

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Domino offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

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

7 712.11 Covenant revitalization.--A homeowners' association
8 not otherwise subject to chapter 720 may use the procedures set
9 forth in ss. 720.403-720.407 to revive covenants that have
10 lapsed under the terms of this chapter.

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

13 718.106 Condominium parcels; appurtenances; possession and
14 enjoyment.--

15 (5) A local government may not prohibit condominium unit
16 owners or an association from permitting guests, licensees, or

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17 invitees access to a public beach adjacent to or adjoining the
18 condominium property.

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

21 718.110 Amendment of declaration; correction of error or
22 omission in declaration by circuit court.--

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

32 (a) As to any mortgage recorded on or after October 1,
33 2006, any provision in the declaration, articles of
34 incorporation, or bylaws that requires ~~recorded after April 1,~~
35 ~~1992, may not require~~ the consent or joinder of some or all
36 mortgagees of units or any other portion of the condominium
37 property to or in amendments to the declaration, articles of
38 incorporation, or bylaws or for any other matter shall be
39 enforceable only as to the following matters: ~~unless the~~
40 ~~requirement is limited to amendments materially affecting the~~
41 ~~rights or interests of the mortgagees, or as otherwise required~~
42 ~~by the Federal National Mortgage Association or the Federal Home~~
43 ~~Loan Mortgage Corporation, and unless the requirement provides~~
44 ~~that such consent may not be unreasonably withheld. It shall be~~
45 ~~presumed that, except as to~~

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

47 2. Amendments to the declaration, articles of
48 incorporation, or bylaws that adversely affect the priority of
49 the mortgagee's lien or the mortgagee's rights to foreclose its
50 lien or that otherwise materially affect the rights and
51 interests of the mortgagees.

52 (b) As to mortgages recorded before October 1, 2006, any
53 existing provisions in the declaration, articles of
54 incorporation, or bylaws requiring mortgagee consent shall be
55 enforceable.

56 (c) In securing consent or joinder, the association shall
57 be entitled to rely upon the public records to identify the
58 holders of outstanding mortgages. The association may use the
59 address provided in the original recorded mortgage document,
60 unless there is a different address for the holder of the
61 mortgage in a recorded assignment or modification of the
62 mortgage, which recorded assignment or modification must
63 reference the official records book and page on which the
64 original mortgage was recorded. Once the association has
65 identified the recorded mortgages of record, the association
66 shall, in writing, request of each unit owner whose unit is
67 encumbered by a mortgage of record any information the owner has
68 in his or her possession regarding the name and address of the
69 person to whom mortgage payments are currently being made.
70 Notice shall be sent to such person if the address provided in
71 the original recorded mortgage document is different from the
72 name and address of the mortgagee or assignee of the mortgage as
73 shown by the public record. The association shall be deemed to
74 have complied with this requirement by making the written

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75 request of the unit owners required under this paragraph. Any
76 notices required to be sent to the mortgagees under this
77 paragraph shall be sent to all available addresses provided to
78 the association.

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

84 (e) For those amendments requiring mortgagee consent on or
85 after October 1, 2006, ~~do not materially affect the rights or~~
86 ~~interests of mortgagees.~~ in the event mortgagee consent is
87 provided other than by properly recorded joinder, such consent
88 shall be evidenced by affidavit of the association recorded in
89 the public records of the county where the declaration is
90 recorded. Any amendment adopted without the required consent of
91 a mortgagee shall be voidable only by a mortgagee who was
92 entitled to notice and an opportunity to consent. An action to
93 void an amendment shall be subject to the statute of limitations
94 beginning 5 years from the date of discovery as to the
95 amendments described in subparagraphs (a)1. and 2. and 5 years
96 from the date of recordation of the certificate of amendment for
97 all other amendments. This provision shall apply to all
98 mortgages, regardless of the date of recordation of the
99 mortgage.

