

By the Committee on Regulated Industries; and Senator Jones

580-2270-05

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

1 the arbitration of recall and election disputes  
2 and by the mediation of those disputes;  
3 creating s. 712.11, F.S.; providing for the  
4 revival of certain declarations that have been  
5 extinguished; providing an effective date.  
6

7 Be It Enacted by the Legislature of the State of Florida:  
8

9 Section 1. The Advisory Council on Condominiums is  
10 directed to hold public hearings, study available options and  
11 proposals, and prepare a report to the Legislature, including  
12 recommended legislation, dealing with the protection and  
13 preservation of condominium property at the time of  
14 anticipated catastrophic windstorm events and the recovery and  
15 rebuilding following such events. Recommendations should  
16 consider the communication options with condominium owners in  
17 times of anticipated and declared emergencies, financial  
18 planning for protecting and rebuilding condominium property  
19 following such events, and the powers and responsibilities of  
20 unit owners and the board of directors of the condominium  
21 association before, during, and after such occurrences.

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

24 720.305 Obligations of members; remedies at law or in  
25 equity; levy of fines and suspension of use rights; failure to  
26 fill sufficient number of vacancies on board of directors to  
27 constitute a quorum; appointment of receiver upon petition of  
28 any member.--

29 (2) If the governing documents so provide, an  
30 association may suspend, for a reasonable period of time, the  
31 rights of a member or a member's tenants, guests, or invitees,

1 or both, to use common areas and facilities and may levy  
2 reasonable fines, not to exceed \$100 per violation, against  
3 any member or any tenant, guest, or invitee. A fine may be  
4 levied on the basis of each day of a continuing violation,  
5 with a single notice and opportunity for hearing, except that  
6 no such fine shall exceed \$1,000 in the aggregate unless  
7 otherwise provided in the governing documents. A fine shall  
8 not become a lien against a parcel unless it is imposed for  
9 violations of use restrictions on the land. In any action to  
10 recover a fine, the prevailing party is entitled to collect  
11 its reasonable attorney's fees and costs from the  
12 nonprevailing party as determined by the court.

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

22 (b) The requirements of this subsection do not apply  
23 to the imposition of suspensions or fines upon any member  
24 because of the failure of the member to pay assessments or  
25 other charges when due if such action is authorized by the  
26 governing documents.

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

31

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

4           720.311 Dispute resolution.--

5           (2)

6           (b) If mediation as described in paragraph (a) is not  
7 successful in resolving all issues between the parties, the  
8 parties may file the unresolved dispute in a court of  
9 competent jurisdiction or elect to enter into binding or  
10 nonbinding arbitration pursuant to the procedures set forth in  
11 s. 718.1255 and rules adopted by the division, with the  
12 arbitration proceeding to be conducted by a department  
13 arbitrator or by a private arbitrator certified by the  
14 department. If all parties do not agree to arbitration  
15 proceedings following an unsuccessful mediation, any party may  
16 file the dispute in court. A final order resulting from  
17 nonbinding arbitration is final and enforceable in the courts  
18 if a complaint for trial de novo is not filed in a court of  
19 competent jurisdiction within 30 days after entry of the  
20 order. The failure of any party to make payment of fees and  
21 costs within the time established by department rule or to  
22 appear for a scheduled mediation session or arbitration  
23 proceeding shall operate as an impasse in the proceeding  
24 between the parties, entitling the other party to proceed in  
25 court and to receive and enforce an award of costs and fees  
26 associated with the mediation or arbitration.

27           (c) The department shall develop a certification and  
28 training program for private mediators and private arbitrators  
29 which shall emphasize experience and expertise in the area of  
30 the operation of community associations. A mediator or  
31 arbitrator shall be certified by the department only if he or

1 she has met the qualifications for a mediator established for  
2 circuit court mediators ~~has attended at least 20 hours of~~  
3 ~~training in mediation or arbitration, as appropriate, and only~~  
4 ~~if the applicant has mediated or arbitrated at least 10~~  
5 ~~disputes involving community associations within 5 years prior~~  
6 ~~to the date of the application, or has mediated or arbitrated~~  
7 ~~10 disputes in any area within 5 years prior to the date of~~  
8 ~~application and has completed 20 hours of training in~~  
9 ~~community association disputes. In order to be certified by~~  
10 ~~the department, any mediator must also be certified by the~~  
11 Florida Supreme Court. The department may conduct the training  
12 and certification program within the department or may  
13 contract with an outside vendor to perform the training or  
14 certification. The expenses of operating the training and  
15 certification and training program shall be paid by the moneys  
16 and filing fees generated by the arbitration of recall and  
17 election disputes and by the mediation of those disputes  
18 referred to in this subsection and by the training fees.

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

1 ~~and filing fees generated by the arbitration of recall and~~  
2 ~~election disputes and by the mediation of those disputes~~  
3 ~~referred to in this subsection.~~

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

6 712.11 Covenants and restrictions.--A homeowners'  
7 association that is not otherwise subject to chapter 720 may  
8 use the procedures provided in ss. 720.403-720.407 to revive a  
9 declaration of covenants and restrictions that has been  
10 extinguished by this chapter entitled Marketable Record Titles  
11 to Real Property.

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

14  
15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
16 COMMITTEE SUBSTITUTE FOR  
17 Senate Bill 948

18 The Committee Substitute (CS) directs the Advisory Council on  
19 Condominiums to hold public hearings, study available options  
20 and proposals and prepare a report to the Legislature that  
21 includes recommended legislation dealing with protection and  
22 preservation of condominium property during anticipated  
23 catastrophic windstorm events and the recovery and rebuilding  
24 following such events.

25 It provides that a fine by a homeowner's association against a  
26 member may not become a lien on a homeowner's parcel unless it  
27 is imposed for violations of use restrictions on the land.

28 It amends mediation provisions relating to proceedings between  
29 a homeowner and homeowners' associations.

30 It deletes a provision that funded education programs to  
31 assist homeowners, associations, board members, and managers  
in understanding homeowners' associations and the use of  
alternative dispute resolution.

It creates a section to permit voluntary homeowners'  
associations to revive extinguished declarations of covenants  
and restrictions.