

Bill No. CS for CS for CS for SB 1184

Amendment No. \_\_\_\_ Barcode 482310

CHAMBER ACTION

Senate

House

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Senator Campbell moved the following amendment:

**Senate Amendment (with title amendment)**

On page 22, line 16, through  
page 24, line 17, delete those lines

and insert:

(5) "Department" means the Department of Business and Professional Regulation.

(6)(5) "Developer" means a person or entity that:

(a) Creates the community served by the association;

or

(b) Succeeds to the rights and liabilities of the person or entity that created the community served by the association, provided that such is evidenced in writing.

(7) "Division" means the Division of Florida Land Sales, Condominiums, and Mobile Homes in the Department of Business and Professional Regulation.

(8)(6) "Governing documents" means:

(a) The recorded declaration of covenants for a community, and all duly adopted and recorded amendments,

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1 supplements, and recorded exhibits thereto; and

2 (b) The articles of incorporation and bylaws of the  
3 homeowners' association, and any duly adopted amendments  
4 thereto.

5 ~~(9)(7)~~ "Homeowners' association" or "association"  
6 means a Florida corporation responsible for the operation of a  
7 community or a mobile home subdivision in which the voting  
8 membership is made up of parcel owners or their agents, or a  
9 combination thereof, and in which membership is a mandatory  
10 condition of parcel ownership, and which is authorized to  
11 impose assessments that, if unpaid, may become a lien on the  
12 parcel. The term "homeowners' association" does not include a  
13 community development district or other similar special taxing  
14 district created pursuant to statute.

15 ~~(10)(8)~~ "Member" means a member of an association, and  
16 may include, but is not limited to, a parcel owner or an  
17 association representing parcel owners or a combination  
18 thereof, and includes any person or entity obligated by the  
19 governing documents to pay an assessment or amenity fee.

20 ~~(11)(9)~~ "Parcel" means a platted or unplatted lot,  
21 tract, unit, or other subdivision of real property within a  
22 community, as described in the declaration:

23 (a) Which is capable of separate conveyance; and

24 (b) Of which the parcel owner, or an association in  
25 which the parcel owner must be a member, is obligated:

26 1. By the governing documents to be a member of an  
27 association that serves the community; and

28 2. To pay to the homeowners' association assessments  
29 that, if not paid, may result in a lien.

30 ~~(12)(10)~~ "Parcel owner" means the record owner of  
31 legal title to a parcel.

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1           ~~(13)(11)~~ "Voting interest" means the voting rights  
2 distributed to the members of the homeowners' association,  
3 pursuant to the governing documents.

4           Section 13. Subsections (1), (2), (3), and (4) of  
5 section 720.302, are amended to read:

6           720.302 Purposes, scope, and application.--

7           (1) The purposes of this chapter ~~ss. 720.301-720.312~~  
8 are to give statutory recognition to corporations not for  
9 profit that operate residential communities in this state, to  
10 provide procedures for operating homeowners' associations, and  
11 to protect the rights of association members without unduly  
12 impairing the ability of such associations to perform their  
13 functions.

14           (2) The Legislature recognizes that it is not in the  
15 best interest of homeowners' associations or the individual  
16 association members thereof to create or impose a bureau or  
17 other agency of state government to regulate the affairs of  
18 homeowners' associations. However, in accordance with s.  
19 720.311, the Legislature finds that homeowners' associations  
20 and their individual members will benefit from an expedited  
21 alternative process for resolution of election and recall  
22 disputes and presuit mediation of other disputes involving  
23 covenant enforcement and authorizes the department to hear,  
24 administer, and determine these disputes as more fully set  
25 forth in this chapter. Further, the Legislature recognizes  
26 that certain contract rights have been created for the benefit  
27 of homeowners' associations and members thereof before the  
28 effective date of this act and that ss. 720.301-720.501 ~~ss.~~  
29 ~~720.301-720.312~~ are not intended to impair such contract  
30 rights, including, but not limited to, the rights of the  
31 developer to complete the community as initially contemplated.

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1           (3) This chapter does ~~Sections 720.301-720.312~~ do not  
2 apply to:

3           (a) A community that is composed of property primarily  
4 intended for commercial, industrial, or other nonresidential  
5 use; or

6           (b) The commercial or industrial parcels in a  
7 community that contains both residential parcels and parcels  
8 intended for commercial or industrial use.

9           (4) This chapter does ~~Sections 720.301-720.312~~ do not  
10 apply to any association that is subject to regulation under  
11 chapter 718, chapter 719, or chapter 721; or to any  
12 nonmandatory association formed under chapter 723.

13           Section 14. Section 720.303, Florida Statutes, is  
14 amended to read:

15           720.303 Association powers and duties; meetings of  
16 board; official records; budgets; financial reporting;  
17 association funds; recalls.--

18           (1) POWERS AND DUTIES.--An association which operates  
19 a community as defined in s. 720.301, must be operated by an  
20 association that is a Florida corporation. After October 1,  
21 1995, the association must be incorporated and the initial  
22 governing documents must be recorded in the official records  
23 of the county in which the community is located. An  
24 association may operate more than one community. The officers  
25 and directors of an association have a fiduciary relationship  
26 to the members who are served by the association. The powers  
27 and duties of an association include those set forth in this  
28 chapter and, except as expressly limited or restricted in this  
29 chapter, those set forth in the governing documents. After  
30 control of the association is obtained by members ~~unit owners~~  
31 other than the developer, the association may institute,

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1 maintain, settle, or appeal actions or hearings in its name on  
2 behalf of all members concerning matters of common interest to  
3 the members, including, but not limited to, the common areas;  
4 roof or structural components of a building, or other  
5 improvements for which the association is responsible;  
6 mechanical, electrical, or plumbing elements serving an  
7 improvement or building for which the association is  
8 responsible; representations of the developer pertaining to  
9 any existing or proposed commonly used facility; and  
10 protesting ad valorem taxes on commonly used facilities. The  
11 association may defend actions in eminent domain or bring  
12 inverse condemnation actions. Before commencing litigation  
13 against any party in the name of the association involving  
14 amounts in controversy in excess of \$100,000, the association  
15 must obtain the affirmative approval of a majority of the  
16 voting interests at a meeting of the membership at which a  
17 quorum has been attained. This subsection does not limit any  
18 statutory or common-law right of any individual member or  
19 class of members to bring any action without participation by  
20 the association. A member does not have authority to act for  
21 the association by virtue of being a member. An association  
22 may have more than one class of members and may issue  
23 membership certificates. An association of 15 or fewer parcel  
24 owners may enforce only the requirements of those deed  
25 restrictions established prior to the purchase of each parcel  
26 upon an affected parcel owner or owners.

