

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

1 attorney's fees against the association, the
2 member may also recover additional amounts as
3 determined by the court; amending s. 720.306,
4 F.S.; providing that certain mergers or
5 consolidations of an association shall not be
6 considered a material or adverse alteration of
7 the proportionate voting interest appurtenant
8 to a parcel; amending s. 720.307, F.S. ;
9 requiring developers to deliver financial
10 records to the board in any transition of
11 association control to members; requiring
12 certain information to be included in the
13 records and for the records to be prepared in a
14 specified manner; amending s. 720.308, F.S. ;
15 providing circumstances under which a guarantee
16 of common expenses shall be effective;
17 providing for approval of the guarantee by
18 association members; providing for a guarantee
19 period and extension thereof; requiring the
20 stated dollar amount of the guarantee to be an
21 exact dollar amount for each parcel identified
22 in the declaration; providing payments required
23 from the guarantor to be determined in a
24 certain manner; providing a formula to
25 determine the guarantor's total financial
26 obligation to the association; providing that
27 certain expenses incurred in the production of
28 certain revenues shall not be included in the
29 operating expenses; amending s. 720.311, F.S. ;
30 revising provisions relating to dispute
31 resolution; providing that the filing of any

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

29
30 Be It Enacted by the Legislature of the State of Florida:
31

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

3 712.11 Covenant revitalization.--A homeowners'
4 association not otherwise subject to chapter 720 may use the
5 procedures set forth in ss. 720.403-720.407 to revive
6 covenants that have lapsed under the terms of this chapter.

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

9 718.106 Condominium parcels; appurtenances; possession
10 and enjoyment.--

11 (5) A local ordinance or regulation may not establish
12 any limitation on the ability of unit owners or an association
13 to permit guests, licensees, members, or invitees to use or
14 access their units or common elements for the purpose of
15 accessing a public beach or private beach adjacent to the
16 condominium.

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

19 718.110 Amendment of declaration; correction of error
20 or omission in declaration by circuit court.--

21 (11) The Legislature finds that the procurement of
22 mortgagee consent to amendments that do not affect the rights
23 or interests of mortgagees is an unreasonable and substantial
24 logistical and financial burden on the unit owners and that
25 there is a compelling state interest in enabling the members
26 of a condominium association to approve amendments to the
27 condominium documents through legal means. Accordingly, and
28 notwithstanding any provision to the contrary contained in
29 this section:

30 (a) As to any mortgage recorded on or after October 1,
31 2006, any provision in the declaration, articles of

1 incorporation, or bylaws that requires recorded after April 1,
2 1992, may not require the consent or joinder of some or all
3 mortgagees of units or any other portion of the condominium
4 property to or in amendments to the declaration, articles of
5 incorporation, or bylaws or for any other matter shall be
6 enforceable only as to the following matters: unless the
7 requirement is limited to amendments materially affecting the
8 rights or interests of the mortgagees, or as otherwise
9 required by the Federal National Mortgage Association or the
10 Federal Home Loan Mortgage Corporation, and unless the
11 requirement provides that such consent may not be unreasonably
12 withheld. It shall be presumed that, except as to
13 1. Those matters described in subsections (4) and
14 (8).
15 2. Amendments to the declaration, articles of
16 incorporation, or bylaws that adversely affect the priority of
17 the mortgagee's lien or the mortgagee's rights to foreclose
18 its lien or that otherwise materially affect the rights and
19 interests of the mortgagees.
20 (b) As to mortgages recorded before October 1, 2006,
21 any existing provisions in the declaration, articles of
22 incorporation, or bylaws requiring mortgagee consent shall be
23 enforceable.
24 (c) In securing consent or joinder, the association
25 shall be entitled to rely upon the public records to identify
26 the holders of outstanding mortgages. The association may use
27 the address provided in the original recorded mortgage
28 document, unless there is a different address for the holder
29 of the mortgage in a recorded assignment or modification of
30 the mortgage, which recorded assignment or modification must
31 reference the official records book and page on which the

1 original mortgage was recorded. Once the association has
2 identified the recorded mortgages of record, the association
3 shall, in writing, request of each unit owner whose unit is
4 encumbered by a mortgage of record any information the owner
5 has in his or her possession regarding the name and address of
6 the person to whom mortgage payments are currently being made.
7 Notice shall be sent to such person if the address provided in
8 the original recorded mortgage document is different from the
9 name and address of the mortgagee or assignee of the mortgage
10 as shown by the public record. The association shall be deemed
11 to have complied with this requirement by making the written
12 request of the unit owners required under this paragraph. Any
13 notices required to be sent to the mortgagees under this
14 paragraph shall be sent to all available addresses provided to
15 the association.

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

21 (e) For those amendments requiring mortgagee consent
22 on or after October 1, 2006, ~~do not materially affect the~~
23 ~~rights or interests of mortgagees.~~ in the event mortgagee
24 consent is provided other than by properly recorded joinder,
25 such consent shall be evidenced by affidavit of the
26 association recorded in the public records of the county where
27 the declaration is recorded. Any amendment adopted without the
28 required consent of a mortgagee shall be voidable only by a
29 mortgagee who was entitled to notice and an opportunity to
30 consent. An action to void an amendment shall be subject to
31 the statute of limitations beginning 5 years from the date of

1 discovery as to the amendments described in subparagraph (a)
2 1. and 2. and 5 years from the date of recordation of the
3 certificate of amendment for all other amendments. This
4 provision shall apply to all mortgages, regardless of the date
5 of recordation of the mortgage.

6 Section 4. Paragraph (1) of subsection (2) of section
7 718.112, Florida Statutes, is amended to read:

8 718.112 Bylaws.--

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

12 (1) Certificate of compliance.--There shall be a
13 provision that a certificate of compliance from a licensed
14 electrical contractor or electrician may be accepted by the
15 association's board as evidence of compliance of the
16 condominium units with the applicable fire and life safety
17 code. Notwithstanding the provisions of chapter 633 or of any
18 other code, statute, ordinance, administrative rule, or
19 regulation, or any interpretation of the foregoing, an
20 association, condominium, or unit owner is not obligated to
21 retrofit the common elements or units of a residential
22 condominium with a fire sprinkler system or other engineered
23 lifesafety system in a building that has been certified for
24 occupancy by the applicable governmental entity, if the unit
25 owners have voted to forego such retrofitting and engineered
26 lifesafety system by the affirmative vote of two-thirds of all
27 voting interests in the affected condominium. However, a
28 condominium association may not vote to forego the
29 retrofitting with a fire sprinkler system of common areas in a
30 high-rise building. For purposes of this subsection, the term
31 "high-rise building" means a building that is greater than 75

1 feet in height where the building height is measured from the
2 lowest level of fire department access to the floor of the
3 highest occupiable story. For purposes of this subsection, the
4 term "common areas" means any enclosed hallway, corridor,
5 lobby, stairwell, or entryway. In no event shall the local
6 authority having jurisdiction require completion of
7 retrofitting of common areas with a sprinkler system before
8 the end of 2025 ~~2014~~.

