

By Senator Diaz de la Portilla

36-1440-06

See HB

1   A bill to be entitled

2           An act relating to community associations;

3           amending s. 718.110, F.S.; requiring notice of

4           a proposed amendment to the declaration to be

5           sent to the unit owner by certified mail;

6           amending s. 718.111, F.S.; restricting a

7           condominium association from waiving a

8           financial report for more than 2 consecutive

9           years; providing duties for condominium boards

10          of administration in the event of certain

11          casualties; providing that certain assessments

12          may be made against unit owners under certain

13          conditions; providing condominium association

14          guidelines for the designation of disabled

15          parking spaces; amending s. 718.112, F.S.;

16          authorizing the board or membership to

17          determine the composition of the board of

18          administration under certain circumstances;

19          requiring the board to respond to certain

20          inquiries by certified mail, return receipt

21          requested; removing a provision allowing a

22          condominium association to respond only once

23          every 30 days to unit owner inquiries;

24          providing that no action shall be taken or

25          resolution made without an open meeting of the

26          board; requiring the board to address agenda

27          items proposed by a petition of 20 percent of

28          the unit owners; revising notice procedures;

29          revising the terms of office and reelection of

30          the members of a condominium association board;

31          providing that certain persons providing notice

1 of a meeting must provide an affidavit  
2 affirming that the notices were delivered;  
3 authorizing the association's representative to  
4 provide certain notices; removing a provision  
5 allowing an association to print or duplicate  
6 certain information sheets on both sides of the  
7 paper; revising procedures relating to the  
8 filling of a vacancy on the board; removing a  
9 provision allowing an association to provide  
10 for different voting and election procedures in  
11 its bylaws; authorizing unit owners the right  
12 to have items placed on the agenda of the  
13 annual meeting and to be voted upon under  
14 certain conditions; requiring a vote to provide  
15 for no reserves or percentage of reserves to be  
16 made at certain times; authorizing the  
17 association to use reserve funds for  
18 nonscheduled purposes under certain conditions;  
19 requiring that assessments be made against  
20 units on a quarter-annual or more frequent  
21 basis; providing that certain provisions shall  
22 not preclude the right of an association to  
23 accelerate assessments of certain owners  
24 delinquent in payment of common expenses;  
25 providing that accelerated assessments shall be  
26 due and payable after the claim of lien is  
27 filed; amending s. 718.113, F.S.; requiring  
28 boards of administration to adopt or restate  
29 hurricane shutter specifications yearly at the  
30 annual meeting; authorizing the board to  
31 install hurricane protection that complies with

1 the applicable building code; requiring the  
2 board to have the condominium buildings  
3 periodically inspected for structural and  
4 electrical soundness by a professional engineer  
5 or professional architect registered in the  
6 state; requiring the inspector to provide a  
7 report to the association; amending s. 718.115,  
8 F.S.; providing that a bulk contract for basic  
9 service may be deemed a common expense;  
10 amending s. 718.116, F.S.; removing provisions  
11 limiting the liability of a first mortgagee or  
12 its successor or assignees who acquire title to  
13 a unit by foreclosure or by deed; revising the  
14 order in which payments received by the  
15 association must be applied; restricting  
16 certain liens from being filed on a condominium  
17 parcel until 30 days after service of a notice  
18 of intent to file the lien; requiring that  
19 itemized expenses and a payment schedule be  
20 included in certain special assessments;  
21 providing that funds collected pursuant to a  
22 special assessment shall not be commingled with  
23 any other association funds; creating s.  
24 718.1223, F.S.; requiring any complaint of  
25 abuse filed with the Division of Florida Land  
26 Sales, Condominiums, and Mobile Homes shall  
27 immediately be investigated by the division;  
28 requiring the division to institute enforcement  
29 proceedings under certain circumstances;  
30 defining the term "abuse" for purposes of the  
31 section; creating s. 718.1224, F.S.;

1 prohibiting certain lawsuits arising from unit  
2 owners' appearances and presentations before a  
3 governmental entity; providing a definition;  
4 amending s. 718.1255, F.S.; requiring the  
5 division to promptly refer certain cases to  
6 mediation; providing that an arbitrator may  
7 refer a dispute to mediation at any time;  
8 amending s. 718.302, F.S.; conforming  
9 provisions; amending s. 718.3026, F.S.;  
10 providing that certain contracts between a  
11 service provider and an association shall not  
12 be for a term in excess of 3 years and shall  
13 not contain an automatic renewal clause;  
14 requiring that certain contracts for  
15 construction must have the approval of an  
16 attorney hired by the association; amending s.  
17 718.303, F.S.; requiring that persons subject  
18 to certain actions be notified of their  
19 violation in a certain manner; providing a  
20 timeframe in which the person must respond;  
21 amending s. 718.501, F.S.; requiring the  
22 division to prepare and disseminate a  
23 prospectus and other information for use by  
24 owners, purchasers, lessees, and developers of  
25 residential condominiums; providing that the  
26 board member training provided by the division  
27 shall be provided in conjunction with  
28 recommendations by the ombudsman; amending s.  
29 718.5011, F.S.; restricting location of the  
30 Office of the Condominium Ombudsman; providing  
31 that the ombudsman shall exercise his or her

1 policymaking and other functions independently  
2 of the Department of Business and Professional  
3 Regulation and without approval or control of  
4 the department; requiring the department to  
5 render administrative support for certain  
6 matters; requiring that revenues collected by  
7 the department for the Office of the  
8 Condominium Ombudsman be deposited in a  
9 separate fund or account; amending s. 718.5012,  
10 F.S.; providing that the division shall process  
11 the ombudsman's recommendations and petitions  
12 in an expedited manner and defer to his or her  
13 findings; providing the ombudsman with the  
14 power to order meetings between certain  
15 parties; authorizing the ombudsman to make  
16 recommendations to the division to pursue  
17 enforcement action in circuit court on behalf  
18 of a class of unit owners, lessees, or  
19 purchasers; authorizing the ombudsman to order  
20 that any aspect of an association election be  
21 conducted by an election monitor; authorizing  
22 the ombudsman to order an association to  
23 implement certain remedies; authorizing the  
24 ombudsman to order certain persons to cease and  
25 desist from unlawful practices; repealing s.  
26 718.50151, F.S., to abolish the Advisory  
27 Council on Condominiums and its functions;  
28 amending s. 719.1055, F.S.; providing that  
29 amendments restricting cooperative owners'  
30 rights relating to the rental of units apply  
31 only to certain unit owners; creating s.

1           720.4016, F.S.; creating the Advisory Council  
2           on Mandated Properties to be located within the  
3           division; providing membership; providing that  
4           members of the council shall serve without  
5           compensation but are entitled to receive per  
6           diem and travel expenses; providing that  
7           vacancies shall be filled in the same manner as  
8           original appointments; providing an effective  
9           date.

10

11 Be It Enacted by the Legislature of the State of Florida:

12

13           Section 1. Paragraph (d) is added to subsection (1) of  
14 section 718.110, Florida Statutes, to read:

15           718.110 Amendment of declaration; correction of error  
16 or omission in declaration by circuit court.--

17           (1)

18           (d) Notice of a proposed amendment to the declaration  
19 shall be sent to the unit owner by certified mail.

20           Section 2. Paragraph (d) of subsection (13) of section  
21 718.111, Florida Statutes, is amended, and subsections (15)  
22 and (16) are added to that section, to read:

23           718.111 The association.--

24           (13) FINANCIAL REPORTING.--Within 90 days after the  
25 end of the fiscal year, or annually on a date provided in the  
26 bylaws, the association shall prepare and complete, or  
27 contract for the preparation and completion of, a financial  
28 report for the preceding fiscal year. Within 21 days after the  
29 final financial report is completed by the association or  
30 received from the third party, but not later than 120 days  
31 after the end of the fiscal year or other date as provided in

1 | the bylaws, the association shall mail to each unit owner at  
2 | the address last furnished to the association by the unit  
3 | owner, or hand deliver to each unit owner, a copy of the  
4 | financial report or a notice that a copy of the financial  
5 | report will be mailed or hand delivered to the unit owner,  
6 | without charge, upon receipt of a written request from the  
7 | unit owner. The division shall adopt rules setting forth  
8 | uniform accounting principles and standards to be used by all  
9 | associations and shall adopt rules addressing financial  
10 | reporting requirements for multicondominium associations. In  
11 | adopting such rules, the division shall consider the number of  
12 | members and annual revenues of an association. Financial  
13 | reports shall be prepared as follows:

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

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

19 |           2. A report of cash receipts and expenditures or a  
20 | compiled financial statement in lieu of a reviewed or audited  
21 | financial statement; or

22 |           3. A report of cash receipts and expenditures, a  
23 | compiled financial statement, or a reviewed financial  
24 | statement in lieu of an audited financial statement.

