

Bill No. SB 2358

Barcode 853694

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Wise) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 712.11, Florida Statutes, is created to read:

712.11 Covenant revitalization.--A homeowners' association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 2. Subsection (5) is added to section 718.106, Florida Statutes, to read:

718.106 Condominium parcels; appurtenances; possession and enjoyment.--

(5) A local ordinance or regulation may not establish any limitation on the ability of unit owners or an association to permit guests, licensees, members, or invitees to use or access their units or common elements for the purpose of

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1 accessing a public beach or private beach adjacent to the
2 condominium.

3 Section 3. Effective October 1, 2006, subsection (11)
4 of section 718.110, Florida Statutes, is amended to read:

5 718.110 Amendment of declaration; correction of error
6 or omission in declaration by circuit court.--

7 (11) The Legislature finds that the procurement of
8 mortgagee consent to amendments that do not affect the rights
9 or interests of mortgagees is an unreasonable and substantial
10 logistical and financial burden on the unit owners and that
11 there is a compelling state interest in enabling the members
12 of a condominium association to approve amendments to the
13 condominium documents through legal means. Accordingly, and
14 notwithstanding any provision to the contrary contained in
15 this section:

16 (a) As to any mortgage recorded on or after October 1,
17 2006, any provision in the declaration, articles of
18 incorporation, or bylaws that requires recorded after April 1,
19 ~~1992, may not require~~ the consent or joinder of some or all
20 mortgagees of units or any other portion of the condominium
21 property to or in amendments to the declaration, articles of
22 incorporation, or bylaws or for any other matter shall be
23 enforceable only as to the following matters: ~~unless the~~
24 ~~requirement is limited to amendments materially affecting the~~
25 ~~rights or interests of the mortgagees, or as otherwise~~
26 ~~required by the Federal National Mortgage Association or the~~
27 ~~Federal Home Loan Mortgage Corporation, and unless the~~
28 ~~requirement provides that such consent may not be unreasonably~~
29 ~~withheld. It shall be presumed that, except as to~~

30 1. Those matters described in subsections (4) and
31 (8).⁷

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1 2. Amendments to the declaration, articles of
2 incorporation, or bylaws that adversely affect the priority of
3 the mortgagee's lien or the mortgagee's rights to foreclose
4 its lien or that otherwise materially affect the rights and
5 interests of the mortgagees.

6 (b) As to mortgages recorded before October 1, 2006,
7 any existing provisions in the declaration, articles of
8 incorporation, or bylaws requiring mortgagee consent shall be
9 enforceable.

10 (c) In securing consent or joinder, the association
11 shall be entitled to rely upon the public records to identify
12 the holders of outstanding mortgages. The association may use
13 the address provided in the original recorded mortgage
14 document, unless there is a different address for the holder
15 of the mortgage in a recorded assignment or modification of
16 the mortgage, which recorded assignment or modification must
17 reference the official records book and page on which the
18 original mortgage was recorded. Once the association has
19 identified the recorded mortgages of record, the association
20 shall, in writing, request of each unit owner whose unit is
21 encumbered by a mortgage of record any information the owner
22 has in his or her possession regarding the name and address of
23 the person to whom mortgage payments are currently being made.
24 Notice shall be sent to such person if the address provided in
25 the original recorded mortgage document is different from the
26 name and address of the mortgagee or assignee of the mortgage
27 as shown by the public record. The association shall be deemed
28 to have complied with this requirement by making the written
29 request of the unit owners required under this paragraph. Any
30 notices required to be sent to the mortgagees under this
31 paragraph shall be sent to all available addresses provided to

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1 the association.

2 (d) Any notice to the mortgagees required under
3 paragraph (c) may be sent by a method that establishes proof
4 of delivery, and any mortgagee who fails to respond within 60
5 days after the date of mailing shall be deemed to have
6 consented to the amendment.

7 (e) For those amendments requiring mortgagee consent
8 on or after October 1, 2006, do not materially affect the
9 rights or interests of mortgagees. in the event mortgagee
10 consent is provided other than by properly recorded joinder,
11 such consent shall be evidenced by affidavit of the
12 association recorded in the public records of the county where
13 the declaration is recorded. Any amendment adopted without the
14 required consent of a mortgagee shall be voidable only by a
15 mortgagee who was entitled to notice and an opportunity to
16 consent. An action to void an amendment shall be subject to
17 the statute of limitations beginning 5 years from the date of
18 discovery as to the amendments described in subparagraph (a)2.
19 and 5 years from the date of recordation of the certificate of
20 amendment for all other amendments. This provision shall apply
21 to all mortgages, regardless of the date of recordation of the
22 mortgage.

23 Section 4. Paragraph (1) of subsection (2) of section
24 718.112, Florida Statutes, is amended to read:

25 718.112 Bylaws.--

26 (2) REQUIRED PROVISIONS.--The bylaws shall provide for
27 the following and, if they do not do so, shall be deemed to
28 include the following:

29 (1) Certificate of compliance.--There shall be a
30 provision that a certificate of compliance from a licensed
31 electrical contractor or electrician may be accepted by the

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1 association's board as evidence of compliance of the
2 condominium units with the applicable fire and life safety
3 code. Notwithstanding the provisions of chapter 633 or of any
4 other code, statute, ordinance, administrative rule, or
5 regulation, or any interpretation of the foregoing, an
6 association, condominium, or unit owner is not obligated to
7 retrofit the common elements or units of a residential
8 condominium with a fire sprinkler system or other engineered
9 lifesafety system in a building that has been certified for
10 occupancy by the applicable governmental entity, if the unit
11 owners have voted to forego such retrofitting and engineered
12 lifesafety system by the affirmative vote of two-thirds of all
13 voting interests in the affected condominium. However, a
14 condominium association may not vote to forego the
15 retrofitting with a fire sprinkler system of common areas in a
16 high-rise building. For purposes of this subsection, the term
17 "high-rise building" means a building that is greater than 75
18 feet in height where the building height is measured from the
19 lowest level of fire department access to the floor of the
20 highest occupiable story. For purposes of this subsection, the
21 term "common areas" means any enclosed hallway, corridor,
22 lobby, stairwell, or entryway. In no event shall the local
23 authority having jurisdiction require completion of
24 retrofitting of common areas with a sprinkler system before
25 the end of 2025 ~~2014~~.

26 1. A vote to forego retrofitting may be obtained by
27 limited proxy or by a ballot personally cast at a duly called
28 membership meeting, or by execution of a written consent by
29 the member, and shall be effective upon the recording of a
30 certificate attesting to such vote in the public records of
31 the county where the condominium is located. The association

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1 shall mail, hand deliver, or electronically transmit to each
 2 unit owner written notice at least 14 days prior to such
 3 membership meeting in which the vote to forego retrofitting of
 4 the required fire sprinkler system is to take place. Within 30
 5 days after the association's opt-out vote, notice of the
 6 results of the opt-out vote shall be mailed, hand delivered,
 7 or electronically transmitted to all unit owners. Evidence of
 8 compliance with this 30-day notice shall be made by an
 9 affidavit executed by the person providing the notice and
 10 filed among the official records of the association. After
 11 such notice is provided to each owner, a copy of such notice
 12 shall be provided by the current owner to a new owner prior to
 13 closing and shall be provided by a unit owner to a renter
 14 prior to signing a lease.