9 1. A vote to forego retrofitting may be obtained by
10 limited proxy or by a ballot personally cast at a duly called
11 membership meeting, or by execution of a written consent by
12 the member, and shall be effective upon the recording of a
13 certificate attesting to such vote in the public records of
14 the county where the condominium is located. The association
15 shall mail, hand deliver, or electronically transmit to each
16 unit owner written notice at least 14 days prior to such
17 membership meeting in which the vote to forego retrofitting of
18 the required fire sprinkler system is to take place. Within 30
19 days after the association's opt-out vote, notice of the
20 results of the opt-out vote shall be mailed, hand delivered,
21 or electronically transmitted to all unit owners. Evidence of
22 compliance with this 30-day notice shall be made by an
23 affidavit executed by the person providing the notice and
24 filed among the official records of the association. After
25 such notice is provided to each owner, a copy of such notice
26 shall be provided by the current owner to a new owner prior to
27 closing and shall be provided by a unit owner to a renter
28 prior to signing a lease.

29 2. As part of the information collected annually from
30 condominiums, the division shall require condominium
31 associations to report the membership vote and recording of a

1 certificate under this subsection and, if retrofitting has
2 been undertaken, the per-unit cost of such work. The division
3 shall annually report to the Division of State Fire Marshal of
4 the Department of Financial Services the number of
5 condominiums that have elected to forego retrofitting.

6 Section 5. Section 718.114, Florida Statutes, is
7 amended to read:

8 718.114 Association powers.--An association has the
9 power to enter into agreements, to acquire leaseholds,
10 memberships, and other possessory or use interests in lands or
11 facilities such as country clubs, golf courses, marinas, and
12 other recreational facilities. It has this power whether or
13 not the lands or facilities are contiguous to the lands of the
14 condominium, if they are intended to provide enjoyment,
15 recreation, or other use or benefit to the unit owners. All of
16 these leaseholds, memberships, and other possessory or use
17 interests existing or created at the time of recording the
18 declaration must be stated and fully described in the
19 declaration. Subsequent to the recording of the declaration,
20 agreements acquiring these leaseholds, memberships, or other
21 possessory or use interests not entered into within 12 months
22 following the recording of the declaration shall be considered
23 a material alteration or substantial addition to the real
24 property that is association property, and the association may
25 not acquire or enter into agreements acquiring these
26 leaseholds, memberships, or other possessory or use interests
27 except as authorized by the declaration as provided in s.
28 718.113. The declaration may provide that the rental,
29 membership fees, operations, replacements, and other expenses
30 are common expenses and may impose covenants and restrictions
31 concerning their use and may contain other provisions not

1 inconsistent with this chapter. A condominium association may
2 conduct bingo games as provided in s. 849.0931.

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

5 718.404 Mixed-use condominiums.--When a condominium
6 consists of both residential and commercial units, the
7 following provisions shall apply:

8 (1) The condominium documents shall not provide that
9 the owner of any commercial unit shall have the authority to
10 veto amendments to the declaration, articles of incorporation,
11 bylaws, or rules or regulations of the association. This
12 subsection shall apply retroactively as a remedial measure.

13 (2) Subject to s. 718.301, where the number of
14 residential units in the condominium equals or exceeds 50
15 percent of the total units operated by the association, owners
16 of the residential units shall be entitled to vote for a
17 majority of the seats on the board of administration. This
18 subsection shall apply retroactively as a remedial measure.

19 Section 7. Subsections (18) through (27) of section
20 719.103, Florida Statutes, are renumbered as subsections (19)
21 through (28), respectively, and a new subsection (18) is added
22 to that section to read:

23 719.103 Definitions.--As used in this chapter:

24 (18) "Equity facilities club" means a club comprised
25 of recreational facilities in which proprietary membership
26 interests are sold to individuals, which membership interests
27 entitle the individuals to use certain physical facilities
28 owned by the equity club. Such physical facilities do not
29 include a residential unit or accommodation. For purposes of
30 this definition, the term "accommodation" shall include, but
31 is not limited to, any apartment, residential cooperative

1 unit, residential condominium unit, cabin, lodge, hotel or
2 motel room, or any other accommodation designed for overnight
3 occupancy for one or more individuals.

4 Section 8. Section 719.507, Florida Statutes, is
5 amended to read:

6 719.507 Zoning and building laws, ordinances, and
7 regulations.--All laws, ordinances, and regulations concerning
8 buildings or zoning shall be construed and applied with
9 reference to the nature and use of such property, without
10 regard to the form of ownership. No law, ordinance, or
11 regulation shall establish any requirement concerning the use,
12 location, placement, or construction of buildings or other
13 improvements which are, or may thereafter be, subjected to the
14 cooperative or equity facilities club form of ownership,
15 unless such requirement shall be equally applicable to all
16 buildings and improvements of the same kind not then, or
17 thereafter to be, subjected to the cooperative or equity
18 facilities club form of ownership. This section does not apply
19 if the owner in fee of any land enters into and records a
20 covenant that existing improvements or improvements to be
21 constructed shall not be converted to the cooperative form of
22 residential ownership prior to 5 years after the later of the
23 date of the covenant or completion date of the improvements.
24 Such covenant shall be entered into with the governing body of
25 the municipality in which the land is located or, if the land
26 is not located in a municipality, with the governing body of
27 the county in which the land is located.

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

30 720.302 Purposes, scope, and application.--
31

1 (4) This chapter does not apply to any association
2 that is subject to regulation under chapter 718, chapter 719,
3 or chapter 721+ or to any nonmandatory association formed
4 under chapter 723, except to the extent that a provision of
5 chapter 718, chapter 719, or chapter 721 is expressly
6 incorporated into this chapter for the purpose of regulating
7 homeowners' associations.

8 (5) Unless expressly stated to the contrary,
9 corporations ~~not for profit~~ that operate residential
10 homeowners' associations in this state shall be governed by
11 and subject to chapter 607, if the association was
12 incorporated under that chapter, or to chapter 617, if the
13 association was incorporated under that chapter, and this
14 chapter. This subsection is intended to clarify existing law.