100 Section 4. Paragraph (1) of subsection (2) of section
101 718.112, Florida Statutes, is amended to read:

102 718.112 Bylaws.--

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

106 (1) Certificate of compliance.--There shall be a provision
107 that a certificate of compliance from a licensed electrical
108 contractor or electrician may be accepted by the association's
109 board as evidence of compliance of the condominium units with
110 the applicable fire and life safety code. Notwithstanding the
111 provisions of chapter 633 or of any other code, statute,
112 ordinance, administrative rule, or regulation, or any
113 interpretation of the foregoing, an association, condominium, or
114 unit owner is not obligated to retrofit the common elements or
115 units of a residential condominium with a fire sprinkler system
116 or other engineered lifesafety system in a building that has
117 been certified for occupancy by the applicable governmental
118 entity, if the unit owners have voted to forego such
119 retrofitting and engineered lifesafety system by the affirmative
120 vote of two-thirds of all voting interests in the affected
121 condominium. However, a condominium association may not vote to
122 forego the retrofitting with a fire sprinkler system of common
123 areas in a high-rise building. For purposes of this subsection,
124 the term "high-rise building" means a building that is greater
125 than 75 feet in height where the building height is measured
126 from the lowest level of fire department access to the floor of
127 the highest occupiable story. For purposes of this subsection,
128 the term "common areas" means any enclosed hallway, corridor,
129 lobby, stairwell, or entryway. In no event shall the local
130 authority having jurisdiction require completion of retrofitting

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131 of common areas with a sprinkler system before the end of 2025
132 ~~2014~~.

133 1. A vote to forego retrofitting may be obtained by
134 limited proxy or by a ballot personally cast at a duly called
135 membership meeting, or by execution of a written consent by the
136 member, and shall be effective upon the recording of a
137 certificate attesting to such vote in the public records of the
138 county where the condominium is located. The association shall
139 mail, hand deliver, or electronically transmit to each unit
140 owner written notice at least 14 days prior to such membership
141 meeting in which the vote to forego retrofitting of the required
142 fire sprinkler system is to take place. Within 30 days after the
143 association's opt-out vote, notice of the results of the opt-out
144 vote shall be mailed, hand delivered, or electronically
145 transmitted to all unit owners. Evidence of compliance with this
146 30-day notice shall be made by an affidavit executed by the
147 person providing the notice and filed among the official records
148 of the association. After such notice is provided to each owner,
149 a copy of such notice shall be provided by the current owner to
150 a new owner prior to closing and shall be provided by a unit
151 owner to a renter prior to signing a lease.

152 2. As part of the information collected annually from
153 condominiums, the division shall require condominium
154 associations to report the membership vote and recording of a
155 certificate under this subsection and, if retrofitting has been
156 undertaken, the per-unit cost of such work. The division shall
157 annually report to the Division of State Fire Marshal of the
158 Department of Financial Services the number of condominiums that
159 have elected to forego retrofitting.

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160 Section 5. Section 718.114, Florida Statutes, is amended
161 to read:

162 718.114 Association powers.--An association has the power
163 to enter into agreements, to acquire leaseholds, memberships,
164 and other possessory or use interests in lands or facilities
165 such as country clubs, golf courses, marinas, and other
166 recreational facilities. It has this power whether or not the
167 lands or facilities are contiguous to the lands of the
168 condominium, if they are intended to provide enjoyment,
169 recreation, or other use or benefit to the unit owners. All of
170 these leaseholds, memberships, and other possessory or use
171 interests existing or created at the time of recording the
172 declaration must be stated and fully described in the
173 declaration. Subsequent to the recording of the declaration,
174 agreements acquiring these leaseholds, memberships, or other
175 possessory or use interests not entered into within 12 months
176 following the recording of the declaration shall be considered a
177 material alteration or substantial addition to the real property
178 that is association property, and the association may not
179 acquire or enter into agreements acquiring these leaseholds,
180 memberships, or other possessory or use interests except as
181 authorized by the declaration as provided in s. 718.113. The
182 declaration may provide that the rental, membership fees,
183 operations, replacements, and other expenses are common expenses
184 and may impose covenants and restrictions concerning their use
185 and may contain other provisions not inconsistent with this
186 chapter. A condominium association may conduct bingo games as
187 provided in s. 849.0931.

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

190 718.404 Mixed-use condominiums.--When a condominium
191 consists of both residential and commercial units, the following
192 provisions shall apply:

193 (1) The condominium documents shall not provide that the
194 owner of any commercial unit shall have the authority to veto
195 amendments to the declaration, articles of incorporation,
196 bylaws, or rules or regulations of the association. This
197 subsection shall apply retroactively as a remedial measure.

198 (2) Subject to s. 718.301, where the number of residential
199 units in the condominium equals or exceeds 50 percent of the
200 total units operated by the association, owners of the
201 residential units shall be entitled to vote for a majority of
202 the seats on the board of administration. This subsection shall
203 apply retroactively as a remedial measure.