15 2. As part of the information collected annually from
 16 condominiums, the division shall require condominium
 17 associations to report the membership vote and recording of a
 18 certificate under this subsection and, if retrofitting has
 19 been undertaken, the per-unit cost of such work. The division
 20 shall annually report to the Division of State Fire Marshal of
 21 the Department of Financial Services the number of
 22 condominiums that have elected to forego retrofitting.

23 Section 5. Section 718.114, Florida Statutes, is
 24 amended to read:

25 718.114 Association powers.--An association has the
 26 power to enter into agreements, to acquire leaseholds,
 27 memberships, and other possessory or use interests in lands or
 28 facilities such as country clubs, golf courses, marinas, and
 29 other recreational facilities. It has this power whether or
 30 not the lands or facilities are contiguous to the lands of the
 31 condominium, if they are intended to provide enjoyment,

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1 recreation, or other use or benefit to the unit owners. All of
 2 these leaseholds, memberships, and other possessory or use
 3 interests existing or created at the time of recording the
 4 declaration must be stated and fully described in the
 5 declaration. Subsequent to the recording of the declaration,
 6 agreements acquiring these leaseholds, memberships, or other
 7 possessory or use interests not entered into within 12 months
 8 following the recording of the declaration shall be considered
 9 a material alteration or substantial addition to the real
 10 property that is association property, and the association may
 11 not acquire or enter into agreements acquiring these
 12 leaseholds, memberships, or other possessory or use interests
 13 except as authorized by the declaration as provided in s.
 14 718.113. The declaration may provide that the rental,
 15 membership fees, operations, replacements, and other expenses
 16 are common expenses and may impose covenants and restrictions
 17 concerning their use and may contain other provisions not
 18 inconsistent with this chapter. A condominium association may
 19 conduct bingo games as provided in s. 849.0931.

20 Section 6. Subsections (1) and (2) of section 718.404,
 21 Florida Statutes, are amended to read:

22 718.404 Mixed-use condominiums.--When a condominium
 23 consists of both residential and commercial units, the
 24 following provisions shall apply:

25 (1) The condominium documents shall not provide that
 26 the owner of any commercial unit shall have the authority to
 27 veto amendments to the declaration, articles of incorporation,
 28 bylaws, or rules or regulations of the association. This
 29 subsection shall apply retroactively as a remedial measure.

30 (2) Subject to s. 718.301, where the number of
 31 residential units in the condominium equals or exceeds 50

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1 percent of the total units operated by the association, owners
 2 of the residential units shall be entitled to vote for a
 3 majority of the seats on the board of administration. This
 4 subsection shall apply retroactively as a remedial measure.

5 Section 7. Subsections (18) through (27) of section
 6 719.103, Florida Statutes, are renumbered as subsections (19)
 7 through (28), respectively, and a new subsection (18) is added
 8 to that section to read:

9 719.103 Definitions.--As used in this chapter:

10 (18) "Equity facilities club" means a club comprised
 11 of recreational facilities in which proprietary membership
 12 interests are sold to individuals, which membership interests
 13 entitle the individuals to use certain physical facilities
 14 owned by the equity club. Such physical facilities do not
 15 include a residential unit or accommodation. For purposes of
 16 this definition, the term "accommodation" shall include, but
 17 is not limited to, any apartment, residential cooperative
 18 unit, residential condominium unit, cabin, lodge, hotel or
 19 motel room, or any other accommodation designed for overnight
 20 occupancy for one or more individuals.

21 Section 8. Section 719.507, Florida Statutes, is
 22 amended to read:

23 719.507 Zoning and building laws, ordinances, and
 24 regulations.--All laws, ordinances, and regulations concerning
 25 buildings or zoning shall be construed and applied with
 26 reference to the nature and use of such property, without
 27 regard to the form of ownership. No law, ordinance, or
 28 regulation shall establish any requirement concerning the use,
 29 location, placement, or construction of buildings or other
 30 improvements which are, or may thereafter be, subjected to the
 31 cooperative or equity facilities club form of ownership,

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1 unless such requirement shall be equally applicable to all
 2 buildings and improvements of the same kind not then, or
 3 thereafter to be, subjected to the cooperative or equity
 4 facilities club form of ownership. This section does not apply
 5 if the owner in fee of any land enters into and records a
 6 covenant that existing improvements or improvements to be
 7 constructed shall not be converted to the cooperative form of
 8 residential ownership prior to 5 years after the later of the
 9 date of the covenant or completion date of the improvements.
 10 Such covenant shall be entered into with the governing body of
 11 the municipality in which the land is located or, if the land
 12 is not located in a municipality, with the governing body of
 13 the county in which the land is located.

14 Section 9. Subsections (4) and (5) of section 720.302,
 15 Florida Statutes, are amended to read:

16 720.302 Purposes, scope, and application.--

17 (4) This chapter does not apply to any association
 18 that is subject to regulation under chapter 718, chapter 719,
 19 or chapter 721+ or to any nonmandatory association formed
 20 under chapter 723, except to the extent that a provision of
 21 chapter 718, chapter 719, or chapter 721 is expressly
 22 incorporated into this chapter for the purpose of regulating
 23 homeowners' associations.

24 (5) Unless expressly stated to the contrary,
 25 corporations ~~not for profit~~ that operate residential
 26 homeowners' associations in this state shall be governed by
 27 and subject to chapter 607, if the association was
 28 incorporated under that chapter, or to chapter 617, if the
 29 association was incorporated under that chapter, and this
 30 chapter. This subsection is intended to clarify existing law.

31 Section 10. Paragraph (a) of subsection (2),

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1 subsection (6), and subsection (7) of section 720.303, Florida
2 Statutes, as amended by section 18 of chapter 2004-345 and
3 section 135 of chapter 2005-2, Laws of Florida, are amended,
4 and paragraph (d) is added to subsection (5) of that section,
5 to read:

6 720.303 Association powers and duties; meetings of
7 board; official records; budgets; financial reporting;
8 association funds; recalls.--

9 (2) BOARD MEETINGS.--

10 (a) A meeting of the board of directors of an
11 association occurs whenever a quorum of the board gathers to
12 conduct association business. All meetings of the board must
13 be open to all members except for meetings between the board
14 and its attorney with respect to proposed or pending
15 litigation where the contents of the discussion would
16 otherwise be governed by the attorney-client privilege. The
17 provisions of this subsection shall also apply to the meetings
18 of any committee or other similar body when a final decision
19 will be made regarding the expenditure of association funds
20 and to meetings of any body vested with the power to approve
21 or disapprove architectural decisions with respect to a
22 specific parcel of residential property owned by a member of
23 the community.

24 (5) INSPECTION AND COPYING OF RECORDS.--The official
25 records shall be maintained within the state and must be open
26 to inspection and available for photocopying by members or
27 their authorized agents at reasonable times and places within
28 10 business days after receipt of a written request for
29 access. This subsection may be complied with by having a copy
30 of the official records available for inspection or copying in
31 the community. If the association has a photocopy machine

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1 available where the records are maintained, it must provide
2 parcel owners with copies on request during the inspection if
3 the entire request is limited to no more than 25 pages.