15 Section 10. Paragraph (a) of subsection (2),
16 subsection (6), and subsection (7) of section 720.303, Florida
17 Statutes, as amended by section 18 of chapter 2004-345 and
18 section 135 of chapter 2005-2, Laws of Florida, are amended,
19 and paragraph (d) is added to subsection (5) of that section,
20 to read:

21 720.303 Association powers and duties; meetings of
22 board; official records; budgets; financial reporting;
23 association funds; recalls.--

24 (2) BOARD MEETINGS.--

25 (a) A meeting of the board of directors of an
26 association occurs whenever a quorum of the board gathers to
27 conduct association business. All meetings of the board must
28 be open to all members except for meetings between the board
29 and its attorney with respect to proposed or pending
30 litigation where the contents of the discussion would
31 otherwise be governed by the attorney-client privilege. The

1 provisions of this subsection shall also apply to the meetings
2 of any committee or other similar body when a final decision
3 will be made regarding the expenditure of association funds
4 and to meetings of any body vested with the power to approve
5 or disapprove architectural decisions with respect to a
6 specific parcel of residential property owned by a member of
7 the community.

8 (5) INSPECTION AND COPYING OF RECORDS.--The official
9 records shall be maintained within the state and must be open
10 to inspection and available for photocopying by members or
11 their authorized agents at reasonable times and places within
12 10 business days after receipt of a written request for
13 access. This subsection may be complied with by having a copy
14 of the official records available for inspection or copying in
15 the community. If the association has a photocopy machine
16 available where the records are maintained, it must provide
17 parcel owners with copies on request during the inspection if
18 the entire request is limited to no more than 25 pages.

19 (d) The association or its authorized agent is not
20 required to provide a prospective purchaser or lienholder with
21 information about the residential subdivision or the
22 association other than information or documents required by
23 this chapter to be made available or disclosed. The
24 association or its authorized agent may charge a reasonable
25 fee to the prospective purchaser or lienholder or the current
26 parcel owner or member for providing good faith responses to
27 requests for information by or on behalf of a prospective
28 purchaser or lienholder, other than that required by law, if
29 the fee does not exceed \$150 plus the reasonable cost of
30 photocopying and any attorney's fees incurred by the
31 association in connection with the response.

1 (6) BUDGETS.--

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

14 (b) In addition to annual operating expenses, the
15 budget may include reserve accounts for capital expenditures
16 and deferred maintenance for which the association is
17 responsible to the extent that the governing documents do not
18 limit increases in assessments, including reserves. If the
19 budget of the association includes reserve accounts, such
20 reserves shall be determined, maintained, and waived in the
21 manner provided in this subsection. Once an association
22 provides for reserve accounts in the budget, the association
23 shall thereafter determine, maintain, and waive reserves in
24 compliance with the provisions of this subsection.

25 (c) If the budget of the association does not provide
26 for reserve accounts governed by this subsection and the
27 association is responsible for the repair and maintenance of
28 capital improvements that may result in a special assessment
29 if reserves are not provided, each financial report for the
30 preceding fiscal year required by subsection (7) shall contain
31 the following statement in conspicuous type: THE BUDGET OF THE

1 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL
2 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
3 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
4 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
5 FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A
6 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

7 (d) An association shall be deemed to have provided
8 for reserve accounts when reserve accounts have been initially
9 established by the developer or when the membership of the
10 association affirmatively elects to provide for reserves. If
11 reserve accounts are not initially provided for by the
12 developer, the membership of the association may elect to do
13 so upon the affirmative approval of not less than a majority
14 of the total voting interests of the association. Such
15 approval may be attained by vote of the members at a duly
16 called meeting of the membership or upon a written consent
17 executed by not less than a majority of the total voting
18 interests in the community. The approval action of the
19 membership shall state that reserve accounts shall be provided
20 for in the budget and designate the components for which the
21 reserve accounts are to be established. Upon approval by the
22 membership, the board of directors shall provide for the
23 required reserve accounts for inclusion in the budget in the
24 next fiscal year following the approval and in each year
25 thereafter. Once established as provided in this subsection,
26 the reserve accounts shall be funded or maintained or shall
27 have their funding waived in the manner provided in paragraph
28 (f).

29 (e) The amount to be reserved in any account
30 established shall be computed by means of a formula that is
31 based upon estimated remaining useful life and estimated

1 replacement cost or deferred maintenance expense of each
2 reserve item. The association may adjust replacement reserve
3 assessments annually to take into account any changes in
4 estimates of cost or useful life of a reserve item.

5 (f) Once a reserve account or reserve accounts are
6 established, the membership of the association, upon a
7 majority vote at a meeting at which a quorum is present, may
8 provide for no reserves or less reserves than required by this
9 section. If a meeting of the unit owners has been called to
10 determine whether to waive or reduce the funding of reserves
11 and no such result is achieved or a quorum is not present, the
12 reserves as included in the budget shall go into effect. After
13 the turnover, the developer may vote its voting interest to
14 waive or reduce the funding of reserves. Any vote taken
15 pursuant to this subsection to waive or reduce reserves shall
16 be applicable only to one budget year.

17 (g) Funding formulas for reserves authorized by this
18 section shall be based on either a separate analysis of each
19 of the required assets or a pooled analysis of two or more of
20 the required assets.

21 1. If the association maintains separate reserve
22 accounts for each of the required assets, the amount of the
23 contribution to each reserve account shall be the sum of the
24 following two calculations:

25 a. The total amount necessary, if any, to bring a
26 negative component balance to zero.

27 b. The total estimated deferred maintenance expense or
28 estimated replacement cost of the reserve component less the
29 estimated balance of the reserve component as of the beginning
30 of the period for which the budget will be in effect. The
31

1 remainder, if greater than zero, shall be divided by the
2 estimated remaining useful life of the component.

3
4 The formula may be adjusted each year for changes in estimates
5 and deferred maintenance performed during the year and may
6 include factors such as inflation and earnings on invested
7 funds.

8 2. If the association maintains a pooled account of
9 two or more of the required reserve assets, the amount of the
10 contribution to the pooled reserve account as disclosed on the
11 proposed budget shall not be less than that required to ensure
12 that the balance on hand at the beginning of the period for
13 which the budget will go into effect plus the projected annual
14 cash inflows over the remaining estimated useful life of all
15 of the assets that make up the reserve pool are equal to or
16 greater than the projected annual cash outflows over the
17 remaining estimated useful lives of all of the assets that
18 make up the reserve pool, based on the current reserve
19 analysis. The projected annual cash inflows may include
20 estimated earnings from investment of principal. The reserve
21 funding formula shall not include any type of balloon
22 payments.

