

1                                   A bill to be entitled  
 2           An act relating to the Home Court Advantage Pilot Program;  
 3           providing legislative intent; providing definitions;  
 4           requesting the chief judges of the Thirteenth and Sixth  
 5           Judicial Circuits to adopt certain rules and procedures  
 6           for the establishment of the pilot program in Hillsborough  
 7           County and Pinellas County, respectively, for the purpose  
 8           of resolving disputes relating to deed restrictions or  
 9           covenants in deed-restricted communities; requiring a  
 10          report; providing for jurisdiction, filing and complaint  
 11          procedures, appeals, qualifications, compensation and term  
 12          of office, and code of ethics; providing for  
 13          nonseverability; providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

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 17           Section 1. Legislative intent.--It is the intent of the  
 18 Legislature to establish the Home Court Advantage Pilot Program  
 19 as a pilot program in Hillsborough and Pinellas Counties for a  
 20 period of 1 year. The purpose of the Home Court Advantage Pilot  
 21 Program is to establish an inexpensive, expedient, simplified  
 22 court procedure as an independent venue for ownership or  
 23 management entities in deed-restricted communities to resolve  
 24 disputes relating to deed restrictions or covenants informally  
 25 without the restrictions and procedures required for formal  
 26 actions in circuit court. The Home Court Advantage Pilot Program  
 27 shall be implemented and administered by the chief judge of the  
 28 Thirteenth Judicial Circuit in Hillsborough County and the chief

29 judge of the Sixth Judicial Circuit in Pinellas County, subject  
 30 to the supervision of the Supreme Court.

31 Section 2. Definitions.--

32 (1) "Community association" has the same meaning as  
 33 provided in s. 468.431(1), Florida Statutes.

34 (2) "Community association manager" has the same meaning  
 35 as provided in s. 468.431(3), Florida Statutes.

36 (3) "Complainant" means a party filing a complaint in home  
 37 court.

38 (4) "Complaint" means an allegation by:

39 (a) A homeowners' association, condominium unit owners'  
 40 association, cooperative association, community development  
 41 district, or civic association that a property owner in a deed-  
 42 restricted community is violating one or more restrictions that  
 43 apply to the property; or

44 (b) A homeowner, condominium unit owner, member of a  
 45 cooperative, resident of a community development district, or  
 46 property owner in any deed-restricted community in which the  
 47 respective association or district is selectively enforcing a  
 48 deed restriction or covenant or is improperly or unlawfully  
 49 seeking to enforce a deed restriction or covenant.

50 (5) "Deed-restricted community" means a residential  
 51 community, condominium, cooperative, or community development  
 52 district in which the properties in the community are subject to  
 53 limitations or restrictions on or covenants restricting the use,  
 54 design, or operation of properties in the community.

55 (6) "Defendant" means a party against whom a complaint is  
 56 filed in home court.

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57           Section 3. Objectives.--The chief judges of the Thirteenth  
58 and Sixth Judicial Circuits may adopt rules and procedures for  
59 the establishment and operation of the Home Court Advantage  
60 Pilot Program in Hillsborough County and Pinellas County,  
61 respectively. The chief judges shall report to the Supreme Court  
62 at the end of the program an analysis of the operation and  
63 results of the program. The Chief Justice of the Supreme Court  
64 shall review the reports and make determinations and  
65 recommendations to the Legislature by February 1, 2008, on the  
66 feasibility of establishing a statewide program and provide  
67 copies of the reports to the Speaker of the House of  
68 Representatives, the President of the Senate, and the minority  
69 leader of each house of the Legislature.

70           Section 4. Jurisdiction; limitations.--

71           (1) Home court magistrates may be empowered to accept  
72 complaints about and decide the reasonableness of any  
73 restriction imposed pursuant to a deed to real property or fine  
74 imposed for a failure to comply with a deed restriction and may  
75 be empowered to issue orders, impose fines, and authorize the  
76 imposition of a lien on real property in the same manner as a  
77 circuit court judge under the laws, rules, and procedures  
78 presently existing or as subsequently amended, except that home  
79 court magistrates may not:

80           (a) Hold a party in contempt of court but may file a  
81 motion for order of contempt with the appropriate state circuit  
82 court judge; or

83           (b) Hear a case involving any dispute other than a deed  
84 restriction.

