

By Senator Posey

24-1191A-06

See CS/HB 391

1                                   A bill to be entitled  
 2           An act relating to community associations;  
 3           creating s. 712.11, F.S.; providing for the  
 4           revival of certain declarations that have been  
 5           extinguished; amending s. 718.110, F.S.;  
 6           revising provisions relating to the amendment  
 7           of declarations; providing legislative findings  
 8           and a finding of compelling state interest;  
 9           requiring a holder of a recorded mortgage on a  
 10          condominium unit that requires the consent or  
 11          joinder of a mortgagee to an amendment to  
 12          provide certain information to a condominium  
 13          association; providing definitions; providing  
 14          criteria for consent to an amendment; requiring  
 15          notice regarding proposed amendments to  
 16          mortgagees; providing criteria for  
 17          notification; requiring the association to  
 18          conduct a diligent search to identify  
 19          mortgagees; requiring the association's  
 20          representative to execute an affidavit  
 21          confirming that a diligent search was  
 22          conducted; prohibiting the declaration of  
 23          condominium, articles of incorporation, or  
 24          bylaws from requiring the consent or joinder of  
 25          more than a specified percent of the eligible  
 26          mortgagees in connection with proposed  
 27          amendments under certain conditions; providing  
 28          criteria for enforcement; requiring mortgagees  
 29          seeking to disapprove a proposed amendment to  
 30          provide certain information to the association;  
 31          providing for the recovery of certain costs and

1 attorney's fees; amending s. 718.404, F.S.;  
2 providing retroactive application of provisions  
3 relating to mixed-use condominiums; amending s.  
4 720.302, F.S.; revising governing provisions  
5 relating to corporations that operate  
6 residential homeowners' associations; amending  
7 s. 720.303, F.S.; providing that special  
8 assessments may not be levied at a board  
9 meeting except under certain circumstances;  
10 revising provisions relating to the  
11 closed-circuit cable broadcast notice  
12 requirement; authorizing the association to  
13 charge a reasonable fee for providing good  
14 faith responses to certain requests for  
15 information by or on behalf of a prospective  
16 purchaser or lienholder; providing conditions  
17 for exemption from liability for providing such  
18 information; revising what must be included in  
19 an association's annual budget; providing for  
20 reserve accounts for capital expenditures and  
21 deferred maintenance; revising when the  
22 association must have its financial report  
23 completed and provided to members; repealing s.  
24 720.303(2), F.S., as amended, relating to board  
25 meetings, to remove conflicting versions of  
26 that subsection; amending s. 720.305, F.S.;  
27 providing that, where a member is entitled to  
28 collect attorney's fees against the  
29 association, the member may also recover  
30 additional amounts as determined by the court;  
31 prohibiting an association from filing a

1 foreclosure action against homestead property;  
2 providing exceptions; tolling applicable  
3 limitation periods; amending s. 720.306, F.S.;  
4 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; revising provisions relating to  
9 items that members and parcel owners may  
10 address at membership meetings; amending s.  
11 720.307, F.S.; providing additional documents  
12 that the developer must deliver at the time the  
13 association members elect the board of  
14 directors; amending s. 720.308, F.S.; providing  
15 for the establishment of guarantees of common  
16 expenses shared by association members;  
17 amending s. 720.311, F.S.; revising provisions  
18 relating to dispute resolution; providing that  
19 the filing of any petition for arbitration or  
20 the serving of an offer for presuit mediation  
21 shall toll the applicable statute of  
22 limitations; providing that certain disputes  
23 between an association and a parcel owner shall  
24 be subject to presuit mediation; revising  
25 provisions to conform; providing that temporary  
26 injunctive relief may be sought in certain  
27 disputes subject to presuit mediation;  
28 authorizing the court to refer the parties to  
29 mediation under certain circumstances;  
30 requiring the aggrieved party to serve on the  
31 responding party a written offer to participate

1 in presuit mediation; providing a form for such  
2 offer; providing that service of the offer is  
3 effected by the sending of such an offer in a  
4 certain manner; providing that the prevailing  
5 party in any subsequent arbitration or  
6 litigation proceedings is entitled to seek  
7 recovery of all costs and attorney's fees  
8 incurred in the presuit mediation process;  
9 requiring the mediator or arbitrator to meet  
10 certain certification requirements; removing a  
11 requirement relating to development of an  
12 education program to increase awareness of the  
13 operation of homeowners' associations and the  
14 use of alternative dispute resolution  
15 techniques; providing effective dates.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19 Section 1. Section 712.11, Florida Statutes, is  
20 created to read:

21 712.11 Covenant revitalization.--A homeowners'  
22 association not otherwise subject to chapter 720 may use the  
23 procedures set forth in ss. 720.403-720.407 to revive  
24 covenants that have lapsed under the terms of this chapter.