23 (h) Reserve funds and any interest accruing thereon
24 shall remain in the reserve account or accounts and shall be
25 used only for authorized reserve expenditures unless their use
26 for other purposes is approved in advance by a majority vote
27 at a meeting at which a quorum is present. Prior to turnover
28 of control of an association by a developer to parcel owners,
29 the developer-controlled association shall not vote to use
30 reserves for purposes other than those for which they were
31 intended without the approval of a majority of all

1 nondeveloper voting interests voting in person or by limited
2 proxy at a duly called meeting of the association.

3 (7) FINANCIAL REPORTING.--Within 90 days after the end
4 of the fiscal year, or annually on the date provided in the
5 bylaws, the association shall prepare and complete, or
6 contract with a third party for the preparation and completion
7 of, a financial report for the preceding fiscal year. Within
8 21 days after the final financial report is completed by the
9 association or received from the third party, but not later
10 than 120 days after the end of the fiscal year or other date
11 as provided in the bylaws, the association shall ~~prepare an~~
12 annual financial report within 60 days after the close of the
13 fiscal year. The association shall, within the time limits set
14 forth in subsection (5), provide each member with a copy of
15 the annual financial report or a written notice that a copy of
16 the financial report is available upon request at no charge to
17 the member. Financial reports shall be prepared as follows:

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

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

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

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

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

4 2. An association in a community of fewer than 50
5 parcels, regardless of the association's annual revenues, may
6 prepare a report of cash receipts and expenditures in lieu of
7 financial statements required by paragraph (a) unless the
8 governing documents provide otherwise.

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

20 (c) If 20 percent of the parcel owners petition the
21 board for a level of financial reporting higher than that
22 required by this section, the association shall duly notice
23 and hold a meeting of members within 30 days of receipt of the
24 petition for the purpose of voting on raising the level of
25 reporting for that fiscal year. Upon approval of a majority of
26 the total voting interests of the parcel owners, the
27 association shall prepare or cause to be prepared, shall amend
28 the budget or adopt a special assessment to pay for the
29 financial report regardless of any provision to the contrary
30 in the governing documents, and shall provide within 90 days
31

1 of the meeting or the end of the fiscal year, whichever occurs
2 later:

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

6 2. Reviewed or audited financial statements, if the
7 association is otherwise required to prepare compiled
8 financial statements; or

9 3. Audited financial statements if the association is
10 otherwise required to prepare reviewed financial statements.

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

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

16 2. A report of cash receipts and expenditures or a
17 compiled financial statement in lieu of a reviewed or audited
18 financial statement; or

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

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

25 Section 12. Section 720.3035, Florida Statutes, is
26 created to read:

27 720.3035 Architectural control covenants; parcel owner
28 improvements; rights and privileges.--

29 (1) The authority of an association or any
30 architectural, construction improvement, or other such similar
31 committee of an association to review and approve plans and

1 specifications for the location, size, type, or appearance of
2 any structure or other improvement on a parcel, or to enforce
3 standards for the external appearance of any structure or
4 improvement located on a parcel, shall only be permitted to
5 the extent that the authority is specifically stated or
6 reasonably inferred as to such location, size, type, or
7 appearance in the declaration of covenants or other published
8 guidelines and standards authorized by the declaration of
9 covenants.

10 (2) If the declaration of covenants or other published
11 guidelines and standards authorized by the declaration of
12 covenants provides options for the use of material, the size
13 of the structure or improvement, the design of the structure
14 or improvement, or the location of the structure or
15 improvement on the parcel, neither the association nor any
16 architectural, construction improvement, or other such similar
17 committee of the association shall restrict the right of a
18 parcel owner to select from the options provided in the
19 declaration of covenants or other published guidelines and
20 standards authorized by the declaration of covenants.

21 (3) Unless otherwise specifically stated in the
22 declaration of covenants or other published guidelines and
23 standards authorized by the declaration of covenants, each
24 parcel shall be deemed to have only one front for purposes of
25 determining the required front setback even if the parcel is
26 bounded by a roadway or other easement on more than one side.
27 When the declaration of covenants or other published
28 guidelines and standards authorized by the declaration of
29 covenants do not provide for specific setback limitations, the
30 applicable county or municipal setback limitations shall
31 apply, and neither the association nor any architectural,

1 construction improvement, or other such similar committee of
2 the association shall enforce or attempt to enforce any
3 setback limitation that is inconsistent with the applicable
4 county or municipal standard or standards.

5 (4) Each parcel owner shall be entitled to the rights
6 and privileges set forth in the declaration of covenants or
7 other published guidelines and standards authorized by the
8 declaration of covenants concerning the use of the parcel, and
9 the construction of permitted structures and improvements on
10 the parcel and such rights and privileges shall not be
11 unreasonably infringed upon or impaired by the association or
12 any architectural, construction improvement, or other such
13 similar committee of the association. If the association or
14 any architectural, construction improvement, or other such
15 similar committee of the association should knowingly and
16 willfully infringe upon or impair the rights and privileges
17 set forth in the declaration of covenants or other published
18 guidelines and standards authorized by the declaration of
19 covenants, the adversely affected parcel owner shall be
20 entitled to recover damages caused by such infringement or
21 impairment, including any costs and reasonable attorney's fees
22 incurred in preserving or restoring the rights and privileges
23 of the parcel owner set forth in the declaration of covenants
24 or other published guidelines and standards authorized by the
25 declaration of covenants.

26 (5) Neither the association nor any architectural,
27 construction improvement, or other such similar committee of
28 the association shall enforce any policy or restriction that
29 is inconsistent with the rights and privileges of a parcel
30 owner set forth in the declaration of covenants or other
31 published guidelines and standards authorized by the

1 declaration of covenants, whether uniformly applied or not.
2 Neither the association nor any architectural, construction
3 improvement, or other such similar committee of the
4 association may rely upon a policy or restriction that is
5 inconsistent with the declaration of covenants or other
6 published guidelines and standards authorized by the
7 declaration of covenants, whether uniformly applied or not, in
8 defense of any action taken in the name of or on behalf of the
9 association against a parcel owner.