25 |

26 | Such meeting and approval must occur prior to the end of the  
27 | fiscal year and is effective only for the fiscal year in which  
28 | the vote is taken. With respect to an association to which the  
29 | developer has not turned over control of the association, all  
30 | unit owners, including the developer, may vote on issues  
31 | related to the preparation of financial reports for the first

1 2 fiscal years of the association's operation, beginning with  
2 the fiscal year in which the declaration is recorded.  
3 Thereafter, all unit owners except the developer may vote on  
4 such issues until control is turned over to the association by  
5 the developer. Under no circumstances may an association or  
6 board of administration waive the financial reporting  
7 requirements of this section for more than 2 consecutive  
8 years.

9 (15) RECONSTRUCTION AFTER CASUALTY.--

10 (a) In the event of a casualty whereby the condominium  
11 property and units are damaged, the board of administration  
12 shall obtain reliable and detailed estimates of the cost  
13 necessary to repair and replace the damaged property to  
14 substantially the same condition existing immediately prior to  
15 the casualty and substantially in accordance with the original  
16 plans and specifications of the condominium as soon as  
17 possible and not later than 60 days after the casualty. If the  
18 damage to the condominium property exceeds 50 percent of the  
19 property's value, the condominium may be terminated unless,  
20 within 90 days after the casualty, 75 percent of the unit  
21 owners agree to reconstruction and repair.

22 (b) The board of administration shall engage the  
23 services of a registered architect and knowledgeable  
24 construction specialists to prepare any necessary plans and  
25 specifications and shall receive and approve bids for  
26 reconstruction, shall execute all necessary contracts for  
27 restoration, and shall arrange for disbursement of  
28 construction funds, the approval of work, and all other  
29 matters pertaining to the repairs and reconstruction required.

30 (c) At any time during reconstruction and repair, or  
31 if the proceeds of the hazard insurance policy maintained by



1 the association pursuant to paragraph (11)(b) are insufficient  
2 to pay the estimated costs of reconstruction, assessments  
3 shall be made against all unit owners according to their share  
4 of the common elements and expenses as set forth in the  
5 declaration of condominium.

6 (d) Assessments shall be made against unit owners for  
7 damage to their units according to the cost of reconstruction  
8 or repair of their respective units. The assessments shall be  
9 levied and collected as all other assessments are provided for  
10 in this chapter.

11 (16) GUEST DISABLED PARKING SPACES.--Where quest  
12 disabled parking is provided, the quest disabled parking  
13 spaces shall be configured and signed pursuant to s. 553.5041.  
14 The association may increase the number of quest disabled  
15 parking spaces, if needed. Residents with disabilities shall  
16 not park in a disabled quest space unless their assigned  
17 parking space is in use illegally. Resident disabled parking  
18 shall be assigned by the board of directors from the spaces  
19 made available by the association pursuant to state and  
20 federal fair housing law. When a resident has two vehicles,  
21 one equipped with a lift, the association shall assign a  
22 second space that satisfies the needs of the vehicle and lift  
23 operation if additional parking space is available and  
24 unassigned.

25 Section 3. Paragraphs (a), (b), (c), (d), (f), and (g)  
26 of subsection (2) of section 718.112, Florida Statutes, are  
27 amended to read:

28 718.112 Bylaws.--

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

1 (a) Administration.--

2 1. The form of administration of the association shall  
3 be described indicating the title of the officers and board of  
4 administration and specifying the powers, duties, manner of  
5 selection and removal, and compensation, if any, of officers  
6 and boards. In the absence of such a provision, or  
7 determination by the board or membership, the board of  
8 administration shall be composed of five members, except in  
9 the case of a condominium which has five or fewer units, in  
10 which case in a not-for-profit corporation the board shall  
11 consist of not fewer than three members. In the absence of  
12 provisions to the contrary in the bylaws, the board of  
13 administration shall have a president, a secretary, and a  
14 treasurer, who shall perform the duties of such officers  
15 customarily performed by officers of corporations. Unless  
16 prohibited in the bylaws, the board of administration may  
17 appoint other officers and grant them the duties it deems  
18 appropriate. Unless otherwise provided in the bylaws, the  
19 officers shall serve without compensation and at the pleasure  
20 of the board of administration. Unless otherwise provided in  
21 the bylaws, the members of the board shall serve without  
22 compensation.

23 2. When a unit owner files a written inquiry by  
24 certified mail with the board of administration, the board  
25 shall respond in writing by certified mail, return receipt  
26 requested, to the unit owner within 30 days of receipt of the  
27 inquiry. The board's response shall either give a substantive  
28 response to the inquirer, notify the inquirer that a legal  
29 opinion has been requested, or notify the inquirer that advice  
30 has been requested from the division. If the board requests  
31 advice from the division, the board shall, within 10 days of

1 | its receipt of the advice, provide in writing a substantive  
2 | response to the inquirer. If a legal opinion is requested, the  
3 | board shall, within 60 days after the receipt of the inquiry,  
4 | provide in writing a substantive response to the inquiry. The  
5 | failure to provide a substantive response to the inquiry as  
6 | provided herein precludes the board from recovering attorney's  
7 | fees and costs in any subsequent litigation, administrative  
8 | proceeding, or arbitration arising out of the inquiry. ~~The~~  
9 | ~~association may through its board of administration adopt~~  
10 | ~~reasonable rules and regulations regarding the frequency and~~  
11 | ~~manner of responding to unit owner inquiries, one of which may~~  
12 | ~~be that the association is only obligated to respond to one~~  
13 | ~~written inquiry per unit in any given 30 day period. In such a~~  
14 | ~~case, any additional inquiry or inquiries must be responded to~~  
15 | ~~in the subsequent 30 day period, or periods, as applicable.~~

16 | (b) Quorum; voting requirements; proxies.--

17 | 1. Unless a lower number is provided in the bylaws,  
18 | the percentage of voting interests required to constitute a  
19 | quorum at a meeting of the members shall be a majority of the  
20 | voting interests. Unless otherwise provided in this chapter or  
21 | in the declaration, articles of incorporation, or bylaws, and  
22 | except as provided in subparagraph (d)3., decisions shall be  
23 | made by owners of a majority of the voting interests  
24 | represented at a meeting at which a quorum is present.

25 | 2. Except as specifically otherwise provided herein,  
26 | after January 1, 1992, unit owners may not vote by general  
27 | proxy, but may vote by limited proxies substantially  
28 | conforming to a limited proxy form adopted by the division.  
29 | Limited proxies and general proxies may be used to establish a  
30 | quorum. Limited proxies shall be used for votes taken to waive  
31 | or reduce reserves in accordance with subparagraph (f)2.; for

1 votes taken to waive the financial reporting requirements of  
2 s. 718.111(13); for votes taken to amend the declaration  
3 pursuant to s. 718.110; for votes taken to amend the articles  
4 of incorporation or bylaws pursuant to this section; and for  
5 any other matter for which this chapter requires or permits a  
6 vote of the unit owners. ~~Except as provided in paragraph (d),~~  
7 ~~after January 1, 1992,~~ No proxy, limited or general, shall be  
8 used in the election of board members. General proxies may be  
9 used for other matters for which limited proxies are not  
10 required, and may also be used in voting for nonsubstantive  
11 changes to items for which a limited proxy is required and  
12 given. Notwithstanding the provisions of this subparagraph,  
13 unit owners may vote in person at unit owner meetings. Nothing  
14 contained herein shall limit the use of general proxies or  
15 require the use of limited proxies for any agenda item or  
16 election at any meeting of a timeshare condominium  
17 association.

18           3. Any proxy given shall be effective only for the  
19 specific meeting for which originally given and any lawfully  
20 adjourned meetings thereof. In no event shall any proxy be  
21 valid for a period longer than 90 days after the date of the  
22 first meeting for which it was given. Every proxy is revocable  
23 at any time at the pleasure of the unit owner executing it.

24           4. A member of the board of administration or a  
25 committee may submit in writing his or her agreement or  
26 disagreement with any action taken at a meeting that the  
27 member did not attend. This agreement or disagreement may not  
28 be used as a vote for or against the action taken and may not  
29 be used for the purposes of creating a quorum.

30           5. When any of the board or committee members meet by  
31 telephone conference, those board or committee members

1 attending by telephone conference may be counted toward  
2 obtaining a quorum and may vote by telephone. A telephone  
3 speaker must be used so that the conversation of those board  
4 or committee members attending by telephone may be heard by  
5 the board or committee members attending in person as well as  
6 by any unit owners present at a meeting.