25 Section 2. Effective October 1, 2006, subsection (11)  
26 of section 718.110, Florida Statutes, is amended to read:

27 718.110 Amendment of declaration; correction of error  
28 or omission in declaration by circuit court.--

29 (11)(a) Notwithstanding any provision to the contrary  
30 contained in this section, any provision in the declaration of  
31 condominium, articles of incorporation, or bylaws that

1 ~~requires~~ declaration recorded after April 1, 1992, may not  
2 ~~require~~ the consent or joinder of some or all mortgagees of  
3 units or any other portion of the condominium property to or  
4 in amendments to the declaration of condominium, articles of  
5 incorporation, or bylaws shall be void to the extent not,  
6 ~~unless the requirement is~~ limited to amendments materially  
7 affecting the rights or interests of the mortgagees, or as  
8 otherwise required by the Federal National Mortgage  
9 Association or the Federal Home Loan Mortgage Corporation, and  
10 any consent or joinder shall ~~unless the requirement provides~~  
11 ~~that such consent may~~ not be unreasonably withheld. It shall  
12 be presumed that, except as to those matters described in  
13 subsections (4) and (8) or other issues materially affecting  
14 the mortgagee's security interest in the property, amendments  
15 to the declaration of condominium, articles of incorporation,  
16 or bylaws do not materially affect the rights or interests of  
17 mortgagees. In the event mortgagee consent is provided other  
18 than by properly recorded joinder, such consent shall be  
19 evidenced by affidavit of the association recorded in the  
20 public records of the county where the declaration of  
21 condominium, articles of incorporation, or bylaws are ~~is~~  
22 recorded.

23 (b) The Legislature finds that the procurement of  
24 mortgagee consent or joinder to amendments that do not  
25 materially affect the rights or interests of mortgagees is an  
26 unreasonable and substantial logistical and financial burden  
27 on the unit owners and condominium associations and that there  
28 is a compelling state interest in enabling the members of a  
29 condominium association to approve amendments. Accordingly,  
30 any holder of a recorded mortgage on a condominium unit or any  
31 other portion of a condominium, which mortgage is first

1 recorded after October 1, 2006, and for which the declaration  
2 of condominium, articles of incorporation, or bylaws require  
3 the consent or joinder of a mortgagee to an amendment, must  
4 provide written notice by certified mail to the association of  
5 the address at which the mortgagee may be contacted in regard  
6 to any proposed amendments. The association shall maintain the  
7 names and addresses of such mortgagees in a registry of  
8 mortgagees, which the association shall utilize when sending a  
9 request for such consent or joinder. A request for consent or  
10 joinder must be mailed to a mortgagee by certified mail,  
11 return receipt requested, to the address provided by the  
12 mortgagee and retained in the registry of mortgagees. As used  
13 in this subsection, "certified mail" means either certified or  
14 registered mail, return receipt requested. Consent to an  
15 amendment shall be deemed to have been given by any holder of  
16 a mortgage that is first recorded after October 1, 2006, and  
17 who fails to provide the required written notice and contact  
18 information. Also, any mortgagee who fails to respond by  
19 certified mail within 30 days after the date the association  
20 mails a request for consent or joinder shall be deemed to have  
21 consented to the proposed amendment.

22 (c) As to mortgages in existence as of October 1,  
23 2006, in those condominiums where the consent or joinder of  
24 such mortgagees is required in connection with amendments to  
25 the governing documents, and where such mortgagees are not  
26 otherwise required by the existing declaration of condominium,  
27 articles of incorporation, or bylaws to provide notice to the  
28 association of their contact information in order to be  
29 eligible to receive notices regarding proposed amendments,  
30 those condominium associations that wish to modify provisions  
31 in the declaration of condominium, articles of incorporation,

1 or bylaws that require the consent or joinder of mortgagees  
2 must notify all mortgagees who hold mortgages on units within  
3 the condominium or other portions of the condominium property  
4 of the need to provide the same contact information as  
5 required in paragraph (b). Any mortgagee who does not provide  
6 contact information as required will be deemed to have  
7 consented to all future proposed amendments. Further, once the  
8 proper address for notifying existing mortgagees has been  
9 obtained in the manner provided for in this subsection,  
10 failure of any mortgagee to respond to a request for the  
11 consent or joinder to a proposed amendment within 30 days  
12 after the date that such request is sent to the mortgagee by  
13 certified mail shall be deemed to have consented to such  
14 amendment. In order to properly notify holders of existing  
15 mortgages:

16 1. The condominium association must first conduct a  
17 diligent search to identify all existing mortgagees and an  
18 address for the required notice to be sent to each mortgagee.  
19 Service of the notice shall be on the mortgagee's registered  
20 agent based upon the information available from the Secretary  
21 of State. Where there is no registered agent, the notice shall  
22 be sent to the address in the original recorded mortgage  
23 unless there is a different address in a more recently  
24 recorded assignment or modification instrument or in the  
25 records maintained by the condominium association. All notices  
26 must be sent by certified mail and must advise the mortgagee  
27 that if he or she fails to provide the contact information  
28 requested within 30 days after the date of mailing of the  
29 certified letter from the association, such mortgagee shall be  
30 deemed to have consented to the proposed amendment.