27 (2) BOARD MEETINGS.--

28 (a) A meeting of the board of directors of an  
29 association occurs whenever a quorum of the board gathers to  
30 conduct association business. All meetings of the board must  
31 be open to all members except for meetings between the board

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1 and its attorney with respect to proposed or pending  
2 litigation where the contents of the discussion would  
3 otherwise be governed by the attorney-client privilege.

4 (b) Members have the right to attend all meetings of  
5 the board and to speak on any matter placed on the agenda by  
6 petition of the voting interests for at least 3 minutes. The  
7 association may adopt written reasonable rules expanding the  
8 right of members to speak and governing the frequency,  
9 duration, and other manner of member statements, which rules  
10 must be consistent with this paragraph and may include a  
11 sign-up sheet for members wishing to speak. Notwithstanding  
12 any other law, the requirement that board meetings and  
13 committee meetings be open to the members is inapplicable to  
14 meetings between the board or a committee and the  
15 association's attorney, with respect to meetings of the board  
16 held for the purpose of discussing personnel matters.

17 (c) The bylaws shall provide for giving notice to  
18 parcel owners and members of all board meetings and, if they  
19 do not do so, shall be deemed to provide the following:

20 1. Notices of all board meetings must be posted in a  
21 conspicuous place in the community at least 48 hours in  
22 advance of a meeting, except in an emergency. In the  
23 alternative, if notice is not posted in a conspicuous place in  
24 the community, notice of each board meeting must be mailed or  
25 delivered to each member at least 7 days before the meeting,  
26 except in an emergency. Notwithstanding this general notice  
27 requirement, for communities with more than 100 members, the  
28 bylaws may provide for a reasonable alternative to posting or  
29 mailing of notice for each board meeting, including  
30 publication of notice, provision of a schedule of board  
31 meetings, or the conspicuous posting and repeated broadcasting

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1 of the notice on a closed-circuit cable television system  
2 serving the homeowners' association. However, if broadcast  
3 notice is used in lieu of a notice posted physically in the  
4 community, the notice must be broadcast at least four times  
5 every broadcast hour of each day that a posted notice is  
6 otherwise required. When broadcast notice is provided, the  
7 notice and agenda must be broadcast in a manner and for a  
8 sufficient continuous length of time so as to allow an average  
9 reader to observe the notice and read and comprehend the  
10 entire content of the notice and the agenda. The bylaws or  
11 amended bylaws may provide for giving notice by electronic  
12 transmission in a manner authorized by law for meetings of the  
13 board of directors, committee meetings requiring notice under  
14 this section, and annual and special meetings of the members;  
15 however, a member must consent in writing to receiving notice  
16 by electronic transmission.

17 2. An assessment may not be levied at a board meeting  
18 unless the notice of the meeting includes a statement that  
19 assessments will be considered and the nature of the  
20 assessments. Written notice of any meeting at which special  
21 assessments will be considered or at which amendments to rules  
22 regarding parcel use will be considered must be mailed,  
23 delivered, or electronically transmitted to the members and  
24 parcel owners and posted conspicuously on the property or  
25 broadcast on closed-circuit cable television not less than 14  
26 days before the meeting.

27 3. Directors may not vote by proxy or by secret ballot  
28 at board meetings, except that secret ballots may be used in  
29 the election of officers. This subsection also applies to the  
30 meetings of any committee or other similar body, when a final  
31 decision will be made regarding the expenditure of association

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1 funds, and to any body vested with the power to approve or  
2 disapprove architectural decisions with respect to a specific  
3 parcel of residential property owned by a member of the  
4 community.

5 (d) If 20 percent of the total voting interests  
6 petition the board to address an item of business, the board  
7 shall at its next regular board meeting or at a special  
8 meeting of the board, but not later than 60 days after the  
9 receipt of the petition, take the petitioned item up on an  
10 agenda. The board shall give all members notice of the meeting  
11 at which the petitioned item shall be addressed in accordance  
12 with the 14-day notice requirement pursuant to subparagraph 2.  
13 Each member shall have the right to speak for at least 3  
14 minutes on each matter placed on the agenda by petition,  
15 provided that the member signs the sign-up sheet, if one is  
16 provided, or submits a written request to speak prior to the  
17 meeting. Other than addressing the petitioned item at the  
18 meeting, the board is not obligated to take any other action  
19 requested by the petition.

20 (3) MINUTES.--Minutes of all meetings of the members  
21 of an association and of the board of directors of an  
22 association must be maintained in written form or in another  
23 form that can be converted into written form within a  
24 reasonable time. A vote or abstention from voting on each  
25 matter voted upon for each director present at a board meeting  
26 must be recorded in the minutes.

27 (4) OFFICIAL RECORDS.--The association shall maintain  
28 each of the following items, when applicable, which constitute  
29 the official records of the association:

30 (a) Copies of any plans, specifications, permits, and  
31 warranties related to improvements constructed on the common



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1 areas or other property that the association is obligated to  
2 maintain, repair, or replace.

3 (b) A copy of the bylaws of the association and of  
4 each amendment to the bylaws.

5 (c) A copy of the articles of incorporation of the  
6 association and of each amendment thereto.

7 (d) A copy of the declaration of covenants and a copy  
8 of each amendment thereto.

9 (e) A copy of the current rules of the homeowners'  
10 association.

11 (f) The minutes of all meetings of the board of  
12 directors and of the members, which minutes must be retained  
13 for at least 7 years.

14 (g) A current roster of all members and their mailing  
15 addresses and parcel identifications. The association shall  
16 also maintain the electronic mailing addresses and the numbers  
17 designated by members for receiving notice sent by electronic  
18 transmission of those members consenting to receive notice by  
19 electronic transmission. The electronic mailing addresses and  
20 numbers provided by unit owners to receive notice by  
21 electronic transmission shall be removed from association  
22 records when consent to receive notice by electronic  
23 transmission is revoked. However, the association is not  
24 liable for an erroneous disclosure of the electronic mail  
25 address or the number for receiving electronic transmission of  
26 notices.