204 Section 7. Subsections (18) through (27) of section
205 719.103, Florida Statutes, are renumbered as subsections (19)
206 through (28), respectively, and a new subsection (18) is added
207 to that section to read:

208 719.103 Definitions.--As used in this chapter:

209 (18) "Equity facilities club" means a club comprised of
210 recreational facilities in which proprietary membership
211 interests are sold to individuals, which membership interests
212 entitle the individuals to use certain physical facilities owned
213 by the equity club. Such physical facilities do not include a
214 residential unit or accommodation. For purposes of this
215 definition, the term "accommodation" shall include, but is not
216 limited to, any apartment, residential cooperative unit,

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217 residential condominium unit, cabin, lodge, hotel or motel room,
218 or any other accommodation designed for overnight occupancy for
219 one or more individuals.

220 Section 8. Section 719.507, Florida Statutes, is amended
221 to read:

222 719.507 Zoning and building laws, ordinances, and
223 regulations.--All laws, ordinances, and regulations concerning
224 buildings or zoning shall be construed and applied with
225 reference to the nature and use of such property, without regard
226 to the form of ownership. No law, ordinance, or regulation shall
227 establish any requirement concerning the use, location,
228 placement, or construction of buildings or other improvements
229 which are, or may thereafter be, subjected to the cooperative or
230 equity facilities club form of ownership, unless such
231 requirement shall be equally applicable to all buildings and
232 improvements of the same kind not then, or thereafter to be,
233 subjected to the cooperative or equity facilities club form of
234 ownership. This section does not apply if the owner in fee of
235 any land enters into and records a covenant that existing
236 improvements or improvements to be constructed shall not be
237 converted to the cooperative form of residential ownership prior
238 to 5 years after the later of the date of the covenant or
239 completion date of the improvements. Such covenant shall be
240 entered into with the governing body of the municipality in
241 which the land is located or, if the land is not located in a
242 municipality, with the governing body of the county in which the
243 land is located.

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

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246 720.302 Purposes, scope, and application.--

247 (4) This chapter does not apply to any association that is
248 subject to regulation under chapter 718, chapter 719, or chapter
249 721, or to any nonmandatory association formed under chapter
250 723, except to the extent that a provision of chapter 718,
251 chapter 719, or chapter 721 is expressly incorporated into this
252 chapter for the purpose of regulating homeowners' associations.

253 (5) Unless expressly stated to the contrary, corporations
254 ~~not for profit~~ that operate residential homeowners' associations
255 in this state shall be governed by and subject to chapter 607,
256 if the association was incorporated under that chapter, or to
257 chapter 617, if the association was incorporated under that
258 chapter, and this chapter. This subsection is intended to
259 clarify existing law.

260 Section 10. Paragraph (a) of subsection (2), subsection
261 (6), and subsection (7) of section 720.303, Florida Statutes, as
262 amended by section 18 of chapter 2004-345 and section 135 of
263 chapter 2005-2, Laws of Florida, are amended, and paragraph (d)
264 is added to subsection (5) of that section, to read:

265 720.303 Association powers and duties; meetings of board;
266 official records; budgets; financial reporting; association
267 funds; recalls.--

268 (2) BOARD MEETINGS.--

269 (a) A meeting of the board of directors of an association
270 occurs whenever a quorum of the board gathers to conduct
271 association business. All meetings of the board must be open to
272 all members except for meetings between the board and its
273 attorney with respect to proposed or pending litigation where
274 the contents of the discussion would otherwise be governed by
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275 | the attorney-client privilege. The provisions of this subsection
276 | shall also apply to the meetings of any committee or other
277 | similar body when a final decision will be made regarding the
278 | expenditure of association funds and to meetings of any body
279 | vested with the power to approve or disapprove architectural
280 | decisions with respect to a specific parcel of residential
281 | property owned by a member of the community.

282 | (5) INSPECTION AND COPYING OF RECORDS.--The official
283 | records shall be maintained within the state and must be open to
284 | inspection and available for photocopying by members or their
285 | authorized agents at reasonable times and places within 10
286 | business days after receipt of a written request for access.
287 | This subsection may be complied with by having a copy of the
288 | official records available for inspection or copying in the
289 | community. If the association has a photocopy machine available
290 | where the records are maintained, it must provide parcel owners
291 | with copies on request during the inspection if the entire
292 | request is limited to no more than 25 pages.