85        (2) This section does not prohibit a circuit court judge  
86 from exercising concurrent jurisdiction with a home court  
87 magistrate.

88        Section 5. Filing and complaint procedures.--

89        (1) Any party may file, on its own behalf or through an  
90 attorney appointed by a party as attorney in fact, a complaint  
91 in home court alleging a violation of a deed restriction or  
92 covenant and seeking enforcement of the restriction or covenant  
93 or alleging unlawful enforcement of a deed restriction or  
94 covenant and seeking an injunction against such unlawful  
95 enforcement. A property owner in a deed-restricted community for  
96 which there is a civic association may appoint the civic  
97 association as his or her attorney in fact, pursuant to the  
98 provisions of s. 709.08, Florida Statutes, for the purposes of  
99 filing an action against another property owner in the deed-  
100 restricted community, or a member or officer of a homeowners'  
101 association of the community if there is one, seeking  
102 enforcement of a restriction or covenant or alleging unlawful  
103 enforcement of a restriction or covenant. The complainant shall  
104 pay a \$75 filing fee to the home court. The complaint shall  
105 contain a completed checklist specifying:

106        (a) What restriction or covenant is being violated.

107        (b) When the violation occurred or began and if the  
108 violation is continuing.

109        (c) Whether the party in violation of the restriction or  
110 covenant was provided notice of the violation and, if so:

111        1. When the notice was provided.

112        2. If the notice was in writing.

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113 (d) Whether the party in violation was provided an  
114 opportunity to comply with the restriction or covenant or cure  
115 the violation.

116 (e) Whether the attempt to enforce the restriction or  
117 covenant was selectively enforced or improper.

118 (f) Whether there were any special considerations relating  
119 to the failure to comply with the restriction or covenant.

120 (g) The remedy being sought against the party in  
121 violation.

122 (2) Upon filing proof of service of the complaint, a  
123 magistrate shall issue an order requiring the complainant and  
124 the defendant to appear for a final hearing within 60 days after  
125 receipt of service of the complaint. The defendant shall provide  
126 to the complainant a copy of the defendant's response to the  
127 notice to comply at least 10 days prior to the final hearing.

128 (3) (a) Within 30 days after the magistrate issues an order  
129 requiring the final hearing, the parties shall be required to  
130 attend mediation conducted pursuant to the rules of practice and  
131 procedure adopted by the Supreme Court pursuant to s. 44.102,  
132 Florida Statutes.

133 (b) The parties to the mediation shall provide copies of  
134 the documents referenced in the checklist in subsection (1).

135 (c) Upon the showing of good cause, the magistrate may  
136 continue the hearing to require the parties to produce  
137 additional information and documentation. The parties shall  
138 provide any additional information or documentation required by  
139 the magistrate within 15 days after the magistrate's request.

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140       (d) The magistrate shall make findings of reasonableness  
141 of the restriction or covenant and any fines to be imposed under  
142 the restriction. The magistrate shall rule on the validity of  
143 the restriction and the fine imposed by the community  
144 association.

145       (e) The purpose of the hearing shall be the issuance of an  
146 order by the magistrate imposing a fine on the party in  
147 violation, compelling the party in violation to comply with the  
148 restriction, and enjoining the party in violation from  
149 continuing the violation. The party in violation shall have 30  
150 days to comply with the order unless good cause is shown to the  
151 magistrate why a longer period should be allowed.

152       (f) The maximum fine the magistrate may impose is the fine  
153 alleged by the party bringing the complaint. The magistrate may  
154 reduce the fine. The fine shall be paid to and retained by the  
155 home court program. If the action for compliance is for dues or  
156 special assessments, the amount of the dues or special  
157 assessments shall be paid to the community association, minus 10  
158 percent of such amount to be retained by the home court program  
159 for purposes of administering the program.

