

HOUSE BILL No. 1406

DIGEST OF INTRODUCED BILL

Citations Affected: IC 2-5-37; IC 32-21-5-8.5; IC 32-25; IC 32-25.5.

Synopsis: Homeowners associations; condominiums. Requires that certain disclosures must be made relating to the sale of property subject to a homeowners association. Describes conditions under which a condominium declaration may be amended. Describes analogous conditions under which the governing documents of a homeowners association may be amended. Removes a geographic restriction on the application of a provision relating to the consent necessary for the co-owners of a condominium to convey common areas and facilities. Provides that certain requirements must be met for a meeting of the board of directors of a homeowners association. Establishes a procedure to resolve certain disputes between a co-owner and a condominium association. Establishes an analogous procedure to resolve disputes between a member and a homeowners association. Provides that certain requirements must be met for a proxy to be valid if used at a meeting of a homeowners association. Reorganizes certain statutes relating to homeowners associations. Repeals certain statutes that are reorganized. Establishes the homeowners association study committee. Requires the study committee to study homeowners associations in Indiana, including mediation or arbitration of disputes involving homeowners associations and members of homeowners associations. Provides that the law establishing the committee expires January 1, 2017.

Effective: July 1, 2015.

Slager, Burton

January 14, 2015, read first time and referred to Committee on Government and Regulatory Reform.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1406



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 2-5-37 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2015]:
4 **Chapter 37. Homeowners Association Study Committee**
5 **Sec. 1. As used in this chapter, "committee" refers to the**
6 **homeowners association study committee established by section 2**
7 **of this chapter.**
8 **Sec. 2. The homeowners association study committee is**
9 **established.**
10 **Sec. 3. The committee consists of the following members:**
11 **(1) Four (4) members of the house appointed by the speaker.**
12 **Not more than two (2) members appointed under this**
13 **subdivision may be members of the same political party.**
14 **(2) Four (4) members of the senate appointed by the president**
15 **pro tempore. Not more than two (2) members appointed**



- 1 under this subdivision may be members of the same political
2 party.
- 3 **Sec. 4. The chairman of the legislative council shall appoint the**
4 **committee's chair.**
- 5 **Sec. 5. IC 2-5-1.2 applies to the committee.**
- 6 **Sec. 6. The committee shall study homeowners associations in**
7 **Indiana, including the use of mediation or arbitration of disputes**
8 **involving homeowners associations and members of homeowners**
9 **associations.**
- 10 **Sec. 7. This chapter expires January 1, 2017.**
- 11 SECTION 2. IC 32-21-5-8.5 IS ADDED TO THE INDIANA CODE
12 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2015]: **Sec. 8.5. (a) This section applies to all transfers of title to**
14 **property after June 30, 2015.**
- 15 **(b) The definitions in IC 32-25.5-2 apply in this section.**
- 16 **(c) As used in this section, "property" refers to real property**
17 **covered by the governing documents of a homeowners association.**
- 18 **(d) As used in this section, "purchaser" refers to a person who**
19 **purchases property.**
- 20 **(e) The following must be provided by the seller to a purchaser**
21 **not later than ten (10) days before the sale of the property closes:**
- 22 **(1) A disclosure that the property is in a community governed**
23 **by a homeowners association.**
- 24 **(2) A copy of the recorded governing documents.**
- 25 **(3) A statement indicating whether there are assessments and**
26 **the amount of any assessments.**
- 27 **(4) The following information about a board member,**
28 **homeowners association agent, or other person who has a**
29 **contract with the homeowners association to provide any**
30 **management services for the homeowners association:**
- 31 **(A) The name.**
- 32 **(B) The business or home address.**
- 33 **(5) A statement of projected capital improvements to be made**
34 **by the homeowners association. The statement must include**
35 **the estimated budget and existing reserves for the projected**
36 **capital improvements.**
- 37 **(f) A homeowners association or agent of a homeowners**
38 **association providing a statement of unpaid assessments or other**
39 **charges of the homeowners association relating to the property**
40 **may charge not more than two hundred fifty dollars (\$250) for the**
41 **statement.**
- 42 **(g) The failure to provide any of the documents listed in**



1 subsection (e) does not limit or prevent enforcement of the
 2 governing documents by the homeowners association.

