

By the Committee on Real Property & Probate and
Representative Crow

1 A bill to be entitled
2 An act relating to condominiums and
3 cooperatives; amending s. 718.112, F.S.;
4 revising procedures relating to written
5 complaints by unit owners; amending s.
6 718.1255, F.S.; redefining the term "dispute";
7 adding mediation to the dispute resolution
8 process; providing a fee; revising the
9 arbitration process; amending s. 718.501, F.S.;
10 providing rulemaking authority for penalties;
11 providing for the certification of mediators;
12 amending s. 718.616, F.S.; requiring
13 acknowledgement of compliance with zoning
14 requirements; providing an appropriation;
15 providing effective dates.

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

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19 Section 1. Paragraph (a) of subsection (2) of section
20 718.112, Florida Statutes, 1996 Supplement, is amended to
21 read:

22 718.112 Bylaws.--

23 (2) REQUIRED PROVISIONS.--The bylaws shall provide for
24 the following and, if they do not do so, shall be deemed to
25 include the following:

26 (a) Administration.--

27 1. The form of administration of the association shall
28 be described indicating the title of the officers and board of
29 administration and specifying the powers, duties, manner of
30 selection and removal, and compensation, if any, of officers
31 and boards. In the absence of such a provision, the board of

1 administration shall be composed of five members, except in
2 the case of a condominium which has five or fewer units, in
3 which case in a not-for-profit corporation the board shall
4 consist of not fewer than three members. In the absence of
5 provisions to the contrary in the bylaws, the board of
6 administration shall have a president, a secretary, and a
7 treasurer, who shall perform the duties of such officers
8 customarily performed by officers of corporations. Unless
9 prohibited in the bylaws, the board of administration may
10 appoint other officers and grant them the duties it deems
11 appropriate. Unless otherwise provided in the bylaws, the
12 officers shall serve without compensation and at the pleasure
13 of the board of administration. Unless otherwise provided in
14 the bylaws, the members of the board shall serve without
15 compensation.

16 2. When a unit owner files a written complaint by
17 certified mail with the board of administration, the board
18 shall respond in writing to the unit owner within 30 days of
19 receipt of the complaint. The board's response shall either
20 give a substantive response to the complainant, notify the
21 complainant that a legal opinion has been requested, or notify
22 the complainant that advice has been requested from the
23 division. If the board requests advice from the division, the
24 board shall, within 10 days of its receipt of the advice,
25 provide in writing a substantive response to the complainant.
26 If a legal opinion is requested, the board shall, within 60
27 days after the receipt of the complaint, provide in writing a
28 substantive response to the complainant. The failure to
29 provide a substantive response to the complainant as provided
30 herein precludes the board from recovering attorney's fees and
31 costs in any subsequent litigation, administrative proceeding,

1 or arbitration arising out of the complaint. However, if a
2 complaint concerns an issue contained in a complaint
3 previously filed by that same unit owner and address by the
4 association, the association is not required to give a
5 substantive response on that issue to the complainant but
6 shall only be required, pursuant to this section, to provide a
7 copy of the prior substantive response to the complainant.

8 Section 2. Section 718.1255, Florida Statutes, is
9 amended to read:

10 718.1255 Alternative dispute resolution; voluntary
11 mediation; mandatory nonbinding arbitration; legislative
12 findings.--

13 (1) DEFINITIONS.--As used in this section, the term
14 "dispute" means any disagreement between two or more parties
15 that involves:

16 (a) The authority of the board of directors, under
17 this chapter or association document to:

18 1. Require any owner to take any action, or not to
19 take any action, involving that owner's unit or the
20 appurtenances thereto.

21 2. Alter or add to a common area or element.

22 (b) The failure of a governing body, when required by
23 this chapter or an association document, to:

24 1. Properly conduct elections.

25 2. Give adequate notice of meetings or other actions.

26 3. Properly conduct meetings.

27 4. Allow inspection of books and records.

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29 "Dispute" does not include any disagreement that primarily
30 involves: title to any unit or common element; the
31 interpretation or enforcement of any warranty; ~~or~~ the levy of

1 a fee or assessment, or the collection of an assessment levied
2 against a party; the eviction or other removal of a tenant
3 from a unit; alleged breaches of fiduciary duty by one or more
4 directors; or claims for damages to a unit based upon the
5 alleged failure of the association to maintain the common
6 elements or condominium property.