4 (d) The association or its authorized agent is not
5 required to provide a prospective purchaser or lienholder with
6 information about the residential subdivision or the
7 association other than information or documents required by
8 this chapter to be made available or disclosed. The
9 association or its authorized agent may charge a reasonable
10 fee to the prospective purchaser or lienholder or the current
11 parcel owner or member for providing good faith responses to
12 requests for information by or on behalf of a prospective
13 purchaser or lienholder, other than that required by law, if
14 the fee does not exceed \$150 plus the reasonable cost of
15 photocopying and any attorney's fees incurred by the
16 association in connection with the response.

17 (6) BUDGETS.--

18 (a) The association shall prepare an annual budget
19 that sets out the annual operating expenses. The budget must
20 reflect the estimated revenues and expenses for that year and
21 the estimated surplus or deficit as of the end of the current
22 year. The budget must set out separately all fees or charges
23 paid for by the association for recreational amenities,
24 whether owned by the association, the developer, or another
25 person. The association shall provide each member with a copy
26 of the annual budget or a written notice that a copy of the
27 budget is available upon request at no charge to the member.
28 The copy must be provided to the member within the time limits
29 set forth in subsection (5).

30 (b) In addition to annual operating expenses, the
31 budget may include reserve accounts for capital expenditures

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1 and deferred maintenance for which the association is
2 responsible to the extent that the governing documents do not
3 limit increases in assessments, including reserves. If the
4 budget of the association includes reserve accounts, such
5 reserves shall be determined, maintained, and waived in the
6 manner provided in this subsection. Once an association
7 provides for reserve accounts in the budget, the association
8 shall thereafter determine, maintain, and waive reserves in
9 compliance with the provisions of this subsection.

10 (c) If the budget of the association does not provide
11 for reserve accounts governed by this subsection and the
12 association is responsible for the repair and maintenance of
13 capital improvements that may result in a special assessment
14 if reserves are not provided, each financial report for the
15 preceding fiscal year required by subsection (7) shall contain
16 the following statement in conspicuous type: THE BUDGET OF THE
17 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL
18 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
19 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
20 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
21 FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A
22 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

23 (d) An association shall be deemed to have provided
24 for reserve accounts when reserve accounts have been initially
25 established by the developer or when the membership of the
26 association affirmatively elects to provide for reserves. If
27 reserve accounts are not initially provided for by the
28 developer, the membership of the association may elect to do
29 so upon the affirmative approval of not less than a majority
30 of the total voting interests of the association. Such
31 approval may be attained by vote of the members at a duly

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1 called meeting of the membership or upon a written consent
 2 executed by not less than a majority of the total voting
 3 interests in the community. The approval action of the
 4 membership shall state that reserve accounts shall be provided
 5 for in the budget and designate the components for which the
 6 reserve accounts are to be established. Upon approval by the
 7 membership, the board of directors shall provide for the
 8 required reserve accounts for inclusion in the budget in the
 9 next fiscal year following the approval and in each year
 10 thereafter. Once established as provided in this subsection,
 11 the reserve accounts shall be funded or maintained or shall
 12 have their funding waived in the manner provided in paragraph
 13 (f).

14 (e) The amount to be reserved in any account
 15 established shall be computed by means of a formula that is
 16 based upon estimated remaining useful life and estimated
 17 replacement cost or deferred maintenance expense of each
 18 reserve item. The association may adjust replacement reserve
 19 assessments annually to take into account any changes in
 20 estimates of cost or useful life of a reserve item.

21 (f) Once a reserve account or reserve accounts are
 22 established, the membership of the association, upon a
 23 majority vote at a meeting at which a quorum is present, may
 24 provide for no reserves or less reserves than required by this
 25 section. If a meeting of the unit owners has been called to
 26 determine whether to waive or reduce the funding of reserves
 27 and no such result is achieved or a quorum is not present, the
 28 reserves as included in the budget shall go into effect. After
 29 the turnover, the developer may vote its voting interest to
 30 wave or reduce the funding of reserves. Any vote taken
 31 pursuant to this subsection to waive or reduce reserves shall

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1 be applicable only to one budget year.

2 (g) Funding formulas for reserves authorized by this
3 section shall be based on either a separate analysis of each
4 of the required assets or a pooled analysis of two or more of
5 the required assets.

6 1. If the association maintains separate reserve
7 accounts for each of the required assets, the amount of the
8 contribution to each reserve account shall be the sum of the
9 following two calculations:

10 a. The total amount necessary, if any, to bring a
11 negative component balance to zero.

12 b. The total estimated deferred maintenance expense or
13 estimated replacement cost of the reserve component less the
14 estimated balance of the reserve component as of the beginning
15 of the period for which the budget will be in effect. The
16 remainder, if greater than zero, shall be divided by the
17 estimated remaining useful life of the component.

18
19 The formula may be adjusted each year for changes in estimates
20 and deferred maintenance performed during the year and may
21 include factors such as inflation and earnings on invested
22 funds.

23 2. If the association maintains a pooled account of
24 two or more of the required reserve assets, the amount of the
25 contribution to the pooled reserve account as disclosed on the
26 proposed budget shall not be less than that required to ensure
27 that the balance on hand at the beginning of the period for
28 which the budget will go into effect plus the projected annual
29 cash inflows over the remaining estimated useful life of all
30 of the assets that make up the reserve pool are equal to or
31 greater than the projected annual cash outflows over the

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1 remaining estimated useful lives of all of the assets that
 2 make up the reserve pool, based on the current reserve
 3 analysis. The projected annual cash inflows may include
 4 estimated earnings from investment of principal. The reserve
 5 funding formula shall not include any type of balloon
 6 payments.

7 (h) Reserve funds and any interest accruing thereon
 8 shall remain in the reserve account or accounts and shall be
 9 used only for authorized reserve expenditures unless their use
 10 for other purposes is approved in advance by a majority vote
 11 at a meeting at which a quorum is present. Prior to turnover
 12 of control of an association by a developer to parcel owners,
 13 the developer-controlled association shall not vote to use
 14 reserves for purposes other than those for which they were
 15 intended without the approval of a majority of all
 16 nondeveloper voting interests voting in person or by limited
 17 proxy at a duly called meeting of the association.

18 (7) FINANCIAL REPORTING.--Within 90 days after the end
 19 of the fiscal year, or annually on the date provided in the
 20 bylaws, the association shall prepare and complete, or
 21 contract with a third party for the preparation and completion
 22 of, a financial report for the preceding fiscal year. Within
 23 21 days after the final financial report is completed by the
 24 association or received from the third party, but not later
 25 than 120 days after the end of the fiscal year or other date
 26 as provided in the bylaws, the association shall ~~prepare an~~
 27 ~~annual financial report within 60 days after the close of the~~
 28 ~~fiscal year. The association shall, within the time limits set~~
 29 forth in subsection (5), provide each member with a copy of
 30 the annual financial report or a written notice that a copy of
 31 the financial report is available upon request at no charge to

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1 the member. Financial reports shall be prepared as follows:

2 (a) An association that meets the criteria of this
3 paragraph shall prepare or cause to be prepared a complete set
4 of financial statements in accordance with generally accepted
5 accounting principles as adopted by the Board of Accountancy.