3 SECTION 3. IC 32-25-7-7 IS ADDED TO THE INDIANA CODE
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2015]: Sec. 7. The declaration must contain a provision allowing
 6 the co-owners to amend the declaration at any time, from time to
 7 time, subject to the following:

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

10 (A) the declarant owns one (1) or more units within the
 11 condominium; and

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

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

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

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

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

22 (3) The consent of the eligible mortgage holders, as defined in
 23 the governing documents. The consent of an eligible mortgage
 24 holder must be indicated in a written instrument signed by the
 25 mortgage holder. However, a mortgage holder is considered
 26 to have consented to a proposed amendment if the mortgage
 27 holder does not respond to a written request for consent
 28 within thirty (30) days after the mortgage holder receives the
 29 request. The governing documents may not require that the
 30 consent of more than seventy-five percent (75%) of the
 31 eligible mortgage holders is required for consent under this
 32 subdivision.

33 (4) Notwithstanding subdivisions (1) through (3), the
 34 declaration may require the approval of ninety-five percent
 35 (95%) of the co-owners to convey common areas or to dissolve
 36 the condominium.

37 SECTION 4. IC 32-25-8-2, AS AMENDED BY P.L.119-2012,
 38 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2015]: Sec. 2. The bylaws must provide for the
 40 following:

41 (1) With respect to the board of directors:

42 (A) the election of the board from among the co-owners;



- 1 (B) the number of persons constituting the board;
 2 (C) the expiration of the terms of at least one-third (1/3) of the
 3 directors annually;
 4 (D) the powers and duties of the board, including whether the
 5 board may engage the services of a manager or managing
 6 agent;
 7 (E) the compensation, if any, of the directors; and
 8 (F) the method of removal from office of directors.
 9 (2) The method of calling meetings of the co-owners and the
 10 percentage, if other than a majority of co-owners, that constitutes
 11 a quorum.
 12 (3) The election from among the board of directors of a president,
 13 who shall preside over the meetings of:
 14 (A) the board of directors; and
 15 (B) the association of co-owners.
 16 (4) The election of a secretary, who shall keep the minute book in
 17 which resolutions shall be recorded.
 18 (5) The election of a treasurer, who shall keep the financial
 19 records and books of account.
 20 (6) The maintenance, repair, and replacement of the common
 21 areas and facilities and payments for that maintenance, repair, and
 22 replacement, including the method of approving payment
 23 vouchers.
 24 (7) The manner of collecting from each condominium owner the
 25 owner's share of the common expenses.
 26 (8) The designation and removal of personnel necessary for the
 27 maintenance, repair, and replacement of the common areas and
 28 facilities.
 29 (9) The method of adopting and of amending administrative rules
 30 governing the details of the operation and use of the common
 31 areas and facilities.
 32 (10) The restrictions on and requirements respecting the use and
 33 maintenance of the condominium units and the use of the
 34 common areas and facilities that are:
 35 (A) not set forth in the declaration; and
 36 (B) designed to prevent unreasonable interference with the use
 37 of their respective units and of the common areas and facilities
 38 by the several co-owners.
 39 (11) The percentage of votes required to amend the bylaws. **The**
 40 **percentage may not exceed seventy-five percent (75%).**
 41 (12) ~~This subdivision applies only to a condominium located on~~
 42 ~~the shore of a lake located in a township with a population of~~



1 more than three thousand (3,000) but less than three thousand one
 2 hundred (3,100) located in a county having a population of more
 3 than forty-seven thousand (47,000) but less than forty-seven
 4 thousand five hundred (47,500). A statement of the percentage of
 5 votes by the condominium unit owners required to convey or
 6 encumber part or all of the common areas and facilities. A
 7 statement under this subdivision may not allow less than
 8 ninety-five percent (95%) of the condominium unit owners, or
 9 less than ninety-five percent (95%) of the owners of condominium
 10 units not owned by the declarant, to convey or encumber part or
 11 all of the common areas and facilities. If the bylaws do not
 12 include a statement under this subdivision, IC 32-25-4-3.5
 13 applies.