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

12 720.305 Obligations of members; remedies at law or in
13 equity; levy of fines and suspension of use rights; failure to
14 fill sufficient number of vacancies on board of directors to
15 constitute a quorum; appointment of receiver upon petition of
16 any member.--

17 (1) Each member and the member's tenants, guests, and
18 invitees, and each association, are governed by, and must
19 comply with, this chapter, the governing documents of the
20 community, and the rules of the association. Actions at law or
21 in equity, or both, to redress alleged failure or refusal to
22 comply with these provisions may be brought by the association
23 or by any member against:

24 (a) The association;

25 (b) A member;

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

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

31

1 The prevailing party in any such litigation is entitled to
2 recover reasonable attorney's fees and costs. A member
3 prevailing in an action between the association and the member
4 under this section, in addition to recovering his or her
5 reasonable attorney's fees, may recover additional amounts as
6 determined by the court to be necessary to reimburse the
7 member for his or her share of assessments levied by the
8 association to fund its expenses of the litigation. This
9 relief does not exclude other remedies provided by law. This
10 section does not deprive any person of any other available
11 right or remedy.

12 Section 14. Paragraph (c) of subsection (1) of section
13 720.306, Florida Statutes, is amended to read:

14 720.306 Meetings of members; voting and election
15 procedures; amendments.--

16 (1) QUORUM; AMENDMENTS.--

17 (c) Unless otherwise provided in the governing
18 documents as originally recorded or permitted by this chapter
19 or chapter 617, an amendment may not materially and adversely
20 alter the proportionate voting interest appurtenant to a
21 parcel or increase the proportion or percentage by which a
22 parcel shares in the common expenses of the association unless
23 the record parcel owner and all record owners of liens on the
24 parcels join in the execution of the amendment. For purposes
25 of this section, a change in quorum requirements is not an
26 alteration of voting interests. The merger or consolidation of
27 one or more associations under a plan of merger or
28 consolidation under chapter 607 or chapter 617 shall not be
29 considered a material or adverse alteration of the
30 proportionate voting interest appurtenant to a parcel.
31

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

3 720.307 Transition of association control in a
4 community.--With respect to homeowners' associations:

5 (3) At the time the members are entitled to elect at
6 least a majority of the board of directors of the homeowners'
7 association, the developer shall, at the developer's expense,
8 within no more than 90 days deliver the following documents to
9 the board:

10 (t) The financial records, including financial
11 statements of the association, and source documents from the
12 incorporation of the association through the date of turnover.
13 The records shall be audited by an independent certified
14 public accountant for the period from the incorporation of the
15 association or from the period covered by the last audit, if
16 an audit has been performed for each fiscal year since
17 incorporation. All financial statements shall be prepared in
18 accordance with generally accepted accounting principles and
19 shall be audited in accordance with generally accepted
20 auditing standards, as prescribed by the Board of Accountancy,
21 pursuant to chapter 473. The certified public accountant
22 performing the audit shall examine to the extent necessary
23 supporting documents and records, including the cash
24 disbursements and related paid invoices to determine if
25 expenditures were for association purposes and the billings,
26 cash receipts, and related records of the association to
27 determine that the developer was charged and paid the proper
28 amounts of assessments. This paragraph applies to associations
29 with a date of incorporation after December 31, 2006.

30 Section 16. Section 720.308, Florida Statutes, is
31 amended to read:

1 720.308 Assessments and charges.--
2 (1) ASSESSMENTS.--For any community created after
3 October 1, 1995, the governing documents must describe the
4 manner in which expenses are shared and specify the member's
5 proportional share thereof. Assessments levied pursuant to the
6 annual budget or special assessment must be in the member's
7 proportional share of expenses as described in the governing
8 document, which share may be different among classes of
9 parcels based upon the state of development thereof, levels of
10 services received by the applicable members, or other relevant
11 factors. While the developer is in control of the homeowners'
12 association, it may be excused from payment of its share of
13 the operating expenses and assessments related to its parcels
14 for any period of time for which the developer has, in the
15 declaration, obligated itself to pay any operating expenses
16 incurred that exceed the assessments receivable from other
17 members and other income of the association. This section does
18 not apply to an association, no matter when created, if the
19 association is created in a community that is included in an
20 effective development-of-regional-impact development order as
21 of the effective date of this act, together with any approved
22 modifications thereto.

23 (2) GUARANTEES OF COMMON EXPENSES.--
24 (a) Establishment of a guarantee.--If a guarantee of
25 the assessments of parcel owners is not included in the
26 purchase contracts or declaration, any agreement establishing
27 a guarantee shall only be effective upon the approval of a
28 majority of the voting interests of the members other than the
29 developer. Approval shall be expressed at a meeting of the
30 members voting in person or by limited proxy or by agreement
31

1 in writing without a meeting if provided in the bylaws. Such
2 guarantee shall meet the requirements of this section.

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

6 1. The ending date or event shall be the same for all
7 of the members of an association, including members in
8 different phases of the development.

9 2. The guarantee may provide for different intervals
10 of time during a guarantee period with different dollar
11 amounts for each such interval.

12 3. The guarantee may provide that after the initial
13 stated period, the developer has an option to extend the
14 guarantee for one or more additional stated periods. The
15 extension of a guarantee is limited to extending the ending
16 date or event; therefore, the developer does not have the
17 option of changing the level of assessments guaranteed.

18 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
19 amount of the guarantee shall be an exact dollar amount for
20 each parcel identified in the declaration. Regardless of the
21 stated dollar amount of the guarantee, assessments charged to
22 a member shall not exceed the maximum obligation of the member
23 based on the total amount of the adopted budget and the
24 member's proportionate ownership share of the common elements.

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

28 (a) If at any time during the guarantee period the
29 funds collected from member assessments at the guaranteed
30 level and other revenues collected by the association are not
31 sufficient to provide payment, on a timely basis, of all

1 assessments, including the full funding of the reserves unless
2 properly waived, the guarantor shall advance sufficient cash
3 to the association at the time such payments are due.

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

18 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
19 guarantor's total financial obligation to the association at
20 the end of the guarantee period shall be determined on the
21 accrual basis using the following formula: the guarantor shall
22 pay any deficits that exceed the guaranteed amount, less the
23 total regular periodic assessments earned by the association
24 from the members other than the guarantor during the guarantee
25 period regardless of whether the actual level charged was less
26 than the maximum guaranteed amount.

27 (6) EXPENSES.--Expenses incurred in the production of
28 nonassessment revenues, not in excess of the nonassessment
29 revenues, shall not be included in the operating expenses. If
30 the expenses attributable to nonassessment revenues exceed
31 nonassessment revenues, only the excess expenses must be

1 funded by the guarantor. Interest earned on the investment of
2 association funds may be used to pay the income tax expense
3 incurred as a result of the investment; such expense shall not
4 be charged to the guarantor; and the net investment income
5 shall be retained by the association. Each such
6 nonassessment-revenue-generating activity shall be considered
7 separately. Any portion of the parcel assessment that is
8 budgeted for designated capital contributions of the
9 association shall not be used to pay operating expenses.

