

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 287

BY COMMERCE AND HUMAN RESOURCES 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 AD-
8 MINISTRATION OF A HOMEOWNER'S ASSOCIATION, TO PROVIDE FOR A STATEMENT
9 OF ACCOUNT AND DISCLOSURE OF FEES BY A HOMEOWNER'S ASSOCIATION, TO
10 PROVIDE FOR VIOLATIONS, DUE PROCESS AND NOTICE, LIMITATIONS ON FINES,
11 AND ATTORNEY'S FEES, TO PROVIDE FOR HOMEOWNER'S ASSOCIATION LIENS,
12 TO ESTABLISH PROVISIONS REGARDING SOLAR PANELS, TO ESTABLISH PROVI-
13 SIONS REGARDING POLITICAL SIGNS, AND TO ESTABLISH PROVISIONS REGARDING
14 FLAGS; AND AMENDING SECTION 42-1311, IDAHO CODE, TO PROVIDE A CORRECT
15 CODE REFERENCE.
16

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

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19 repealed.

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21 repealed.

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23 repealed.

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

27 CHAPTER 32

28 HOMEOWNER'S ASSOCIATION ACT

29 55-3201. SHORT TITLE. This chapter shall be known and may be cited as
30 the "Homeowner's Association Act."

31 55-3202. LEGISLATIVE INTENT. An increasing number of Idahoans reside
32 within homeowners' associations. Idahoans freely develop and establish
33 these associations as they see fit. However, to protect the rights of cur-
34 rent and subsequent property owners within a homeowner's association, it is
35 the intent of the legislature to prevent excessive homeowner's association
36 regulations or restrictions that go beyond establishing community standards
37 and that infringe on property rights and normal expectations of personal
38 freedom.

1 55-3203. DEFINITIONS. As used in this chapter:

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

5 (2) "Governing documents" means a written instrument by which the home-
6 owner's association may exercise powers or manage, maintain, or otherwise
7 affect the property under the jurisdiction of the homeowner's association.
8 "Governing documents" includes but is not limited to articles of incorpora-
9 tion, bylaws, a plat, rules of the homeowner's association, and any declara-
10 tion of covenants, conditions, and restrictions.

11 (3) "Homeowner's association" means any incorporated or unincorporated
12 association:

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

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

18 (4) "Member" or "membership" means any person or entity owning or pos-
19 sessed an interest in residential real property or lot within the physical
20 boundaries of an established homeowner's association.

21 55-3204. ADMINISTRATION OF A HOMEOWNER'S ASSOCIATION. (1) Board
22 meetings must be open to, at a minimum, the members of the homeowner's asso-
23 ciation and any representative or agent designated in a signed writing by a
24 member to represent the member.

25 (2) At least forty-eight (48) hours' notice of any meeting is required
26 in order to transact business at a meeting of the membership or the board.

27 (3) In addition to any other notice requirements in the governing doc-
28 uments, a homeowner's association must allow for meeting notice to the mem-
29 bership by email.

30 55-3205. STATEMENT OF ACCOUNT -- DISCLOSURE OF FEES. (1) A homeowner's
31 association or its agent must provide a member and the member's agent, if
32 any, a statement of the member's account no more than five (5) business days
33 after a request by the member or the member's agent is received by the man-
34 ager, president, board member, or other agent of the homeowner's associa-
35 tion, or any combination thereof. The statement of account must include, at
36 a minimum, the amount of annual charges against the property, the date when
37 said amounts are due, and any unpaid assessments or other charges due and ow-
38 ing from such member at the time of the request. The homeowner's association
39 will be bound by the amounts set forth within the statement of account.

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

1 55-3206. VIOLATIONS -- DUE PROCESS AND NOTICE -- LIMITATION ON FINES
 2 -- ATTORNEY'S FEES. (1) No fine may be imposed for a violation of the
 3 covenants and restrictions pursuant to the rules or regulations of a home-
 4 owner's association unless the authority to impose a fine is clearly set
 5 forth in the covenants and restrictions. A majority vote by the board is
 6 required before any fine may be imposed on a member for a violation of any
 7 covenants and restrictions pursuant to the rules and regulations of the
 8 homeowner's association. Written notice must be provided to the member at
 9 least thirty (30) days prior to a meeting at which a vote to impose a fine on
 10 the member is to be held. Service of the notice must be by personal service or
 11 certified mail.

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

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

18 (4) Except as may otherwise be provided in this subsection, nothing in
 19 this section is intended to affect any statute, rule, covenant, bylaw, pro-
 20 vision, or clause that may allow for the recovery of attorney's fees. Attor-
 21 ney's fees and costs may not accrue or be assessed or collected by the home-
 22 owner's association until the homeowner's association has complied with the
 23 requirements of this section and the member has failed to address the vio-
 24 lation as set forth in subsection (2) of this section. A court of competent
 25 jurisdiction may determine the reasonableness of attorney's fees and costs
 26 assessed against a member. In an action to determine the reasonableness of
 27 attorney's fees and costs assessed by the homeowner's association against a
 28 member, the court may award reasonable attorney's fees and costs to the pre-
 29 vailing party.

