

By the Fiscal Responsibility Council and Representative Cantens

1 A bill to be entitled
2 An act relating to condominiums and
3 cooperatives; amending s. 718.1255, F.S.;
4 providing and limiting arbitration of disputes
5 by the Division of Florida Land Sales,
6 Condominiums, and Mobile Homes to those
7 regarding elections and the recall of board
8 members; deleting reference to voluntary
9 mediation; providing for the resolution of
10 certain other complaints at the local level;
11 providing exemptions; requiring the
12 continuation of arbitration of cases filed by a
13 certain date; providing a contingent
14 appropriation; providing an effective date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 718.1255, Florida Statutes, is
19 amended to read:

20 718.1255 Alternative dispute resolution; ~~voluntary~~
21 ~~mediation;~~ mandatory nonbinding arbitration and mediation;
22 local resolution; exemptions; legislative findings.--

23 (1) APPLICABILITY DEFINITIONS.--

24 (a) The provisions of subsection (3) apply to ~~As used~~
25 ~~in this section, the term "dispute" means~~ any disagreement
26 between two or more parties that involves+

27 ~~(a) The authority of the board of directors, under~~
28 ~~this chapter or association document to:~~

29 1. ~~Require any owner to take any action, or not to~~
30 ~~take any action, involving that owner's unit or the~~
31 ~~appurtenances thereto.~~

1 ~~2. Alter or add to a common area or element.~~
2 ~~(b) the failure of a governing body, when required by~~
3 ~~this chapter or an association document, to:~~
4 ~~1. properly conduct elections or to recall a board~~
5 ~~member.~~
6 (b) The provisions of subsection (4) apply to any
7 disagreement between two or more parties that involves:
8 1. The authority of the board of directors, under this
9 chapter or an association document, to:
10 a. Require any owner to take any action, or not to
11 take any action, involving that owner's unit or the
12 appurtenances thereto; or
13 b. Alter or add to a common area or element.
14 2. The failure of a governing body, when required by
15 this chapter or an association document, to:
16 ~~a.2. Give adequate notice of meetings or other~~
17 ~~actions; or~~
18 ~~b.3. Properly conduct meetings; or~~
19 ~~c.4. Allow inspection of books and records.~~
20
21 ~~"Dispute" does not include any disagreement that primarily~~
22 ~~involves: title to any unit or common element; the~~
23 ~~interpretation or enforcement of any warranty; the levy of a~~
24 ~~fee or assessment, or the collection of an assessment levied~~
25 ~~against a party; the eviction or other removal of a tenant~~
26 ~~from a unit; alleged breaches of fiduciary duty by one or more~~
27 ~~directors; or claims for damages to a unit based upon the~~
28 ~~alleged failure of the association to maintain the common~~
29 ~~elements or condominium property.~~
30
31

1 ~~(2) VOLUNTARY MEDIATION.--Voluntary mediation through~~
2 ~~Citizen Dispute Settlement Centers as provided for in s.~~
3 ~~44.201 is encouraged.~~

4 (2)~~(3)~~ LEGISLATIVE FINDINGS.--

5 (a) The Legislature finds that unit owners are
6 frequently at a disadvantage when litigating against an
7 association. Specifically, a condominium association, with its
8 statutory assessment authority, is often more able to bear the
9 costs and expenses of litigation than the unit owner who must
10 rely on his or her own financial resources to satisfy the
11 costs of litigation against the association.

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

20 (c) There exists a need to develop a flexible means of
21 alternative dispute resolution that directs disputes to the
22 most efficient means of resolution.

23 (d) The high cost and significant delay of circuit
24 court litigation faced by unit owners in the state can be
25 alleviated by requiring nonbinding arbitration and mediation
26 in appropriate cases, thereby reducing delay and attorney's
27 fees while preserving the right of either party to have its
28 case heard by a jury, if applicable, in a court of law.

29 (3)~~(4)~~ MANDATORY NONBINDING ARBITRATION AND MEDIATION
30 OF DISPUTES.--The Division of Florida Land Sales,
31 Condominiums, and Mobile Homes of the Department of Business

1 and Professional Regulation shall provide ~~employ full-time~~
2 ~~attorneys to act as~~ arbitrators to conduct the arbitration
3 hearings as required ~~provided~~ by this chapter. The department
4 may employ attorneys to act as arbitrators, and the division
5 may also certify attorneys who are not employed by the
6 division to act as arbitrators to conduct the arbitration
7 hearings provided by this chapter ~~section~~. No person may be
8 employed by the department as an ~~a full-time~~ arbitrator unless
9 he or she is a member in good standing of The Florida Bar. The
10 department shall promulgate rules of procedure to govern such
11 arbitration hearings including mediation incident thereto.
12 The decision of an arbitrator shall be final; however, such a
13 decision shall not be deemed final agency action. Nothing in
14 this provision shall be construed to foreclose parties from
15 proceeding in a trial de novo unless the parties have agreed
16 that the arbitration is binding. If such judicial proceedings
17 are initiated, the final decision of the arbitrator shall be
18 admissible in evidence in the trial de novo.

19 (a) Prior to the institution of court litigation, a
20 party to a dispute shall petition the division for nonbinding
21 arbitration. The petition must be accompanied by a filing fee
22 in the amount of \$50. Filing fees collected under this
23 section must be used to defray the expenses of the alternative
24 dispute resolution program.

25 (b) The petition must recite, and have attached
26 thereto, supporting proof that the petitioner gave the
27 respondents:

- 28 1. Advance written notice of the specific nature of
29 the dispute;
- 30 2. A demand for relief, and a reasonable opportunity
31 to comply or to provide the relief; and

1 3. Notice of the intention to file an arbitration
2 petition or other legal action in the absence of a resolution
3 of the dispute.