31

1           2. An affidavit must be executed by a representative  
2 of the condominium association confirming that a diligent  
3 search has been conducted to identify all outstanding  
4 mortgages on the condominium in the manner provided for in  
5 subparagraph 1. and summarizing the steps that were taken in  
6 connection with such diligent search and the notification of  
7 all mortgagees, and such affidavit shall be placed in the  
8 association's minute book as an attachment to the minutes of  
9 the meeting in which the board of directors considers such  
10 affidavit.

11           (d) After October 1, 2006, no new declaration of  
12 condominium, articles of incorporation, or bylaws may require  
13 the consent or joinder of more than 51 percent of the eligible  
14 mortgagees in connection with any proposed amendment unless a  
15 higher percentage is required in order to comply with the  
16 requirements of the Federal National Mortgage Association or  
17 Federal Home Loan Mortgage Corporation. Any new declaration of  
18 condominium, articles of incorporation, or bylaws must also  
19 require mortgagees to provide to the condominium association  
20 the address to which notices may be sent, as provided for in  
21 paragraph (b), in order for such mortgagees to have the right  
22 to be contacted in connection with any proposed amendment.

23           (e) A provision requiring the consent or joinder of  
24 some or all holders of mortgages on units or other portions of  
25 the condominium property to any proposed amendment shall be  
26 enforceable only by mortgagees of record as of the date an  
27 amendment is recorded in the public records and only by those  
28 mortgagees who have complied with the requirements of  
29 paragraph (b) or paragraph (c). Any amendment adopted without  
30 the required consent of a mortgagee shall be deemed voidable  
31 by any mortgagee who was entitled to notice and the



1 opportunity to consent, and actions to void such amendments  
2 shall be subject to the statute of limitations applicable to  
3 actions founded upon written instruments, which statute shall  
4 commence to run as of the date such amendment is recorded in  
5 the public records and, for amendments recorded prior to  
6 October 1, 2006, shall commence on October 1, 2006.

7 (f) In order to establish that he or she is not  
8 unreasonably withholding consent, any mortgagee who seeks to  
9 disapprove of a proposed amendment by withholding his or her  
10 consent or joinder must include in his or her reply to the  
11 condominium association's request for consent or joinder a  
12 statement of the specific reasons the proposed amendment is  
13 claimed to materially and adversely affect the rights and  
14 interests of such mortgagee.

15 (g) In connection with any litigation between a  
16 condominium association and a lender with regard to whether  
17 consent has been improperly or unreasonably withheld, the  
18 prevailing party shall be entitled to recover his or her costs  
19 and reasonable attorney's fees.

20 Section 3. 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

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 4. Subsections (4) and (5) of section 720.302,  
6 Florida Statutes, are amended to read:

7 720.302 Purposes, scope, and application.--

8 (4) This chapter does not apply to any association  
9 that is subject to regulation under chapter 718, chapter 719,  
10 or chapter 721~~+~~ or to any nonmandatory association formed  
11 under chapter 723, except to the extent that a provision of  
12 chapter 718, chapter 719, or chapter 721 is expressly  
13 incorporated into this chapter for the purpose of regulating  
14 homeowners' associations.

15 (5) Unless expressly stated to the contrary,  
16 corporations ~~not for profit~~ that operate residential  
17 homeowners' associations in this state shall be governed by  
18 and subject to chapter 607, if the association was  
19 incorporated thereunder, or to chapter 617, if the association  
20 was incorporated thereunder, and this chapter. This subsection  
21 is intended to clarify existing law.

22 Section 5. Subsections (2), (6), and (7) of section  
23 720.303, Florida Statutes, as amended by section 18 of chapter  
24 2004-345 and section 135 of chapter 2005-2, Laws of Florida,  
25 are amended, and paragraphs (d) and (e) are added to  
26 subsection (5) of that section, to read:

27 720.303 Association powers and duties; meetings of  
28 board; official records; budgets; financial reporting;  
29 association funds; recalls.--

30 (2) BOARD MEETINGS.--

31

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

15           (b) Members have the right to attend all meetings of  
16 the board and to speak on any matter placed on the agenda by  
17 petition of the voting interests for at least 3 minutes. The  
18 association may adopt written reasonable rules expanding the  
19 right of members to speak and governing the frequency,  
20 duration, and other manner of member statements, which rules  
21 must be consistent with this paragraph and may include a  
22 sign-up sheet for members wishing to speak. Notwithstanding  
23 any other law, the requirement that board meetings and  
24 committee meetings be open to the members is inapplicable to  
25 meetings between the board or a committee and the  
26 association's attorney, with respect to meetings of the board  
27 held for the purpose of discussing personnel matters.