27 (h) All of the association's insurance policies or a  
28 copy thereof, which policies must be retained for at least 7  
29 years.

30 (i) A current copy of all contracts to which the  
31 association is a party, including, without limitation, any

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1 management agreement, lease, or other contract under which the  
2 association has any obligation or responsibility. Bids  
3 received by the association for work to be performed must also  
4 be considered official records and must be kept for a period  
5 of 1 year.

6 (j) The financial and accounting records of the  
7 association, kept according to good accounting practices. All  
8 financial and accounting records must be maintained for a  
9 period of at least 7 years. The financial and accounting  
10 records must include:

11 1. Accurate, itemized, and detailed records of all  
12 receipts and expenditures.

13 2. A current account and a periodic statement of the  
14 account for each member, designating the name and current  
15 address of each member who is obligated to pay assessments,  
16 the due date and amount of each assessment or other charge  
17 against the member, the date and amount of each payment on the  
18 account, and the balance due.

19 3. All tax returns, financial statements, and  
20 financial reports of the association.

21 4. Any other records that identify, measure, record,  
22 or communicate financial information.

23 (k) A copy of the disclosure summary described in s.  
24 720.401(2).

25 (l) All other written records of the association not  
26 specifically included in the foregoing which are related to  
27 the operation of the association.

28 (5) INSPECTION AND COPYING OF RECORDS.--The official  
29 records shall be maintained within the state and must be open  
30 to inspection and available for photocopying by members or  
31 their authorized agents at reasonable times and places within

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1 10 business days after receipt of a written request for  
2 access. This subsection may be complied with by having a copy  
3 of the official records available for inspection or copying in  
4 the community. If the association has a photocopy machine  
5 available where the records are maintained, it must provide  
6 parcel owners with copies on request during the inspection if  
7 the entire request is limited to no more than 25 pages.

8 (a) The failure of an association to provide access to  
9 the records within 10 business days after receipt of a written  
10 request creates a rebuttable presumption that the association  
11 willfully failed to comply with this subsection.

12 (b) A member who is denied access to official records  
13 is entitled to the actual damages or minimum damages for the  
14 association's willful failure to comply with this subsection.  
15 The minimum damages are to be \$50 per calendar day up to 10  
16 days, the calculation to begin on the 11th business day after  
17 receipt of the written request.

18 (c) The association may adopt reasonable written rules  
19 governing the frequency, time, location, notice, records to be  
20 inspected, and manner of inspections, but may not impose a  
21 requirement that a parcel owner demonstrate any proper purpose  
22 for the inspection, state any reason for the inspection, or  
23 limit a parcel owner's right to inspect records to less than  
24 one 8-hour business day per month. The association ~~and~~ may  
25 impose fees to cover the costs of providing copies of the  
26 official records, including, without limitation, the costs of  
27 copying. The association may charge up to 50 cents per page  
28 for copies made on the association's photocopier. If the  
29 association does not have a photocopy machine available where  
30 the records are kept, or if the records requested to be copied  
31 exceed 25 pages in length, the association may have copies

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1 made by an outside vendor and may charge the actual cost of  
2 copying. The association shall maintain an adequate number of  
3 copies of the recorded governing documents, to ensure their  
4 availability to members and prospective members, ~~and may~~  
5 ~~charge only its actual costs for reproducing and furnishing~~  
6 ~~these documents to those persons who are entitled to receive~~  
7 ~~them.~~ Notwithstanding the provisions of this paragraph, the  
8 following records shall not be accessible to members or parcel  
9 owners:

10 1. Any record protected by the lawyer-client privilege  
11 as described in s. 90.502 and any record protected by the  
12 work-product privilege, including, but not limited to, any  
13 record prepared by an association attorney or prepared at the  
14 attorney's express direction which reflects a mental  
15 impression, conclusion, litigation strategy, or legal theory  
16 of the attorney or the association and was prepared  
17 exclusively for civil or criminal litigation or for  
18 adversarial administrative proceedings or which was prepared  
19 in anticipation of imminent civil or criminal litigation or  
20 imminent adversarial administrative proceedings until the  
21 conclusion of the litigation or adversarial administrative  
22 proceedings.

23 2. Information obtained by an association in  
24 connection with the approval of the lease, sale, or other  
25 transfer of a parcel.

26 3. Disciplinary, health, insurance, and personnel  
27 records of the association's employees.

28 4. Medical records of parcel owners or community  
29 residents.

30 (6) BUDGETS.--The association shall prepare an annual  
31 budget. The budget must reflect the estimated revenues and

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1 expenses for that year and the estimated surplus or deficit as  
2 of the end of the current year. The budget must set out  
3 separately all fees or charges for recreational amenities,  
4 whether owned by the association, the developer, or another  
5 person. The association shall provide each member with a copy  
6 of the annual budget or a written notice that a copy of the  
7 budget is available upon request at no charge to the member.  
8 The copy must be provided to the member within the time limits  
9 set forth in subsection (5).

10 (7) FINANCIAL REPORTING.--The association shall  
11 prepare an annual financial report within 60 days after the  
12 close of the fiscal year. The association shall, within the  
13 time limits set forth in subsection (5), provide each member  
14 with a copy of the annual financial report or a written notice  
15 that a copy of the financial report is available upon request  
16 at no charge to the member. Financial reports shall be  
17 prepared as follows ~~The financial report must consist of~~  
18 ~~either:~~

19 (a) An association that meets the criteria of this  
20 paragraph shall prepare or cause to be prepared a complete set  
21 of financial statements in accordance with generally accepted  
22 accounting principles. The financial statements shall be based  
23 upon the association's total annual revenues, as follows:

24 1. An association with total annual revenues of  
25 \$100,000 or more, but less than \$200,000, shall prepare  
26 compiled financial statements.

27 2. An association with total annual revenues of at  
28 least \$200,000, but less than \$400,000, shall prepare reviewed  
29 financial statements.

30 3. An association with total annual revenues of  
31 \$400,000 or more shall prepare audited financial statements.