7 (c) Board of administration meetings.--Meetings of the  
8 board of administration at which a quorum of the members is  
9 present shall be open to all unit owners. No action shall be  
10 taken or resolution made without an open meeting of the board  
11 of administration. The board of administration shall address  
12 agenda items proposed by a petition of 20 percent of the unit  
13 owners. Any unit owner may tape record or videotape meetings  
14 of the board of administration. The right to attend such  
15 meetings includes the right to speak at such meetings with  
16 reference to all designated agenda items. The division shall  
17 adopt reasonable rules governing the tape recording and  
18 videotaping of the meeting. The association may adopt written  
19 reasonable rules governing the frequency, duration, and manner  
20 of unit owner statements. Adequate notice of all meetings,  
21 which notice shall specifically incorporate an identification  
22 of agenda items, shall be posted conspicuously on the  
23 condominium property at least 48 continuous hours preceding  
24 the meeting except in an emergency. Any item not included on  
25 the notice may be taken up on an emergency basis by at least a  
26 majority plus one of the members of the board or by a petition  
27 of 20 percent of the unit owners. Such emergency action shall  
28 be noticed and ratified at the next regular meeting of the  
29 board. However, written notice of any meeting at which  
30 nonemergency special assessments, or at which amendment to  
31 rules regarding unit use, will be considered shall be mailed,

1 delivered, or electronically transmitted to the unit owners  
2 and posted conspicuously on the condominium property not less  
3 than 14 days prior to the meeting. Evidence of compliance with  
4 this 14-day notice shall be made by an affidavit executed by  
5 the person providing the notice and filed among the official  
6 records of the association. Upon notice to the unit owners,  
7 the board shall by duly adopted rule designate a specific  
8 location on the condominium property or association property  
9 upon which all notices of board meetings shall be posted. If  
10 there is no condominium property or association property upon  
11 which notices can be posted, notices of board meetings shall  
12 be mailed, delivered, or electronically transmitted at least  
13 14 days before the meeting to the owner of each unit. In lieu  
14 of or in addition to the physical posting of notice of any  
15 meeting of the board of administration on the condominium  
16 property, the association may, by reasonable rule, adopt a  
17 procedure for conspicuously posting and repeatedly  
18 broadcasting the notice and the agenda on a closed-circuit  
19 cable television system serving the condominium association.  
20 However, if broadcast notice is used in lieu of a notice  
21 posted physically on the condominium property, the notice and  
22 agenda must be broadcast at least four times every broadcast  
23 hour of each day that a posted notice is otherwise required  
24 under this section. When broadcast notice is provided, the  
25 notice and agenda must be broadcast in a manner and for a  
26 sufficient continuous length of time so as to allow an average  
27 reader to observe the notice and read and comprehend the  
28 entire content of the notice and the agenda. Notice of any  
29 meeting in which regular or special assessments against unit  
30 owners are to be considered for any reason shall specifically  
31 contain a statement that assessments will be considered and

1 | the nature, cost, and breakdown of any such assessments.  
2 | Meetings of a committee to take final action on behalf of the  
3 | board or make recommendations to the board regarding the  
4 | association budget are subject to the provisions of this  
5 | paragraph. Meetings of a committee that does not take final  
6 | action on behalf of the board or make recommendations to the  
7 | board regarding the association budget are subject to the  
8 | provisions of this section, unless those meetings are exempted  
9 | from this section by the bylaws of the association.  
10 | Notwithstanding any other law, the requirement that board  
11 | meetings and committee meetings be open to the unit owners is  
12 | inapplicable to meetings between the board or a committee and  
13 | the association's attorney, with respect to proposed or  
14 | pending litigation, when the meeting is held for the purpose  
15 | of seeking or rendering legal advice.

16 |           (d) Unit owner meetings.--

17 |           1. There shall be an annual meeting of the unit  
18 | owners. Unless the bylaws provide otherwise, a vacancy on the  
19 | board caused by the expiration of a director's term shall be  
20 | filled by electing a new board member, and the election shall  
21 | be by secret ballot; however, if the number of vacancies  
22 | equals or exceeds the number of candidates, no election is  
23 | required. If there is no provision in the bylaws for terms of  
24 | the members of the board, the terms of all members of the  
25 | board shall expire upon the election of their successors at  
26 | the annual meeting. A unit owner may not serve on the board as  
27 | a director for more than two terms or longer than 4 years. A  
28 | member may not serve as an officer of the corporation for more  
29 | than one term. Coowners of a unit may not serve as members of  
30 | the board of administration during the same fiscal year. Any  
31 | unit owner desiring to be a candidate for board membership

1 shall comply with subparagraph 3. A person who has been  
2 convicted of any felony by any court of record in the United  
3 States and who has not had his or her right to vote restored  
4 pursuant to law in the jurisdiction of his or her residence is  
5 not eligible for board membership. The validity of an action  
6 by the board is not affected if it is later determined that a  
7 member of the board is ineligible for board membership due to  
8 having been convicted of a felony.

9           2. The bylaws shall provide the method of calling  
10 meetings of unit owners, including annual meetings. Written  
11 notice, which notice must include an agenda, shall be mailed,  
12 hand delivered, or electronically transmitted to each unit  
13 owner at least 14 days prior to the annual meeting and shall  
14 be posted in a conspicuous place on the condominium property  
15 at least 14 continuous days preceding the annual meeting. Upon  
16 notice to the unit owners, the board shall by duly adopted  
17 rule designate a specific location on the condominium property  
18 or association property upon which all notices of unit owner  
19 meetings shall be posted; however, if there is no condominium  
20 property or association property upon which notices can be  
21 posted, this requirement does not apply. In lieu of or in  
22 addition to the physical posting of notice of any meeting of  
23 the unit owners on the condominium property, the association  
24 may, by reasonable rule, adopt a procedure for conspicuously  
25 posting and repeatedly broadcasting the notice and the agenda  
26 on a closed-circuit cable television system serving the  
27 condominium association. However, if broadcast notice is used  
28 in lieu of a notice posted physically on the condominium  
29 property, the notice and agenda must be broadcast at least  
30 four times every broadcast hour of each day that a posted  
31 notice is otherwise required under this section. When



1 broadcast notice is provided, the notice and agenda must be  
2 broadcast in a manner and for a sufficient continuous length  
3 of time so as to allow an average reader to observe the notice  
4 and read and comprehend the entire content of the notice and  
5 the agenda. Unless a unit owner waives in writing the right to  
6 receive notice of the annual meeting, such notice shall be  
7 hand delivered, mailed, or electronically transmitted to each  
8 unit owner. Notice for meetings and notice for all other  
9 purposes shall be mailed to each unit owner at the address  
10 last furnished to the association by the unit owner, or hand  
11 delivered to each unit owner. However, if a unit is owned by  
12 more than one person, the association shall provide notice,  
13 for meetings and all other purposes, to that one address which  
14 the developer initially identifies for that purpose and  
15 thereafter as one or more of the owners of the unit shall so  
16 advise the association in writing, or if no address is given  
17 or the owners of the unit do not agree, to the address  
18 provided on the deed of record. An officer of the association,  
19 or the manager or other person providing the first notice of  
20 the association meeting, and the second notice as set forth in  
21 subparagraph 3., shall provide an affidavit or United States  
22 Postal Service certificate of mailing, to be included in the  
23 official records of the association affirming that the first  
24 and second notices were ~~notice was~~ mailed or hand delivered,  
25 in accordance with this provision.

26           3. The members of the board shall be elected by  
27 written ballot or voting machine. Proxies shall in no event be  
28 used in electing the board, either in general elections or  
29 elections to fill vacancies caused by recall, resignation, or  
30 otherwise, unless otherwise provided in this chapter. Not less  
31 than 60 days before a scheduled election, the association or

1 its representative shall mail, deliver, or electronically  
2 transmit, whether by separate association mailing or included  
3 in another association mailing, delivery, or transmission,  
4 including regularly published newsletters, to each unit owner  
5 entitled to a vote, a first notice of the date of the  
6 election. Any unit owner or other eligible person desiring to  
7 be a candidate for the board must give written notice to the  
8 association or its representative not less than 40 days before  
9 a scheduled election. Together with the written notice and  
10 agenda as set forth in subparagraph 2., the association or its  
11 representative shall mail, deliver, or electronically transmit  
12 a second notice of the election to all unit owners entitled to  
13 vote therein, together with a ballot which shall list all  
14 candidates. Upon request of a candidate, the association or  
15 its representative shall include an information sheet, no  
16 larger than 8 1/2 inches by 11 inches, which must be furnished  
17 by the candidate not less than 35 days before the election, to  
18 be included with the mailing, delivery, or transmission of the  
19 ballot, with the costs of mailing, delivery, or electronic  
20 transmission and copying to be borne by the association. The  
21 association is not liable for the contents of the information  
22 sheets prepared by the candidates. ~~In order to reduce costs,~~  
23 ~~the association may print or duplicate the information sheets~~  
24 ~~on both sides of the paper.~~ The division shall by rule  
25 establish voting procedures consistent with the provisions  
26 contained herein, including rules establishing procedures for  
27 giving notice by electronic transmission and rules providing  
28 for the secrecy of ballots. Elections shall be decided by a  
29 plurality of those ballots cast. There shall be no quorum  
30 requirement; however, at least 20 percent of the eligible  
31 voters must cast a ballot in order to have a valid election of