6 The financial statements shall be based upon the association's
7 total annual revenues, as follows:

8 1. An association with total annual revenues of
9 \$100,000 or more, but less than \$200,000, shall prepare
10 compiled financial statements.

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

14 3. An association with total annual revenues of
15 \$400,000 or more shall prepare audited financial statements.

16 (b)1. An association with total annual revenues of
17 less than \$100,000 shall prepare a report of cash receipts and
18 expenditures.

19 2. An association in a community of fewer than 50
20 parcels, regardless of the association's annual revenues, may
21 prepare a report of cash receipts and expenditures in lieu of
22 financial statements required by paragraph (a) unless the
23 governing documents provide otherwise.

24 3. A report of cash receipts and disbursement must
25 disclose the amount of receipts by accounts and receipt
26 classifications and the amount of expenses by accounts and
27 expense classifications, including, but not limited to, the
28 following, as applicable: costs for security, professional,
29 and management fees and expenses; taxes; costs for recreation
30 facilities; expenses for refuse collection and utility
31 services; expenses for lawn care; costs for building

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1 maintenance and repair; insurance costs; administration and
2 salary expenses; and reserves if maintained by the
3 association.

4 (c) If 20 percent of the parcel owners petition the
5 board for a level of financial reporting higher than that
6 required by this section, the association shall duly notice
7 and hold a meeting of members within 30 days of receipt of the
8 petition for the purpose of voting on raising the level of
9 reporting for that fiscal year. Upon approval of a majority of
10 the total voting interests of the parcel owners, the
11 association shall prepare or cause to be prepared, shall amend
12 the budget or adopt a special assessment to pay for the
13 financial report regardless of any provision to the contrary
14 in the governing documents, and shall provide within 90 days
15 of the meeting or the end of the fiscal year, whichever occurs
16 later:

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

20 2. Reviewed or audited financial statements, if the
21 association is otherwise required to prepare compiled
22 financial statements; or

23 3. Audited financial statements if the association is
24 otherwise required to prepare reviewed financial statements.

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

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

30 2. A report of cash receipts and expenditures or a
31 compiled financial statement in lieu of a reviewed or audited

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1 financial statement; or

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

5 Section 11. Subsection (2) of section 720.303, Florida
6 Statutes, as amended by section 2 of chapter 2004-345 and
7 section 15 of chapter 2004-353, Laws of Florida, is repealed.

8 Section 12. Section 720.3035, Florida Statutes, is
9 created to read:

10 720.3035 Architectural control covenants; parcel owner
11 improvements; rights and privileges.--

12 (1) The authority of an association or any
13 architectural, construction improvement, or other such similar
14 committee of an association to review and approve plans and
15 specifications for the location, size, type, or appearance of
16 any structure or other improvement on a parcel, or to enforce
17 standards for the external appearance of any structure or
18 improvement located on a parcel, shall only be permitted to
19 the extent that the authority is specifically stated or
20 reasonably inferred as to such location, size, type, or
21 appearance in the declaration of covenants or other published
22 guidelines and standards authorized by the declaration of
23 covenants.

24 (2) If the declaration of covenants or other published
25 guidelines and standards authorized by the declaration of
26 covenants provides options for the use of material, the size
27 of the structure or improvement, the design of the structure
28 or improvement, or the location of the structure or
29 improvement on the parcel, neither the association nor any
30 architectural, construction improvement, or other such similar
31 committee of the association shall restrict the right of a

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1 parcel owner to select from the options provided in the
2 declaration of covenants or other published guidelines and
3 standards authorized by the declaration of covenants.

4 (3) Unless otherwise specifically stated in the
5 declaration of covenants or other published guidelines and
6 standards authorized by the declaration of covenants, each
7 parcel shall be deemed to have only one front for purposes of
8 determining the required front setback even if the parcel is
9 bounded by a roadway or other easement on more than one side.

10 When the declaration of covenants or other published
11 guidelines and standards authorized by the declaration of
12 covenants do not provide for specific setback limitations, the
13 applicable county or municipal setback limitations shall
14 apply, and neither the association nor any architectural,
15 construction improvement, or other such similar committee of
16 the association shall enforce or attempt to enforce any
17 setback limitation that is inconsistent with the applicable
18 county or municipal standard or standards.

19 (4) Each parcel owner shall be entitled to the rights
20 and privileges set forth in the declaration of covenants or
21 other published guidelines and standards authorized by the
22 declaration of covenants concerning the use of the parcel, and
23 the construction of permitted structures and improvements on
24 the parcel and such rights and privileges shall not be
25 unreasonably infringed upon or impaired by the association or
26 any architectural, construction improvement, or other such
27 similar committee of the association. If the association or
28 any architectural, construction improvement, or other such
29 similar committee of the association should knowingly and
30 willfully infringe upon or impair the rights and privileges
31 set forth in the declaration of covenants or other published

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1 guidelines and standards authorized by the declaration of
 2 covenants, the adversely affected parcel owner shall be
 3 entitled to recover damages caused by such infringement or
 4 impairment, including any costs and reasonable attorney's fees
 5 incurred in preserving or restoring the rights and privileges
 6 of the parcel owner set forth in the declaration of covenants
 7 or other published guidelines and standards authorized by the
 8 declaration of covenants.

9 (5) Neither the association nor any architectural,
 10 construction improvement, or other such similar committee of
 11 the association shall enforce any policy or restriction that
 12 is inconsistent with the rights and privileges of a parcel
 13 owner set forth in the declaration of covenants or other
 14 published guidelines and standards authorized by the
 15 declaration of covenants, whether uniformly applied or not.
 16 Neither the association nor any architectural, construction
 17 improvement, or other such similar committee of the
 18 association may rely upon a policy or restriction that is
 19 inconsistent with the declaration of covenants or other
 20 published guidelines and standards authorized by the
 21 declaration of covenants, whether uniformly applied or not, in
 22 defense of any action taken in the name of or on behalf of the
 23 association against a parcel owner.

24 Section 13. Subsection (1) of section 720.305, Florida
 25 Statutes, is amended to read:

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

31 (1) Each member and the member's tenants, guests, and

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1 invitees, and each association, are governed by, and must
2 comply with, this chapter, the governing documents of the
3 community, and the rules of the association. Actions at law or
4 in equity, or both, to redress alleged failure or refusal to
5 comply with these provisions may be brought by the association
6 or by any member against:

7 (a) The association;

8 (b) A member;

9 (c) Any director or officer of an association who
10 willfully and knowingly fails to comply with these provisions;

11 and

12 (d) Any tenants, guests, or invitees occupying a
13 parcel or using the common areas.

14

15 The prevailing party in any such litigation is entitled to
16 recover reasonable attorney's fees and costs. A member
17 prevailing in an action between the association and the member
18 under this section, in addition to recovering his or her
19 reasonable attorney's fees, may recover additional amounts as
20 determined by the court to be necessary to reimburse the
21 member for his or her share of assessments levied by the
22 association to fund its expenses of the litigation. This
23 relief does not exclude other remedies provided by law. This
24 section does not deprive any person of any other available
25 right or remedy.