10 Section 17. Section 720.311, Florida Statutes, is
11 amended to read:

12 720.311 Dispute resolution.--

13 (1) The Legislature finds that alternative dispute
14 resolution has made progress in reducing court dockets and
15 trials and in offering a more efficient, cost-effective option
16 to litigation. The filing of any petition for ~~mediation or~~
17 arbitration or the serving of an offer for presuit mediation
18 as provided for in this section shall toll the applicable
19 statute of limitations. Any recall dispute filed with the
20 department pursuant to s. 720.303(10) shall be conducted by
21 the department in accordance with the provisions of ss.
22 718.112(2)(j) and 718.1255 and the rules adopted by the
23 division. In addition, the department shall conduct mandatory
24 binding arbitration of election disputes between a member and
25 an association pursuant to s. 718.1255 and rules adopted by
26 the division. Neither election disputes nor recall disputes
27 are eligible for presuit mediation; these disputes shall be
28 arbitrated by the department. At the conclusion of the
29 proceeding, the department shall charge the parties a fee in
30 an amount adequate to cover all costs and expenses incurred by
31 the department in conducting the proceeding. Initially, the

1 petitioner shall remit a filing fee of at least \$200 to the
2 department. The fees paid to the department shall become a
3 recoverable cost in the arbitration proceeding, and the
4 prevailing party in an arbitration proceeding shall recover
5 its reasonable costs and attorney's fees in an amount found
6 reasonable by the arbitrator. The department shall adopt rules
7 to effectuate the purposes of this section.

8 (2)(a) Disputes between an association and a parcel
9 owner regarding use of or changes to the parcel or the common
10 areas and other covenant enforcement disputes, disputes
11 regarding amendments to the association documents, disputes
12 regarding meetings of the board and committees appointed by
13 the board, membership meetings not including election
14 meetings, and access to the official records of the
15 association shall be the subject of an offer filed with the
16 ~~department~~ for presuit mandatory mediation served by an
17 aggrieved party before the dispute is filed in court. Presuit
18 mediation proceedings must be conducted in accordance with the
19 applicable Florida Rules of Civil Procedure, and these
20 proceedings are privileged and confidential to the same extent
21 as court-ordered mediation. Disputes subject to presuit
22 mediation under this section shall not include the collection
23 of any assessment, fine, or other financial obligation,
24 including attorney's fees and costs, claimed to be due or any
25 action to enforce a prior mediation settlement agreement
26 between the parties. Also, in any dispute subject to presuit
27 mediation under this section where emergency relief is
28 required, a motion for temporary injunctive relief may be
29 filed with the court without first complying with the presuit
30 mediation requirements of this section. After any issues
31 regarding emergency or temporary relief are resolved, the

1 court may either refer the parties to a mediation program
2 administered by the courts or require mediation under this
3 section. An arbitrator or judge may not consider any
4 information or evidence arising from the presuit mediation
5 proceeding except in a proceeding to impose sanctions for
6 failure to attend a presuit mediation session or with the
7 parties' agreement in a proceeding seeking to enforce the
8 agreement. Persons who are not parties to the dispute may not
9 attend the presuit mediation conference without the consent of
10 all parties, except for counsel for the parties and a
11 corporate representative designated by the association. When
12 mediation is attended by a quorum of the board, such mediation
13 is not a board meeting for purposes of notice and
14 participation set forth in s. 720.303. An aggrieved party
15 shall serve on the responding party a written offer to
16 participate in presuit mediation in substantially the
17 following form:

18 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

19 The alleged aggrieved party, _____,
20 hereby offers to _____, as the
21 responding party, to enter into presuit
22 mediation in connection with the following
23 dispute, which by statute is of a type that is
24 subject to presuit mediation:

25
26 (List specific nature of the dispute or
27 disputes to be mediated and the authority
28 supporting a finding of a violation as to each
29 dispute.)
30
31

1 Pursuant to section 720.311, Florida Statutes,
2 this offer to resolve the dispute through
3 presuit mediation is required before a lawsuit
4 can be filed concerning the dispute. Pursuant
5 to the statute, the aggrieved party is hereby
6 offering to engage in presuit mediation with a
7 neutral third-party mediator in order to
8 attempt to resolve this dispute without court
9 action, and the aggrieved party demands that
10 you likewise agree to this process. If you fail
11 to agree to presuit mediation, or if you agree
12 and later fail to follow through with your
13 agreement to mediate, suit may be brought
14 against you without further warning.

15
16 The process of mediation involves a supervised
17 negotiation process in which a trained, neutral
18 third-party mediator meets with both parties
19 and assists them in exploring possible
20 opportunities for resolving part or all of the
21 dispute. The mediation process is a voluntary
22 one. By agreeing to participate in presuit
23 mediation, you are not bound in any way to
24 change your position or to enter into any type
25 of agreement. Furthermore, the mediator has no
26 authority to make any decisions in this matter
27 or to determine who is right or wrong and
28 merely acts as a facilitator to ensure that
29 each party understands the position of the
30 other party and that all reasonable settlement
31 options are fully explored. All mediation

1 communications are confidential under the
2 Mediation Confidentiality and Privilege Act
3 pursuant to sections 44.401-44.406, Florida
4 Statutes, and a mediation participant may not
5 disclose a mediation communication to a person
6 other than a mediation participant or a
7 participant's counsel.

8
9 If an agreement is reached, it shall be reduced
10 to writing and becomes a binding and
11 enforceable commitment of the parties. A
12 resolution of one or more disputes in this
13 fashion avoids the need to litigate these
14 issues in court. The failure to reach an
15 agreement, or the failure of a party to
16 participate in the process, results in the
17 mediator's declaring an impasse in the
18 mediation, after which the aggrieved party may
19 proceed to court on all outstanding, unsettled
20 disputes.

21
22 The aggrieved party has selected and hereby
23 lists three certified mediators who we believe
24 to be neutral and qualified to mediate the
25 dispute. You have the right to select any one
26 of these mediators. The fact that one party may
27 be familiar with one or more of the listed
28 mediators does not mean that the mediator
29 cannot act as a neutral and impartial
30 facilitator. Any mediator who cannot act in
31 this capacity ethically must decline to accept

1 engagement. The mediators that we suggest, and
2 their current hourly rates, are as follows:

3
4 (List the names, addresses, telephone numbers,
5 and hourly rates of the mediators. Other
6 pertinent information about the background of
7 the mediators may be included as an
8 attachment.)