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

16 SECTION 5. IC 32-25-8.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2015]:

19 **Chapter 8.5. Grievance Resolution**

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

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

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

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

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

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

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

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

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

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

38 **(1) A claim by the association of co-owners for assessments or**
 39 **dues and any action by the association to collect assessments**
 40 **or dues.**

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



- 1 (A) to maintain the status quo and preserve the party's
 2 ability to enforce the condominium instruments; or
 3 (B) when an emergency condition exists that jeopardizes
 4 the health or safety of any of the residents within the
 5 condominium community.
- 6 (3) A suit to which an applicable statute of limitations would
 7 expire within the notice period. This subdivision does not
 8 apply if a party against which the claim is made agrees to toll
 9 the statute of limitations as to the claim for the period
 10 reasonably necessary to comply with this chapter.
- 11 (4) A dispute that is subject to mediation, arbitration, or other
 12 alternate dispute resolution under applicable law, contract,
 13 warranty agreement, or other instrument.
- 14 (5) A claim that is substantively identical to a claim:
 15 (A) that was previously addressed by the parties; or
 16 (B) which was resolved by a judicial determination in favor
 17 of one (1) of the parties.
- 18 **Sec. 6.** As used in this chapter, "legal proceedings" refers to
 19 either of the following:
 20 (1) An action maintained in a court.
 21 (2) An administrative proceeding initiated under an
 22 applicable law.
- 23 **Sec. 7.** As used in this chapter, "party" refers to any of the
 24 following:
 25 (1) The association of co-owners.
 26 (2) A co-owner.
 27 (3) The board.
- 28 **Sec. 8.** As used in this chapter, "respondent" refers to the party
 29 against whom a claimant has a claim.
- 30 **Sec. 9.** The condominium instruments must include grievance
 31 resolution procedures that apply to all members of the association
 32 of co-owners and the board.
- 33 **Sec. 10.** A claimant may not begin legal proceedings seeking
 34 redress or resolution of a claim until the claimant has complied
 35 with the procedures described in this chapter.
- 36 **Sec. 11.** A claimant shall provide notice of the claim to the
 37 respondent, stating plainly and concisely the following
 38 information:
 39 (1) The nature of the claim, including the date, time, location,
 40 persons involved, and the respondent's role in the claim.
 41 (2) The basis of the claim, including the provision of the
 42 condominium instruments or other authority out of which the



- 1 claim arises.
- 2 (3) What the claimant wants the respondent to do or not to do
- 3 to resolve the claim.
- 4 (4) That the respondent has a right to meet with the claimant,
- 5 if the respondent makes a written request for a meeting.
- 6 (5) The name and address of the person from whom the
- 7 respondent must request a meeting under subdivision (4).
- 8 **Sec. 12. (a) This section applies if a respondent has requested a**
- 9 **meeting under section 11 of this chapter not later than ten (10)**
- 10 **business days after the date of the notice of the claim given under**
- 11 **section 11 of this chapter.**
- 12 (b) The claimant and the respondent shall meet in person to
- 13 resolve the claim by good faith negotiation, at the time and place
- 14 agreed to by the claimant and the respondent.
- 15 (c) During the meeting, the parties must have full access to the
- 16 property that is the subject of the claim to inspect the property, if
- 17 appropriate or necessary. If the respondent agrees to take
- 18 corrective action, the claimant must provide the respondent and
- 19 the respondent's agents with full access to the property to take and
- 20 complete corrective action.
- 21 **Sec. 13. (a) The parties are considered to be at an impasse if:**
- 22 (1) the respondent does not request a meeting under section 11
- 23 of this chapter;
- 24 (2) either party fails to attend a meeting agreed upon under
- 25 section 12 of this chapter; or
- 26 (3) the parties are unable to settle the claim at a meeting held
- 27 under section 12 of this chapter.
- 28 (b) Either party may, not later than ten (10) days after an
- 29 impasse is reached, request in writing that the other party submit
- 30 the claim to mediation or binding arbitration.
- 31 (c) The party making the request under subsection (b) is
- 32 responsible for the costs of the mediator or arbitrator.
- 33 **Sec. 14. If an impasse is reached and:**
- 34 (1) neither party requests mediation or arbitration; or
- 35 (2) mediation or arbitration does not result in a settlement of
- 36 the claim;
- 37 the claimant may begin legal proceedings.
- 38 **Sec. 15. (a) This section applies if a claim is settled through**
- 39 **negotiation, mediation, or arbitration.**
- 40 (b) The settlement of the claim must be documented in a written
- 41 agreement signed by each of the parties.
- 42 (c) If a party fails to abide by the settlement agreement signed