1 | members of the board. No unit owner shall permit any other  
2 | person to vote his or her ballot, and any such ballots  
3 | improperly cast shall be deemed invalid, provided any unit  
4 | owner who violates this provision may be fined by the  
5 | association in accordance with s. 718.303. A unit owner who  
6 | needs assistance in casting the ballot for the reasons stated  
7 | in s. 101.051 may obtain assistance in casting the ballot. The  
8 | regular election shall occur on the date of the annual  
9 | meeting. The provisions of this subparagraph shall not apply  
10 | to timeshare condominium associations. Notwithstanding the  
11 | provisions of this subparagraph, an election is not required  
12 | unless more candidates file notices of intent to run or are  
13 | nominated than board vacancies exist.

14 |         4. Any approval by unit owners called for by this  
15 | chapter or the applicable declaration or bylaws, including,  
16 | but not limited to, the approval requirement in s. 718.111(8),  
17 | shall be made at a duly noticed meeting of unit owners and  
18 | shall be subject to all requirements of this chapter or the  
19 | applicable condominium documents relating to unit owner  
20 | decisionmaking, except that unit owners may take action by  
21 | written agreement, without meetings, on matters for which  
22 | action by written agreement without meetings is expressly  
23 | allowed by the applicable bylaws or declaration or any statute  
24 | that provides for such action.

25 |         5. Unit owners may waive notice of specific meetings  
26 | if allowed by the applicable bylaws or declaration or any  
27 | statute. If authorized by the bylaws, notice of meetings of  
28 | the board of administration, unit owner meetings, except unit  
29 | owner meetings called to recall board members under paragraph  
30 | (j), and committee meetings may be given by electronic  
31 |

1 transmission to unit owners who consent to receive notice by  
2 electronic transmission.

3           6. Unit owners shall have the right to participate in  
4 meetings of unit owners with reference to all designated  
5 agenda items. However, the association may adopt reasonable  
6 rules governing the frequency, duration, and manner of unit  
7 owner participation.

8           7. Any unit owner may tape record or videotape a  
9 meeting of the unit owners subject to reasonable rules adopted  
10 by the division.

11           8. Unless otherwise provided in the bylaws, any  
12 vacancy occurring on the board before the expiration of a term  
13 may be filled by the affirmative vote of the majority of the  
14 remaining directors, even if the remaining directors  
15 constitute less than a quorum, or by the sole remaining  
16 director. In the alternative, a board may hold an election to  
17 fill the vacancy, in which case the election procedures must  
18 conform to the requirements of subparagraph 3. ~~unless the~~  
19 ~~association has opted out of the statutory election process,~~  
20 ~~in which case the bylaws of the association control.~~ Unless  
21 otherwise provided in the bylaws, a board member appointed or  
22 elected under this section shall fill the vacancy for the  
23 unexpired term of the seat being filled. Filling vacancies  
24 created by recall is governed by paragraph (j) and rules  
25 adopted by the division.

26  
27 ~~Notwithstanding subparagraphs (b)2. and (d)3., an association~~  
28 ~~may, by the affirmative vote of a majority of the total voting~~  
29 ~~interests, provide for different voting and election~~  
30 ~~procedures in its bylaws, which vote may be by a proxy~~  
31 ~~specifically delineating the different voting and election~~

1 ~~procedures. The different voting and election procedures may~~  
2 ~~provide for elections to be conducted by limited or general~~  
3 ~~proxy.~~

4 9. Unit owners have the right to have items placed on  
5 the agenda of the annual meeting and to be voted upon if a  
6 written request is made to the board of administration by 20  
7 percent or more of all voting interests at least 90 days  
8 before the date of the annual meeting.

9 (f) Annual budget.--

10 1. The proposed annual budget of common expenses shall  
11 be detailed and shall show the amounts budgeted by accounts  
12 and expense classifications, including, if applicable, but not  
13 limited to, those expenses listed in s. 718.504(21). A  
14 multicondominium association shall adopt a separate budget of  
15 common expenses for each condominium the association operates  
16 and shall adopt a separate budget of common expenses for the  
17 association. In addition, if the association maintains limited  
18 common elements with the cost to be shared only by those  
19 entitled to use the limited common elements as provided for in  
20 s. 718.113(1), the budget or a schedule attached thereto shall  
21 show amounts budgeted therefor. If, after turnover of control  
22 of the association to the unit owners, any of the expenses  
23 listed in s. 718.504(21) are not applicable, they need not be  
24 listed.

25 2. In addition to annual operating expenses, the  
26 budget shall include reserve accounts for capital expenditures  
27 and deferred maintenance. These accounts shall include, but  
28 are not limited to, roof replacement, building painting, and  
29 pavement resurfacing, regardless of the amount of deferred  
30 maintenance expense or replacement cost, and for any other  
31 item for which the deferred maintenance expense or replacement

1 | cost exceeds \$10,000. The amount to be reserved shall be  
2 | computed by means of a formula which is based upon estimated  
3 | remaining useful life and estimated replacement cost or  
4 | deferred maintenance expense of each reserve item. The  
5 | association may adjust replacement reserve assessments  
6 | annually to take into account any changes in estimates or  
7 | extension of the useful life of a reserve item caused by  
8 | deferred maintenance. This subsection does not apply to an  
9 | adopted budget in which the members of an association have  
10 | determined, by a majority vote at a duly called meeting of the  
11 | association, to provide no reserves or less reserves than  
12 | required by this subsection. However, prior to turnover of  
13 | control of an association by a developer to unit owners other  
14 | than a developer pursuant to s. 718.301, the developer may  
15 | vote to waive the reserves or reduce the funding of reserves  
16 | for the first 2 fiscal years of the association's operation,  
17 | beginning with the fiscal year in which the initial  
18 | declaration is recorded, after which time reserves may be  
19 | waived or reduced only upon the vote of a majority of all  
20 | nondeveloper voting interests voting in person or by limited  
21 | proxy at a duly called meeting of the association. If a  
22 | meeting of the unit owners has been called to determine  
23 | whether to waive or reduce the funding of reserves, and no  
24 | such result is achieved or a quorum is not attained, the  
25 | reserves as included in the budget shall go into effect. After  
26 | the turnover, the developer may vote its voting interest to  
27 | waive or reduce the funding of reserves.

28 |         3. Reserve funds and any interest accruing thereon  
29 | shall remain in the reserve account or accounts, and shall be  
30 | used only for authorized reserve expenditures unless their use  
31 | for other purposes is approved in advance by a majority vote

1 at a duly called meeting of the association. Prior to turnover  
2 of control of an association by a developer to unit owners  
3 other than the developer pursuant to s. 718.301, the  
4 developer-controlled association shall not vote to use  
5 reserves for purposes other than that for which they were  
6 intended without the approval 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.

9 4. The only voting interests which are eligible to  
10 vote on questions that involve waiving or reducing the funding  
11 of reserves, or using existing reserve funds for purposes  
12 other than purposes for which the reserves were intended, are  
13 the voting interests of the units subject to assessment to  
14 fund the reserves in question.

15 5. A vote to provide for no reserves or percentage of  
16 reserves shall be made at the annual meeting of the unit  
17 owners called under paragraph (d). The division shall adopt  
18 the form for the ballot for no reserves or percentage of  
19 reserves.

20 6. Notwithstanding the provisions of subparagraph 3.,  
21 the association, after turnover of control of the association  
22 may, in case of a catastrophic event, use reserve funds for  
23 nonscheduled purposes to mitigate further damage to units or  
24 common elements or to make the condominium accessible for  
25 repairs.

26 (g) Assessments.--The manner of collecting from the  
27 unit owners their shares of the common expenses shall be  
28 stated in the bylaws. Assessments shall be made against units  
29 on a quarter-annual, or more frequent, basis not less  
30 frequently than quarterly in an amount which is not less than  
31 that required to provide funds in advance for payment of all

1 of the anticipated current operating expenses and for all of  
2 the unpaid operating expenses previously incurred. Nothing in  
3 this paragraph shall preclude the right of an association to  
4 accelerate assessments of an owner delinquent in payment of  
5 common expenses against whom a lien has been filed.

