

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 628

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE HOMEOWNER'S ASSOCIATION ACT; REPEALING SECTION 45-810,  
2 IDAHO CODE, RELATING TO HOMEOWNER'S ASSOCIATION LIENS; REPEALING SEC-  
3 TION 55-115, IDAHO CODE, RELATING TO PROHIBITED CONDUCT BY HOMEOWNER'S  
4 ASSOCIATIONS; REPEALING SECTION 55-116, IDAHO CODE, RELATING TO HOME-  
5 OWNER'S ASSOCIATIONS; AMENDING TITLE 55, IDAHO CODE, BY THE ADDITION  
6 OF A NEW CHAPTER 32, TITLE 55, IDAHO CODE, TO PROVIDE A SHORT TITLE,  
7 TO PROVIDE LEGISLATIVE INTENT, TO DEFINE TERMS, TO PROVIDE FOR THE  
8 ADMINISTRATION OF AN INCORPORATED OR UNINCORPORATED HOMEOWNER'S ASSO-  
9 CIATION, TO PROVIDE FOR DISCLOSURE OF FEES AND FINANCIAL DISCLOSURES  
10 BY A HOMEOWNER'S ASSOCIATION, TO PROVIDE FOR VIOLATIONS, DUE PROCESS  
11 AND NOTICE, LIMITATIONS ON FINES, AND ATTORNEY'S FEES, TO PROVIDE FOR  
12 HOMEOWNER'S ASSOCIATION LIENS, TO ESTABLISH PROVISIONS REGARDING SO-  
13 LAR PANELS, TO ESTABLISH PROVISIONS REGARDING POLITICAL SIGNS, TO  
14 ESTABLISH PROVISIONS REGARDING FLAGS, AND TO PROHIBIT CERTAIN CONDUCT  
15 REGARDING RENTAL RESTRICTIONS; AMENDING SECTION 42-1311, IDAHO CODE,  
16 TO PROVIDE A CORRECT CODE REFERENCE; AND DECLARING AN EMERGENCY AND PRO-  
17 VIDING AN EFFECTIVE DATE.  
18

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

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21 repealed.

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23 repealed.

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25 repealed.

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

29 CHAPTER 32

30 HOMEOWNER'S ASSOCIATION ACT

31 55-3201. SHORT TITLE. This chapter shall be known and may be cited as  
32 the "Homeowner's Association Act."

33 55-3202. LEGISLATIVE INTENT. An increasing number of Idahoans reside  
34 within homeowner's associations. To protect the rights of current and sub-  
35 sequent property owners within a homeowner's association, it is the intent  
36 of the legislature to ensure the transparent operation and inclusive manage-  
37 ment of these associations, balancing the rights of all owners within home-

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

3 55-3203. DEFINITIONS. As used in this chapter:

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

7 (2) "Financial disclosure" means the accounting book of the organiza-  
8 tion open to inspection, including the disclosure of cash reconciliation to  
9 bank statements and, if the organization takes advantage of certain tax ben-  
10 efits, the most recent internal revenue service form 1120-H, U.S. income tax  
11 return for homeowners associations.

12 (3) "Governing documents" means a written instrument by which the home-  
13 owner's association may exercise powers or manage, maintain, or otherwise  
14 affect the property under the jurisdiction of the homeowner's association.  
15 "Governing documents" includes but is not limited to articles of incorpora-  
16 tion, bylaws, a plat, rules of the homeowner's association, and any declara-  
17 tion of covenants, conditions, and restrictions.

18 (4) "Homeowner's association" means any incorporated or unincorpo-  
19 rated association:

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

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

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

28 55-3204. ADMINISTRATION OF AN INCORPORATED OR UNINCORPORATED HOME-  
29 OWNER'S ASSOCIATION. (1) Board meetings must be open to, at a minimum, the  
30 members of the homeowner's association and any representative or agent des-  
31 ignated in a signed writing by a member to represent the member.

32 (2) The governing documents of a homeowner's association must provide  
33 for at least the following:

34 (a) A requirement that the homeowner's association holds at least one  
35 (1) meeting each calendar year and that meetings may be conducted in  
36 person or, with the approval of a simple majority of members, can be  
37 conducted through an electronic or hybrid meeting model;

38 (b) A requirement that all general or membership meetings be governed  
39 by the provisions of sections 30-30-501 and 30-30-505, Idaho Code, and  
40 that a member may waive his right to receive notice of any meeting of  
41 the homeowner's association by mail by providing an email address. All  
42 dates and information of the notice must remain the same as a mail no-  
43 tice;

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

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

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

4 55-3205. DISCLOSURE OF FEES AND FINANCIAL DISCLOSURES. (1) A home-  
5 owner's association or its agent must provide a member and the member's  
6 agent, if any, a statement of the member's account no more than five (5)  
7 business days after a request by the member or the member's agent is received  
8 by the manager, president, board member, or other agent of the homeowner's  
9 association, or any combination thereof. The statement of account must in-  
10 clude, at a minimum, the amount of annual charges against the property, the  
11 date when said amounts are due, and any unpaid assessments or other charges  
12 due and owing from such member at the time of the request. The homeowner's  
13 association will be bound by the amounts set forth within the statement of  
14 account.

