

1 A bill to be entitled

2 An act relating to community associations; directing the  
3 Advisory Council on Condominiums to hold public hearings  
4 and prepare and present a report to the Legislature  
5 regarding certain issues relating to the powers of  
6 condominium associations during catastrophic windstorm  
7 events and the recovery and rebuilding following such  
8 events; amending s. 720.305, F.S.; providing that a fine  
9 levied by a homeowners' association against a homeowner  
10 shall not become a lien against a parcel unless it is  
11 imposed for violations of use restrictions on the land;  
12 amending s. 720.311, F.S.; providing that the failure of a  
13 party to make payment of fees and costs or appear for a  
14 mediation session or arbitration proceeding acts as an  
15 impasse in the proceeding and entitles the other party to  
16 proceed in court and to receive and enforce an award of  
17 costs and fees associated with the mediation or  
18 arbitration; deleting the training hours required for  
19 certification of mediators and arbitrators; providing that  
20 qualifications for certification as a mediator or  
21 arbitrator will be established by the Florida Supreme  
22 Court; deleting a provision requiring the initial costs of  
23 educating homeowners and other parties about homeowners'  
24 associations and the use of alternative dispute resolution  
25 techniques to be paid from moneys and filing fees  
26 generated by the arbitration of recall and election  
27 disputes and by the mediation of those disputes; creating  
28 s. 712.11, F.S.; providing for the revival of certain

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29 |        declarations that have been extinguished; providing an  
 30 |        effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

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34 |        Section 1. The Advisory Council on Condominiums is  
 35 | directed to hold public hearings, study available options and  
 36 | proposals, and prepare a report to the Legislature, including  
 37 | recommended legislation, dealing with the protection and  
 38 | preservation of condominium property at the time of anticipated  
 39 | catastrophic windstorm events and the recovery and rebuilding  
 40 | following such events. Recommendations should consider the  
 41 | communication options with condominium owners in times of  
 42 | anticipated and declared emergencies, financial planning for  
 43 | protecting and rebuilding condominium property following such  
 44 | events, and the powers and responsibilities of unit owners and  
 45 | the board of directors of the condominium association before,  
 46 | during, and after such occurrences.

47 |        Section 2. Subsection (2) of section 720.305, Florida  
 48 | Statutes, is amended to read:

49 |        720.305 Obligations of members; remedies at law or in  
 50 | equity; levy of fines and suspension of use rights; failure to  
 51 | fill sufficient number of vacancies on board of directors to  
 52 | constitute a quorum; appointment of receiver upon petition of  
 53 | any member.--

54 |        (2) If the governing documents so provide, an association  
 55 | may suspend, for a reasonable period of time, the rights of a  
 56 | member or a member's tenants, guests, or invitees, or both, to

57 | use common areas and facilities and may levy reasonable fines,  
58 | not to exceed \$100 per violation, against any member or any  
59 | tenant, guest, or invitee. A fine may be levied on the basis of  
60 | each day of a continuing violation, with a single notice and  
61 | opportunity for hearing, except that no such fine shall exceed  
62 | \$1,000 in the aggregate unless otherwise provided in the  
63 | governing documents. A fine shall not become a lien against a  
64 | parcel unless it is imposed for violations of use restrictions  
65 | on the land. In any action to recover a fine, the prevailing  
66 | party is entitled to collect its reasonable attorney's fees and  
67 | costs from the nonprevailing party as determined by the court.

68 | (a) A fine or suspension may not be imposed without notice  
69 | of at least 14 days to the person sought to be fined or  
70 | suspended and an opportunity for a hearing before a committee of  
71 | at least three members appointed by the board who are not  
72 | officers, directors, or employees of the association, or the  
73 | spouse, parent, child, brother, or sister of an officer,  
74 | director, or employee. If the committee, by majority vote, does  
75 | not approve a proposed fine or suspension, it may not be  
76 | imposed.

77 | (b) The requirements of this subsection do not apply to  
78 | the imposition of suspensions or fines upon any member because  
79 | of the failure of the member to pay assessments or other charges  
80 | when due if such action is authorized by the governing  
81 | documents.