6 Accelerated assessments shall be due and payable after ~~on the~~  
7 ~~date~~ the claim of lien is filed. Such accelerated assessments  
8 shall include the amounts due for the remainder of the budget  
9 year in which the claim of lien was filed.

10 Section 4. Subsection (5) of section 718.113, Florida  
11 Statutes, is amended, and subsection (6) is added to that  
12 section, to read:

13 718.113 Maintenance; limitation upon improvement;  
14 display of flag; hurricane shutters.--

15 (5) Each board of administration shall adopt or,  
16 yearly at the annual meeting, restate hurricane shutter  
17 specifications for each building within each condominium  
18 operated by the association which shall include color, style,  
19 and other factors deemed relevant by the board. All  
20 specifications adopted by the board shall comply with the  
21 applicable building code. Notwithstanding any provision to the  
22 contrary in the condominium documents, if approval is required  
23 by the documents, a board shall not refuse to approve the  
24 installation or replacement of hurricane shutters conforming  
25 to the specifications adopted by the board. The board may,  
26 subject to the provisions of s. 718.3026, and the approval of  
27 a majority of voting interests of the condominium, install  
28 hurricane shutters or hurricane protection that complies with  
29 the applicable building code and may maintain, repair, or  
30 replace such approved hurricane shutters, whether on or within  
31 common elements, limited common elements, units, or



1 association property. However, where laminated glass or window  
2 film architecturally designed to function as hurricane  
3 protection which complies with the applicable building code  
4 has been installed, the board may not install hurricane  
5 shutters. The board may operate shutters installed pursuant to  
6 this subsection without permission of the unit owners only  
7 where such operation is necessary to preserve and protect the  
8 condominium property and association property. The  
9 installation, replacement, operation, repair, and maintenance  
10 of such shutters in accordance with the procedures set forth  
11 herein shall not be deemed a material alteration to the common  
12 elements or association property within the meaning of this  
13 section.

14 (6) Every 5 years the board of administration shall  
15 have the condominium buildings inspected by a professional  
16 engineer or professional architect registered in the state for  
17 the purpose of determining that the building is structurally  
18 and electrically safe. The engineer or architect shall render  
19 a report that shall indicate the manner and type of inspection  
20 forming the basis for the report and description of any  
21 matters identified as requiring remedial action. The report  
22 shall become an official record of the association to be  
23 provided to the members upon request pursuant to s.  
24 718.111(12).

25 Section 5. Paragraph (d) of subsection (1) of section  
26 718.115, Florida Statutes, is amended to read:

27 718.115 Common expenses and common surplus.--

28 (1)

29 (d) If so provided in the declaration, the cost of a  
30 master antenna television system or duly franchised cable  
31 television service obtained pursuant to a bulk contract for

1 basic service shall be deemed a common expense. If the  
2 declaration does not provide for the cost of a master antenna  
3 television system or duly franchised basic cable television  
4 service obtained under a basic bulk contract as a common  
5 expense, the board may enter into such a contract, and the  
6 cost of the service will be a common expense but allocated on  
7 a per-unit basis rather than a percentage basis if the  
8 declaration provides for other than an equal sharing of common  
9 expenses, and any contract entered into before July 1, 1998,  
10 in which the cost of the service is not equally divided among  
11 all unit owners, may be changed by vote of a majority of the  
12 voting interests present at a regular or special meeting of  
13 the association, to allocate the cost equally among all units.  
14 The contract shall be for a term of not less than 2 years.

15         1. Any contract made by the board after the effective  
16 date hereof for a community antenna system or duly franchised  
17 basic cable television service may be canceled by a majority  
18 of the voting interests present at the next regular or special  
19 meeting of the association. Any member may make a motion to  
20 cancel said contract, but if no motion is made or if such  
21 motion fails to obtain the required majority at the next  
22 regular or special meeting, whichever is sooner, following the  
23 making of the contract, then such contract shall be deemed  
24 ratified for the term therein expressed.

25         2. Any such contract shall provide, and shall be  
26 deemed to provide if not expressly set forth, that any  
27 hearing-impaired or legally blind unit owner who does not  
28 occupy the unit with a non-hearing-impaired or sighted person,  
29 or any unit owner receiving supplemental security income under  
30 Title XVI of the Social Security Act or food stamps as  
31 administered by the Department of Children and Family Services

1 pursuant to s. 414.31, may discontinue the service without  
2 incurring disconnect fees, penalties, or subsequent service  
3 charges, and, as to such units, the owners shall not be  
4 required to pay any common expenses charge related to such  
5 service. If less than all members of an association share the  
6 expenses of cable television, the expense shall be shared  
7 equally by all participating unit owners. The association may  
8 use the provisions of s. 718.116 to enforce payment of the  
9 shares of such costs by the unit owners receiving cable  
10 television.

11 Section 6. Subsections (1) and (3), paragraph (a) of  
12 subsection (5), and subsection (10) of section 718.116,  
13 Florida Statutes, are amended to read:

14 718.116 Assessments; liability; lien and priority;  
15 interest; collection.--

16 (1)(a) A unit owner, regardless of how his or her  
17 title has been acquired, including by purchase at a  
18 foreclosure sale or by deed in lieu of foreclosure, is liable  
19 for all assessments which come due while he or she is the unit  
20 owner. Additionally, a unit owner is jointly and severally  
21 liable with the previous owner for all unpaid assessments that  
22 came due up to the time of transfer of title. This liability  
23 is without prejudice to any right the owner may have to  
24 recover from the previous owner the amounts paid by the owner.

25 ~~(b) The liability of a first mortgagee or its~~  
26 ~~successor or assignees who acquire title to a unit by~~  
27 ~~foreclosure or by deed in lieu of foreclosure for the unpaid~~  
28 ~~assessments that became due prior to the mortgagee's~~  
29 ~~acquisition of title is limited to the lesser of:~~

30 ~~1. The unit's unpaid common expenses and regular~~  
31 ~~periodic assessments which accrued or came due during the 6~~

1 ~~months immediately preceding the acquisition of title and for~~  
2 ~~which payment in full has not been received by the~~  
3 ~~association; or~~

4 ~~2. One percent of the original mortgage debt. The~~  
5 ~~provisions of this paragraph apply only if the first mortgagee~~  
6 ~~joined the association as a defendant in the foreclosure~~  
7 ~~action. Joinder of the association is not required if, on the~~  
8 ~~date the complaint is filed, the association was dissolved or~~  
9 ~~did not maintain an office or agent for service of process at~~  
10 ~~a location which was known to or reasonably discoverable by~~  
11 ~~the mortgagee.~~

12 ~~(b)(c)~~ The person acquiring title shall pay the amount  
13 owed to the association within 30 days after transfer of  
14 title. Failure to pay the full amount when due shall entitle  
15 the association to record a claim of lien against the parcel  
16 and proceed in the same manner as provided in this section for  
17 the collection of unpaid assessments.

18 ~~(c)(d)~~ With respect to each timeshare unit, each owner  
19 of a timeshare estate therein is jointly and severally liable  
20 for the payment of all assessments and other charges levied  
21 against or with respect to that unit pursuant to the  
22 declaration or bylaws, except to the extent that the  
23 declaration or bylaws may provide to the contrary.

24 ~~(d)(e)~~ ~~Notwithstanding the provisions of paragraph~~  
25 ~~(b)~~, A first mortgagee or its successor or assignees who  
26 acquire title to a condominium unit as a result of the  
27 foreclosure of the mortgage or by deed in lieu of foreclosure  
28 of the mortgage shall be exempt from liability for all unpaid  
29 assessments attributable to the parcel or chargeable to the  
30 previous owner which came due prior to acquisition of title if  
31 the first mortgage was recorded prior to April 1, 1992. ~~If,~~

1 ~~however, the first mortgage was recorded on or after April 1,~~  
2 ~~1992, or on the date the mortgage was recorded, the~~  
3 ~~declaration included language incorporating by reference~~  
4 ~~future amendments to this chapter, the provisions of paragraph~~  
5 ~~(b) shall apply.~~

6         ~~(e)(f)~~ The provisions of this subsection are intended  
7 to clarify existing law, and shall not be available in any  
8 case where the unpaid assessments sought to be recovered by  
9 the association are secured by a lien recorded prior to the  
10 recording of the mortgage. Notwithstanding the provisions of  
11 chapter 48, the association shall be a proper party to  
12 intervene in any foreclosure proceeding to seek equitable  
13 relief.

14         ~~(f)(g)~~ For purposes of this subsection, the term  
15 "successor or assignee" as used with respect to a first  
16 mortgagee includes only a subsequent holder of the first  
17 mortgage.