160       (4) If the party in violation does not comply with the  
161 magistrate's order within 30 days after the order is issued and,  
162 prior to the expiration of the 30-day period, good cause has not  
163 been shown to the magistrate for extending the period, or within  
164 the period of an extension of the 30-day period if good cause  
165 has been shown to the magistrate for extending the period and  
166 the magistrate grants an extension, and the violation of the  
167 deed restriction or covenant is monetary, notwithstanding the

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168 limitations of chapter 713, Florida Statutes, s. 720.305,  
169 Florida Statutes, or any other provision of law restricting the  
170 perfecting of a lien on real property, the complainant may file  
171 a lien to be placed upon the property for all amounts included  
172 in the magistrate's order plus filing fees and costs for  
173 bringing the action.

174 (5) (a) Upon application to the home court by a party to  
175 the mediation or the mediator, a magistrate, in the course of  
176 his or her jurisdiction at the request of a party to an action,  
177 may issue subpoenas for the attendance of necessary and material  
178 witnesses and for the production of books, records, documents,  
179 and other evidence and may administer oaths. Subpoenas shall be  
180 served and enforced in the manner provided by law for the  
181 service and enforcement of subpoenas in a civil action. A party  
182 or mediator applying to the home court for issuance of a  
183 subpoena shall provide to the court a separate envelope for each  
184 person the party or mediator requests the magistrate to  
185 subpoena. The envelope shall be addressed to the person and have  
186 the postage paid for certified, return receipt requested, mail.  
187 The magistrate shall mail the subpoena to the person subject to  
188 the subpoena.

189 (b) Upon application of a party to the mediation and for  
190 use as evidence, the mediator, in the course of his or her  
191 jurisdiction, may permit a deposition to be taken of a witness  
192 who cannot be subpoenaed or is unable to attend the mediation in  
193 the manner and upon the terms designated by the mediator. All  
194 provisions of law compelling a person under subpoena to testify  
195 apply to the deposition.

196           (6) This section does not limit the rights of the parties  
 197 to seek injunctive relief in circuit court to compel compliance.

198           Section 6. Appeals.--An order of a home court magistrate  
 199 may be appealed, under the rules of court, to the circuit court.  
 200 The appeal shall be based upon the record of the hearing before  
 201 the magistrate and shall not be a hearing de novo. The appellant  
 202 is responsible for producing the record of the hearing beyond  
 203 that which normally results from the home court hearing process.

204           Section 7. Qualifications.--An applicant for the position  
 205 of home court magistrate shall be a member in good standing of  
 206 The Florida Bar with at least 5 years of experience in  
 207 litigation actions involving enforcement of deed restrictions or  
 208 covenants or be a community association manager licensed under  
 209 s. 468.433, Florida Statutes.

210           Section 8. Compensation; term of office.--A home court  
 211 magistrate is an independent contractor and shall serve without  
 212 compensation, shall serve at the pleasure of the chief judge of  
 213 the judicial circuit in which he or she is to hear cases, and  
 214 shall have no definite term of office.

215           Section 9. Code of ethics.--A home court magistrate is  
 216 subject to the Code of Ethics for Arbitrators in Commercial  
 217 Disputes published by the American Arbitration Association or  
 218 the standards and procedures for professional conduct and  
 219 discipline for mediators and arbitrators established by the  
 220 Supreme Court pursuant to s. 44.106, Florida Statutes. A home  
 221 court magistrate is not subject to the Judicial Code of Ethics,  
 222 except a magistrate shall avoid practices or occupations that  
 223 would constitute a conflict of interest or give the appearance



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224 of impropriety. Whether serving full time or part time, a home  
225 court magistrate is prohibited from representing clients or  
226 practicing before any other home court or from representing any  
227 client appealing the decision of any other home court  
228 magistrate. A home court magistrate appointed under section 1  
229 has judicial immunity in the same manner and to the same extent  
230 as judges.

231 Section 10. Nonseverability.--If the provisions of section  
232 4 authorizing magistrates to impose sanctions are found to be  
233 unconstitutional by the Supreme Court, the magistrates shall  
234 have no further jurisdiction over civil infractions.

235 Section 11. This act shall take effect July 1, 2006.