82 | (c) Suspension of common-area-use rights shall not impair  
83 | the right of an owner or tenant of a parcel to have vehicular

84 and pedestrian ingress to and egress from the parcel, including,  
85 but not limited to, the right to park.

86 Section 3. Paragraphs (b) and (c) of subsection (2) and  
87 subsection (3) of section 720.311, Florida Statutes, are amended  
88 to read:

89 720.311 Dispute resolution.--

90 (2)

91 (b) If mediation as described in paragraph (a) is not  
92 successful in resolving all issues between the parties, the  
93 parties may file the unresolved dispute in a court of competent  
94 jurisdiction or elect to enter into binding or nonbinding  
95 arbitration pursuant to the procedures set forth in s. 718.1255  
96 and rules adopted by the division, with the arbitration  
97 proceeding to be conducted by a department arbitrator or by a  
98 private arbitrator certified by the department. If all parties  
99 do not agree to arbitration proceedings following an  
100 unsuccessful mediation, any party may file the dispute in court.  
101 A final order resulting from nonbinding arbitration is final and  
102 enforceable in the courts if a complaint for trial de novo is  
103 not filed in a court of competent jurisdiction within 30 days  
104 after entry of the order. The failure of any party to make  
105 payment of fees and costs within the time established by  
106 department rule or to appear for a scheduled mediation session  
107 or arbitration proceeding shall operate as an impasse in the  
108 proceeding between the parties, entitling the other party to  
109 proceed in court and to receive and enforce an award of costs  
110 and fees associated with the mediation or arbitration.

111 (c) The department shall develop a certification and  
112 training program for private mediators and private arbitrators  
113 which shall emphasize experience and expertise in the area of  
114 the operation of community associations. A mediator or  
115 arbitrator shall be certified by the department only if he or  
116 she has met the qualifications for a mediator established for  
117 circuit court mediators ~~has attended at least 20 hours of~~  
118 ~~training in mediation or arbitration, as appropriate, and only~~  
119 ~~if the applicant has mediated or arbitrated at least 10 disputes~~  
120 ~~involving community associations within 5 years prior to the~~  
121 ~~date of the application, or has mediated or arbitrated 10~~  
122 ~~disputes in any area within 5 years prior to the date of~~  
123 ~~application and has completed 20 hours of training in community~~  
124 ~~association disputes. In order to be certified by the~~  
125 ~~department, any mediator must also be certified by the Florida~~  
126 Supreme Court. The department may conduct the training and  
127 certification program within the department or may contract with  
128 an outside vendor to perform the training or certification. The  
129 expenses of operating the training and certification and  
130 training program shall be paid by the moneys and filing fees  
131 generated by the arbitration of recall and election disputes and  
132 by the mediation of those disputes referred to in this  
133 subsection and by the training fees.

134 (3) The department shall develop an education program to  
135 assist homeowners, associations, board members, and managers in  
136 understanding and increasing awareness of the operation of  
137 homeowners' associations pursuant to this chapter and in  
138 understanding the use of alternative dispute resolution

139 techniques in resolving disputes between parcel owners and  
140 associations or between owners. Such education program may  
141 include the development of pamphlets and other written  
142 instructional guides, the holding of classes and meetings by  
143 department employees or outside vendors, as the department  
144 determines, and the creation and maintenance of a website  
145 containing instructional materials. ~~The expenses of operating~~  
146 ~~the education program shall be initially paid by the moneys and~~  
147 ~~filing fees generated by the arbitration of recall and election~~  
148 ~~disputes and by the mediation of those disputes referred to in~~  
149 ~~this subsection.~~

150 Section 4. Section 712.11, Florida Statutes, is created to  
151 read:

152 712.11 Covenants and restrictions.--A homeowners'  
153 association that is not otherwise subject to chapter 720 may use  
154 the procedures provided in ss. 720.403-720.407 to revive a  
155 declaration of covenants and restrictions that has been  
156 extinguished by this chapter entitled Marketable Record Titles  
157 to Real Property.

158 Section 5. This act shall take effect upon becoming a law.