7 (2) VOLUNTARY MEDIATION.--Voluntary mediation through
8 Citizen Dispute Settlement Centers as provided for in s.
9 44.201 is encouraged.

10 (3) LEGISLATIVE FINDINGS.--

11 (a) The Legislature finds that unit owners are
12 frequently at a disadvantage when litigating against an
13 association. Specifically, a condominium association, with its
14 statutory assessment authority, is often more able to bear the
15 costs and expenses of litigation than the unit owner who must
16 rely on his own financial resources to satisfy the costs of
17 litigation against the association.

18 (b) The Legislature finds that the courts are becoming
19 overcrowded with condominium and other disputes, and further
20 finds that alternative dispute resolution has been making
21 progress in reducing court dockets and trials and in offering
22 a more efficient, cost-effective option to court litigation.
23 However, the Legislature also finds that alternative dispute
24 resolution should not be used as a mechanism to encourage the
25 filing of frivolous or nuisance suits.

26 (c) There exists a need to develop a flexible means of
27 alternative dispute resolution that directs disputes to the
28 most efficient means of resolution.

29 (d) The high cost and significant delay of circuit
30 court litigation faced by unit owners in the state can be
31 alleviated by requiring nonbinding arbitration and mediation

1 in appropriate cases, thereby reducing delay and attorney's
2 fees while preserving the right of either party to have its
3 case heard by a jury, if applicable, in a court of law.

4 (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF

5 DISPUTES.--The Division of Florida Land Sales, Condominiums,
6 and Mobile Homes of the Department of Business and

7 Professional Regulation shall employ full-time attorneys to
8 act as arbitrators to conduct the arbitration hearings
9 provided by this chapter. The division may also certify

10 attorneys who are not employed by the division to act as
11 arbitrators to conduct the arbitration hearings provided by
12 this section. No person may be employed by the department as a
13 full-time arbitrator unless he or she is a member in good
14 standing of The Florida Bar. The department shall promulgate
15 rules of procedure to govern such arbitration hearings
16 including mediation incident thereto. The decision of an
17 arbitrator shall be final; however, such a decision shall not
18 be deemed final agency action. Nothing in this provision shall
19 be construed to foreclose parties from proceeding in a trial
20 de novo unless the parties have agreed that the arbitration is
21 binding. If such judicial proceedings are initiated, the final
22 decision of the arbitrator shall be admissible in evidence in
23 the trial de novo.

24 (a) Prior to the institution of court litigation, a
25 party ~~the parties~~ to a dispute shall petition the division for
26 nonbinding arbitration. The petition must be accompanied by a
27 filing fee in the amount of \$50. Filing fees collected under
28 this section must be used to defray the expenses of the
29 alternative dispute resolution program.

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1 (b) The petition must recite, and have attached
2 thereto, supporting proof that the petitioner gave the
3 respondents:

4 1. Advance written notice of the specific nature of
5 the dispute.

6 2. A demand for relief, and a reasonable opportunity
7 to comply or to provide the relief.

8 3. Notice of the intention to file an arbitration
9 petition or other legal action in the absence of a resolution
10 of the dispute. Failure to include the allegations or proof
11 of compliance with these prerequisites requires dismissal of
12 the petition without prejudice.

13 (c) Upon receipt, the petition shall be promptly
14 reviewed by the division to determine the existence of a
15 dispute and compliance with the requirements of paragraphs (a)
16 and (b). If emergency relief is required and is not available
17 through arbitration, a motion to stay the arbitration may be
18 filed. The motion must be accompanied by a verified petition
19 alleging facts that, if proven, would support entry of a
20 temporary injunction, and if an appropriate motion and
21 supporting papers are filed, the division may abate the
22 arbitration pending a court hearing and disposition of a
23 motion for temporary injunction.

24 (d) Upon determination by the division that a dispute
25 exists and that the petition substantially meets the
26 requirements of paragraphs (a) and (b) and any other
27 applicable rules, a copy of the petition shall forthwith be
28 served by the division upon all respondents.

29 (e) Either before or after the filing of the
30 respondent's answer to the petition, any party may request
31 that the arbitrator refer the case to mediation under this

1 section and any rules adopted by the division. Upon receipt
2 of a request for mediation, the division shall promptly
3 contact the parties to determine if there is agreement that
4 mediation would be appropriate. If all parties agree, the
5 dispute shall be referred to mediation. Notwithstanding a
6 lack of an agreement by all parties, the arbitrator may refer
7 a dispute to mediation at any time.