26 Section 14. Paragraph (c) of subsection (1) of section
27 720.306, Florida Statutes, is amended to read:

28 720.306 Meetings of members; voting and election
29 procedures; amendments.--

30 (1) QUORUM; AMENDMENTS.--

31 (c) Unless otherwise provided in the governing

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1 documents as originally recorded or permitted by this chapter
 2 or chapter 617, an amendment may not materially and adversely
 3 alter the proportionate voting interest appurtenant to a
 4 parcel or increase the proportion or percentage by which a
 5 parcel shares in the common expenses of the association unless
 6 the record parcel owner and all record owners of liens on the
 7 parcels join in the execution of the amendment. For purposes
 8 of this section, a change in quorum requirements is not an
 9 alteration of voting interests. The merger or consolidation of
 10 one or more associations under a plan of merger or
 11 consolidation under chapter 607 or chapter 617 shall not be
 12 considered a material or adverse alteration of the
 13 proportionate voting interest appurtenant to a parcel.

14 Section 15. Paragraph (t) is added to subsection (3)
 15 of section 720.307, Florida Statutes, to read:

16 720.307 Transition of association control in a
 17 community.--With respect to homeowners' associations:

18 (3) At the time the members are entitled to elect at
 19 least a majority of the board of directors of the homeowners'
 20 association, the developer shall, at the developer's expense,
 21 within no more than 90 days deliver the following documents to
 22 the board:

23 (t) The financial records, including financial
 24 statements of the association, and source documents from the
 25 incorporation of the association through the date of turnover.
 26 The records shall be audited by an independent certified
 27 public accountant for the period from the incorporation of the
 28 association or from the period covered by the last audit, if
 29 an audit has been performed for each fiscal year since
 30 incorporation. All financial statements shall be prepared in
 31 accordance with generally accepted accounting principles and

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1 shall be audited in accordance with generally accepted
2 auditing standards, as prescribed by the Board of Accountancy,
3 pursuant to chapter 473. The certified public accountant
4 performing the audit shall examine to the extent necessary
5 supporting documents and records, including the cash
6 disbursements and related paid invoices to determine if
7 expenditures were for association purposes and the billings,
8 cash receipts, and related records of the association to
9 determine that the developer was charged and paid the proper
10 amounts of assessments. This paragraph applies to associations
11 with a date of incorporation after December 31, 2006.

12 Section 16. Section 720.308, Florida Statutes, is
13 amended to read:

14 720.308 Assessments and charges.--

15 (1) ASSESSMENTS.--For any community created after
16 October 1, 1995, the governing documents must describe the
17 manner in which expenses are shared and specify the member's
18 proportional share thereof. Assessments levied pursuant to the
19 annual budget or special assessment must be in the member's
20 proportional share of expenses as described in the governing
21 document, which share may be different among classes of
22 parcels based upon the state of development thereof, levels of
23 services received by the applicable members, or other relevant
24 factors. While the developer is in control of the homeowners'
25 association, it may be excused from payment of its share of
26 the operating expenses and assessments related to its parcels
27 for any period of time for which the developer has, in the
28 declaration, obligated itself to pay any operating expenses
29 incurred that exceed the assessments receivable from other
30 members and other income of the association. This section does
31 not apply to an association, no matter when created, if the

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1 association is created in a community that is included in an
2 effective development-of-regional-impact development order as
3 of the effective date of this act, together with any approved
4 modifications thereto.

5 (2) GUARANTEES OF COMMON EXPENSES.--

6 (a) Establishment of a guarantee.--If a guarantee of
7 the assessments of parcel owners is not included in the
8 purchase contracts or declaration, any agreement establishing
9 a guarantee shall only be effective upon the approval of a
10 majority of the voting interests of the members other than the
11 developer. Approval shall be expressed at a meeting of the
12 members voting in person or by limited proxy or by agreement
13 in writing without a meeting if provided in the bylaws. Such
14 guarantee shall meet the requirements of this section.

15 (b) Guarantee period.--The period of time for the
16 guarantee shall be indicated by a specific beginning and
17 ending date or event.

18 1. The ending date or event shall be the same for all
19 of the members of an association, including members in
20 different phases of the development.

21 2. The guarantee may provide for different intervals
22 of time during a guarantee period with different dollar
23 amounts for each such interval.

24 3. The guarantee may provide that after the initial
25 stated period, the developer has an option to extend the
26 guarantee for one or more additional stated periods. The
27 extension of a guarantee is limited to extending the ending
28 date or event; therefore, the developer does not have the
29 option of changing the level of assessments guaranteed.

30 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
31 amount of the guarantee shall be an exact dollar amount for

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1 each parcel identified in the declaration. Regardless of the
2 stated dollar amount of the guarantee, assessments charged to
3 a member shall not exceed the maximum obligation of the member
4 based on the total amount of the adopted budget and the
5 member's proportionate ownership share of the common elements.

6 (4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The
7 cash payments required from the guarantor during the guarantee
8 period shall be determined as follows:

9 (a) If at any time during the guarantee period the
10 funds collected from member assessments at the guaranteed
11 level and other revenues collected by the association are not
12 sufficient to provide payment, on a timely basis, of all
13 assessments, including the full funding of the reserves unless
14 properly waived, the guarantor shall advance sufficient cash
15 to the association at the time such payments are due.

16 (b) Expenses incurred in the production of
17 nonassessment revenues, not in excess of the nonassessment
18 revenues, shall not be included in the assessments. If the
19 expenses attributable to nonassessment revenues exceed
20 nonassessment revenues, only the excess expenses must be
21 funded by the guarantor. Interest earned on the investment of
22 association funds may be used to pay the income tax expense
23 incurred as a result of the investment; such expense shall not
24 be charged to the guarantor; and the net investment income
25 shall be retained by the association. Each such
26 nonassessment-revenue-generating activity shall be considered
27 separately. Any portion of the parcel assessment that is
28 budgeted for designated capital contributions of the
29 association shall not be used to pay operating expenses.

30 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
31 guarantor's total financial obligation to the association at

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1 the end of the guarantee period shall be determined on the
 2 accrual basis using the following formula: the guarantor shall
 3 pay any deficits that exceed the guaranteed amount, less the
 4 total regular periodic assessments earned by the association
 5 from the members other than the guarantor during the guarantee
 6 period regardless of whether the actual level charged was less
 7 than the maximum guaranteed amount.

8 (6) EXPENSES.--Expenses incurred in the production of
 9 nonassessment revenues, not in excess of the nonassessment
 10 revenues, shall not be included in the operating expenses. If
 11 the expenses attributable to nonassessment revenues exceed
 12 nonassessment revenues, only the excess expenses must be
 13 funded by the guarantor. Interest earned on the investment of
 14 association funds may be used to pay the income tax expense
 15 incurred as a result of the investment; such expense shall not
 16 be charged to the guarantor; and the net investment income
 17 shall be retained by the association. Each such
 18 nonassessment-revenue-generating activity shall be considered
 19 separately. Any portion of the parcel assessment that is
 20 budgeted for designated capital contributions of the
 21 association shall not be used to pay operating expenses.