28           (c) The bylaws shall provide for giving notice to  
29 parcel owners and members of all board meetings and, if they  
30 do not do so, shall be deemed to provide the following:  
31

1           1. Notices of all board meetings must be posted in a  
2 conspicuous place in the community at least 48 hours in  
3 advance of a meeting, except in an emergency. In the  
4 alternative, if notice is not posted in a conspicuous place in  
5 the community, notice of each board meeting must be mailed or  
6 delivered to each member at least 7 days before the meeting,  
7 except in an emergency. Notwithstanding this general notice  
8 requirement, for communities with more than 100 parcels  
9 ~~members~~, the bylaws may provide for a reasonable alternative  
10 to posting or mailing of notice for each board meeting,  
11 including publication of notice, provision of a schedule of  
12 board meetings, or the conspicuous posting and repeated  
13 broadcasting of the notice on a closed-circuit cable  
14 television system serving the homeowners' association.  
15 However, if broadcast notice is used in lieu of a notice  
16 posted physically in the community, the notice must be  
17 broadcast at least four times every broadcast hour of each day  
18 that a posted notice is otherwise required. When broadcast  
19 notice is provided, the notice ~~and agenda~~ must be broadcast in  
20 a manner and for a sufficient continuous length of time so as  
21 to allow an average reader to observe the notice and read and  
22 comprehend the entire content of the notice ~~and the agenda~~.  
23 The bylaws or amended bylaws may provide for giving notice by  
24 electronic transmission in a manner authorized by law for  
25 meetings of the board of directors, committee meetings  
26 requiring notice under this section, and annual and special  
27 meetings of the members; however, a member must consent in  
28 writing to receiving notice by electronic transmission.  
29           2. A special ~~An~~ assessment may not be levied at a  
30 board meeting unless the notice of the meeting includes a  
31 statement that special assessments will be considered and the

1 nature of the special assessments. Written notice of any  
2 meeting at which special assessments will be considered or at  
3 which amendments to rules regarding parcel use will be  
4 considered must be mailed, delivered, or electronically  
5 transmitted to the members and parcel owners and posted  
6 conspicuously on the property or broadcast on closed-circuit  
7 cable television not less than 14 days before the meeting.

8 3. Directors may not vote by proxy or by secret ballot  
9 at board meetings, except that secret ballots may be used in  
10 the election of officers. ~~This subsection also applies to the~~  
11 ~~meetings of any committee or other similar body, when a final~~  
12 ~~decision will be made regarding the expenditure of association~~  
13 ~~funds, and to any body vested with the power to approve or~~  
14 ~~disapprove architectural decisions with respect to a specific~~  
15 ~~parcel of residential property owned by a member of the~~  
16 ~~community.~~

17 (d) If 20 percent of the total voting interests  
18 petition the board to address an item of business, the board  
19 shall at its next regular board meeting or at a special  
20 meeting of the board, but not later than 60 days after the  
21 receipt of the petition, take the petitioned item up on an  
22 agenda. The board shall give all members notice of the meeting  
23 at which the petitioned item shall be addressed in accordance  
24 with the 14-day notice requirement pursuant to subparagraph  
25 (c)2. Each member shall have the right to speak for at least 3  
26 minutes on each matter placed on the agenda by petition,  
27 provided that the member signs the sign-up sheet, if one is  
28 provided, or submits a written request to speak prior to the  
29 meeting. Other than addressing the petitioned item at the  
30 meeting, the board is not obligated to take any other action  
31 requested by the petition.

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

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

25           (e) An association and its authorized agent are not  
26 liable for providing such information in good faith pursuant  
27 to a written request if the person providing the information  
28 includes a written statement in substantially the following  
29 form: "The responses herein are made in good faith and to the  
30 best of my ability as to their accuracy."

31           (6) BUDGETS.--

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

13           (b) In addition to annual operating expenses, the  
14 budget shall include reserve accounts for capital expenditures  
15 and deferred maintenance. These accounts shall include, but  
16 are not limited to, accounts for roof replacement, building  
17 painting, and pavement resurfacing, regardless of the amount  
18 of deferred maintenance expense or replacement cost, and for  
19 any other item for which the deferred maintenance expense or  
20 replacement cost exceeds \$10,000. The amount to be reserved  
21 shall be computed by means of a formula that is based upon the  
22 estimated remaining useful life and estimated replacement cost  
23 or deferred maintenance expense of each reserve item. The  
24 association may adjust replacement reserve assessments  
25 annually to take into account any changes in estimates or  
26 extension of the useful life of a reserve item caused by  
27 deferred maintenance. This subsection does not apply to an  
28 adopted budget in which the members of an association have  
29 determined, by a majority vote at a duly called meeting of the  
30 association, to provide no reserves or fewer reserves than  
31 required by this subsection. However, prior to turnover of

1 control of an association by a developer to unit owners, the  
2 developer may vote to waive the reserves or reduce the funding  
3 of reserves for the first 2 fiscal years of the association's  
4 operation, beginning with the fiscal year in which the initial  
5 declaration is recorded, after which time reserves may be  
6 waived or reduced only upon the vote of a majority of all  
7 nondeveloper voting interests voting in person or by limited  
8 proxy at a duly called meeting of the association. If a  
9 meeting of the unit owners has been called to determine  
10 whether to waive or reduce the funding of reserves and no such  
11 result is achieved or a quorum is not attained, the reserves  
12 as included in the budget shall go into effect. After the  
13 turnover, the developer may vote its voting interest to waive  
14 or reduce the funding of reserves.