30 55-3207. HOMEOWNER'S ASSOCIATION LIENS. (1) A homeowner's associa-
 31 tion may levy an assessment against a lot for the reasonable costs incurred
 32 in the maintenance of common areas consisting of real property owned and
 33 maintained by the homeowner's association. Upon complying with subsection
 34 (2) of this section, the homeowner's association will have a lien upon the
 35 individual lot for any unpaid assessments accrued during the previous twelve
 36 (12) months.

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

- 40 (i) A true statement of the amount due for the unpaid assessments
- 41 after deducting all just credits and offsets;
- 42 (ii) The name of the lot owner, or reputed owner, if known;
- 43 (iii) The name of the homeowner's association; and
- 44 (iv) A description, sufficient for identification, of the prop-
 45 erty to be charged with the lien.

46 (b) When a claim has been filed and recorded pursuant to this section
 47 and the owner of the lot subject to the claim thereafter fails to pay any
 48 assessment chargeable to such lot, then as long as the original or any
 49 subsequent unpaid assessment remains unpaid, such claim shall automat-

1 ically accumulate the subsequent unpaid assessments without the neces-
2 sity of further filings under this section.

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

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

11 (3) The lien may be continued in force for a period of time not to ex-
12 ceed one (1) year from the date the claim is filed and recorded pursuant to
13 subsection (2) of this section; provided, however, that such period may be
14 extended by the homeowner's association for no more than one (1) additional
15 year by recording a written extension thereof. For the purpose of determin-
16 ing the date the claim is filed in those cases when subsequent unpaid assess-
17 ments have accumulated under the claim as provided in subsection (2) of this
18 section, the claim regarding each unpaid assessment shall be deemed to have
19 been filed at the time the unpaid assessment became due. The lien may be en-
20 forced by the board acting on behalf of the homeowner's association.

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

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

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

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

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

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

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

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

43 55-3208. SOLAR PANELS. (1) No homeowner's association may add, amend,
44 or enforce any covenant, condition, or restriction in such a way that pro-
45 hibits the installation of solar panels or solar collectors on the rooftop of
46 any property or structure within the jurisdiction of the homeowner's associ-
47 ation. A homeowner's association may, however, determine the specific loca-
48 tion where solar panels or solar collectors may be installed on the roof as

1 long as installation is permitted with an orientation to the south or within
2 forty-five (45) degrees east or west of due south.

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

10 55-3209. POLITICAL SIGNS. (1) Except as otherwise provided in this
11 section, no homeowner's association may add, amend, or enforce any covenant,
12 condition, or restriction in such a way that prohibits or has the effect of
13 prohibiting the display of a political sign.

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

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

19 (a) Is placed within the common areas, including limited common areas,
20 other property or improvements owned or maintained by the homeowner's
21 association, or property owned in common by the members of the home-
22 owner's association;

23 (b) Threatens the public health or safety;

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

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

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

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

35 55-3210. FLAGS. (1) No homeowner's association may add, amend, or en-
36 force any covenant, condition, or restriction in such a way that prohibits or
37 has the effect of prohibiting the display of:

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

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

40 (c) The POW/MIA flag; or

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

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

45 (a) That require:

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

1 (ii) A flagpole attached to a dwelling or a freestanding flagpole
 2 to be constructed of permanent, long-lasting materials with a fin-
 3 ish appropriate to the materials used in the construction of the
 4 flagpole and harmonious to the dwelling;

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

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

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

15 (i) Is not more than twenty (20) feet in height and, subject to ap-
 16 plicable zoning ordinances, easements, and setbacks of record, is
 17 located in the front yard of the property; or

18 (ii) Is attached to any portion of a residential structure owned
 19 by the member and not maintained by the homeowner's association;

20 (c) That govern the size of a displayed flag;

21 (d) That regulate the size, location, and intensity of any lights used
 22 to illuminate a displayed flag;

23 (e) That impose reasonable restrictions to abate noise caused by an ex-
 24 ternal halyard of a flagpole; or

25 (f) That prohibit a member from locating a displayed flag or flagpole on
 26 property that is:

27 (i) A common area, including a limited common area;

28 (ii) Owned or maintained by the homeowner's association; or

29 (iii) Owned in common by the members of the association.

30 (3) A member who has a front yard and who otherwise complies with any
 31 permitted homeowner's association regulation may elect to install a flag-
 32 pole in accordance with subsection (2) (b) of this section.

33 (4) A homeowner's association may not remove a flag permitted by sub-
 34 section (1) of this section from the property of a member or impose any fine
 35 or penalty upon the member unless it has first provided the member three (3)
 36 days' written notice that specifically identifies the rule and the nature of
 37 the violation.

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

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

1 this section shall have priority according to its date of recordation, ex-
2 cept as to other liens described in titles 42 and 43, Idaho Code.