22 Section 17. Section 720.311, Florida Statutes, is
 23 amended to read:

24 720.311 Dispute resolution.--

25 (1) The Legislature finds that alternative dispute
 26 resolution has made progress in reducing court dockets and
 27 trials and in offering a more efficient, cost-effective option
 28 to litigation. The filing of any petition for ~~mediation or~~
 29 arbitration or the serving of an offer for presuit mediation
 30 as provided for in this section shall toll the applicable
 31 statute of limitations. Any recall dispute filed with the

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1 department pursuant to s. 720.303(10) shall be conducted by
 2 the department in accordance with the provisions of ss.
 3 718.112(2)(j) and 718.1255 and the rules adopted by the
 4 division. In addition, the department shall conduct mandatory
 5 binding arbitration of election disputes between a member and
 6 an association pursuant to s. 718.1255 and rules adopted by
 7 the division. Neither election disputes nor recall disputes
 8 are eligible for presuit mediation; these disputes shall be
 9 arbitrated by the department. At the conclusion of the
 10 proceeding, the department shall charge the parties a fee in
 11 an amount adequate to cover all costs and expenses incurred by
 12 the department in conducting the proceeding. Initially, the
 13 petitioner shall remit a filing fee of at least \$200 to the
 14 department. The fees paid to the department shall become a
 15 recoverable cost in the arbitration proceeding, and the
 16 prevailing party in an arbitration proceeding shall recover
 17 its reasonable costs and attorney's fees in an amount found
 18 reasonable by the arbitrator. The department shall adopt rules
 19 to effectuate the purposes of this section.

20 (2)(a) Disputes between an association and a parcel
 21 owner regarding use of or changes to the parcel or the common
 22 areas and other covenant enforcement disputes, disputes
 23 regarding amendments to the association documents, disputes
 24 regarding meetings of the board and committees appointed by
 25 the board, membership meetings not including election
 26 meetings, and access to the official records of the
 27 association shall be the subject of an offer ~~filed with the~~
 28 ~~department~~ for presuit ~~mandatory~~ mediation served by an
 29 aggrieved party before the dispute is filed in court. Presuit
 30 mediation proceedings must be conducted in accordance with the
 31 applicable Florida Rules of Civil Procedure, and these

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1 proceedings are privileged and confidential to the same extent
2 as court-ordered mediation. Disputes subject to presuit
3 mediation under this section shall not include the collection
4 of any assessment, fine, or other financial obligation,
5 including attorney's fees and costs, claimed to be due or any
6 action to enforce a prior mediation settlement agreement
7 between the parties. Also, in any dispute subject to presuit
8 mediation under this section where emergency relief is
9 required, a motion for temporary injunctive relief may be
10 filed with the court without first complying with the presuit
11 mediation requirements of this section. After any issues
12 regarding emergency or temporary relief are resolved, the
13 court may either refer the parties to a mediation program
14 administered by the courts or require mediation under this
15 section. An arbitrator or judge may not consider any
16 information or evidence arising from the presuit mediation
17 proceeding except in a proceeding to impose sanctions for
18 failure to attend a presuit mediation session or with the
19 parties' agreement in a proceeding seeking to enforce the
20 agreement. Persons who are not parties to the dispute may not
21 attend the presuit mediation conference without the consent of
22 all parties, except for counsel for the parties and a
23 corporate representative designated by the association. When
24 mediation is attended by a quorum of the board, such mediation
25 is not a board meeting for purposes of notice and
26 participation set forth in s. 720.303. An aggrieved party
27 shall serve on the responding party a written offer to
28 participate in presuit mediation in substantially the
29 following form:

STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

The alleged aggrieved party, _____,

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1 hereby offers to _____, as the
 2 responding party, to enter into presuit
 3 mediation in connection with the following
 4 dispute, which by statute is of a type that is
 5 subject to presuit mediation:

6
 7 (List specific nature of the dispute or
 8 disputes to be mediated and the authority
 9 supporting a finding of a violation as to each
 10 dispute.)

11
 12 Pursuant to section 720.311, Florida Statutes,
 13 this offer to resolve the dispute through
 14 presuit mediation is required before a lawsuit
 15 can be filed concerning the dispute. Pursuant
 16 to the statute, the aggrieved party is hereby
 17 offering to engage in presuit mediation with a
 18 neutral third-party mediator in order to
 19 attempt to resolve this dispute without court
 20 action, and the aggrieved party demands that
 21 you likewise agree to this process. If you fail
 22 to agree to presuit mediation, or if you agree
 23 and later fail to follow through with your
 24 agreement to mediate, suit may be brought
 25 against you without further warning.

26
 27 The process of mediation involves a supervised
 28 negotiation process in which a trained, neutral
 29 third-party mediator meets with both parties
 30 and assists them in exploring possible
 31 opportunities for resolving part or all of the

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1 dispute. The mediation process is a voluntary
2 one. By agreeing to participate in presuit
3 mediation, you are not bound in any way to
4 change your position or to enter into any type
5 of agreement. Furthermore, the mediator has no
6 authority to make any decisions in this matter
7 or to determine who is right or wrong and
8 merely acts as a facilitator to ensure that
9 each party understands the position of the
10 other party and that all reasonable settlement
11 options are fully explored. All mediation
12 communications are confidential under the
13 Mediation Confidentiality and Privilege Act
14 pursuant to sections 44.401-44.406, Florida
15 Statutes, and a mediation participant may not
16 disclose a mediation communication to a person
17 other than a mediation participant or a
18 participant's counsel.

19
20 If an agreement is reached, it shall be reduced
21 to writing and becomes a binding and
22 enforceable commitment of the parties. A
23 resolution of one or more disputes in this
24 fashion avoids the need to litigate these
25 issues in court. The failure to reach an
26 agreement, or the failure of a party to
27 participate in the process, results in the
28 mediator's declaring an impasse in the
29 mediation, after which the aggrieved party may
30 proceed to court on all outstanding, unsettled
31 disputes.

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The aggrieved party has selected and hereby lists three certified mediators who we believe to be neutral and qualified to mediate the dispute. You have the right to select any one of these mediators. The fact that one party may be familiar with one or more of the listed mediators does not mean that the mediator cannot act as a neutral and impartial facilitator. Any mediator who cannot act in this capacity ethically must decline to accept engagement. The mediators that we suggest, and their current hourly rates, are as follows:

(List the names, addresses, telephone numbers, and hourly rates of the mediators. Other pertinent information about the background of the mediators may be included as an attachment.)

You may contact the offices of these mediators to confirm that the listed mediators will be neutral and will not show any favoritism toward either party. The names of certified mediators may be found through the office of the clerk of the circuit court for this circuit.