18         (3) Assessments and installments on them which are not  
19 paid when due bear interest at the rate provided in the  
20 declaration, from the due date until paid. This rate may not  
21 exceed the rate allowed by law, and, if no rate is provided in  
22 the declaration, interest shall accrue at the rate of 18  
23 percent per year. Also, if the declaration or bylaws so  
24 provide, the association may charge an administrative late fee  
25 in addition to such interest, in an amount not to exceed the  
26 greater of \$25 or 5 percent of each installment of the  
27 assessment for each delinquent installment that the payment is  
28 late. Any payment received by an association shall be applied  
29 first to any interest accrued by the association, then to any  
30 administrative late fee, then to the delinquent assessment,  
31 and then to any costs and reasonable attorney's fees incurred

1 | in collection, ~~and then to the delinquent assessment~~. The  
2 | foregoing shall be applicable notwithstanding any restrictive  
3 | endorsement, designation, or instruction placed on or  
4 | accompanying a payment. A late fee shall not be subject to the  
5 | provisions in chapter 687 or s. 718.303(3).

6 |         (5)(a) The association has a lien on each condominium  
7 | parcel to secure the payment of assessments. A lien may not be  
8 | filed on a condominium parcel until 30 days after the date of  
9 | a notice of intent to file a lien has been served on the owner  
10 | of the condominium parcel by certified mail or by personal  
11 | service in the manner authorized by chapter 48 and the Florida  
12 | Rules of Civil Procedure. Except as otherwise provided in  
13 | subsection (1) and as set forth below, the lien is effective  
14 | from and shall relate back to the recording of the original  
15 | declaration of condominium, or, in the case of lien on a  
16 | parcel located in a phase condominium, the last to occur of  
17 | the recording of the original declaration or amendment thereto  
18 | creating the parcel. However, as to first mortgages of record,  
19 | the lien is effective from and after recording of a claim of  
20 | lien in the public records of the county in which the  
21 | condominium parcel is located. Nothing in this subsection  
22 | shall be construed to bestow upon any lien, mortgage, or  
23 | certified judgment of record on April 1, 1992, including the  
24 | lien for unpaid assessments created herein, a priority which,  
25 | by law, the lien, mortgage, or judgment did not have before  
26 | that date.

27 |  
28 | After notice of contest of lien has been recorded, the clerk  
29 | of the circuit court shall mail a copy of the recorded notice  
30 | to the association by certified mail, return receipt  
31 | requested, at the address shown in the claim of lien or most

1 recent amendment to it and shall certify to the service on the  
2 face of the notice. Service is complete upon mailing. After  
3 service, the association has 90 days in which to file an  
4 action to enforce the lien; and, if the action is not filed  
5 within the 90-day period, the lien is void. However, the  
6 90-day period shall be extended for any length of time that  
7 the association is prevented from filing its action because of  
8 an automatic stay resulting from the filing of a bankruptcy  
9 petition by the unit owner or by any other person claiming an  
10 interest in the parcel.

11 (10) The specific purpose or purposes including  
12 itemized expenses of any special assessment approved in  
13 accordance with the condominium documents shall be set forth  
14 in a written notice of such assessment sent or delivered to  
15 each unit owner. A payment schedule shall be provided with due  
16 regard to the financial burden of the assessment on the unit  
17 owner. The funds collected pursuant to a special assessment  
18 shall not be commingled with any of the other association  
19 funds and shall be used only for the specific purpose or  
20 purposes set forth in such notice. However, upon completion of  
21 such specific purpose or purposes, any excess funds will be  
22 considered common surplus, and may, at the discretion of the  
23 board, either be returned to the unit owners or applied as a  
24 credit toward future assessments.

25 Section 7. Section 718.1223, Florida Statutes, is  
26 created to read:

27 718.1223 Protection against abuse.--

28 (1) In order to protect the safety, health, and  
29 welfare of the people of this state and to ensure protection  
30 of condominium owners, especially the infirm, and elderly, any  
31 complaint of abuse filed with the Division of Florida Land

1 Sales, Condominiums, and Mobile Homes shall immediately be  
2 investigated by the division. Where the division then has  
3 reasonable cause to believe that abuse has occurred against  
4 any unit owner, the division shall institute enforcement  
5 proceedings pursuant to its powers and duties as set forth in  
6 s. 718.501.

7 (2) For purposes of this section, the term "abuse"  
8 means any willful act or threatened act by a member of the  
9 board of directors of a condominium association or any member  
10 of a committee or subcommittee appointed by the board of  
11 directors, any employee, volunteer, or agent purporting to act  
12 on behalf of the board of directors, or any officer, director,  
13 employee, or agent of any management company acting on behalf  
14 of a condominium association who denies or is likely to deny a  
15 condominium unit owner or dweller any of the rights and  
16 protections afforded to the unit owner or dweller under  
17 applicable state and federal laws, administrative rules, and  
18 the governing documents of the condominium association.

19 Section 8. Section 718.1224, Florida Statutes, is  
20 created to read:

21 718.1224 Prohibition against SLAPP suits.--

22 (1) It is the intent of the Legislature to protect the  
23 right of condominium unit owners to exercise their rights to  
24 instruct their representatives and petition for redress of  
25 grievances before the various governmental entities of this  
26 state as protected by the First Amendment to the United States  
27 Constitution and s. 5, Art. I of the State Constitution. The  
28 Legislature recognizes that strategic lawsuits against public  
29 participation, or "SLAPP" suits as they are typically referred  
30 to, have occurred when association members are sued by  
31 individuals, business entities, or governmental entities



1 arising out of a condominium unit owner's appearance and  
2 presentation before a governmental entity on matters related  
3 to the condominium association. However, it is the public  
4 policy of this state that governmental entities, business  
5 organizations, and individuals not engage in SLAPP suits,  
6 because such actions are inconsistent with the right of  
7 condominium unit owners to participate in the state's  
8 institutions of government. Therefore, the Legislature finds  
9 and declares that prohibiting such lawsuits by governmental  
10 entities, business entities, and individuals against  
11 condominium unit owners who address matters concerning their  
12 condominium association will preserve this fundamental state  
13 policy, preserve the constitutional rights of condominium unit  
14 owners, and ensure the continuation of representative  
15 government in this state. It is the intent of the Legislature  
16 that such lawsuits be expeditiously disposed of by the courts.  
17 As used in this subsection, the term "governmental entity"  
18 means the state, including the executive, legislative, and  
19 judicial branches of government, the independent  
20 establishments of the state, counties, municipalities,  
21 districts, authorities, boards, or commissions, or any  
22 agencies of these branches that are subject to chapter 286.

23 (2) No governmental entity, business organization, or  
24 individual in this state shall file or cause to be filed  
25 through its employees or agents, any lawsuit, cause of action,  
26 claim, cross-claim, or counterclaim against a condominium unit  
27 owner without merit and solely because such condominium unit  
28 owner has exercised the right to instruct his or her  
29 representatives of the right to petition for redress of  
30 grievances before the various governmental entities of this  
31 state, as protected by the First Amendment to the United

1 States Constitution and s. 5, Art. I of the State  
2 Constitution.  
3 (3) A condominium unit owner sued by a governmental  
4 entity, business organization, or individual in violation of  
5 this section has a right to an expeditious resolution of a  
6 claim that the suit is in violation of this section. A  
7 condominium unit owner may petition the court for an order  
8 dismissing the action or granting final judgment in favor of  
9 that condominium unit owner. The petitioner may file a motion  
10 for summary judgment, together with supplemental affidavits,  
11 seeking a determination that the governmental entity's,  
12 business organization's, or individual's lawsuit has been  
13 brought in violation of this section. The governmental entity,  
14 business organization, or individual shall thereafter file its  
15 response and any supplemental affidavits. As soon as  
16 practicable, the court shall set a hearing on the petitioner's  
17 motion, which shall be held at the earliest possible time  
18 after the filing of the governmental entity's, business  
19 organization's, or individual's response. The court may award  
20 the condominium unit owner sued by the governmental entity,  
21 business organization, or individual actual damages arising  
22 from the governmental entity's, individual's, or business  
23 organization's violation of this section. A court may treble  
24 the damages awarded to a prevailing condominium unit owner and  
25 shall state the basis for the treble damages award in its  
26 judgment. The court shall award the prevailing party  
27 reasonable attorney's fees and costs incurred in connection  
28 with a claim that an action was filed in violation of this  
29 section.  
30  
31

1           (4) Condominium associations may not expend  
2 association funds in prosecuting a SLAPP suit against a  
3 condominium unit owner.