8 (f) Upon referral of a case to mediation, the parties
9 shall select a mutually acceptable mediator. To assist in the
10 selection, the arbitrator shall provide the parties with a
11 list of both volunteer and paid mediators that have been
12 certified by the division under s. 718.501. If the parties
13 are unable to agree on a mediator within the time allowed by
14 the arbitrator, the arbitrator shall appoint a mediator from
15 the list of certified mediators. If a case is referred to
16 mediation, the parties shall attend a mediation conference, as
17 scheduled by the parties and the mediator. If any party fails
18 to attend a duly noticed mediation conference, without the
19 permission or approval of the arbitrator or mediator, the
20 arbitrator shall impose sanctions against the party, including
21 the striking of any pleadings filed, the entry of an order of
22 dismissal or default if appropriate, and the award of costs
23 and attorney's fees incurred by the other parties. Unless
24 otherwise agreed to by the parties or as provided by order of
25 the arbitrator, a party is deemed to have appeared at a
26 mediation conference by the physical presence of the party or
27 its representative having full authority to settle without
28 further consultation. The parties shall share equally the
29 expense of mediation, unless they agree otherwise.

30 (g) The purpose of mediation as provided for by this
31 section is to present the parties with an opportunity to

1 resolve the underlying dispute in good faith, and with a
2 minimum expenditure of time and resources. Mediation
3 proceedings shall generally be conducted in accordance with
4 the Florida Rules of Civil Procedure, and these proceedings
5 are privileged and confidential to the same extent as
6 court-ordered mediation. Persons who are not parties to the
7 dispute are not allowed to attend the mediation conference
8 without the consent of all parties. If the mediator declares
9 an impasse after a mediation conference has been held, the
10 arbitration proceeding terminates, unless all parties agree in
11 writing to continue the arbitration proceeding in which case
12 the arbitrator's decision shall be binding upon the parties;
13 in the arbitration proceeding, the arbitrator shall not
14 consider any evidence relating to the unsuccessful mediation
15 except in a proceeding to impose sanctions for failure to
16 appear at the mediation conference. If the parties do not
17 agree to continue arbitration, the arbitrator shall enter an
18 order of dismissal, and either party may institute a suit in a
19 court of competent jurisdiction. The parties may seek to
20 recover any costs and attorney's fees incurred in connection
21 with arbitration and mediation proceedings under this section
22 as part of the costs and fees that may be recovered by the
23 prevailing party in any subsequent litigation.

24 (h) Arbitration shall be conducted according to rules
25 promulgated by the division. The filing of a petition for
26 arbitration shall toll the applicable statute of limitations.

27 (i)~~(b)~~ At the request of any party to the arbitration,
28 such arbitrator shall issue subpoenas for the attendance of
29 witnesses and the production of books, records, documents, and
30 other evidence and any party on whose behalf a subpoena is
31 issued may apply to the court for orders compelling such

1 attendance and production. Subpoenas shall be served and shall
2 be enforceable in the manner provided by the Florida Rules of
3 Civil Procedure. Discovery may, in the discretion of the
4 arbitrator, be permitted in the manner provided by the Florida
5 Rules of Civil Procedure. Rules promulgated by the division
6 may authorize any reasonable sanctions except contempt for a
7 violation of the arbitration procedural rules of the division
8 or for the failure of a party to comply with a reasonable
9 nonfinal order issued by an arbitrator which is not under
10 judicial review.

11 (j)~~(c)~~ The arbitration decision shall be presented to
12 the parties in writing. An arbitration decision ~~is shall be~~
13 final in those disputes in which the parties have agreed to be
14 bound. An arbitration decision is also final if a complaint
15 for a trial de novo is not filed in a court of competent
16 jurisdiction in which the condominium is located within 30
17 days. The right to file for a trial de novo entitles the
18 parties to file a complaint in the appropriate trial court for
19 a judicial resolution of the dispute. The prevailing party in
20 an arbitration proceeding shall may be awarded the costs of
21 the arbitration and, reasonable attorney's fees, or both, in
22 an amount determined by in the discretion of the arbitrator.
23 Such an award shall include the costs and reasonable
24 attorney's fees incurred in the arbitration proceeding as well
25 as the costs and reasonable attorney's fees incurred in
26 preparing for and attending any scheduled mediation.