If you agree to participate in the presuit mediation process, the statute requires that each party is to pay one-half of the costs and fees involved in the presuit mediation process

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1 unless otherwise agreed by all parties. An
2 average mediation may require 3 to 4 hours of
3 the mediator's time, including some preparation
4 time, and each party would need to pay one-half
5 of the mediator's fees as well as his or her
6 own attorney's fees if he or she chooses to
7 employ an attorney in connection with the
8 mediation. However, use of an attorney is not
9 required and is at the option of each party.
10 The mediator may require the advance payment of
11 some or all of the anticipated fees. The
12 aggrieved party hereby agrees to pay or prepay
13 one-half of the mediator's estimated fees and
14 to forward this amount or such other reasonable
15 advance deposits as the mediator may require
16 for this purpose. Any funds deposited will be
17 returned to you if these are in excess of your
18 share of the fees incurred.

19
20 If you agree to participate in presuit
21 mediation in order to attempt to resolve the
22 dispute and thereby avoid further legal action,
23 please sign below and clearly indicate which
24 mediator is acceptable to you. We will then ask
25 the mediator to schedule a mutually convenient
26 time and place for the mediation conference to
27 be held. The mediation conference must be held
28 within 90 days after the date of this letter
29 unless extended by mutual written agreement. In
30 the event that you fail to respond within 20
31 days after the date of this letter, or if you

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1 fail to agree to at least one of the mediators
2 that we have suggested and to pay or prepay to
3 the mediator one-half of the costs involved,
4 the aggrieved party will be authorized to
5 proceed with the filing of a lawsuit against
6 you without further notice and may seek an
7 award of attorney's fees or costs incurred in
8 attempting to obtain mediation.

9
10 Should you wish, you may also elect to waive
11 presuit mediation so that this matter may
12 proceed directly to court.

13
14 Therefore, please give this matter your
15 immediate attention. By law, your response must
16 be mailed by certified mail, return receipt
17 requested, with an additional copy being sent
18 by regular first-class mail to the address
19 shown on this offer.

20
21 _____

22 _____

23
24 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO
25 OPTIONS BELOW. YOUR SIGNATURE INDICATES YOUR
26 AGREEMENT TO THAT CHOICE.

27
28 AGREEMENT TO MEDIATE

29
30 The undersigned hereby agrees to participate in
31 presuit mediation and agrees to the following

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1 mediator or mediators as acceptable to mediate
2 this dispute:

3
4 (List acceptable mediator or mediators.)

5
6 I/we further agree to pay or prepay one-half of
7 the mediator's fees and to forward such advance
8 deposits as the mediator may require for this
9 purpose.

10
11 _____
12 Signature of responding party #1

13
14 _____
15 Signature of responding party #2 (if
16 applicable)(if property is owned by more than
17 one person, all owners must sign)

18
19 WAIVER OF MEDIATION

20
21 The undersigned hereby waives the right to
22 participate in presuit mediation of the dispute
23 listed above and agrees to allow the aggrieved
24 party to proceed in court on such matters.

25
26 _____
27 Signature of responding party #1

28
29 _____
30 Signature of responding party #2 (if
31 applicable)(if property is owned by more than

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1 one person, all owners must sign)

2

3 (b) Service of the statutory offer to participate in
4 presuit mediation shall be effected by sending a letter in
5 substantial conformity with the above form by certified mail,
6 return receipt requested, with an additional copy being sent
7 by regular first-class mail, to the address of the responding
8 party as it last appears on the books and records of the
9 association. The responding party shall have 20 days from the
10 date of the mailing of the statutory offer to serve a response
11 to the aggrieved party in writing. The response shall be
12 served by certified mail, return receipt requested, with an
13 additional copy being sent by regular first-class mail, to the
14 address shown on the statutory offer. In the alternative, the
15 responding party may waive mediation in writing.

16 Notwithstanding the foregoing, once the parties have agreed on
17 a mediator, the mediator may reschedule the mediation for a
18 date and time mutually convenient to the parties. The
19 ~~department shall conduct the proceedings through the use of~~
20 ~~department mediators or refer the disputes to private~~
21 ~~mediators who have been duly certified by the department as~~
22 ~~provided in paragraph (c).~~ The parties shall share the costs
23 of presuit mediation equally, including the fee charged by the
24 mediator, if any, unless the parties agree otherwise, and the
25 mediator may require advance payment of its reasonable fees
26 and costs. The failure of any party to respond to a demand or
27 response, to agree upon a mediator, to make payment of fees
28 and costs within the time established by the mediator, or to
29 appear for a scheduled mediation session shall operate as an
30 impasse in the presuit mediation by such party, entitling the
31 other party to proceed in court and to seek an award of the

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1 costs and fees associated with the mediation. Additionally, if
 2 any presuit mediation session cannot be scheduled and
 3 conducted within 90 days after the offer to participate in
 4 mediation was filed, an impasse shall be deemed to have
 5 occurred unless both parties agree to extend this deadline. ~~if~~
 6 ~~a department mediator is used, the department may charge such~~
 7 ~~fee as is necessary to pay expenses of the mediation,~~
 8 ~~including, but not limited to, the salary and benefits of the~~
 9 ~~mediator and any travel expenses incurred. The petitioner~~
 10 ~~shall initially file with the department upon filing the~~
 11 ~~disputes, a filing fee of \$200, which shall be used to defray~~
 12 ~~the costs of the mediation. At the conclusion of the~~
 13 ~~mediation, the department shall charge to the parties, to be~~
 14 ~~shared equally unless otherwise agreed by the parties, such~~
 15 ~~further fees as are necessary to fully reimburse the~~
 16 ~~department for all expenses incurred in the mediation.~~

17 (c)~~(b)~~ If presuit mediation as described in paragraph
 18 (a) is not successful in resolving all issues between the
 19 parties, the parties may file the unresolved dispute in a
 20 court of competent jurisdiction or elect to enter into binding
 21 or nonbinding arbitration pursuant to the procedures set forth
 22 in s. 718.1255 and rules adopted by the division, with the
 23 arbitration proceeding to be conducted by a department
 24 arbitrator or by a private arbitrator certified by the
 25 department. If all parties do not agree to arbitration
 26 proceedings following an unsuccessful presuit mediation, any
 27 party may file the dispute in court. A final order resulting
 28 from nonbinding arbitration is final and enforceable in the
 29 courts if a complaint for trial de novo is not filed in a
 30 court of competent jurisdiction within 30 days after entry of
 31 the order. As to any issue or dispute that is not resolved at

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1 presuit mediation, and as to any issue that is settled at
 2 presuit mediation but is thereafter subject to an action
 3 seeking enforcement of the mediation settlement, the
 4 prevailing party in any subsequent arbitration or litigation
 5 proceeding shall be entitled to seek recovery of all costs and
 6 attorney's fees incurred in the presuit mediation process.