4           Section 9. Paragraphs (e) and (h) of subsection (4) of  
5 section 718.1255, Florida Statutes, are amended to read:

6           718.1255 Alternative dispute resolution; voluntary  
7 mediation; mandatory nonbinding arbitration; legislative  
8 findings.--

9           (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF  
10 DISPUTES.--The Division of Florida Land Sales, Condominiums,  
11 and Mobile Homes of the Department of Business and  
12 Professional Regulation shall employ full-time attorneys to  
13 act as arbitrators to conduct the arbitration hearings  
14 provided by this chapter. The division may also certify  
15 attorneys who are not employed by the division to act as  
16 arbitrators to conduct the arbitration hearings provided by  
17 this section. No person may be employed by the department as a  
18 full-time arbitrator unless he or she is a member in good  
19 standing of The Florida Bar. The department shall promulgate  
20 rules of procedure to govern such arbitration hearings  
21 including mediation incident thereto. The decision of an  
22 arbitrator shall be final; however, such a decision shall not  
23 be deemed final agency action. Nothing in this provision shall  
24 be construed to foreclose parties from proceeding in a trial  
25 de novo unless the parties have agreed that the arbitration is  
26 binding. If such judicial proceedings are initiated, the final  
27 decision of the arbitrator shall be admissible in evidence in  
28 the trial de novo.

29           (e) Either before or after the filing of the  
30 respondents' answer to the petition, any party may request  
31 that the arbitrator refer the case to mediation under this

1 section and any rules adopted by the division. Upon receipt of  
2 a request for mediation, the division shall promptly refer the  
3 case ~~contact the parties to determine if there is agreement~~  
4 ~~that mediation would be appropriate. If all parties agree, the~~  
5 ~~dispute must be referred to mediation. Notwithstanding a lack~~  
6 ~~of an agreement by all parties,~~ The arbitrator may refer a  
7 dispute to mediation at any time.

8 (h) Mediation proceedings must generally be conducted  
9 in accordance with the Florida Rules of Civil Procedure, and  
10 these proceedings are privileged and confidential to the same  
11 extent as court-ordered mediation. Persons who are not parties  
12 to the dispute are not allowed to attend the mediation  
13 conference without the consent of all parties, with the  
14 exception of counsel for the parties and corporate  
15 representatives designated to appear for a party. If the  
16 mediator declares an impasse after a mediation conference has  
17 been held, the arbitration proceeding terminates, unless all  
18 parties agree in writing to continue the arbitration  
19 proceeding, in which case the arbitrator's decision shall be  
20 either binding or nonbinding, as agreed upon by the parties;  
21 in the arbitration proceeding, the arbitrator shall not  
22 consider any evidence relating to the unsuccessful mediation  
23 except in a proceeding to impose sanctions for failure to  
24 appear at the mediation conference. If the parties do not  
25 agree to continue arbitration, the arbitrator shall enter an  
26 order of dismissal, and either party may institute a suit in a  
27 court of competent jurisdiction. The parties may seek to  
28 recover any costs and attorneys' fees incurred in connection  
29 with arbitration ~~and mediation~~ proceedings under this section  
30 as part of the costs and fees that may be recovered by the  
31 prevailing party in any subsequent litigation.

1           Section 10. Subsection (1) of section 718.302, Florida  
2 Statutes, is amended to read:

3           718.302 Agreements entered into by the association.--

4           (1) Any grant or reservation made by a declaration,  
5 lease, or other document, and any contract made by an  
6 association prior to assumption of control of the association  
7 by unit owners other than the developer, that provides for  
8 services, products, operation, maintenance, or management of a  
9 condominium association or property serving the unit owners of  
10 a condominium shall be fair and reasonable, and such grant,  
11 reservation, or contract may be canceled by unit owners other  
12 than the developer:

13           (a) If the association operates only one condominium  
14 and the unit owners other than the developer have assumed  
15 control of the association, or if unit owners other than the  
16 developer own not less than 75 percent of the voting interests  
17 in the condominium, the cancellation shall be by concurrence  
18 of the owners of not less than 75 percent of the voting  
19 interests other than the voting interests owned by the  
20 developer. If a grant, reservation, or contract is so canceled  
21 and the unit owners other than the developer have not assumed  
22 control of the association, the association shall make a new  
23 contract or otherwise provide for maintenance, management, or  
24 operation in lieu of the canceled obligation, at the direction  
25 of the owners of not less than a majority of the voting  
26 interests in the condominium other than the voting interests  
27 owned by the developer.

28           (b) If the association operates more than one  
29 condominium and the unit owners other than the developer have  
30 not assumed control of the association, and if unit owners  
31 other than the developer own at least 75 percent of the voting

1 | interests in a condominium operated by the association, any  
2 | grant, reservation, or contract for maintenance, management,  
3 | or operation of buildings containing the units in that  
4 | condominium or of improvements used only by unit owners of  
5 | that condominium may be canceled by concurrence of the owners  
6 | of at least 75 percent of the voting interests in the  
7 | condominium other than the voting interests owned by the  
8 | developer. No grant, reservation, or contract for maintenance,  
9 | management, or operation of recreational areas or any other  
10 | property serving more than one condominium, and operated by  
11 | more than one association, may be canceled except pursuant to  
12 | paragraph (d).

13 |         (c) If the association operates more than one  
14 | condominium and the unit owners other than the developer have  
15 | assumed control of the association, the cancellation shall be  
16 | by concurrence of the owners of not less than 75 percent of  
17 | the total number of voting interests in all condominiums  
18 | operated by the association other than the voting interests  
19 | owned by the developer.

20 |         (d) If the owners of units in a condominium have the  
21 | right to use property in common with owners of units in other  
22 | condominiums and those condominiums are operated by more than  
23 | one association, no grant, reservation, or contract for  
24 | maintenance, management, or operation of the property serving  
25 | more than one condominium may be canceled until unit owners  
26 | other than the developer have assumed control of all of the  
27 | associations operating the condominiums that are to be served  
28 | by the recreational area or other property, after which  
29 | cancellation may be effected by concurrence of the owners of  
30 | not less than 75 percent of the total number of voting  
31 |

1 interests in those condominiums other than voting interests  
2 owned by the developer.

3 Section 11. Paragraph (a) of subsection (2) of section  
4 718.3026, Florida Statutes, is amended to read:

5 718.3026 Contracts for products and services; in  
6 writing; bids; exceptions.--Associations with less than 100  
7 units may opt out of the provisions of this section if  
8 two-thirds of the unit owners vote to do so, which opt-out may  
9 be accomplished by a proxy specifically setting forth the  
10 exception from this section.

11 (2)(a)1. Notwithstanding the foregoing, contracts with  
12 employees of the association, and contracts for attorney,  
13 accountant, architect, community association manager,  
14 timeshare management firm, engineering, and landscape  
15 architect services are not subject to the provisions of this  
16 section.

17 2. A contract executed before January 1, 1992, and any  
18 renewal thereof, is not subject to the competitive bid  
19 requirements of this section. If a contract was awarded under  
20 the competitive bid procedures of this section, any renewal of  
21 that contract is not subject to such competitive bid  
22 requirements if the contract contains a provision that allows  
23 the board to cancel the contract on 30 days' notice.

24 Materials, equipment, or services provided to a condominium  
25 under a local government franchise agreement by a franchise  
26 holder are not subject to the competitive bid requirements of  
27 this section. A contract with a manager, if made by a  
28 competitive bid, may be made for up to 3 years. A condominium  
29 whose declaration or bylaws provides for competitive bidding  
30 for services may operate under the provisions of that  
31 declaration or bylaws in lieu of this section if those

1 provisions are not less stringent than the requirements of  
2 this section.

3 3. A contract by and between a service provider and an  
4 association shall not be for a term in excess of 3 years and  
5 shall not contain an automatic renewal clause.

6 4. A contract for construction or repair of the  
7 property that exceeds 10 percent of the total annual budget of  
8 the association, including reserves, must have the approval of  
9 an attorney hired by the association.

10 Section 12. Subsection (4) is added to section  
11 718.303, Florida Statutes, to read:

12 718.303 Obligations of owners; waiver; levy of fine  
13 against unit by association.--

14 (4) Anyone subject to an action under this section  
15 shall be notified of the violation by certified mail, return  
16 receipt requested, and, except in the case of imminent danger  
17 to person or property, shall have 30 days in which to respond  
18 in writing. If no response is provided and the violation  
19 continues or is repeated, the association may proceed under  
20 subsections (1) and (2) without further notice except as  
21 provided in subsection (3).