293 | (d) The association or its authorized agent is not
294 | required to provide a prospective purchaser or lienholder with
295 | information about the residential subdivision or the association
296 | other than information or documents required by this chapter to
297 | be made available or disclosed. The association or its
298 | authorized agent may charge a reasonable fee to the prospective
299 | purchaser or lienholder or the current parcel owner or member
300 | for providing good faith responses to requests for information
301 | by or on behalf of a prospective purchaser or lienholder, other
302 | than that required by law, if the fee does not exceed \$150 plus

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303 the reasonable cost of photocopying and any attorney's fees
304 incurred by the association in connection with the response.

305 (6) BUDGETS.--

306 (a) The association shall prepare an annual budget that
307 sets out the annual operating expenses. The budget must reflect
308 the estimated revenues and expenses for that year and the
309 estimated surplus or deficit as of the end of the current year.
310 The budget must set out separately all fees or charges paid for
311 by the association for recreational amenities, whether owned by
312 the association, the developer, or another person. The
313 association shall provide each member with a copy of the annual
314 budget or a written notice that a copy of the budget is
315 available upon request at no charge to the member. The copy must
316 be provided to the member within the time limits set forth in
317 subsection (5).

318 (b) In addition to annual operating expenses, the budget
319 may include reserve accounts for capital expenditures and
320 deferred maintenance for which the association is responsible to
321 the extent that the governing documents do not limit increases
322 in assessments, including reserves. If the budget of the
323 association includes reserve accounts, such reserves shall be
324 determined, maintained, and waived in the manner provided in
325 this subsection. Once an association provides for reserve
326 accounts in the budget, the association shall thereafter
327 determine, maintain, and waive reserves in compliance with the
328 provisions of this subsection.

329 (c) If the budget of the association does not provide for
330 reserve accounts governed by this subsection and the association
331 is responsible for the repair and maintenance of capital

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332 improvements that may result in a special assessment if reserves
333 are not provided, each financial report for the preceding fiscal
334 year required by subsection (7) shall contain the following
335 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
336 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
337 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
338 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
339 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
340 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
341 INTERESTS OF THE ASSOCIATION.

342 (d) An association shall be deemed to have provided for
343 reserve accounts when reserve accounts have been initially
344 established by the developer or when the membership of the
345 association affirmatively elects to provide for reserves. If
346 reserve accounts are not initially provided for by the
347 developer, the membership of the association may elect to do so
348 upon the affirmative approval of not less than a majority of the
349 total voting interests of the association. Such approval may be
350 attained by vote of the members at a duly called meeting of the
351 membership or upon a written consent executed by not less than a
352 majority of the total voting interests in the community. The
353 approval action of the membership shall state that reserve
354 accounts shall be provided for in the budget and designate the
355 components for which the reserve accounts are to be established.
356 Upon approval by the membership, the board of directors shall
357 provide for the required reserve accounts for inclusion in the
358 budget in the next fiscal year following the approval and in
359 each year thereafter. Once established as provided in this
360 subsection, the reserve accounts shall be funded or maintained

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361 or shall have their funding waived in the manner provided in
362 paragraph (f).

363 (e) The amount to be reserved in any account established
364 shall be computed by means of a formula that is based upon
365 estimated remaining useful life and estimated replacement cost
366 or deferred maintenance expense of each reserve item. The
367 association may adjust replacement reserve assessments annually
368 to take into account any changes in estimates of cost or useful
369 life of a reserve item.

370 (f) Once a reserve account or reserve accounts are
371 established, the membership of the association, upon a majority
372 vote at a meeting at which a quorum is present, may provide for
373 no reserves or less reserves than required by this section. If a
374 meeting of the unit owners has been called to determine whether
375 to waive or reduce the funding of reserves and no such result is
376 achieved or a quorum is not present, the reserves as included in
377 the budget shall go into effect. After the turnover, the
378 developer may vote its voting interest to waive or reduce the
379 funding of reserves. Any vote taken pursuant to this subsection
380 to waive or reduce reserves shall be applicable only to one
381 budget year.

382 (g) Funding formulas for reserves authorized by this
383 section shall be based on either a separate analysis of each of
384 the required assets or a pooled analysis of two or more of the
385 required assets.

386 1. If the association maintains separate reserve accounts
387 for each of the required assets, the amount of the contribution
388 to each reserve account shall be the sum of the following two
389 calculations:

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390 a. The total amount necessary, if any, to bring a negative
391 component balance to zero.