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

24 (3) A homeowner's association or its agent must provide a member and the  
25 member's agent, if any, an up-to-date and reconciled financial disclosure  
26 and the most recent internal revenue service form 1120-H no more than five  
27 (5) business days after a request by the member or the member's agent is re-  
28 ceived by the manager, president, board member, or other agent of the home-  
29 owner's association, or any combination thereof.

30 (4) On or before January 1 of each year, a homeowner's association or  
31 its agent must provide all members of the organization, and the member's  
32 agent, if any, with up-to-date and reconciled financial disclosure for the  
33 fiscal year and the most recent internal revenue service form 1120-H.

34 55-3206. VIOLATIONS -- DUE PROCESS AND NOTICE -- LIMITATION ON FINES  
35 -- ATTORNEY'S FEES. (1) No fine may be imposed for a violation of the  
36 covenants and restrictions pursuant to the rules or regulations of a home-  
37 owner's association unless the authority to impose a fine is clearly set  
38 forth in the covenants and restrictions. A majority vote by the board is  
39 required before any fine may be imposed on a member for a violation of any  
40 covenants and restrictions pursuant to the rules and regulations of the  
41 homeowner's association. Written notice must be provided to the member at  
42 least thirty (30) days prior to a meeting at which a vote to impose a fine on  
43 the member is to be held. Service of the notice must be by personal service or  
44 certified mail.

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

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

3 (4) Except as may otherwise be provided in this subsection, nothing in  
4 this section is intended to affect any statute, rule, covenant, bylaw, pro-  
5 vision, or clause that may allow for the recovery of attorney's fees. Attor-  
6 ney's fees and costs may not accrue or be assessed or collected by the home-  
7 owner's association until the homeowner's association has complied with the  
8 requirements of this section and the member has failed to address the vio-  
9 lation as set forth in subsection (2) of this section. A court of competent  
10 jurisdiction may determine the reasonableness of attorney's fees and costs  
11 assessed against a member. In an action to determine the reasonableness of  
12 attorney's fees and costs assessed by the homeowner's association against a  
13 member, the court may award reasonable attorney's fees and costs to the pre-  
14 vailing party.

15 55-3207. HOMEOWNER'S ASSOCIATION LIENS. (1) A homeowner's associa-  
16 tion may levy an assessment against a lot for the reasonable costs incurred  
17 in the maintenance of common areas consisting of real property owned and  
18 maintained by the homeowner's association. Upon complying with the provi-  
19 sions of subsection (2) of this section, the homeowner's association will  
20 have a lien upon the individual lot for any unpaid assessments accrued during  
21 the previous twelve (12) months.

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

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

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

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

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

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

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

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

45 (3) The lien may be continued in force for a period of time not to ex-  
46 ceed one (1) year from the date the claim is filed and recorded pursuant to  
47 subsection (2) of this section; provided, however, that such period may be  
48 extended by the homeowner's association for no more than one (1) additional  
49 year by recording a written extension thereof. For the purpose of determin-

1 ing the date the claim is filed in those cases when subsequent unpaid assess-  
2 ments have accumulated under the claim as provided in subsection (2) of this  
3 section, the claim regarding each unpaid assessment shall be deemed to have  
4 been filed at the time the unpaid assessment became due. The lien may be en-  
5 forced by the board acting on behalf of the homeowner's association.

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

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

14 (6) In order to file a lien as provided in this section, a homeowner's  
15 association that is an unincorporated association must be governed by bylaws  
16 that provide for at least the following:

17 (a) A requirement that the homeowner's association holds at least one

18 (1) meeting each calendar year;

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

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

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

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

28 55-3208. SOLAR PANELS. (1) No homeowner's association may add, amend,  
29 or enforce any covenant, condition, or restriction in such a way that pro-  
30 hibits the installation of solar panels or solar collectors on the rooftop of  
31 any property or structure within the jurisdiction of the homeowner's associ-  
32 ation. A homeowner's association may, however, determine the specific loca-  
33 tion where solar panels or solar collectors may be installed on the roof as  
34 long as installation is permitted with an orientation to the south or within  
35 forty-five (45) degrees east or west of due south.

36 (2) A homeowner's association may adopt reasonable rules for the  
37 installation of solar panels or solar collectors consistent with an ap-  
38 plicable building code or to require that panels or collectors be parallel  
39 to a roofline, conform to the slope of a roof, and that any frame, support  
40 bracket, or visible piping or wiring be painted to coordinate with the roof-  
41 ing material. The provisions of this subsection shall apply only to rooftops  
42 that are owned, controlled, and maintained by the homeowner.

