318 (5)~~(4)~~ The department shall issue a license to practice in
 319 this state as a community association manager to a ~~any~~ qualified
 320 applicant who successfully completes the examination in
 321 accordance with this section and pays the appropriate fee.

322 Section 6. Section 468.4336, Florida Statutes, is amended
 323 to read:

324 468.4336 Renewal of license.—

325 (1) The board ~~department~~ shall renew a license upon
 326 receipt of the renewal application and fee and upon proof of
 327 compliance with the continuing education requirements of s.
 328 468.4337.

329 (2) The board ~~department~~ shall adopt rules establishing a
 330 procedure for the biennial renewal of licenses.

331 Section 7. Section 468.4337, Florida Statutes, is amended
 332 to read:

333 468.4337 Continuing education.—The department may not
 334 renew a community association manager's license until the
 335 licensee submits proof of completion ~~that the licensee has~~
 336 ~~completed the requisite hours of~~ the requisite hours of
 337 continuing education. At least 20 ~~No more than 10~~ hours of
 338 biennial continuing education is ~~annually shall be~~ required for

339 renewal of a license. The number of hours, criteria, and course
 340 content, which shall include at least 2 hours of annual legal
 341 update seminars, shall be approved by the board ~~council~~ by rule.

342 Section 8. Section 468.4338, Florida Statutes, is amended
 343 to read:

344 468.4338 Reactivation; continuing education.—The board
 345 ~~council~~ shall prescribe by rule continuing education
 346 requirements for reactivating a license. The continuing
 347 education requirements for reactivating a license may not exceed
 348 one renewal cycle of continuing education.

349 Section 9. Section 468.435, Florida Statutes, is amended
 350 to read:

351 468.435 Fees; establishment; disposition.—

352 (1) The board ~~council~~ shall, by rule, establish fees for
 353 the described purposes and within the ranges specified in this
 354 section:

- 355 (a) Application fee: not ~~less than \$25,~~ or more than \$50.
- 356 (b) Examination fee: not ~~less than \$25,~~ or more than \$100.
- 357 (c) Initial license fee: not ~~less than \$25,~~ or more than
 358 \$100.
- 359 (d) Renewal of license fee: not ~~less than \$25,~~ or more
 360 than \$100.
- 361 (e) Delinquent license fee: not ~~less than \$25,~~ or more
 362 than \$50.
- 363 (f) Inactive license fee: not ~~less than \$10,~~ or more than
 364 \$25.

365 (2) The renewal of license fee shall be estimated in the
 366 annual budget to fulfill the responsibilities in this section,
 367 rounded to the next highest even dollar amount, but shall not
 368 exceed \$100 ~~Until the council establishes fees under subsection~~
 369 ~~(1), the lower amount in each range shall apply.~~

370 (3) Fees collected under this section shall be deposited
 371 in the Regulatory Council of Community Association Managers
 372 account in ~~to the credit of~~ the Professional Regulation Trust
 373 Fund.

374 (4) The board ~~council~~ shall establish fees ~~that are~~
 375 adequate to fund the cost to implement the provisions of this
 376 part. Fees shall be based on the department estimates of the
 377 revenue required to implement this part and the provisions of
 378 law with respect to the regulation of community association
 379 managers and firms.

380 Section 10. Section 468.436, Florida Statutes, is amended
 381 to read:

382 468.436 Disciplinary proceedings.—

383 (1) The department shall investigate complaints and
 384 allegations of a violation of this part, chapter 455, or any
 385 rule adopted thereunder, ~~7~~ filed against community association
 386 managers or firms or ~~and~~ forwarded from other divisions of ~~under~~
 387 the department ~~of Business and Professional Regulation~~.

388 (a) After a complaint is received, the department shall
 389 conduct its inquiry with due regard to the interests of the
 390 affected parties and consideration of damages that may occur if

391 the inquiry is not expedited.

392 (b) Within 30 days after receipt of a complaint, the
393 department shall acknowledge the complaint in writing and notify
394 the complainant whether or not the complaint is within the
395 jurisdiction of the department and whether ~~or not~~ additional
396 information is needed ~~by the department~~ from the complainant.

397 (c) The department shall conduct a timely ~~an~~ investigation
398 and shall, within 45 ~~90~~ days after receipt of the original
399 complaint or of a timely request for additional information,
400 take action upon the complaint. However, the failure to complete
401 the investigation within 45 ~~90~~ days does not prevent the
402 department from continuing the investigation, accepting or
403 considering evidence obtained or received after 45 ~~90~~ days, or
404 taking administrative action if reasonable cause exists to
405 believe that a violation of this part, chapter 455, or a rule of
406 the department has occurred.