392 b. The total estimated deferred maintenance expense or
393 estimated replacement cost of the reserve component less the
394 estimated balance of the reserve component as of the beginning
395 of the period for which the budget will be in effect. The
396 remainder, if greater than zero, shall be divided by the
397 estimated remaining useful life of the component.

398
399 The formula may be adjusted each year for changes in estimates
400 and deferred maintenance performed during the year and may
401 include factors such as inflation and earnings on invested
402 funds.

403 2. If the association maintains a pooled account of two or
404 more of the required reserve assets, the amount of the
405 contribution to the pooled reserve account as disclosed on the
406 proposed budget shall not be less than that required to ensure
407 that the balance on hand at the beginning of the period for
408 which the budget will go into effect plus the projected annual
409 cash inflows over the remaining estimated useful life of all of
410 the assets that make up the reserve pool are equal to or greater
411 than the projected annual cash outflows over the remaining
412 estimated useful lives of all of the assets that make up the
413 reserve pool, based on the current reserve analysis. The
414 projected annual cash inflows may include estimated earnings
415 from investment of principal. The reserve funding formula shall
416 not include any type of balloon payments.

417 (h) Reserve funds and any interest accruing thereon shall
418 remain in the reserve account or accounts and shall be used only

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419 for authorized reserve expenditures unless their use for other
420 purposes is approved in advance by a majority vote at a meeting
421 at which a quorum is present. Prior to turnover of control of an
422 association by a developer to parcel owners, the developer-
423 controlled association shall not vote to use reserves for
424 purposes other than those for which they were intended without
425 the approval of a majority of all nondeveloper voting interests
426 voting in person or by limited proxy at a duly called meeting of
427 the association.

428 (7) FINANCIAL REPORTING.--Within 90 days after the end of
429 the fiscal year, or annually on the date provided in the bylaws,
430 the association shall prepare and complete, or contract with a
431 third party for the preparation and completion of, a financial
432 report for the preceding fiscal year. Within 21 days after the
433 final financial report is completed by the association or
434 received from the third party, but not later than 120 days after
435 the end of the fiscal year or other date as provided in the
436 bylaws, the association shall ~~prepare an annual financial report~~
437 ~~within 60 days after the close of the fiscal year. The~~
438 ~~association shall,~~ within the time limits set forth in
439 subsection (5), provide each member with a copy of the annual
440 financial report or a written notice that a copy of the
441 financial report is available upon request at no charge to the
442 member. Financial reports shall be prepared as follows:

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

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

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

452 2. An association with total annual revenues of at least
453 \$200,000, but less than \$400,000, shall prepare reviewed
454 financial statements.

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

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

460 2. An association in a community of fewer than 50 parcels,
461 regardless of the association's annual revenues, may prepare a
462 report of cash receipts and expenditures in lieu of financial
463 statements required by paragraph (a) unless the governing
464 documents provide otherwise.

465 3. A report of cash receipts and disbursement must
466 disclose the amount of receipts by accounts and receipt
467 classifications and the amount of expenses by accounts and
468 expense classifications, including, but not limited to, the
469 following, as applicable: costs for security, professional, and
470 management fees and expenses; taxes; costs for recreation
471 facilities; expenses for refuse collection and utility services;
472 expenses for lawn care; costs for building maintenance and
473 repair; insurance costs; administration and salary expenses; and
474 reserves if maintained by the association.

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475 (c) If 20 percent of the parcel owners petition the board
476 for a level of financial reporting higher than that required by
477 this section, the association shall duly notice and hold a
478 meeting of members within 30 days of receipt of the petition for
479 the purpose of voting on raising the level of reporting for that
480 fiscal year. Upon approval of a majority of the total voting
481 interests of the parcel owners, the association shall prepare or
482 cause to be prepared, shall amend the budget or adopt a special
483 assessment to pay for the financial report regardless of any
484 provision to the contrary in the governing documents, and shall
485 provide within 90 days of the meeting or the end of the fiscal
486 year, whichever occurs later:

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

490 2. Reviewed or audited financial statements, if the
491 association is otherwise required to prepare compiled financial
492 statements; or

493 3. Audited financial statements if the association is
494 otherwise required to prepare reviewed financial statements.