4
5 Failure to include the allegations or proof of compliance with
6 these prerequisites requires dismissal of the petition without
7 prejudice.

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

19 (d) Upon determination by the division that a dispute
20 exists and that the petition substantially meets the
21 requirements of paragraphs (a) and (b) and any other
22 applicable rules, a copy of the petition shall forthwith be
23 served by the division upon all respondents.

24 (e) Either before or after the filing of the
25 respondents' answer to the petition, any party may request
26 that the arbitrator refer the case to mediation under this
27 section and any rules adopted by the division. Upon receipt
28 of a request for mediation, the division shall promptly
29 contact the parties to determine if there is agreement that
30 mediation would be appropriate. If all parties agree, the
31 dispute must be referred to mediation. Notwithstanding a lack

1 of an agreement by all parties, the arbitrator may refer a
2 dispute to mediation at any time.

3 (f) Upon referral of a case to mediation, the parties
4 must select a mutually acceptable mediator. To assist in the
5 selection, the arbitrator shall provide the parties with a
6 list of both volunteer and paid mediators that have been
7 certified by the division under s. 718.501. If the parties
8 are unable to agree on a mediator within the time allowed by
9 the arbitrator, the arbitrator shall appoint a mediator from
10 the list of certified mediators. If a case is referred to
11 mediation, the parties shall attend a mediation conference, as
12 scheduled by the parties and the mediator. If any party fails
13 to attend a duly noticed mediation conference, without the
14 permission or approval of the arbitrator or mediator, the
15 arbitrator must impose sanctions against the party, including
16 the striking of any pleadings filed, the entry of an order of
17 dismissal or default if appropriate, and the award of costs
18 and attorneys' fees incurred by the other parties. Unless
19 otherwise agreed to by the parties or as provided by order of
20 the arbitrator, a party is deemed to have appeared at a
21 mediation conference by the physical presence of the party or
22 its representative having full authority to settle without
23 further consultation, provided that an association may comply
24 by having one or more representatives present with full
25 authority to negotiate a settlement and recommend that the
26 board of administration ratify and approve such a settlement
27 within 5 days from the date of the mediation conference. The
28 parties shall share equally the expense of mediation, unless
29 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.

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

27 (i) Arbitration shall be conducted according to rules
28 promulgated by the division. The filing of a petition for
29 arbitration shall toll the applicable statute of limitations.

30 (j) At the request of any party to the arbitration,
31 such arbitrator shall issue subpoenas for the attendance of

1 witnesses and the production of books, records, documents, and
2 other evidence and any party on whose behalf a subpoena is
3 issued may apply to the court for orders compelling such
4 attendance and production. Subpoenas shall be served and shall
5 be enforceable in the manner provided by the Florida Rules of
6 Civil Procedure. Discovery may, in the discretion of the
7 arbitrator, be permitted in the manner provided by the Florida
8 Rules of Civil Procedure. Rules adopted by the division may
9 authorize any reasonable sanctions except contempt for a
10 violation of the arbitration procedural rules of the division
11 or for the failure of a party to comply with a reasonable
12 nonfinal order issued by an arbitrator which is not under
13 judicial review.

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

30 (l) The party who files a complaint for a trial de
31 novo shall be assessed the other party's arbitration costs,

1 court costs, and other reasonable costs, including attorney's
2 fees, investigation expenses, and expenses for expert or other
3 testimony or evidence incurred after the arbitration hearing
4 if the judgment upon the trial de novo is not more favorable
5 than the arbitration decision. If the judgment is more
6 favorable, the party who filed a complaint for trial de novo
7 shall be awarded reasonable court costs and attorney's fees.

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

23 (4) DISPUTES SUBJECT TO LOCAL RESOLUTION.--Disputes
24 shall be resolved in the county in which the dispute has
25 occurred by a local government alternative dispute resolution,
26 mediation, or arbitration program. Such cases shall be handled
27 by these programs without the necessity of the case being
28 filed in the court system. In the resolution of these cases on
29 the local level, past precedent of prior division arbitration
30 decisions shall be considered and followed where appropriate.
31 Local government alternative dispute resolution, mediation, or

1 arbitration programs may charge fees for handling these cases.
2 The division shall handle any of these cases arising in
3 counties which do not have local government alternative
4 dispute resolution, mediation, or arbitration programs. The
5 division shall provide a list of these programs to anyone
6 requesting this information and shall act as a clearinghouse
7 for disputes, directing affected parties to the appropriate
8 local alternative dispute resolution, mediation, or
9 arbitration program within the county in which the dispute has
10 occurred.

11 (5) EXEMPTIONS.--A dispute is not subject to
12 resolution under this section if it includes any disagreement
13 that primarily involves:

14 (a) Title to any unit or common element;

15 (b) The interpretation or enforcement of any warranty;

16 (c) The levy of a fee or assessment or the collection
17 of an assessment levied against a party;

18 (d) The eviction or other removal of a tenant from a
19 unit;

20 (e) Alleged breaches of fiduciary duty by one or more
21 directors; or

22 (f) Claims for damages to a unit based upon the
23 alleged failure of the association to maintain the common
24 elements or condominium property.

25 Section 2. The Division of Florida Land Sales,
26 Condominiums, and Mobile Homes of the Department of Business
27 and Professional Regulation shall continue the arbitration of
28 any cases which qualified for arbitration on the date the case
29 was filed with the division and which were filed with the
30 division prior to the date on which this act becomes law.

31