15 (c) Funding formulas for reserves required by this  
16 subsection shall be based on either a separate analysis of  
17 each of the required assets or a pooled analysis of two or  
18 more of the required assets.

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

23 a. The total amount necessary, if any, to bring a  
24 negative component balance to zero.

25 b. The total estimated deferred maintenance expense or  
26 estimated replacement cost of the reserve component less the  
27 estimated balance of the reserve component as of the beginning  
28 of the period for which the budget will be in effect. The  
29 remainder, if greater than zero, shall be divided by the  
30 estimated remaining useful life of the component.  
31



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

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

20 (d) Reserve funds and any interest accruing thereon  
21 shall remain in the reserve account or accounts and shall be  
22 used only for authorized reserve expenditures unless their use  
23 for other purposes is approved in advance by a majority vote  
24 at a duly called meeting of the association. Prior to turnover  
25 of control of an association by a developer to unit owners,  
26 the developer-controlled association shall not vote to use  
27 reserves for purposes other than that for which they were  
28 intended without the approval of a majority of all  
29 nondeveloper voting interests voting in person or by limited  
30 proxy at a duly called meeting of the association.

1           (7) FINANCIAL REPORTING.--Within 90 days after the end  
2 of the fiscal year, or annually on a date provided in the  
3 bylaws, the association shall prepare and complete, or  
4 contract for the preparation and completion of, a financial  
5 report for the preceding fiscal year. Within 21 days after the  
6 final financial report is completed by the association or  
7 received from the third party, but not later than 120 days  
8 after the end of the fiscal year or other date as provided in  
9 the bylaws, the association shall ~~prepare an annual financial~~  
10 report within 60 days after the close of the fiscal year. The  
11 ~~association shall~~, within the time limits set forth in  
12 subsection (5), provide each member with a copy of the annual  
13 financial report or a written notice that a copy of the  
14 financial report is available upon request at no charge to the  
15 member. Financial reports shall be prepared as follows:  
16           (a) An association that meets the criteria of this  
17 paragraph shall prepare or cause to be prepared a complete set  
18 of financial statements in accordance with generally accepted  
19 accounting principles as adopted by the Florida Board of  
20 Accountancy. The financial statements shall be based upon the  
21 association's total annual revenues, as follows:  
22           1. An association with total annual revenues of  
23 \$100,000 or more, but less than \$200,000, shall prepare  
24 compiled financial statements.  
25           2. An association with total annual revenues of at  
26 least \$200,000, but less than \$400,000, shall prepare reviewed  
27 financial statements.  
28           3. An association with total annual revenues of  
29 \$400,000 or more shall prepare audited financial statements.  
30  
31

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 6. 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 7. Section 720.305, Florida Statutes, is  
26 amended to read:

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

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

8           (a) The association;

9           (b) A member;

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

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

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

27           (2) If the governing documents so provide, an  
28 association may suspend, for a reasonable period of time, the  
29 rights of a member or a member's tenants, guests, or invitees,  
30 or both, to use common areas and facilities and may levy  
31 reasonable fines, not to exceed \$100 per violation, against

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

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

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

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

28 (3) If the governing documents so provide, an  
29 association may suspend the voting rights of a member for the  
30 nonpayment of regular annual assessments that are delinquent  
31 in excess of 90 days.

1           (4) If an association fails to fill vacancies on the  
2 board of directors sufficient to constitute a quorum in  
3 accordance with the bylaws, any member may apply to the  
4 circuit court that has jurisdiction over the community served  
5 by the association for the appointment of a receiver to manage  
6 the affairs of the association. At least 30 days before  
7 applying to the circuit court, the member shall mail to the  
8 association, by certified or registered mail, and post, in a  
9 conspicuous place on the property of the community served by  
10 the association, a notice describing the intended action,  
11 giving the association 30 days to fill the vacancies. If  
12 during such time the association fails to fill a sufficient  
13 number of vacancies so that a quorum can be assembled, the  
14 member may proceed with the petition. If a receiver is  
15 appointed, the homeowners' association shall be responsible  
16 for the salary of the receiver, court costs, attorney's fees,  
17 and all other expenses of the receivership. The receiver has  
18 all the powers and duties of a duly constituted board of  
19 directors and shall serve until the association fills a  
20 sufficient number of vacancies on the board so that a quorum  
21 can be assembled.