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1 ~~Financial statements presented in conformity with generally~~  
2 ~~accepted accounting principles; or~~

3           (b) ~~A financial report of actual receipts and~~  
4 ~~expenditures, cash basis, which report must show:~~

5           1. An association with total annual revenues of less  
6 than \$100,000 shall prepare a report of cash receipts and  
7 expenditures. The amount of receipts and expenditures by  
8 classification; and

9           2. An association in a community of fewer than 50  
10 parcels, regardless of the association's annual revenues, may  
11 prepare a report of cash receipts and expenditures in lieu of  
12 financial statements required by paragraph (a) unless the  
13 governing documents provide otherwise. The beginning and  
14 ending cash balances of the association.

15           3. A report of cash receipts and disbursement must  
16 disclose the amount of receipts by accounts and receipt  
17 classifications and the amount of expenses by accounts and  
18 expense classifications, including, but not limited to, the  
19 following, as applicable: costs for security, professional,  
20 and management fees and expenses; taxes; costs for recreation  
21 facilities; expenses for refuse collection and utility  
22 services; expenses for lawn care; costs for building  
23 maintenance and repair; insurance costs; administration and  
24 salary expenses; and reserves if maintained by the  
25 association.

26           (c) If 20 percent of the parcel owners petition the  
27 board for a level of financial reporting higher than that  
28 required by this section, the association shall duly notice  
29 and hold a meeting of members within 30 days of receipt of the  
30 petition for the purpose of voting on raising the level of  
31 reporting for that fiscal year. Upon approval of a majority of

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1 the total voting interests of the parcel owners, the  
2 association shall prepare or cause to be prepared, shall amend  
3 the budget or adopt a special assessment to pay for the  
4 financial report regardless of any provision to the contrary  
5 in the governing documents, and shall provide within 90 days  
6 of the meeting or the end of the fiscal year, whichever occurs  
7 later:

8       1. Compiled, reviewed, or audited financial  
9 statements, if the association is otherwise required to  
10 prepare a report of cash receipts and expenditures;

11       2. Reviewed or audited financial statements, if the  
12 association is otherwise required to prepare compiled  
13 financial statements; or

14       3. Audited financial statements if the association is  
15 otherwise required to prepare reviewed financial statements.

16       (d) If approved by a majority of the voting interests  
17 present at a properly called meeting of the association, an  
18 association may prepare or cause to be prepared:

19       1. A report of cash receipts and expenditures in lieu  
20 of a compiled, reviewed, or audited financial statement;

21       2. A report of cash receipts and expenditures or a  
22 compiled financial statement in lieu of a reviewed or audited  
23 financial statement; or

24       3. A report of cash receipts and expenditures, a  
25 compiled financial statement, or a reviewed financial  
26 statement in lieu of an audited financial statement.

27       (8) ASSOCIATION FUNDS; COMMINGLING.--

28       (a) All association funds held by a developer shall be  
29 maintained separately in the association's name. Reserve and  
30 operating funds of the association shall not be commingled  
31 prior to turnover except the association may jointly invest

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1 reserve funds; however, such jointly invested funds must be  
 2 accounted for separately.

3 (b) No developer in control of a homeowners'  
 4 association shall commingle any association funds with his or  
 5 her funds or with the funds of any other homeowners'  
 6 association or community association.

7 (c) Association funds may not be used by a developer  
 8 to defend a civil or criminal action, administrative  
 9 proceeding, or arbitration proceeding that has been filed  
 10 against the developer or directors appointed to the  
 11 association board by the developer, even when the subject of  
 12 the action or proceeding concerns the operation of the  
 13 developer-controlled association.

14 (9) APPLICABILITY.--Sections 617.1601-617.1604 do not  
 15 apply to a homeowners' association in which the members have  
 16 the inspection and copying rights set forth in this section.

17 (10) RECALL OF DIRECTORS.--

18 (a)1. Regardless of any provision to the contrary  
 19 contained in the governing documents, subject to the  
 20 provisions of s. 720.307 regarding transition of association  
 21 control, any member of the board or directors may be recalled  
 22 and removed from office with or without cause by a majority of  
 23 the total voting interests.

24 2. When the governing documents, including the  
 25 declaration, articles of incorporation, or bylaws, provide  
 26 that only a specific class of members is entitled to elect a  
 27 board director or directors, only that class of members may  
 28 vote to recall those board directors so elected.

29 (b)1. Board directors may be recalled by an agreement  
 30 in writing or by written ballot without a membership meeting.  
 31 The agreement in writing or the written ballots, or a copy



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1 thereof, shall be served on the association by certified mail  
2 or by personal service in the manner authorized by chapter 48  
3 and the Florida Rules of Civil Procedure.

4       2. The board shall duly notice and hold a meeting of  
5 the board within 5 full business days after receipt of the  
6 agreement in writing or written ballots. At the meeting, the  
7 board shall either certify the written ballots or written  
8 agreement to recall a director or directors of the board, in  
9 which case such director or directors shall be recalled  
10 effective immediately and shall turn over to the board within  
11 5 full business days any and all records and property of the  
12 association in their possession, or proceed as described in  
13 paragraph (d).

14       3. When it is determined by the department pursuant to  
15 binding arbitration proceedings that an initial recall effort  
16 was defective, written recall agreements or written ballots  
17 used in the first recall effort and not found to be defective  
18 may be reused in one subsequent recall effort. However, in no  
19 event is a written agreement or written ballot valid for more  
20 than 120 days after it has been signed by the member.

21       4. Any rescission or revocation of a member's written  
22 recall ballot or agreement must be in writing and, in order to  
23 be effective, must be delivered to the association before the  
24 association is served with the written recall agreements or  
25 ballots.

26       5. The agreement in writing or ballot shall list at  
27 least as many possible replacement directors as there are  
28 directors subject to the recall, when at least a majority of  
29 the board is sought to be recalled; the person executing the  
30 recall instrument may vote for as many replacement candidates  
31 as there are directors subject to the recall.

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1           (c)1. If the declaration, articles of incorporation,  
2 or bylaws specifically provide, the members may also recall  
3 and remove a board director or directors by a vote taken at a  
4 meeting. If so provided in the governing documents, a special  
5 meeting of the members to recall a director or directors of  
6 the board of administration may be called by 10 percent of the  
7 voting interests giving notice of the meeting as required for  
8 a meeting of members, and the notice shall state the purpose  
9 of the meeting. Electronic transmission may not be used as a  
10 method of giving notice of a meeting called in whole or in  
11 part for this purpose.