9
10 You may contact the offices of these mediators
11 to confirm that the listed mediators will be
12 neutral and will not show any favoritism toward
13 either party. The names of certified mediators
14 may be found through the office of the clerk of
15 the circuit court for this circuit.

16
17 If you agree to participate in the presuit
18 mediation process, the statute requires that
19 each party is to pay one-half of the costs and
20 fees involved in the presuit mediation process
21 unless otherwise agreed by all parties. An
22 average mediation may require 3 to 4 hours of
23 the mediator's time, including some preparation
24 time, and each party would need to pay one-half
25 of the mediator's fees as well as his or her
26 own attorney's fees if he or she chooses to
27 employ an attorney in connection with the
28 mediation. However, use of an attorney is not
29 required and is at the option of each party.
30 The mediator may require the advance payment of
31 some or all of the anticipated fees. The

1 aggrieved party hereby agrees to pay or prepay
2 one-half of the mediator's estimated fees and
3 to forward this amount or such other reasonable
4 advance deposits as the mediator may require
5 for this purpose. Any funds deposited will be
6 returned to you if these are in excess of your
7 share of the fees incurred.

8
9 If you agree to participate in presuit
10 mediation in order to attempt to resolve the
11 dispute and thereby avoid further legal action,
12 please sign below and clearly indicate which
13 mediator is acceptable to you. We will then ask
14 the mediator to schedule a mutually convenient
15 time and place for the mediation conference to
16 be held. The mediation conference must be held
17 within 90 days after the date of this letter
18 unless extended by mutual written agreement. In
19 the event that you fail to respond within 20
20 days after the date of this letter, or if you
21 fail to agree to at least one of the mediators
22 that we have suggested and to pay or prepay to
23 the mediator one-half of the costs involved,
24 the aggrieved party will be authorized to
25 proceed with the filing of a lawsuit against
26 you without further notice and may seek an
27 award of attorney's fees or costs incurred in
28 attempting to obtain mediation.

29
30
31

1 Should you wish, you may also elect to waive
2 presuit mediation so that this matter may
3 proceed directly to court.

4
5 Therefore, please give this matter your
6 immediate attention. By law, your response must
7 be mailed by certified mail, return receipt
8 requested, with an additional copy being sent
9 by regular first-class mail to the address
10 shown on this offer.

11
12 _____
13 _____

14
15 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO
16 OPTIONS BELOW. YOUR SIGNATURE INDICATES YOUR
17 AGREEMENT TO THAT CHOICE.

18
19 AGREEMENT TO MEDIATE

20
21 The undersigned hereby agrees to participate in
22 presuit mediation and agrees to the following
23 mediator or mediators as acceptable to mediate
24 this dispute:

25
26 (List acceptable mediator or mediators.)

27
28 I/we further agree to pay or prepay one-half of
29 the mediator's fees and to forward such advance
30 deposits as the mediator may require for this
31 purpose.

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Signature of responding party #1

Signature of responding party #2 (if applicable)(if property is owned by more than one person, all owners must sign)

WAIVER OF MEDIATION

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

Signature of responding party #1

Signature of responding party #2 (if applicable)(if property is owned by more than one person, all owners must sign)

(b) Service of the statutory offer to participate in presuit mediation shall be effected by sending a letter in substantial conformity with the above form by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the association. The responding party shall have 20 days from the

1 date of the mailing of the statutory offer to serve a response
2 to the aggrieved party in writing. The response shall be
3 served by certified mail, return receipt requested, with an
4 additional copy being sent by regular first-class mail, to the
5 address shown on the statutory offer. In the alternative, the
6 responding party may waive mediation in writing.
7 Notwithstanding the foregoing, once the parties have agreed on
8 a mediator, the mediator may reschedule the mediation for a
9 date and time mutually convenient to the parties. The
10 ~~department shall conduct the proceedings through the use of~~
11 ~~department mediators or refer the disputes to private~~
12 ~~mediators who have been duly certified by the department as~~
13 ~~provided in paragraph (c).~~ The parties shall share the costs
14 of presuit mediation equally, including the fee charged by the
15 mediator, if any, unless the parties agree otherwise, and the
16 mediator may require advance payment of its reasonable fees
17 and costs. The failure of any party to respond to a demand or
18 response, to agree upon a mediator, to make payment of fees
19 and costs within the time established by the mediator, or to
20 appear for a scheduled mediation session shall operate as an
21 impasse in the presuit mediation by such party, entitling the
22 other party to proceed in court and to seek an award of the
23 costs and fees associated with the mediation. Additionally, if
24 any presuit mediation session cannot be scheduled and
25 conducted within 90 days after the offer to participate in
26 mediation was filed, an impasse shall be deemed to have
27 occurred unless both parties agree to extend this deadline. If
28 ~~a department mediator is used, the department may charge such~~
29 ~~fee as is necessary to pay expenses of the mediation,~~
30 ~~including, but not limited to, the salary and benefits of the~~
31 ~~mediator and any travel expenses incurred. The petitioner~~

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

8 ~~(c)(b)~~ If presuit mediation as described in paragraph
9 (a) is not successful in resolving all issues between the
10 parties, the parties may file the unresolved dispute in a
11 court of competent jurisdiction or elect to enter into binding
12 or nonbinding arbitration pursuant to the procedures set forth
13 in s. 718.1255 and rules adopted by the division, with the
14 arbitration proceeding to be conducted by a department
15 arbitrator or by a private arbitrator certified by the
16 department. If all parties do not agree to arbitration
17 proceedings following an unsuccessful presuit mediation, any
18 party may file the dispute in court. A final order resulting
19 from nonbinding arbitration is final and enforceable in the
20 courts if a complaint for trial de novo is not filed in a
21 court of competent jurisdiction within 30 days after entry of
22 the order. As to any issue or dispute that is not resolved at
23 presuit mediation, and as to any issue that is settled at
24 presuit mediation but is thereafter subject to an action
25 seeking enforcement of the mediation settlement, the
26 prevailing party in any subsequent arbitration or litigation
27 proceeding shall be entitled to seek recovery of all costs and
28 attorney's fees incurred in the presuit mediation process.

29 ~~(d)(c)~~ ~~The department shall develop a certification~~
30 ~~and training program for private mediators and private~~
31 ~~arbitrators which shall emphasize experience and expertise in~~

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

23 (e)(d) The presuit mediation procedures provided by
24 this subsection may be used by a Florida corporation
25 responsible for the operation of a community in which the
26 voting members are parcel owners or their representatives, in
27 which membership in the corporation is not a mandatory
28 condition of parcel ownership, or which is not authorized to
29 impose an assessment that may become a lien on the parcel.