22 Section 13. Paragraphs (e) and (j) of subsection (1)  
23 of section 718.501, Florida Statutes, are amended to read:

24 718.501 Powers and duties of Division of Florida Land  
25 Sales, Condominiums, and Mobile Homes.--

26 (1) The Division of Florida Land Sales, Condominiums,  
27 and Mobile Homes of the Department of Business and  
28 Professional Regulation, referred to as the "division" in this  
29 part, in addition to other powers and duties prescribed by  
30 chapter 498, has the power to enforce and ensure compliance  
31 with the provisions of this chapter and rules promulgated



1 pursuant hereto relating to the development, construction,  
2 sale, lease, ownership, operation, and management of  
3 residential condominium units. In performing its duties, the  
4 division has the following powers and duties:

5 (e) The division shall ~~is authorized to~~ prepare and  
6 disseminate a prospectus and other information to assist  
7 prospective owners, purchasers, lessees, and developers of  
8 residential condominiums in assessing the rights, privileges,  
9 and duties pertaining thereto.

10 (j) The division shall provide training programs for  
11 condominium association board members and unit owners in  
12 conjunction with the recommendations of the ombudsman.

13 Section 14. Subsection (1) of section 718.5011,  
14 Florida Statutes, is amended to read:

15 718.5011 Ombudsman; appointment; administration.--

16 (1) There is created an Office of the Condominium  
17 Ombudsman, to be located for administrative purposes only  
18 within the Division of Florida Land Sales, Condominiums, and  
19 Mobile Homes. The ombudsman shall exercise his or her  
20 policymaking and other functions authorized by this chapter  
21 independently of the Department of Business and Professional  
22 Regulation and without approval or control of the department.  
23 The department shall render administrative support to the  
24 office in matters pertaining to budget, personnel, office  
25 space, equipment, and supplies. All revenues collected for the  
26 office by the department shall be deposited in a separate fund  
27 or account from which the department may not use or divert the  
28 revenues. The functions of the office shall be funded by the  
29 Division of Florida Land Sales, Condominiums, and Mobile Homes  
30 Trust Fund. The ombudsman shall be a bureau chief of the  
31

1 | division, and the office shall be set within the division in  
2 | the same manner as any other bureau is staffed and funded.

3 |       Section 15. Section 718.5012, Florida Statutes, is  
4 | amended to read:

5 |       718.5012 Ombudsman; powers and duties.--

6 |       (1) The ombudsman shall have the powers that are  
7 | necessary to carry out the duties of his or her office,  
8 | including the following specific powers:

9 |       ~~(a)(1)~~ To have access to and use of all files and  
10 | records of the division.

11 |       ~~(b)(2)~~ To employ professional and clerical staff as  
12 | necessary for the efficient operation of the office.

13 |       ~~(c)(3)~~ To prepare and issue reports and  
14 | recommendations to the Governor, the department, the division,  
15 | ~~the Advisory Council on Condominiums,~~ the President of the  
16 | Senate, and the Speaker of the House of Representatives on any  
17 | matter or subject within the jurisdiction of the division. The  
18 | ombudsman shall make recommendations he or she deems  
19 | appropriate for legislation relative to division procedures,  
20 | rules, jurisdiction, personnel, and functions.

21 |       ~~(d)(4)~~ To act as liaison between the division, unit  
22 | owners, boards of directors, board members, community  
23 | association managers, and other affected parties. The  
24 | ombudsman shall develop policies and procedures to assist unit  
25 | owners, boards of directors, board members, community  
26 | association managers, and other affected parties to understand  
27 | their rights and responsibilities as set forth in this chapter  
28 | and the condominium documents governing their respective  
29 | association. The ombudsman shall coordinate and assist in the  
30 | preparation and adoption of educational and reference  
31 | material, and shall endeavor to coordinate with private or

1 volunteer providers of these services, so that the  
2 availability of these resources is made known to the largest  
3 possible audience.

4 ~~(e)(5)~~ To monitor and review procedures and disputes  
5 concerning condominium elections or meetings, including, but  
6 not limited to, recommending that the division pursue  
7 enforcement action in any manner where there is reasonable  
8 cause to believe that election misconduct has occurred. The  
9 division shall process the ombudsman's recommendations and  
10 petitions in an expedited manner and shall defer to his or her  
11 findings.

12 ~~(f)(6)~~ To make recommendations to the division for  
13 changes in rules and procedures for the filing, investigation,  
14 and resolution of complaints filed by unit owners,  
15 associations, and managers.

16 ~~(g)(7)~~ To provide resources to assist members of  
17 boards of directors and officers of associations to carry out  
18 their powers and duties consistent with this chapter, division  
19 rules, and the condominium documents governing the  
20 association.

21 ~~(h)(8)~~ To order, encourage, and facilitate ~~voluntary~~  
22 meetings with and between unit owners, boards of directors,  
23 board members, community association managers, and other  
24 affected parties when the meetings may assist in resolving a  
25 dispute within a community association before a person submits  
26 a dispute for a formal or administrative remedy. It is the  
27 intent of the Legislature that the ombudsman act as a neutral  
28 resource for both the rights and responsibilities of unit  
29 owners, associations, and board members.

30 (i) To make recommendations to the division to pursue  
31 enforcement action in circuit court on behalf of a class of

1 unit owners, lessees, or purchasers for declaratory relief,  
2 injunctive relief, or restitution against any developer,  
3 association, officer, or member of the board of administration  
4 or its assignees or agents when there is reasonable cause to  
5 believe misconduct has occurred. The division shall process  
6 the ombudsman's recommendations and petitions in an expedited  
7 manner and shall defer to his or her findings.

8       ~~(2)(9)~~ Fifteen percent of the total voting interests  
9 in a condominium association, or six unit owners, whichever is  
10 greater, may petition the ombudsman to appoint an election  
11 monitor to attend the annual meeting of the unit owners and  
12 conduct the election of directors. The ombudsman upon petition  
13 may order any aspect of the election process as set forth in  
14 s. 718.112(2)(d)3. to be conducted by the election monitor. No  
15 association or person may reject an election monitor appointed  
16 by the ombudsman or interfere with an election monitor in the  
17 performance of his or her duties. The ombudsman may order an  
18 association to implement a known division remedy for a  
19 procedural violation of s. 718.112(2)(d)3. prior to and during  
20 a monitored election. The ombudsman shall appoint a division  
21 employee, a person or persons specializing in condominium  
22 election monitoring, or an attorney licensed to practice in  
23 this state as the election monitor. All costs associated with  
24 the election monitoring process shall be paid by the  
25 association. The division shall adopt a rule establishing  
26 procedures for the appointment of election monitors and the  
27 scope and extent of the monitor's role in the election  
28 process.

29       (3) Any unit owner or association acting in good faith  
30 on the advice or opinion of the office of the ombudsman shall  
31 be immune from any penalties or actions.

1           (4) If the ombudsman has reasonable cause to believe  
2 that a violation of any provision of this chapter or of any  
3 rule adopted hereto has occurred, the ombudsman may issue an  
4 order requiring any developer, association, officer, or member  
5 of the board of administration, or its assignees or agents, to  
6 cease and desist from the unlawful practice and to take  
7 affirmative action to carry out the purposes of this chapter.

8           Section 16. Section 718.50151, Florida Statutes, is  
9 repealed.

10           Section 17. Subsection (7) is added to section  
11 719.1055, Florida Statutes, to read:

12           719.1055 Amendment of cooperative documents;  
13 alteration and acquisition of property.--

14           (7) Any amendment restricting cooperative owners'  
15 rights relating to the rental of units applies only to unit  
16 owners who consent to the amendment and unit owners who  
17 purchase their units after the effective date of that  
18 amendment.

19           Section 18. Section 720.4016, Florida Statutes, is  
20 created to read:

21           720.4016 Advisory Council on Mandated  
22 Properties.--There is created the Advisory Council on Mandated  
23 Properties. The council shall consist of seven appointed  
24 members. Two members shall be appointed by the President of  
25 the Senate, two members shall be appointed by the Speaker of  
26 the House of Representatives, and three members shall be  
27 appointed by the Governor. At least one member each appointed  
28 by the Governor, by the President, and by the Speaker shall be  
29 a homeowners' rights advocate and parcel owner. Members shall  
30 be appointed to 2-year terms; however, one of the persons  
31 initially appointed by the Governor, by the President, and by

1 the Speaker shall be appointed to a 1-year term. A member of  
2 the division, appointed by the secretary, shall serve as an ex  
3 officio nonvoting member. The selection of council members  
4 shall be made in a manner that ensures a fair and balanced  
5 representation from the service-provider sector and consumer  
6 advocates with a substantial public record of endeavors on  
7 behalf of homeowners' rights and consumer interests. The  
8 council shall be located within the division for  
9 administrative purposes. Members of the council shall serve  
10 without compensation but are entitled to receive per diem and  
11 travel expenses pursuant to s. 112.061 while on official  
12 business. A vacancy on the advisory council shall be filled in  
13 the same manner as the original appointment.

14           Section 19. This act shall take effect July 1, 2006.  
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