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

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

500 2. A report of cash receipts and expenditures or a
501 compiled financial statement in lieu of a reviewed or audited
502 financial statement; or

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

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

509 Section 12. Section 720.3035, Florida Statutes, is created
510 to read:

511 720.3035 Architectural control covenants; parcel owner
512 improvements; rights and privileges.--

513 (1) The authority of an association or any architectural,
514 construction improvement, or other such similar committee of an
515 association to review and approve plans and specifications for
516 the location, size, type, or appearance of any structure or
517 other improvement on a parcel, or to enforce standards for the
518 external appearance of any structure or improvement located on a
519 parcel, shall only be permitted to the extent that the authority
520 is specifically stated or reasonably inferred as to such
521 location, size, type, or appearance in the declaration of
522 covenants or other published guidelines and standards authorized
523 by the declaration of covenants.

524 (2) If the declaration of covenants or other published
525 guidelines and standards authorized by the declaration of
526 covenants provides options for the use of material, the size of
527 the structure or improvement, the design of the structure or
528 improvement, or the location of the structure or improvement on
529 the parcel, neither the association nor any architectural,
530 construction improvement, or other such similar committee of the
531 association shall restrict the right of a parcel owner to select
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532 from the options provided in the declaration of covenants or
533 other published guidelines and standards authorized by the
534 declaration of covenants.

535 (3) Unless otherwise specifically stated in the
536 declaration of covenants or other published guidelines and
537 standards authorized by the declaration of covenants, each
538 parcel shall be deemed to have only one front for purposes of
539 determining the required front setback even if the parcel is
540 bounded by a roadway or other easement on more than one side.
541 When the declaration of covenants or other published guidelines
542 and standards authorized by the declaration of covenants do not
543 provide for specific setback limitations, the applicable county
544 or municipal setback limitations shall apply, and neither the
545 association nor any architectural, construction improvement, or
546 other such similar committee of the association shall enforce or
547 attempt to enforce any setback limitation that is inconsistent
548 with the applicable county or municipal standard or standards.

549 (4) Each parcel owner shall be entitled to the rights and
550 privileges set forth in the declaration of covenants or other
551 published guidelines and standards authorized by the declaration
552 of covenants concerning the architectural use of the parcel, and
553 the construction of permitted structures and improvements on the
554 parcel and such rights and privileges shall not be unreasonably
555 infringed upon or impaired by the association or any
556 architectural, construction improvement, or other such similar
557 committee of the association. If the association or any
558 architectural, construction improvement, or other such similar
559 committee of the association should unreasonably, knowingly, and
560 willfully infringe upon or impair the rights and privileges set

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561 forth in the declaration of covenants or other published
562 guidelines and standards authorized by the declaration of
563 covenants, the adversely affected parcel owner shall be entitled
564 to recover damages caused by such infringement or impairment,
565 including any costs and reasonable attorney's fees incurred in
566 preserving or restoring the rights and privileges of the parcel
567 owner set forth in the declaration of covenants or other
568 published guidelines and standards authorized by the declaration
569 of covenants.

570 (5) Neither the association nor any architectural,
571 construction improvement, or other such similar committee of the
572 association shall enforce any policy or restriction that is
573 inconsistent with the rights and privileges of a parcel owner
574 set forth in the declaration of covenants or other published
575 guidelines and standards authorized by the declaration of
576 covenants, whether uniformly applied or not. Neither the
577 association nor any architectural, construction improvement, or
578 other such similar committee of the association may rely upon a
579 policy or restriction that is inconsistent with the declaration
580 of covenants or other published guidelines and standards
581 authorized by the declaration of covenants, whether uniformly
582 applied or not, in defense of any action taken in the name of or
583 on behalf of the association against a parcel owner.

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

586 720.305 Obligations of members; remedies at law or in
587 equity; levy of fines and suspension of use rights; failure to
588 fill sufficient number of vacancies on board of directors to

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589 constitute a quorum; appointment of receiver upon petition of
590 any member.--

591 (1) Each member and the member's tenants, guests, and
592 invitees, and each association, are governed by, and must comply
593 with, this chapter, the governing documents of the community,
594 and the rules of the association. Actions at law or in equity,
595 or both, to redress alleged failure or refusal to comply with
596 these provisions may be brought by the association or by any
597 member against:

598 (a) The association;

599 (b) A member;

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

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

605

606 The prevailing party in any such litigation is entitled to
607 recover reasonable attorney's fees and costs. A member
608 prevailing in an action between the association and the member
609 under this section, in addition to recovering his or her
610 reasonable attorney's fees, may recover additional amounts as
611 determined by the court to be necessary to reimburse the member
612 for his or her share of assessments levied by the association to
613 fund its expenses of the litigation. This relief does not
614 exclude other remedies provided by law. This section does not
615 deprive any person of any other available right or remedy.