30 ~~(3)~~ ~~The department shall develop an education program~~
31 ~~to assist homeowners, associations, board members, and~~

1 ~~managers in understanding and increasing awareness of the~~
2 ~~operation of homeowners' associations pursuant to this chapter~~
3 ~~and in understanding the use of alternative dispute resolution~~
4 ~~techniques in resolving disputes between parcel owners and~~
5 ~~associations or between owners. Such education program may~~
6 ~~include the development of pamphlets and other written~~
7 ~~instructional guides, the holding of classes and meetings by~~
8 ~~department employees or outside vendors, as the department~~
9 ~~determines, and the creation and maintenance of a website~~
10 ~~containing instructional materials. The expenses of operating~~
11 ~~the education program shall be initially paid by the moneys~~
12 ~~and filing fees generated by the arbitration of recall and~~
13 ~~election disputes and by the mediation of those disputes~~
14 ~~referred to in this subsection.~~

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

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2358

4 The CS creates s. 712.11, F.S., to provide for revival of
5 declaration of covenants that have lapsed.

6 The CS amends s 718.106, F.S., to provide for beach access for
7 condominiums.

8 The bill amends s. 718.110, F.S., to limit the enforcement of
9 any provision in the governing documents of a condominium
10 association recorded on or after October 1, 2006 that require
11 the consent or joinder of some or all mortgages, of units or
12 any other portion of the condominium property for those
13 mortgages, with certain exceptions.

14 The CS amends s. 718.112(2)(1), F.S., to extend from 2014 to
15 the end of the year 2025 the date before which local
16 authorities cannot require that condominium associations in
17 high-rise buildings must retrofit their common areas with a
18 fire sprinkler system.

19 The CS amends s. 718.114, F.S., to restrict leaseholds,
20 memberships, or other possessory or use interest acquired
21 within 12 months after a declaration in acquired.

22 The CS amends s. 718.404(1) and (2), F.S., to provide that
23 these subsections apply retroactively as a remedial measure.

24 The CS creates s. 719.013, F.S., to define the term "equity
25 facilities club." It also amends s. 719.507, F.S., to
26 prohibit certain laws, ordinances, or regulations that are not
27 equally applicable to other forms of ownership.

28 The CS amends s. 720.302(4), F.S., to provide that ch. 720,
29 F.S., does not apply to any association regulated under chs.
30 718, 719, 721, or 723, F.S., except to the extent that those
31 chapters expressly incorporate ch. 720, F.S, for the purpose
of regulating homeowners' associations.

The CS amends s. 720.302(5), F.S., to require that
corporations operating residential homeowners' associations in
Florida are to be governed by and subject to ch. 607, F.S., or
to ch. 617, F.S.

The CS amends s. 720.303(2)(a), F.S., as amended by section 18
of ch. 2004-345, L.O.F., and section 135 of ch. 2005-2,
L.O.F., relating to open meeting requirements for homeowner's
association boards. It also repeals section 18 of ch.
2004-345, L.O.F., and section 135 of ch. 2005-2, L.O.F.

The CS amends s. 720.303(5), F.S., to provide for an
association's duty to provide a prospective purchaser or
lienholder with information about the residential subdivision
or the association, and to authorize the association to charge
a reasonable fee, including any attorney's fees incurred by
the association in connection with the response.

The CS also repeals s. 720.303(2), F.S., as amended by section

1 2 of chapter 2004-345, L.O.F., and section 15 of chapter
2 2004-353.

3 The CS amends s. 720.303(6), F.S., to clarify that the fees
4 and charges paid for by the association for recreational
5 amenities must be separately set out.

6 The CS provides that the annual budget may include reserve
7 accounts for capital expenditures and deferred maintenance for
8 which the association is responsible to the extent that the
9 association's governing documents do not limit increases in
10 assessments. It deletes the requirement that the budget must
11 include such a reserve account. It deletes the requirement
12 that these accounts must provide for items such as roof
13 replacement, building painting, and pavement resurfacing and
14 for any other item for which the expense or cost is more than
15 \$10,000.

16 The CS requires that, if the budget of the association
17 includes reserve accounts, the reserves must be determined,
18 maintained and waived in the manner provided in s. 720.303(6),
19 F.S. It requires that, if an association provides for reserve
20 accounts in its budget, it must from then on continue to
21 comply with the procedures in that subsection.

22 The CS creates s. 720.303(6)(c), F.S., to provide a notice
23 requirement for associations that do not provide reserve
24 accounts. It creates s. 720.303(6)(d), F.S., to provide
25 circumstances for when an association is deemed to provide for
26 reserve accounts and to provide procedures for an association
27 to elect to provide for reserve accounts. It provides that
28 any vote taken to waive reserves is applicable for only one
29 budget year. The CS deletes the provision that permits the
30 developer to waive reserves for the first two fiscal years of
31 the association's operation after the initial declaration is
recorded.

The CS creates s. 720.303(6)(g), F.S., to provide the funding
formula for reserves. It creates s. 720.303(6)(h), F.S., to
provide that the reserves may only be used for the authorized
reserve expenditure, unless another use of the expenditure is
approved by a majority of the members.

The CS creates s. 720.3035, F.S., to limit the association's
authority to review and approve building plans and
specifications, including options for the use of material, and
the size or design, only to the extent that it is specifically
stated or reasonably inferred in the declaration of covenants,
or other published guidelines and standards authorized by the
declaration of covenants. It provides for the determination
of setbacks. It also provides for recovery of damages by a
parcel owner that is adversely affected by the infringement or
impairment of the rights set forth in the declaration of
covenants, or other published guidelines and standards
authorized by the declaration of covenants.

The CS amends s. 720.305, F.S., to provide for the
reimbursement of assessments levied to fund the association's
expenses of the litigation with a member who prevails in the
litigation.

The CS amends s. 720.307(3)(t), F.S., to limit the application

1 of this paragraph to associations with a date of incorporation
2 after December 31, 2006.

3 The CS amends s. 720.306(1)(c), F.S., to provide that the
4 merger or consolidation of one or more associations is not
5 considered a material or adverse alteration of the
6 proportionate voting interest appurtenant to a parcel.

7 The CS amends s. 720.308, F.S., to refer to guarantees of
8 assessments of parcel owners instead of common assessments.
9 It provides for the use of interest earned on the investment
10 of the association and to require retention of net investment
11 income by the association. It deletes an example regarding
12 the funding of excess expenses by the guarantor. It also adds
13 headings to each subsection.

14 The CS amends the homeowner's association dispute resolution
15 procedures in s. 720.311, F.S.

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