12           2. The board shall duly notice and hold a board  
13 meeting within 5 full business days after the adjournment of  
14 the member meeting to recall one or more directors. At the  
15 meeting, the board shall certify the recall, in which case  
16 such member or members shall be recalled effective immediately  
17 and shall turn over to the board within 5 full business days  
18 any and all records and property of the association in their  
19 possession, or shall proceed as set forth in subparagraph (d).

20           (d) If the board determines not to certify the written  
21 agreement or written ballots to recall a director or directors  
22 of the board or does not certify the recall by a vote at a  
23 meeting, the board shall, within 5 full business days after  
24 the meeting, file with the department a petition for binding  
25 arbitration pursuant to the applicable procedures in ss.  
26 718.1255 and 718.112(2)(j) and the rules adopted thereunder.  
27 For the purposes of this section, the members who voted at the  
28 meeting or who executed the agreement in writing shall  
29 constitute one party under the petition for arbitration. If  
30 the arbitrator certifies the recall as to any director or  
31 directors of the board, the recall will be effective upon

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1 mailing of the final order of arbitration to the association.  
2 The director or directors so recalled shall deliver to the  
3 board any and all records of the association in their  
4 possession within 5 full business days after the effective  
5 date of the recall.

6 (e) If a vacancy occurs on the board as a result of a  
7 recall and less than a majority of the board directors are  
8 removed, the vacancy may be filled by the affirmative vote of  
9 a majority of the remaining directors, notwithstanding any  
10 provision to the contrary contained in this subsection or in  
11 the association documents. If vacancies occur on the board as  
12 a result of a recall and a majority or more of the board  
13 directors are removed, the vacancies shall be filled by  
14 members voting in favor of the recall; if removal is at a  
15 meeting, any vacancies shall be filled by the members at the  
16 meeting. If the recall occurred by agreement in writing or by  
17 written ballot, members may vote for replacement directors in  
18 the same instrument in accordance with procedural rules  
19 adopted by the division, which rules need not be consistent  
20 with this subsection.

21 (f) If the board fails to duly notice and hold a board  
22 meeting within 5 full business days after service of an  
23 agreement in writing or within 5 full business days after the  
24 adjournment of the member recall meeting, the recall shall be  
25 deemed effective and the board directors so recalled shall  
26 immediately turn over to the board all records and property of  
27 the association.

28 (g) If a director who is removed fails to relinquish  
29 his or her office or turn over records as required under this  
30 section, the circuit court in the county where the association  
31 maintains its principal office may, upon the petition of the

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1 association, summarily order the director to relinquish his or  
2 her office and turn over all association records upon  
3 application of the association.

4       (h) The minutes of the board meeting at which the  
5 board decides whether to certify the recall are an official  
6 association record. The minutes must record the date and time  
7 of the meeting, the decision of the board, and the vote count  
8 taken on each board member subject to the recall. In addition,  
9 when the board decides not to certify the recall, as to each  
10 vote rejected, the minutes must identify the parcel number and  
11 the specific reason for each such rejection.

12       (i) When the recall of more than one board director is  
13 sought, the written agreement, ballot, or vote at a meeting  
14 shall provide for a separate vote for each board director  
15 sought to be recalled.

16       Section 15. Section 720.304, Florida Statutes, is  
17 amended to read:

18       720.304 Right of owners to peaceably assemble; display  
19 of flag; SLAPP suits prohibited.--

20       (1) All common areas and recreational facilities  
21 serving any homeowners' association shall be available to  
22 parcel owners in the homeowners' association served thereby  
23 and their invited guests for the use intended for such common  
24 areas and recreational facilities. The entity or entities  
25 responsible for the operation of the common areas and  
26 recreational facilities may adopt reasonable rules and  
27 regulations pertaining to the use of such common areas and  
28 recreational facilities. No entity or entities shall  
29 unreasonably restrict any parcel owner's right to peaceably  
30 assemble or right to invite public officers or candidates for  
31 public office to appear and speak in common areas and

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1 recreational facilities.

2           (2) Any homeowner may display one portable, removable  
3 United States flag or official flag of the State of Florida in  
4 a respectful manner, and on Armed Forces Day, Memorial Day,  
5 Flag Day, Independence Day, and Veterans Day may display in a  
6 respectful manner portable, removable official flags, not  
7 larger than 4 1/2 feet by 6 feet, which represents the United  
8 States Army, Navy, Air Force, Marine Corps, or Coast Guard,  
9 regardless of any declaration rules or requirements dealing  
10 with flags or decorations.

11           (3) Any owner prevented from exercising rights  
12 guaranteed by subsection (1) or subsection (2) may bring an  
13 action in the appropriate court of the county in which the  
14 alleged infringement occurred, and, upon favorable  
15 adjudication, the court shall enjoin the enforcement of any  
16 provision contained in any homeowners' association document or  
17 rule that operates to deprive the owner of such rights.

18           (4) It is the intent of the Legislature to protect the  
19 right of parcel owners to exercise their rights to instruct  
20 their representatives and petition for redress of grievances  
21 before the various governmental entities of this state as  
22 protected by the First Amendment to the United States  
23 Constitution and s. 5, Art. I of the State Constitution. The  
24 Legislature recognizes that "Strategic Lawsuits Against Public  
25 Participation" or "SLAPP" suits, as they are typically called,  
26 have occurred when members are sued by individuals, business  
27 entities, or governmental entities arising out of a parcel  
28 owner's appearance and presentation before a governmental  
29 entity on matters related to the homeowners' association.  
30 However, it is the public policy of this state that government  
31 entities, business organizations, and individuals not engage

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1 in SLAPP suits because such actions are inconsistent with the  
2 right of parcel owners to participate in the state's  
3 institutions of government. Therefore, the Legislature finds  
4 and declares that prohibiting such lawsuits by governmental  
5 entities, business entities, and individuals against parcel  
6 owners who address matters concerning their homeowners'  
7 association will preserve this fundamental state policy,  
8 preserve the constitutional rights of parcel owners, and  
9 assure the continuation of representative government in this  
10 state. It is the intent of the Legislature that such lawsuits  
11 be expeditiously disposed of by the courts.