43 55-3209. POLITICAL SIGNS. (1) Except as otherwise provided in this  
44 section, no homeowner's association may add, amend, or enforce any covenant,  
45 condition, or restriction in such a way that prohibits or has the effect of  
46 prohibiting the display of a political sign.

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

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

6 (a) Is placed within the common areas, including limited common areas,  
7 other property or improvements owned or maintained by the homeowner's  
8 association, or property owned in common by the members of the home-  
9 owner's association;

10 (b) Threatens the public health or safety;

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

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

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

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

22 55-3210. FLAGS. (1) No homeowner's association may add, amend, or en-  
23 force any covenant, condition, or restriction in such a way that prohibits or  
24 has the effect of prohibiting the display of:

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

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

27 (c) The POW/MIA flag; or

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

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

32 (a) That require:

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

36 (ii) A flagpole attached to a dwelling or a freestanding flagpole  
37 to be constructed of permanent, long-lasting materials with a fin-  
38 ish appropriate to the materials used in the construction of the  
39 flagpole and harmonious to the dwelling;

40 (iii) The display of a flag, or the location and construction of  
41 the supporting flagpole, to comply with applicable zoning ordi-  
42 nances, easements, and setbacks of record; and

43 (iv) That a displayed flag and the flagpole on which it is flown be  
44 maintained in good condition and that any deteriorated flag or de-  
45 teriorated or structurally unsafe flagpole be repaired, replaced,  
46 or removed;

47 (b) That regulate the size, number, and location of flagpoles on which  
48 flags are displayed, except that the regulation may not prevent the in-  
49 stallation or erection of at least one (1) flagpole per property that:

- 1 (i) Is not more than twenty (20) feet in height and, subject to  
 2 applicable zoning ordinances, easements, and setbacks of record,  
 3 is located in the front yard of the property; or  
 4 (ii) Is attached to any portion of a residential structure owned  
 5 by the member and not maintained by the homeowner's association;  
 6 (c) That govern the size of a displayed flag;  
 7 (d) That regulate the size, location, and intensity of any lights used  
 8 to illuminate a displayed flag;  
 9 (e) That impose reasonable restrictions to abate noise caused by an ex-  
 10 ternal halyard of a flagpole; or  
 11 (f) That prohibit a member from locating a displayed flag or flagpole on  
 12 property that is:  
 13 (i) A common area, including a limited common area;  
 14 (ii) Owned or maintained by the homeowner's association; or  
 15 (iii) Owned in common by the members of the association.  
 16 (3) A member who has a front yard and who otherwise complies with any  
 17 permitted homeowner's association regulation may elect to install a flag-  
 18 pole in accordance with subsection (2) (b) of this section.  
 19 (4) A homeowner's association may not remove a flag permitted by sub-  
 20 section (1) of this section from the property of a member or impose any fine  
 21 or penalty upon the member unless it has first provided the member three (3)  
 22 days' written notice that specifically identifies the rule and the nature of  
 23 the violation.

24 55-3211. PROHIBITED CONDUCT -- RENTAL RESTRICTIONS. No homeowner's  
 25 association may add, amend, or enforce any covenant, condition, or restric-  
 26 tion in such a way that limits or prohibits the rental, for any amount of  
 27 time, of any property, land, or structure thereon within the jurisdiction of  
 28 the homeowner's association, unless expressly agreed to in writing at the  
 29 time of such addition or amendment by the owner of the affected property.  
 30 Nothing in this section shall be construed to prevent the enforcement of  
 31 valid covenants, conditions, or restrictions limiting a property owner's  
 32 right to transfer his interest in land or the structures thereon as long as  
 33 that covenant, condition, or restriction applied to the property at the time  
 34 the homeowner acquired his interest in the property.

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

37 42-1311. AMOUNT AND LIEN OF ASSESSMENTS. The amount assessed against  
 38 each water user, together with any penalties and interest, shall be a lien  
 39 upon the water user's land that is entitled to receive water from the point  
 40 or points of delivery in the canal or reservoir, or from the point or points  
 41 of diversion from waters of the state, that supplies the association's lat-  
 42 eral or ditch. The lien shall be recorded and collected in accordance with  
 43 ~~subsections (2) through (5) of section 45-810~~ section 55-3207, Idaho Code,  
 44 governing homeowner's association liens, except that the lien may be con-  
 45 tinued in force for a period of time not to exceed three (3) years and may be  
 46 extended not to exceed three (3) additional years. The lien provided for in  
 47 this section shall have priority according to its date of recordation, ex-  
 48 cept as to other liens described in titles 42 and 43, Idaho Code.

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