407 (d) If an investigation is not completed within the time
408 limits established in this subsection, the department shall, at
409 least monthly ~~on a monthly basis~~, notify the complainant in
410 writing of the status of the investigation. When reporting its
411 action to the complainant, the department shall inform the
412 complainant of any right to a hearing pursuant to ss. 120.569
413 and 120.57.

414 (2) A community association manager or firm charged by
415 information or indictment with a felony offense shall have its
416 license suspended. While the community association manager or

417 firm has a criminal charge pending, it may not perform services
418 of community association management. However, if the charges are
419 resolved without a finding of guilt, the community association
420 manager or firm shall be reinstated for the remainder of its
421 term, if any.

422 (3)~~(2)~~ The following acts constitute grounds for which the
423 disciplinary actions in subsection (5) ~~(4)~~ may be taken:

424 (a) Violation of any provision of s. 455.227(1).

425 (b)1. Violation of any provision of this part.

426 2. Violation of any lawful order or rule rendered or
427 adopted by the department or the board ~~council~~.

428 3. Being convicted of or pleading nolo contendere to a
429 felony in any court in the United States.

430 4. Obtaining a license or certification or any other
431 order, ruling, or authorization by means of fraud,
432 misrepresentation, or concealment of material facts.

433 5. Committing acts of gross misconduct or gross negligence
434 in connection with the profession.

435 6. Contracting, on behalf of an association, with any
436 entity in which the licensee has a financial interest that is
437 not disclosed.

438 7. Violating any provision of chapter 718 or chapter 721~~r~~
439 ~~chapter 719, or chapter 720~~ during the course of performing
440 community association management services pursuant to a contract
441 with a community association as defined in s. 468.431(2)
442 ~~468.431(1)~~.

443 (4)~~(3)~~ The board ~~council~~ shall specify by rule the acts or
 444 omissions that constitute a violation of subsection (3) ~~(2)~~.

445 (5)~~(4)~~ When the department finds any community association
 446 manager or firm guilty of any of the grounds set forth in
 447 subsection (3) ~~(2)~~, it may enter an order imposing one or more
 448 of the following penalties:

- 449 (a) Denial of an application for licensure.
- 450 (b) Revocation or suspension of a license.
- 451 (c) Imposition of an administrative fine not to exceed
 452 \$5,000 for each count or separate offense.
- 453 (d) Issuance of a reprimand.
- 454 (e) Placement of the community association manager or firm
 455 on probation for a period of time and subject to such conditions
 456 as the department specifies.
- 457 (f) Restriction of the authorized scope of practice by the
 458 community association manager or firm.

459 (6)~~(5)~~ The department may reissue the license of a
 460 disciplined community association manager or firm upon
 461 certification by the board ~~department~~ that the disciplined
 462 person or firm has complied with all of the terms and conditions
 463 set forth in the final order.

464 Section 11. Section 468.4365, Florida Statutes, is amended
 465 to read:

466 468.4365 Availability of disciplinary records and
 467 proceedings. ~~Notwithstanding s. 455.225, any complaint or record~~
 468 ~~maintained by the Department of Business and Professional~~

469 ~~Regulation pursuant to the~~ Discipline of a licensed community
470 association manager or firm and any proceeding held by the
471 department to discipline a licensed community association
472 manager or firm shall remain open and available to the public
473 pursuant to s. 286.011.

474 Section 12. Subsection (2) of section 468.438, Florida
475 Statutes, is amended to read:

476 468.438 Timeshare management firms.—

477 (2) A timeshare management firm is ~~shall only be~~ required
478 to employ at least one individual licensed under this part at
479 each noncontiguous geographic location at which the management
480 firm provides community association management. No other person
481 providing community association management on behalf of such
482 management firms shall be required to hold a license pursuant to
483 this part, provided that any community association management
484 provided pursuant to this section must be performed under the
485 direct supervision and control of a licensed community
486 association manager. A community association manager licensed
487 pursuant to this part and employed by a timeshare management
488 firm pursuant to this section assumes responsibility for all
489 community association management performed by unlicensed persons
490 employed by the timeshare management firm.

491 Section 13. This act shall take effect July 1, 2016.