22           (5) No association may sue to foreclose a lien against  
23 real property during any period of time that the member of the  
24 association who owes the money giving rise to the lien is also  
25 entitled to the homestead protection described in s. 4(a)(1),  
26 Art. X of the State Constitution as to that parcel of real  
27 property. This subsection does not prevent the filing of a  
28 lien against the real property, nor does this subsection bar  
29 the filing of an action against a subsequent purchaser of the  
30 real property regardless of whether the definition of  
31 homestead may be applicable to such subsequent purchaser. Any

1 applicable statute of limitations, whether applicable to an in  
2 rem foreclosure action or applicable to an in personam action  
3 against the member, shall be tolled during any period of time  
4 that the association is barred from filing or prosecuting a  
5 foreclosure action by this subsection.

6 Section 8. Paragraph (c) of subsection (1) and  
7 subsection (6) of section 720.306, Florida Statutes, are  
8 amended to read:

9 720.306 Meetings of members; voting and election  
10 procedures; amendments.--

11 (1) QUORUM; AMENDMENTS.--

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

26 (6) RIGHT TO SPEAK.--Members and parcel owners have  
27 the right to attend all membership meetings and to speak at  
28 any meeting with reference to all items ~~opened for discussion~~  
29 ~~or~~ included on the agenda. Notwithstanding any provision to  
30 the contrary in the governing documents or any rules adopted  
31 by the board or by the membership, a member and a parcel owner



1 have the right to speak for at least 3 minutes on any agenda  
2 item, provided that the member or parcel owner submits a  
3 written request to speak prior to the meeting. The association  
4 may adopt written reasonable rules governing the frequency,  
5 duration, and other manner of member and parcel owner  
6 statements, which rules must be consistent with this  
7 subsection.

8 Section 9. Paragraph (t) is added to subsection (3) of  
9 section 720.307, Florida Statutes, to read:

10 720.307 Transition of association control in a  
11 community.--With respect to homeowners' associations:

12 (3) At the time the members are entitled to elect at  
13 least a majority of the board of directors of the homeowners'  
14 association, the developer shall, at the developer's expense,  
15 within no more than 90 days deliver the following documents to  
16 the board:

17 (t) The financial records, including financial  
18 statements of the association, and source documents from the  
19 incorporation of the association through the date of turnover.  
20 The records shall be audited by an independent certified  
21 public accountant for the period from the incorporation of the  
22 association or from the period covered by the last audit, if  
23 an audit has been performed for each fiscal year since  
24 incorporation. All financial statements shall be prepared in  
25 accordance with generally accepted accounting principles and  
26 shall be audited in accordance with generally accepted  
27 auditing standards, as prescribed by the Florida Board of  
28 Accountancy, pursuant to chapter 473. The certified public  
29 accountant performing the audit shall examine to the extent  
30 necessary supporting documents and records, including the cash  
31 disbursements and related paid invoices to determine if

1 expenditures were for association purposes and the billings,  
2 cash receipts, and related records to determine that the  
3 developer was charged and paid the proper amounts of  
4 assessments.

5 Section 10. Section 720.308, Florida Statutes, is  
6 amended to read:

7 720.308 Assessments and charges.--

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

29 (2) GUARANTEES OF COMMON EXPENSES.--

30 (a) Establishment of guarantee.--If a guarantee is not  
31 included in the purchase contracts, declaration, or

1 prospectus, any agreement establishing a guarantee shall only  
2 be effective either upon the vote of a majority of all  
3 nondeveloper voting interests voting in person or by limited  
4 proxy at a duly called meeting of the association or by  
5 agreement in writing without a meeting if provided in the  
6 bylaws. Such guarantee shall meet the requirements of this  
7 section.

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

11 1. The ending date or event shall be the same for all  
12 of the members of a homeowners' association, including members  
13 in different phases of homeowners' associations.

14 2. The guarantee may provide for different intervals  
15 of time during a guarantee period with different dollar  
16 amounts for each such interval.

17 (c) Guarantee extension.--The guarantee may provide  
18 that after the initial stated period, the developer has an  
19 option to extend the guarantee for one or more additional  
20 stated periods. The extension of a guarantee is limited to  
21 extending the ending date or event; therefore, the developer  
22 does not have the option of changing the level of assessments  
23 guaranteed.

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

31

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

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

11           (b) Expenses incurred in the production of  
12 nonassessment revenues, not in excess of the nonassessment  
13 revenues, shall not be included in the common expenses. If the  
14 expenses attributable to nonassessment revenues exceed  
15 nonassessment revenues, only the excess expenses must be  
16 funded by the guarantor. For example, if the association  
17 operates a rental program in which rental expenses exceed  
18 rental revenues, the guarantor shall fund the rental expenses  
19 in excess of the rental revenues. Interest earned on the  
20 investment of association funds may be used to pay the income  
21 tax expense incurred as a result of the investment, such  
22 expense shall not be charged to the guarantor, and the net  
23 investment income shall be retained by the association. Each  
24 such nonassessment revenue-generating activity shall be  
25 considered separately. Capital contributions collected from  
26 members are not revenues and shall not be used to pay common  
27 expenses.