12       (a) As used in this subsection, the term "governmental  
13 entity" means the state, including the executive, legislative,  
14 and judicial branches of government, the independent  
15 establishments of the state, counties, municipalities,  
16 districts, authorities, boards, or commissions, or any  
17 agencies of these branches which are subject to chapter 286.

18       (b) A governmental entity, business organization, or  
19 individual in this state may not file or cause to be filed  
20 through its employees or agents any lawsuit, cause of action,  
21 claim, cross-claim, or counterclaim against a parcel owner  
22 without merit and solely because such parcel owner has  
23 exercised the right to instruct his or her representatives or  
24 the right to petition for redress of grievances before the  
25 various governmental entities of this state, as protected by  
26 the First Amendment to the United States Constitution and s.  
27 5, Art. I of the State Constitution.

28       (c) A parcel owner sued by a governmental entity,  
29 business organization, or individual in violation of this  
30 section has a right to an expeditious resolution of a claim  
31 that the suit is in violation of this section. A parcel owner

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1 may petition the court for an order dismissing the action or  
2 granting final judgment in favor of that parcel owner. The  
3 petitioner may file a motion for summary judgment, together  
4 with supplemental affidavits, seeking a determination that the  
5 governmental entity's, business organization's, or  
6 individual's lawsuit has been brought in violation of this  
7 section. The governmental entity, business organization, or  
8 individual shall thereafter file its response and any  
9 supplemental affidavits. As soon as practicable, the court  
10 shall set a hearing on the petitioner's motion, which shall be  
11 held at the earliest possible time after the filing of the  
12 governmental entity's, business organization's or individual's  
13 response. The court may award the parcel owner sued by the  
14 governmental entity, business organization, or individual  
15 actual damages arising from the governmental entity's,  
16 individual's, or business organization's violation of this  
17 section. A court may treble the damages awarded to a  
18 prevailing parcel owner and shall state the basis for the  
19 treble damages award in its judgment. The court shall award  
20 the prevailing party reasonable attorney's fees and costs  
21 incurred in connection with a claim that an action was filed  
22 in violation of this section.

23 (d) Homeowners' associations may not expend  
24 association funds in prosecuting a SLAPP suit against a parcel  
25 owner.

26 (5)(a) Any parcel owner may construct an access ramp  
27 if a resident or occupant of the parcel has a medical  
28 necessity or disability that requires a ramp for egress and  
29 ingress under the following conditions:

30 1. The ramp must be as unobtrusive as possible, be  
31 designed to blend in aesthetically as practicable, and be

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1 reasonably sized to fit the intended use.

2 2. Plans for the ramp must be submitted in advance to  
3 the homeowners' association. The association may make  
4 reasonable requests to modify the design to achieve  
5 architectural consistency with surrounding structures and  
6 surfaces.

7 (b) The parcel owner must submit to the association an  
8 affidavit from a physician attesting to the medical necessity  
9 or disability of the resident or occupant of the parcel  
10 requiring the access ramp. Certification used for s. 320.0848  
11 shall be sufficient to meet the affidavit requirement.

12 (6) Any parcel owner may display a sign of reasonable  
13 size provided by a contractor for security services within 10  
14 feet of any entrance to the home.

15 Section 16. Subsection (2) of section 720.305, Florida  
16 Statutes, is amended to read:

17 720.305 Obligations of members; remedies at law or in  
18 equity; levy of fines and suspension of use rights; failure to  
19 fill sufficient number of vacancies on board of directors to  
20 constitute a quorum; appointment of receiver upon petition of  
21 any member.--

22 (2) If the governing documents so provide, an  
23 association may suspend, for a reasonable period of time, the  
24 rights of a member or a member's tenants, guests, or invitees,  
25 or both, to use common areas and facilities and may levy  
26 reasonable fines, not to exceed \$100 per violation, against  
27 any member or any tenant, guest, or invitee. A fine may be  
28 levied on the basis of each day of a continuing violation,  
29 with a single notice and opportunity for hearing, except that  
30 no such fine shall exceed \$1,000 in the aggregate unless  
31 otherwise provided in the governing documents. A fine shall



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1 not become a lien against a parcel. In any action to recover a  
 2 fine, the prevailing party is entitled to collect its  
 3 reasonable attorney's fees and costs from the nonprevailing  
 4 party as determined by the court.

5 (a) A fine or suspension may not be imposed without  
 6 notice of at least 14 days to the person sought to be fined or  
 7 suspended and an opportunity for a hearing before a committee  
 8 of at least three members appointed by the board who are not  
 9 officers, directors, or employees of the association, or the  
 10 spouse, parent, child, brother, or sister of an officer,  
 11 director, or employee. If the committee, by majority vote,  
 12 does not approve a proposed fine or suspension, it may not be  
 13 imposed.

14 (b) The requirements of this subsection do not apply  
 15 to the imposition of suspensions or fines upon any member  
 16 because of the failure of the member to pay assessments or  
 17 other charges when due if such action is authorized by the  
 18 governing documents.

19 (c) Suspension of common-area-use rights shall not  
 20 impair the right of an owner or tenant of a parcel to have  
 21 vehicular and pedestrian ingress to and egress from the  
 22 parcel, including, but not limited to, the right to park.

23 Section 17. Section 720.3055, Florida Statutes, is  
 24 created to read:

25 720.3055 Contracts for products and services; in  
 26 writing; bids; exceptions.--

27 (1) All contracts as further described in this section  
 28 or any contract that is not to be fully performed within 1  
 29 year after the making thereof for the purchase, lease, or  
 30 renting of materials or equipment to be used by the  
 31 association in accomplishing its purposes under this chapter

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1 or the governing documents, and all contracts for the  
2 provision of services, shall be in writing. If a contract for  
3 the purchase, lease, or renting of materials or equipment, or  
4 for the provision of services, requires payment by the  
5 association that exceeds 10 percent of the total annual budget  
6 of the association, including reserves, the association must  
7 obtain competitive bids for the materials, equipment, or  
8 services. Nothing contained in this section shall be construed  
9 to require the association to accept the lowest bid.