1 under subsection (b), the other party may begin legal proceedings
2 without again complying with this chapter.

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

- 6 (1) court costs;
- 7 (2) attorney's fees; and
- 8 (3) all other reasonable costs incurred in enforcing the
9 settlement agreement.

10 Sec. 16. A release or discharge of a respondent from liability to
11 the claimant with respect to the claim does not release or discharge
12 the respondent with respect to any other person who is not a party
13 to the claim.

14 Sec. 17. The board, on behalf of the association of co-owners,
15 and without the consent of the co-owners, may do any of the
16 following:

- 17 (1) Negotiate settlements of claims or legal proceedings under
18 this chapter.
- 19 (2) Execute settlement agreements, waivers, releases of claims,
20 or any other document resulting from application of this
21 chapter.

22 Sec. 18. Except as otherwise provided in this chapter, each party
23 shall bear its own costs for application of this chapter, including
24 attorney's fees.

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

- 28 (1) A homeowners association established after June 30, 2009.
- 29 (2) A homeowners association established before July 1, 2009:
 - 30 (A) if a majority of the members of the homeowners
31 association elect to be governed by this article; or
 - 32 (B) if the number of members required by the homeowners
33 association's governing documents elect to be governed by this
34 article if a different number of members other than the number
35 established in clause (A) is required by the governing
36 documents.

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

- 39 ~~(e)~~ **(1) IC 32-25.5-3-3(g) through IC 32-25.5-3-3(m). apply to all**
40 **homeowners associations.**
- 41 **(2) IC 32-25.5-3-9.**
- 42 **(3) IC 32-25.5-3-10.**



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

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

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

7 (1) The articles of incorporation and bylaws of a homeowners
8 association and all adopted amendments to the articles of
9 incorporation and bylaws. ~~and~~

10 (2) Any applicable **covenants filed with the office of the county**
11 **recorder of the applicable county recorder, whether contained**
12 **in a declaration of covenants, contained in conditions and**
13 **restrictions (or similarly titled document), or contained within**
14 **a plat.**

15 SECTION 8. IC 32-25.5-3-1.5 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2015]: **Sec. 1.5. The following apply to a**
18 **meeting of the board of a homeowners association:**

19 (1) **Written notice of the meeting must be given to the**
20 **members of the homeowners association not less than**
21 **forty-eight (48) hours before the meeting is scheduled to**
22 **convene. A notice of a meeting must include the following**
23 **information:**

24 **(A) The date and time of the meeting.**

25 **(B) The location of the meeting.**

26 **(C) An agenda for the meeting.**

27 **A notice of the meeting may include other information the**
28 **board considers useful to communicate to the members.**

29 (2) **Except as provided in subdivision (4), all board meetings**
30 **must be open to the members of the homeowners association.**

31 (3) **As the meeting progresses, the following written**
32 **memoranda of the meeting shall be kept:**

33 **(A) The date, time, and place of the meeting.**

34 **(B) The members of the board recorded as either present**
35 **or absent.**

36 **(C) The general substance of all matters proposed,**
37 **discussed, or decided.**

38 **(D) A record of all votes taken by individual members if**
39 **there is a roll call. The vote of a board member may not be**
40 **given in secret.**

41 (4) **The board may meet in executive session only as provided**
42 **in the governing documents. Written notice of an executive**