28           (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The  
29 guarantor's total financial obligation to the association at  
30 the end of the guarantee period shall be determined on the  
31 accrual basis using the following formula:

1           (a) The guarantor shall fund the total common expenses  
2 incurred during the guarantee period, including the full  
3 funding of the reserves unless properly waived; less

4           (b) The total regular periodic assessments earned by  
5 the association from the members other than the guarantor  
6 during the guarantee period regardless of whether the actual  
7 level charged was less 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 common expenses. If the  
11 expenses attributable to nonassessment revenues exceed  
12 nonassessment revenues, only the excess expenses must be  
13 funded by the guarantor. For example, if the association  
14 operates a rental program in which rental expenses exceed  
15 rental revenues, the guarantor shall fund the rental expenses  
16 in excess of the rental revenues. Interest earned on the  
17 investment of association funds may be used to pay the income  
18 tax expense incurred as a result of the investment, such  
19 expense shall not be charged to the guarantor, and the net  
20 investment income shall be retained by the association. Each  
21 such nonassessment revenue-generating activity shall be  
22 considered separately. Capital contributions collected from  
23 members are not revenues and shall not be used to pay common  
24 expenses.

25           Section 11. Section 720.311, Florida Statutes, is  
26 amended to read:

27           720.311 Dispute resolution.--

28           (1) The Legislature finds that alternative dispute  
29 resolution has made progress in reducing court dockets and  
30 trials and in offering a more efficient, cost-effective option  
31 to litigation. The filing of any petition for ~~mediation or~~

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

23           (2)(a) Disputes between an association and a parcel  
24 owner regarding use of or changes to the parcel or the common  
25 areas and other covenant enforcement disputes, disputes  
26 regarding amendments to the association documents, disputes  
27 regarding meetings of the board and committees appointed by  
28 the board, membership meetings not including election  
29 meetings, and access to the official records of the  
30 association shall be the subject of an offer filed with the  
31 ~~department~~ for presuit mandatory mediation served by an

1 aggrieved party before the dispute is filed in court. Presuit  
2 mediation proceedings must be conducted in accordance with the  
3 applicable Florida Rules of Civil Procedure, and these  
4 proceedings are privileged and confidential to the same extent  
5 as court-ordered mediation. Disputes subject to presuit  
6 mediation under this section shall not include the collection  
7 of any assessment, fine, or other financial obligation,  
8 including attorney's fees and costs, claimed to be due or any  
9 action to enforce a prior mediation settlement agreement  
10 between the parties. Also, in any dispute subject to presuit  
11 mediation under this section where emergency relief is  
12 required, a motion for temporary injunctive relief may be  
13 filed with the court without first complying with the presuit  
14 mediation requirements of this section. After any issues  
15 regarding emergency or temporary relief are resolved, the  
16 court may either refer the parties to a mediation program  
17 administered by the courts or require mediation under this  
18 section. An arbitrator or judge may not consider any  
19 information or evidence arising from the presuit mediation  
20 proceeding except in a proceeding to impose sanctions for  
21 failure to attend a presuit mediation session or with the  
22 parties' agreement in a proceeding seeking to enforce the  
23 agreement. Persons who are not parties to the dispute may not  
24 attend the presuit mediation conference without the consent of  
25 all parties, except for counsel for the parties and a  
26 corporate representative designated by the association. When  
27 mediation is attended by a quorum of the board, such mediation  
28 is not a board meeting for purposes of notice and  
29 participation set forth in s. 720.303. An aggrieved party  
30 shall serve on the responding party a written offer to  
31

1 participate in presuit mediation in substantially the  
2 following form:

3  
4 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

5  
6 The alleged aggrieved party, \_\_\_\_\_,  
7 hereby offers to \_\_\_\_\_, as the  
8 responding party, to enter into presuit  
9 mediation in connection with the following  
10 dispute, which by statute is of a type that is  
11 subject to presuit mediation:

12  
13 (List specific nature of the dispute or  
14 disputes to be mediated and the authority  
15 supporting a finding of a violation as to each  
16 dispute.)

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



1  
2       The process of mediation involves a supervised  
3       negotiation process in which a trained, neutral  
4       third-party mediator meets with both parties  
5       and assists them in exploring possible  
6       opportunities for resolving part or all of the  
7       dispute. The mediation process is a voluntary  
8       one. By agreeing to participate in presuit  
9       mediation, you are not bound in any way to  
10       change your position or to enter into any type  
11       of agreement. Furthermore, the mediator has no  
12       authority to make any decisions in this matter  
13       or to determine who is right or wrong and  
14       merely acts as a facilitator to ensure that  
15       each party understands the position of the  
16       other party and that all reasonable settlement  
17       options are fully explored.