27 (k)~~(d)~~ The party who files a complaint for a trial de
28 novo shall be assessed the other party's arbitration costs,
29 court costs, and other reasonable costs, including attorney's
30 fees, investigation expenses, and expenses for expert or other
31 testimony or evidence incurred after the arbitration hearing

1 if the judgment upon the trial de novo is not more favorable
2 than the arbitration decision. If the judgment is more
3 favorable, the party who filed a complaint for trial de novo
4 shall be awarded reasonable court costs and attorney's fees.
5 ~~(1)(e)~~ Any party to an arbitration proceeding may
6 enforce an arbitration award by filing a petition in a court
7 of competent jurisdiction in which the condominium is located.
8 A petition may not be granted unless the time for appeal by
9 the filing of a complaint for trial de novo has expired. If a
10 complaint for a trial de novo has been filed, a petition may
11 not be granted with respect to an arbitration award that has
12 been stayed. If the petition is granted, the petitioner may
13 recover reasonable attorney's fees and costs incurred in
14 enforcing the arbitration award. A mediation settlement may
15 also be enforced through the county or circuit court, as
16 applicable, and any costs and fees incurred in the enforcement
17 of a settlement agreement reached at mediation must be awarded
18 to the prevailing party in any enforcement action.

19 Section 3. Paragraphs (d) and (m) of subsection (1) of
20 section 718.501, Florida Statutes, 1996 Supplement, are
21 amended to read:

22 718.501 Powers and duties of Division of Florida Land
23 Sales, Condominiums, and Mobile Homes.--

24 (1) The Division of Florida Land Sales, Condominiums,
25 and Mobile Homes of the Department of Business and
26 Professional Regulation, referred to as the "division" in this
27 part, in addition to other powers and duties prescribed by
28 chapter 498, has the power to enforce and ensure compliance
29 with the provisions of this chapter and rules promulgated
30 pursuant hereto relating to the development, construction,
31 sale, lease, ownership, operation, and management of

1 residential condominium units. In performing its duties, the
2 division has the following powers and duties:

3 (d) Notwithstanding any remedies available to unit
4 owners and associations, if the division has reasonable cause
5 to believe that a violation of any provision of this chapter
6 or rule promulgated pursuant hereto has occurred, the division
7 may institute enforcement proceedings in its own name against
8 any developer, association, officer, or member of the board of
9 administration, or its assignees or agents, as follows:

10 1. The division may permit a person whose conduct or
11 actions may be under investigation to waive formal proceedings
12 and enter into a consent proceeding whereby orders, rules, or
13 letters of censure or warning, whether formal or informal, may
14 be entered against the person.

15 2. The division may issue an order requiring the
16 developer, association, officer, or member of the board of
17 administration, or its assignees or agents, to cease and
18 desist from the unlawful practice and take such affirmative
19 action as in the judgment of the division will carry out the
20 purposes of this chapter. Such affirmative action may include,
21 but is not limited to, an order requiring a developer to pay
22 moneys determined to be owed to a condominium association.

23 3. The division may bring an action in circuit court
24 on behalf of a class of unit owners, lessees, or purchasers
25 for declaratory relief, injunctive relief, or restitution.

26 4. The division may impose a civil penalty against a
27 developer or association, or its assignee or agent, for any
28 violation of this chapter or a rule promulgated pursuant
29 hereto. The division may impose a civil penalty individually
30 against any officer or board member who willfully and
31 knowingly violates a provision of this chapter, a rule adopted

1 pursuant hereto, or a final order of the division. The term
2 "willfully and knowingly" means that the division informed the
3 officer or board member that his action or intended action
4 violates this chapter, a rule adopted under this chapter, or a
5 final order of the division and that the officer or board
6 member refused to comply with the requirements of this
7 chapter, a rule adopted under this chapter, or a final order
8 of the division. The division, prior to initiating formal
9 agency action under chapter 120, shall afford the officer or
10 board member an opportunity to voluntarily comply with this
11 chapter, a rule adopted under this chapter, or a final order
12 of the division. An officer or board member who complies
13 within 10 days is not subject to a civil penalty. A penalty
14 may be imposed on the basis of each day of continuing
15 violation, but in no event shall the penalty for any offense
16 exceed \$5,000. Not later than January 1, 1998, the division
17 shall adopt, by rule, penalty guidelines applicable to
18 possible violations, or categories of violations, of this
19 chapter or rules promulgated by the division. The guidelines
20 shall specify a meaningful range of civil penalties for each
21 such violation of the statute and rules, and shall be based
22 upon the harm caused by the violation, the repetition of the
23 violation, and upon such other factors deemed relevant by the
24 division whether or not related to the foregoing. For
25 example, the division may consider whether the violations were
26 committed by a developer or owner-controlled association, the
27 size of the association, and other factors whether or not
28 related to the foregoing. The guidelines shall designate the
29 possible mitigating or aggravating circumstances that may
30 justify a departure from the range of penalties provided by
31 the rules. It is the legislative intent that minor violations