10 (2)(a)1. Notwithstanding the foregoing, contracts with  
11 employees of the association, and contracts for attorney,  
12 accountant, architect, community association manager,  
13 engineering, and landscape architect services are not subject  
14 to the provisions of this section.

15 2. A contract executed before October 1, 2004, and any  
16 renewal thereof, is not subject to the competitive bid  
17 requirements of this section. If a contract was awarded under  
18 the competitive bid procedures of this section, any renewal of  
19 that contract is not subject to such competitive bid  
20 requirements if the contract contains a provision that allows  
21 the board to cancel the contract on 30 days' notice.

22 Materials, equipment, or services provided to an association  
23 under a local government franchise agreement by a franchise  
24 holder are not subject to the competitive bid requirements of  
25 this section. A contract with a manager, if made by a  
26 competitive bid, may be made for up to 3 years. An association  
27 whose declaration or bylaws provide for competitive bidding  
28 for services may operate under the provisions of that  
29 declaration or bylaws in lieu of this section if those  
30 provisions are not less stringent than the requirements of  
31 this section.

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1       (b) Nothing contained in this section is intended to  
2 limit the ability of an association to obtain needed products  
3 and services in an emergency.

4       (c) This section does not apply if the business entity  
5 with which the association desires to enter into a contract is  
6 the only source of supply within the county serving the  
7 association.

8       (d) Nothing contained in this section shall excuse a  
9 party contracting to provide maintenance or management  
10 services from compliance with s. 720.309.

11           Section 18. Present subsections (5) through (8) of  
12 section 720.306, Florida Statutes, are renumbered as  
13 subsections (7) through (10), respectively, present subsection  
14 (7) is amended, and new subsections (5) and (6) are added to  
15 that section to read:

16           720.306 Meetings of members; voting and election  
17 procedures; amendments.--

18           (5) NOTICE OF MEETINGS.--The bylaws shall provide for  
19 giving notice to members of all member meetings, and if they  
20 do not do so shall be deemed to provide the following: The  
21 association shall give all parcel owners and members actual  
22 notice of all membership meetings, which shall be mailed,  
23 delivered, or electronically transmitted to the members not  
24 less than 14 days prior to the meeting. Evidence of compliance  
25 with this 14-day notice shall be made by an affidavit executed  
26 by the person providing the notice and filed upon execution  
27 among the official records of the association. In addition to  
28 mailing, delivering, or electronically transmitting the notice  
29 of any meeting, the association may, by reasonable rule, adopt  
30 a procedure for conspicuously posting and repeatedly  
31 broadcasting the notice and the agenda on a closed-circuit

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1 cable television system serving the association. When  
2 broadcast notice is provided, the notice and agenda must be  
3 broadcast in a manner and for a sufficient continuous length  
4 of time so as to allow an average reader to observe the notice  
5 and read and comprehend the entire content of the notice and  
6 the agenda.

7 (6) RIGHT TO SPEAK.--Members and parcel owners have  
8 the right to attend all membership meetings and to speak at  
9 any meeting with reference to all items opened for discussion  
10 or included on the agenda. Notwithstanding any provision to  
11 the contrary in the governing documents or any rules adopted  
12 by the board or by the membership, a member and a parcel owner  
13 have the right to speak for at least 3 minutes on any item,  
14 provided that the member or parcel owner submits a written  
15 request to speak prior to the meeting. The association may  
16 adopt written reasonable rules governing the frequency,  
17 duration, and other manner of member and parcel owner  
18 statements, which rules must be consistent with this  
19 paragraph.

20 (9)(7) ELECTIONS.--Elections of directors must be  
21 conducted in accordance with the procedures set forth in the  
22 governing documents of the association. All members of the  
23 association shall be eligible to serve on the board of  
24 directors, and a member may nominate himself or herself as a  
25 candidate for the board at a meeting where the election is to  
26 be held. Except as otherwise provided in the governing  
27 documents, boards of directors must be elected by a plurality  
28 of the votes cast by eligible voters. Any election dispute  
29 between a member and an association must be submitted to  
30 mandatory binding arbitration with the division. Such  
31 proceedings shall be conducted in the manner provided by s.

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1 718.1255 and the procedural rules adopted by the division.

2 Section 19. Section 720.311, Florida Statutes, is  
3 amended to read:

4 720.311 Dispute resolution.--

5 (1) The Legislature finds that alternative dispute  
6 resolution has made progress in reducing court dockets and  
7 trials and in offering a more efficient, cost-effective option  
8 to litigation. The filing of any petition for mediation or  
9 arbitration provided for in this section shall toll the  
10 applicable statute of limitations. Any recall dispute filed  
11 with the department pursuant to s. 720.303(10) shall be  
12 conducted by the department in accordance with the provisions  
13 of ss. 718.1255 and 718.112(2)(j) and the rules adopted by the  
14 division. In addition, the department shall conduct mandatory  
15 binding arbitration of election disputes between a member and  
16 an association pursuant to s. 718.1255 and rules adopted by  
17 the division. Neither election disputes nor recall disputes  
18 are eligible for mediation; these disputes shall be arbitrated  
19 by the department. At the conclusion of the proceeding, the  
20 department shall charge the parties a fee in an amount  
21 adequate to cover all costs and expenses incurred by the  
22 department in conducting the proceeding. Initially, the  
23 petitioner shall remit a filing fee of at least \$200 to the  
24 department. The fees paid to the department shall become a  
25 recoverable cost in the arbitration proceeding and the  
26 prevailing party in an arbitration proceeding shall recover  
27 its reasonable costs and attorney's fees in an amount found  
28 reasonable by the arbitrator. The department shall adopt rules  
29 to effectuate the purposes of this section.