18  
19       If an agreement is reached, it shall be reduced  
20       to writing and becomes a binding and  
21       enforceable commitment of the parties. A  
22       resolution of one or more disputes in this  
23       fashion avoids the need to litigate these  
24       issues in court. The failure to reach an  
25       agreement, or the failure of a party to  
26       participate in the process, results in the  
27       mediator's declaring an impasse in the  
28       mediation, after which the aggrieved party may  
29       proceed to court on all outstanding, unsettled  
30       disputes.

31

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

13  
14       (List the names, addresses, telephone numbers,  
15       and hourly rates of the mediators. Other  
16       pertinent information about the background of  
17       the mediators may be included as an  
18       attachment.)

19  
20       You may contact the offices of these mediators  
21       to confirm that the listed mediators will be  
22       neutral and will not show any favoritism toward  
23       either party. The names of certified mediators  
24       may be found through the office of the clerk of  
25       the circuit court for this circuit.

26  
27       If you agree to participate in the presuit  
28       mediation process, the statute requires that  
29       each party is to pay one-half of the costs and  
30       fees involved in the presuit mediation process  
31       unless otherwise agreed by all parties. An

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

18  
19       If you agree to participate in presuit  
20       mediation in order to attempt to resolve the  
21       dispute and thereby avoid further legal action,  
22       please sign below and clearly indicate which  
23       mediator is acceptable to you. We will then ask  
24       the mediator to schedule a mutually convenient  
25       time and place for the mediation conference to  
26       be held. The mediation conference must be held  
27       within 90 days after the date of this letter  
28       unless extended by mutual written agreement. In  
29       the event that you fail to respond within 20  
30       days after the date of this letter, or if you  
31       fail to agree to at least one of the mediators

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

8  
9           Should you wish, you may also elect to waive  
10          presuit mediation so that this matter may  
11          proceed directly to court.

12  
13          Therefore, please give this matter your  
14          immediate attention. By law, your response must  
15          be mailed by certified mail, return receipt  
16          requested, with an additional copy being sent  
17          by regular first-class mail to the address  
18          shown on this offer.

19  
20          \_\_\_\_\_  
21          \_\_\_\_\_

22  
23          RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO  
24          OPTIONS BELOW. YOUR SIGNATURE INDICATES YOUR  
25          AGREEMENT TO THAT CHOICE.

26  
27          AGREEMENT TO MEDIATE

28  
29          The undersigned hereby agrees to participate in  
30          presuit mediation and agrees to the following  
31

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  
31

1           Signature of responding party #2 (if  
2           applicable)(if property is owned by more than  
3           one person, all owners must sign)  
4  
5           (b) Service of the statutory offer to participate in  
6 presuit mediation shall be effected by sending a letter in  
7 substantial conformity with the above form by certified mail,  
8 return receipt requested, with an additional copy being sent  
9 by regular first-class mail, to the address of the responding  
10 party as it last appears on the books and records of the  
11 association. The responding party shall have 20 days from the  
12 date of the mailing of the statutory offer to serve a response  
13 to the aggrieved party in writing. The response shall be  
14 served by certified mail, return receipt requested, with an  
15 additional copy being sent by regular first-class mail, to the  
16 address shown on the statutory offer. In the alternative, the  
17 responding party may waive mediation in writing.  
18 Notwithstanding the foregoing, once the parties have agreed on  
19 a mediator, the mediator may reschedule the mediation for a  
20 date and time mutually convenient to the parties. The  
21 ~~department shall conduct the proceedings through the use of~~  
22 ~~department mediators or refer the disputes to private~~  
23 ~~mediators who have been duly certified by the department as~~  
24 ~~provided in paragraph (c).~~ The parties shall share the costs  
25 of presuit mediation equally, including the fee charged by the  
26 mediator, if any, unless the parties agree otherwise, and the  
27 mediator may require advance payment of its reasonable fees  
28 and costs. The failure of any party to respond to a demand or  
29 response, to agree upon a mediator, to make payment of fees  
30 and costs within the time established by the mediator, or to  
31 appear for a scheduled mediation session shall operate as an

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

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

1 competent jurisdiction within 30 days after entry of the  
2 order. As to any issue or dispute that is not resolved at  
3 presuit mediation, and as to any issue that is settled at  
4 presuit mediation but is thereafter subject to an action  
5 seeking enforcement of the mediation settlement, the  
6 prevailing party in any subsequent arbitration or litigation  
7 proceeding shall be entitled to seek recovery of all costs and  
8 attorney's fees incurred in the presuit mediation process.

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



1 ~~election disputes and by the mediation of those disputes~~  
2 ~~referred to in this subsection and by the training fees.~~

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

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

26       Section 12. Except as otherwise expressly provided in  
27 this act, this act shall take effect July 1, 2006.