- 1 **session must be given to the members of the homeowners**
 2 **association as provided in subdivision (1).**
 3 SECTION 9. IC 32-25.5-3-6 IS REPEALED [EFFECTIVE JULY
 4 1, 2015]. Sec. 6: The governing documents must include grievance
 5 resolution procedures that apply to all members of the homeowners
 6 association and the board.
 7 SECTION 10. IC 32-25.5-3-8 IS REPEALED [EFFECTIVE JULY
 8 1, 2015]. Sec. 8: (a) The attorney general may bring an action against
 9 a board or an individual member of a board of a homeowners
 10 association if the attorney general finds that:
 11 (1) the association's funds have been knowingly or intentionally
 12 misappropriated or diverted by a board member; or
 13 (2) a board member has knowingly or intentionally used the board
 14 member's position on the board to commit fraud or a criminal act
 15 against the association or the association's members.
 16 (b) A court in which an action is brought under this section may do
 17 the following:
 18 (1) Issue an injunction.
 19 (2) Order the board member to make restitution to the
 20 homeowners association or to a member.
 21 (3) Order a board member to be removed from the board.
 22 (4) Order a board member to reimburse the state for the
 23 reasonable costs of the attorney general's investigation and
 24 prosecution of the violation.
 25 SECTION 11. IC 32-25.5-3-9 IS ADDED TO THE INDIANA
 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
 27 [EFFECTIVE JULY 1, 2015]: **Sec. 9. The governing documents must**
 28 **contain a provision allowing the owners to amend the governing**
 29 **documents at any time, from time to time, subject to the following:**
 30 (1) **The declarant's consent to an amendment may be required**
 31 **if:**
 32 (A) **the declarant owns one (1) or more units within the**
 33 **subdivision; and**
 34 (B) **not more than seven (7) years have passed since the**
 35 **original governing documents were first recorded.**
 36 (2) **The consent of the owners to the amendment has been**
 37 **obtained as evidenced by either of the following:**
 38 (A) **The vote of the owners at a meeting duly called for the**
 39 **purpose of considering the amendment.**
 40 (B) **A written instrument signed by the owners.**
 41 **The governing documents may not require that the consent of**
 42 **more than seventy-five percent (75%) of the owners is**



1 required for consent under this subdivision.

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

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

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

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

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

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

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

41 (e) A member may create and use a proxy form designed by the
 42 member if the form complies with the requirements of subsection



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

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

Chapter 4. Attorney General Actions

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

- (1) The association's funds have been knowingly or intentionally misappropriated or diverted by a board member.**
- (2) A board member has knowingly or intentionally used the board member's position on the board to commit fraud or a criminal act against the association or the association's members.**
- (3) A proxy was exercised in violation of IC 32-25.5-3-10.**
- (4) A violation of IC 32-25.5-3-3 has occurred.**

Sec. 2. A court in which an action is brought under this chapter may do the following:

- (1) Issue an injunction.**
- (2) Order the board member to make restitution to the homeowners association or to a member of the homeowners association.**
- (3) Order a board member to be removed from the board.**
- (4) Order a board member to reimburse the state for the reasonable costs of the attorney general's investigation and prosecution of the violation.**

SECTION 14. IC 32-25.5-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 5. Grievance Resolution

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

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

- (1) A claim arising out of or relating to the interpretation, application, or enforcement of the governing documents.**
- (2) A claim relating to the rights or duties of the association of co-owners or the board under the governing documents.**



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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 other party submit the claim to mediation or binding arbitration.

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

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

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

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

8 the claimant may begin legal proceedings.

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

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

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

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

19 (1) court costs;

20 (2) attorney's fees; and

21 (3) all other reasonable costs incurred in enforcing the
22 settlement agreement.

23 **Sec. 15. A release or discharge of a respondent from liability to**
24 **the claimant with respect to the claim does not release or discharge**
25 **the respondent with respect to any other person who is not a party**
26 **to the claim.**

27 **Sec. 16. The board, on behalf of the homeowners association,**
28 **and without the consent of the members of the homeowners**
29 **association, may do any of the following:**

30 (1) Negotiate settlements of claims or legal proceedings under
31 this chapter.

32 (2) Execute settlement agreements, waivers, releases of claims,
33 or any other documents resulting from application of this
34 chapter.

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