1 be distinguished from those which endanger the health, safety,
2 or welfare of the condominium residents or other persons, and
3 that such guidelines provide reasonable and meaningful notice
4 to the public of likely penalties that may be imposed for
5 proscribed conduct. The provisions of this subsection are not
6 intended and shall not be construed to limit the ability of
7 the division to informally dispose of administrative actions
8 or complaints by stipulation, agreed settlement, or consent
9 order. All amounts collected shall be deposited with the
10 Treasurer to the credit of the Division of Florida Land Sales,
11 Condominiums, and Mobile Homes Trust Fund. If a developer
12 fails to pay the civil penalty, the division shall thereupon
13 issue an order directing that such developer cease and desist
14 from further operation until such time as the civil penalty is
15 paid or may pursue enforcement of the penalty in a court of
16 competent jurisdiction. If an association fails to pay the
17 civil penalty, the division shall thereupon pursue enforcement
18 in a court of competent jurisdiction, and the order imposing
19 the civil penalty or the cease and desist order will not
20 become effective until 20 days after the date of such order.
21 Any action commenced by the division shall be brought in the
22 county in which the division has its executive offices or in
23 the county where the violation occurred.

24 (m) The division shall develop a program to certify
25 both ~~recruit~~ volunteer and paid mediators to provide ~~voluntary~~
26 mediation of condominium disputes ~~without compensation or~~
27 ~~reimbursement~~. The division shall provide, upon request, a
28 list of such mediators to any association, unit owner, or
29 other participant in arbitration proceedings under s. 718.1255
30 requesting a copy of the list. The division shall include on
31 the list of volunteer mediators only the names of persons who

1 have received at least 20 hours of training in mediation
2 techniques or who have mediated at least 20 disputes. In
3 order to become initially certified by the division, paid
4 mediators must be certified by the Florida Supreme Court to
5 mediate court cases in either county or circuit courts.
6 However, the division may adopt, by rulemaking, additional
7 factors for the certification of paid mediators which factors
8 shall be related to experience, education, or background. Any
9 person initially certified as a paid mediator by the division
10 must, in order to continue to be certified, comply with the
11 factors or requirements imposed by rules to be adopted by the
12 division.

13 Section 4. Subsection (4) of section 718.616, Florida
14 Statutes, 1996 Supplement, is amended to read:

15 718.616 Disclosure of condition of building and
16 estimated replacement costs and notification of
17 municipalities.--

18 (4) If the proposed condominium is situated within a
19 municipality, the disclosure shall include a letter from the
20 municipality acknowledging that the municipality has been
21 notified of the proposed creation of a residential condominium
22 by conversion of existing, previously occupied improvements
23 and acknowledges compliance with applicable zoning
24 requirements as determined by the municipality.

25 Section 5. Upon this section becoming a law, there is
26 hereby appropriated \$173,647.00 from the Division of Florida
27 Land Sales, Condominiums, and Mobile Homes Trust Fund to the
28 Department of Business and Professional Regulation, Division
29 of Florida Land Sales, Condominiums, and Mobile Homes and
30 three positions for the purposes of implementing the
31 provisions of this act.

1 Section 6. Except as otherwise provided herein, this
2 act shall take effect October 1, 1997.

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5 HOUSE SUMMARY

6 Revises provisions of law with respect to Condominiums
7 to:

- 8 1. Revise procedures with respect to written
9 complaints by unit owners.
10 2. Redefine the term "dispute."
11 3. Include mediations within the dispute resolution
12 process.
13 4. Revise process relating to arbitration.
14 5. Provide rulemaking authority for the Division of
15 Florida Land Sales, Condominiums, and Mobile Homes of the
16 Department of Business and Professional Regulation with
17 respect to described penalties.
18 6. Provide for the certification of mediators.

19 (See bill for details.)
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