7 ~~(d)(c) The department shall develop a certification~~
 8 ~~and training program for private mediators and private~~
 9 ~~arbitrators which shall emphasize experience and expertise in~~
 10 ~~the area of the operation of community associations. A~~
 11 ~~mediator or arbitrator shall be certified to conduct mediation~~
 12 ~~or arbitration under this section by the department only if he~~
 13 ~~or she has been certified as a circuit court civil mediator or~~
 14 ~~arbitrator, respectively, pursuant to the requirements~~
 15 ~~established attended at least 20 hours of training in~~
 16 ~~mediation or arbitration, as appropriate, and only if the~~
 17 ~~applicant has mediated or arbitrated at least 10 disputes~~
 18 ~~involving community associations within 5 years prior to the~~
 19 ~~date of the application, or has mediated or arbitrated 10~~
 20 ~~disputes in any area within 5 years prior to the date of~~
 21 ~~application and has completed 20 hours of training in~~
 22 ~~community association disputes. In order to be certified by~~
 23 ~~the department, any mediator must also be certified by the~~
 24 ~~Florida Supreme Court. The department may conduct the training~~
 25 ~~and certification program within the department or may~~
 26 ~~contract with an outside vendor to perform the training or~~
 27 ~~certification. The expenses of operating the training and~~
 28 ~~certification and training program shall be paid by the moneys~~
 29 ~~and filing fees generated by the arbitration of recall and~~
 30 ~~election disputes and by the mediation of those disputes~~
 31 ~~referred to in this subsection and by the training fees.~~

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1 ~~(e)(d)~~ The presuit mediation procedures provided by
2 this subsection may be used by a Florida corporation
3 responsible for the operation of a community in which the
4 voting members are parcel owners or their representatives, in
5 which membership in the corporation is not a mandatory
6 condition of parcel ownership, or which is not authorized to
7 impose an assessment that may become a lien on the parcel.

8 ~~(3) The department shall develop an education program~~
9 ~~to assist homeowners, associations, board members, and~~
10 ~~managers in understanding and increasing awareness of the~~
11 ~~operation of homeowners' associations pursuant to this chapter~~
12 ~~and in understanding the use of alternative dispute resolution~~
13 ~~techniques in resolving disputes between parcel owners and~~
14 ~~associations or between owners. Such education program may~~
15 ~~include the development of pamphlets and other written~~
16 ~~instructional guides, the holding of classes and meetings by~~
17 ~~department employees or outside vendors, as the department~~
18 ~~determines, and the creation and maintenance of a website~~
19 ~~containing instructional materials. The expenses of operating~~
20 ~~the education program shall be initially paid by the moneys~~
21 ~~and filing fees generated by the arbitration of recall and~~
22 ~~election disputes and by the mediation of those disputes~~
23 ~~referred to in this subsection.~~

24 Section 18. Except as otherwise expressly provided in
25 this act, this act shall take effect July 1, 2006.

26
27

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

29 And the title is amended as follows:

30 Delete everything before the enacting clause

31

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1 and insert:

2 A bill to be entitled

3 An act relating to community associations;

4 creating s. 712.11, F.S.; providing for the

5 revival of certain covenants that have lapsed;

6 amending s. 718.106, F.S.; prohibiting local

7 ordinances that limit the access of certain

8 persons to beaches that adjoin condominiums;

9 amending s. 718.110, F.S.; revising provisions

10 relating to the amendment of declarations;

11 providing legislative findings and a finding of

12 compelling state interest; providing criteria

13 for consent to an amendment; requiring notice

14 regarding proposed amendments to mortgagees;

15 providing criteria for notification; providing

16 for voiding certain amendments; amending s.

17 718.112, F.S.; revising the implementation date

18 for retrofitting of common areas with a

19 sprinkler system; amending s. 718.114, F.S.;

20 providing that certain leaseholds, memberships,

21 or other possessory or use interests shall be

22 considered a material alteration or substantial

23 addition to certain real property; amending s.

24 718.404, F.S.; providing retroactive

25 application of provisions relating to mixed-use

26 condominiums; amending s. 719.103, F.S.;

27 providing a definition; amending s. 719.507,

28 F.S.; prohibiting laws, ordinances, or

29 regulations that apply only to improvements

30 that are or may be subjected to an equity club

31 form of ownership; amending s. 720.302, F.S.;

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1 revising governing provisions relating to
2 corporations that operate residential
3 homeowners' associations; amending s. 720.303,
4 F.S.; revising application to include certain
5 meetings; requiring the association to provide
6 certain information to prospective purchasers
7 or lienholders; authorizing the association to
8 charge a reasonable fee for providing certain
9 information; requiring the budget to provide
10 for annual operating expenses; authorizing the
11 budget to include reserve accounts for capital
12 expenditures and deferred maintenance;
13 providing a formula for calculating the amount
14 to be reserved; authorizing the association to
15 adjust replacement reserve assessments
16 annually; authorizing the developer to vote to
17 waive the reserves or reduce the funding of
18 reserves for a certain period; revising
19 provisions relating to financial reporting;
20 revising time periods in which the association
21 must complete its reporting; repealing s.
22 720.303(2), F.S., as amended, relating to board
23 meetings, to remove conflicting versions of
24 that subsection; creating s. 720.3035, F.S.;
25 providing for architectural control covenants
26 and parcel owner improvements; authorizing the
27 review and approval of plans and
28 specifications; providing limitations;
29 providing rights and privileges for parcel
30 owners as set forth in the declaration of
31 covenants; amending s. 720.305, F.S.; providing

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1 that, where a member is entitled to collect
2 attorney's fees against the association, the
3 member may also recover additional amounts as
4 determined by the court; amending s. 720.306,
5 F.S.; providing that certain mergers or
6 consolidations of an association shall not be
7 considered a material or adverse alteration of
8 the proportionate voting interest appurtenant
9 to a parcel; amending s. 720.307, F.S.;

10 requiring developers to deliver financial
11 records to the board in any transition of
12 association control to members; requiring
13 certain information to be included in the
14 records and for the records to be prepared in a
15 specified manner; amending s. 720.308, F.S.;

16 providing circumstances under which a guarantee
17 of common expenses shall be effective;

18 providing for approval of the guarantee by
19 association members; providing for a guarantee
20 period and extension thereof; requiring the
21 stated dollar amount of the guarantee to be an
22 exact dollar amount for each parcel identified
23 in the declaration; providing payments required
24 from the guarantor to be determined in a
25 certain manner; providing a formula to
26 determine the guarantor's total financial
27 obligation to the association; providing that
28 certain expenses incurred in the production of
29 certain revenues shall not be included in the
30 operating expenses; amending s. 720.311, F.S.;

31 revising provisions relating to dispute

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1 resolution; providing that the filing of any
2 petition for arbitration or the serving of an
3 offer for presuit mediation shall toll the
4 applicable statute of limitations; providing
5 that certain disputes between an association
6 and a parcel owner shall be subject to presuit
7 mediation; revising provisions to conform;
8 providing that temporary injunctive relief may
9 be sought in certain disputes subject to
10 presuit mediation; authorizing the court to
11 refer the parties to mediation under certain
12 circumstances; requiring the aggrieved party to
13 serve on the responding party a written offer
14 to participate in presuit mediation; providing
15 a form for such offer; providing that service
16 of the offer is effected by the sending of such
17 an offer in a certain manner; providing that
18 the prevailing party in any subsequent
19 arbitration or litigation proceedings is
20 entitled to seek recovery of all costs and
21 attorney's fees incurred in the presuit
22 mediation process; requiring the mediator or
23 arbitrator to meet certain certification
24 requirements; removing a requirement relating
25 to development of an education program to
26 increase awareness of the operation of
27 homeowners' associations and the use of
28 alternative dispute resolution techniques;
29 providing effective dates.

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