30 (2)(a) Disputes between an association and a parcel  
31 owner regarding use of or changes to the parcel or the common

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1 areas and other covenant enforcement disputes, disputes  
2 regarding amendments to the association documents, disputes  
3 regarding meetings of the board and committees appointed by  
4 the board, membership meetings not including election  
5 meetings, and access to the official records of the  
6 association shall be filed with the department for mandatory  
7 mediation before the dispute is filed in court. Mediation  
8 proceedings must be conducted in accordance with the  
9 applicable Florida Rules of Civil Procedure, and these  
10 proceedings are privileged and confidential to the same extent  
11 as court-ordered mediation. An arbitrator or judge may not  
12 consider any information or evidence arising from the  
13 mediation proceeding except in a proceeding to impose  
14 sanctions for failure to attend a mediation session. Persons  
15 who are not parties to the dispute may not attend the  
16 mediation conference without the consent of all parties,  
17 except for counsel for the parties and a corporate  
18 representative designated by the association. When mediation  
19 is attended by a quorum of the board, such mediation is not a  
20 board meeting for purposes of notice and participation set  
21 forth in s. 720.303. The department shall conduct the  
22 proceedings through the use of department mediators or refer  
23 the disputes to private mediators who have been duly certified  
24 by the department as provided in paragraph (c). The parties  
25 shall share the costs of mediation equally, including the fee  
26 charged by the mediator, if any, unless the parties agree  
27 otherwise. If a department mediator is used, the department  
28 may charge such fee as is necessary to pay expenses of the  
29 mediation, including, but not limited to, the salary and  
30 benefits of the mediator and any travel expenses incurred. The  
31 petitioner shall initially file with the department upon

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1 filing the disputes, a filing fee of \$200, which shall be used  
2 to defray the costs of the mediation. At the conclusion of the  
3 mediation, the department shall charge to the parties, to be  
4 shared equally unless otherwise agreed by the parties, such  
5 further fees as are necessary to fully reimburse the  
6 department for all expenses incurred in the mediation.

7 (b) If mediation as described in paragraph (a) is not  
8 successful in resolving all issues between the parties, the  
9 parties may file the unresolved dispute in a court of  
10 competent jurisdiction or elect to enter into binding or  
11 nonbinding arbitration pursuant to the procedures set forth in  
12 s. 718.1255 and rules adopted by the division, with the  
13 arbitration proceeding to be conducted by a department  
14 arbitrator or by a private arbitrator certified by the  
15 department. If all parties do not agree to arbitration  
16 proceedings following an unsuccessful mediation, any party may  
17 file the dispute in court. A final order resulting from  
18 nonbinding arbitration is final and enforceable in the courts  
19 if a complaint for trial de novo is not filed in a court of  
20 competent jurisdiction within 30 days after entry of the  
21 order.

22 (c) The department shall develop a certification and  
23 training program for private mediators and private arbitrators  
24 which shall emphasize experience and expertise in the area of  
25 the operation of community associations. A mediator or  
26 arbitrator shall be certified by the department only if he or  
27 she has attended at least 20 hours of training in mediation or  
28 arbitration, as appropriate, and only if the applicant has  
29 mediated or arbitrated at least 10 disputes involving  
30 community associations within 5 years prior to the date of the  
31 application, or has mediated or arbitrated 10 disputes in any

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1 area within 5 years prior to the date of application and has  
2 completed 20 hours of training in community association  
3 disputes. In order to be certified by the department, any  
4 mediator must also be certified by the Florida Supreme Court.  
5 The department may conduct the training and certification  
6 program within the department or may contract with an outside  
7 vendor to perform the training or certification. The expenses  
8 of operating the training and certification and training  
9 program shall be paid by the moneys and filing fees generated  
10 by the arbitration of recall and election disputes and by the  
11 mediation of those disputes referred to in this subsection and  
12 by the training fees.

13 (d) The mediation procedures provided by this  
14 subsection may be used by a Florida corporation responsible  
15 for the operation of a community in which the voting members  
16 are parcel owners or their representatives, in which  
17 membership in the corporation is not a mandatory condition of  
18 parcel ownership, or which is not authorized to impose an  
19 assessment that may become a lien on the parcel.

20 (3) The department shall develop an education program  
21 to assist homeowners, associations, board members, and  
22 managers in understanding and increasing awareness of the  
23 operation of homeowners' associations pursuant to chapter 720  
24 and in understanding the use of alternative dispute resolution  
25 techniques in resolving disputes between parcel owners and  
26 associations or between owners. Such education program may  
27 include the development of pamphlets and other written  
28 instructional guides, the holding of classes and meetings by  
29 department employees or outside vendors, as the department  
30 determines, and the creation and maintenance of a website  
31 containing instructional materials. The expenses of operating



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1 the education program shall be initially paid by the moneys  
 2 and filing fees generated by the arbitration of recall and  
 3 election disputes and by the mediation of those disputes  
 4 referred to in this subsection. At any time after the filing  
 5 in a court of competent jurisdiction of a complaint relating  
 6 to a dispute under ss. 720.301-720.312, the court may order  
 7 that the parties enter mediation or arbitration procedures.

8

9 (Redesignate subsequent sections.)

10

11

12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 2, line 27, after the first semicolon,

15

16 insert:

17 providing definitions; prescribing a  
 18 legislative purpose of providing alternative  
 19 dispute resolution procedures for disputes  
 20 involving elections and recalls; amending s.  
 21 720.303, F.S.; prescribing the right of an  
 22 association to enforce deed restrictions;  
 23 prescribing rights of members and parcel owners  
 24 to attend and address association board  
 25 meetings and to have items placed on an agenda;  
 26 prescribing additional requirements for notice  
 27 of meetings; providing for additional materials  
 28 to be maintained as records; providing  
 29 additional requirements and limitations with  
 30 respect to inspecting and copying records;  
 31 providing requirements with respect to

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1 financial statements; providing procedures for  
2 recall of directors; amending s. 720.304, F.S.;  
3 prescribing owners' rights with respect to flag  
4 display; prohibiting certain lawsuits against  
5 parcel owners; providing penalties; allowing a  
6 parcel owner to construct a ramp for a parcel  
7 resident who has a medical need for a ramp;  
8 providing conditions; allowing the display of a  
9 security-services sign; amending s. 720.305,  
10 F.S.; providing that a fine by an association  
11 cannot become a lien against a parcel;  
12 providing for attorney's fees in actions to  
13 recover fines; creating s. 720.3055, F.S.;  
14 prescribing requirements for contracts for  
15 products and services; amending s. 720.306,  
16 F.S.; providing for notice of and right to  
17 speak at member meetings; requiring election  
18 disputes between a member and an association to  
19 be submitted to mandatory binding arbitration;  
20 amending s. 720.311, F.S.; expanding  
21 requirements and guidelines with respect to  
22 alternative dispute resolution; providing  
23 requirements for mediation and arbitration;  
24 providing for training and education programs;

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