

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 657

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO HOMEOWNER'S ASSOCIATIONS; AMENDING CHAPTER 32, TITLE 55, IDAHO  
2 CODE, BY THE ADDITION OF A NEW SECTION 55-3204A, IDAHO CODE, TO PROVIDE  
3 FOR CERTAIN POWERS, DUTIES, AND ENFORCEMENT; AMENDING CHAPTER 32, TITLE  
4 55, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 55-3204B, IDAHO CODE, TO  
5 PROVIDE FOR RESTRICTIONS ON BOARD MEMBERSHIP AND PROXY VOTES; PROVIDING  
6 LEGISLATIVE INTENT; AND DECLARING AN EMERGENCY.  
7

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

9 SECTION 1. That Chapter 32, Title 55, Idaho Code, be, and the same is  
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
11 ignated as Section 55-3204A, Idaho Code, and to read as follows:

12 55-3204A. HOMEOWNER'S ASSOCIATIONS -- POWERS -- DUTIES -- ENFORCE-  
13 MENT. (1) If a homeowner's association has been established in connection  
14 with the development of property, then regardless of the period or condi-  
15 tions of the developer's management and control provided in the governing  
16 documents, the developer's management and control of the homeowner's asso-  
17 ciation shall terminate and the management and control of the homeowner's  
18 association and all of its assets, including the right and authority to  
19 assess and record liens against the real property of the association's mem-  
20 bers, shall be assigned and transferred by an enforceable and duly recorded  
21 instrument from the developer to the property owners, or to a nonprofit  
22 corporation controlled by the property owners. Such process shall occur  
23 as follows: Once seventy-five percent (75%) of a development is built and  
24 occupied, a minimum of a five (5) member homeowner's association board shall  
25 be established, and such board shall be comprised of at least forty percent  
26 (40%) of homeowners who reside in the development. Once ninety-five percent  
27 (95%) of a development is built and occupied, the developer shall begin the  
28 process of turning over full control of the homeowner's association to the  
29 property owners and shall complete the process within one hundred eighty  
30 (180) days.

31 (2) Provided the covenants, conditions, and restrictions do not  
32 provide otherwise, any contract, written, oral, or implied, between a  
33 homeowner's association and any other person, including but not limited to  
34 management companies, landscaping and snow removal companies, and banking,  
35 finance, and escrow companies, that is in effect on the transfer of manage-  
36 ment and control pursuant to subsection (1) of this section shall be subject  
37 to cancellation and termination without recourse against the homeowner's  
38 association or release of claims against the other party or parties at the  
39 option of the property owners, or the nonprofit corporation controlled by  
40 them, at any time within the first three hundred sixty-five (365) days of the  
41 transfer of management and control pursuant to the provisions of subsection  
42 (1) of this section.

1 (3) All financial or other information, including documents, that have  
2 been requested by a member of a homeowner's association in writing or elec-  
3 tronically shall be delivered in writing or in electronic form from the home-  
4 owner's association board or management company no later than fifteen (15)  
5 business days from the date of request.

6 (4) Upon the transfer of control pursuant to subsection (1) of this sec-  
7 tion, regardless of contrary or inconsistent voting provisions set forth in  
8 the governing documents, each member in good standing of the homeowner's as-  
9 sociation and the developer shall be entitled to one (1) vote for each lot  
10 owned.

11 (5) If a developer fails or refuses to transfer management and control  
12 of a homeowner's association pursuant to subsection (1) of this section, or  
13 otherwise violates any of the provisions of this chapter, and if a member  
14 prevails in a legal action to protect his rights or to enforce the rights of  
15 the homeowner's association provided herein, then:

16 (a) The member shall be entitled to an award of his reasonable attor-  
17 ney's fees and costs incurred in the action;

18 (b) The developer shall be required to pay a penalty to the homeowner's  
19 association in the amount of five hundred dollars (\$500) per day for  
20 each day of delay of transfer of management and control; and

21 (c) Any provision in the governing documents or any other document pro-  
22 viding for the indemnification, defense, or hold harmless in favor of  
23 the developer in such action shall be null, void, and unenforceable.

24 SECTION 2. That Chapter 32, Title 55, Idaho Code, be, and the same is  
25 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
26 ignated as Section 55-3204B, Idaho Code, and to read as follows:

27 55-3204B. RESTRICTIONS ON BOARD MEMBERSHIP -- PROXY VOTES. (1) Only  
28 one (1) member per lot may serve on the board of a homeowner's association.

29 (2) No member of a homeowner's association or homeowner's association  
30 board or other person shall hold proxies that, when aggregated together with  
31 the voting power of the person holding the proxies, exceed fifty percent  
32 (50%) of the voting power of the association on any matter that is the subject  
33 of the vote as to which the proxy is exercised.

34 (3) All board members must reside within the boundaries of the home-  
35 owner's association.

36 SECTION 3. LEGISLATIVE INTENT. The legislature recognizes the signif-  
37 icant and rapid population growth in the State of Idaho that has occurred  
38 for more than a decade and the corresponding increase of residential devel-  
39 opment within homeowner's associations that has occurred and finds and de-  
40 clares that this legislation is necessary to protect the property rights,  
41 reasonable expectations, and welfare of the citizens and residents of this  
42 state who own property and are members of homeowner's associations.

43 SECTION 4. An emergency existing therefor, which emergency is hereby  
44 declared to exist, this act shall be in full force and effect on and after its  
45 passage and approval.