616 Section 14. Paragraph (c) of subsection (1) of section
617 720.306, Florida Statutes, is amended to read:

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618 720.306 Meetings of members; voting and election
619 procedures; amendments.--

620 (1) QUORUM; AMENDMENTS.--

621 (c) Unless otherwise provided in the governing documents
622 as originally recorded or permitted by this chapter or chapter
623 617, an amendment may not materially and adversely alter the
624 proportionate voting interest appurtenant to a parcel or
625 increase the proportion or percentage by which a parcel shares
626 in the common expenses of the association unless the record
627 parcel owner and all record owners of liens on the parcels join
628 in the execution of the amendment. For purposes of this section,
629 a change in quorum requirements is not an alteration of voting
630 interests. The merger or consolidation of one or more
631 associations under a plan of merger or consolidation under
632 chapter 607 or chapter 617 shall not be considered a material or
633 adverse alteration of the proportionate voting interest
634 appurtenant to a parcel.

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

637 720.307 Transition of association control in a
638 community.--With respect to homeowners' associations:

639 (3) At the time the members are entitled to elect at least
640 a majority of the board of directors of the homeowners'
641 association, the developer shall, at the developer's expense,
642 within no more than 90 days deliver the following documents to
643 the board:

644 (t) The financial records, including financial statements
645 of the association, and source documents from the incorporation
646 of the association through the date of turnover. The records

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647 shall be audited by an independent certified public accountant
648 for the period from the incorporation of the association or from
649 the period covered by the last audit, if an audit has been
650 performed for each fiscal year since incorporation. All
651 financial statements shall be prepared in accordance with
652 generally accepted accounting principles and shall be audited in
653 accordance with generally accepted auditing standards, as
654 prescribed by the Board of Accountancy, pursuant to chapter 473.
655 The certified public accountant performing the audit shall
656 examine to the extent necessary supporting documents and
657 records, including the cash disbursements and related paid
658 invoices to determine if expenditures were for association
659 purposes and the billings, cash receipts, and related records of
660 the association to determine that the developer was charged and
661 paid the proper amounts of assessments. This paragraph applies
662 to associations with a date of incorporation after December 31,
663 2006.

664 Section 16. Section 720.308, Florida Statutes, is amended
665 to read:

666 720.308 Assessments and charges.--

667 (1) ASSESSMENTS.--For any community created after October
668 1, 1995, the governing documents must describe the manner in
669 which expenses are shared and specify the member's proportional
670 share thereof. Assessments levied pursuant to the annual budget
671 or special assessment must be in the member's proportional share
672 of expenses as described in the governing document, which share
673 may be different among classes of parcels based upon the state
674 of development thereof, levels of services received by the
675 applicable members, or other relevant factors. While the

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676 developer is in control of the homeowners' association, it may
677 be excused from payment of its share of the operating expenses
678 and assessments related to its parcels for any period of time
679 for which the developer has, in the declaration, obligated
680 itself to pay any operating expenses incurred that exceed the
681 assessments receivable from other members and other income of
682 the association. This section does not apply to an association,
683 no matter when created, if the association is created in a
684 community that is included in an effective development-of-
685 regional-impact development order as of the effective date of
686 this act, together with any approved modifications thereto.

687 (2) GUARANTEES OF COMMON EXPENSES.--

688 (a) Establishment of a guarantee.--If a guarantee of the
689 assessments of parcel owners is not included in the purchase
690 contracts or declaration, any agreement establishing a guarantee
691 shall only be effective upon the approval of a majority of the
692 voting interests of the members other than the developer.
693 Approval shall be expressed at a meeting of the members voting
694 in person or by limited proxy or by agreement in writing without
695 a meeting if provided in the bylaws. Such guarantee shall meet
696 the requirements of this section.

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

700 1. The ending date or event shall be the same for all of
701 the members of an association, including members in different
702 phases of the development.

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703 2. The guarantee may provide for different intervals of
704 time during a guarantee period with different dollar amounts for
705 each such interval.

706 3. The guarantee may provide that after the initial stated
707 period, the developer has an option to extend the guarantee for
708 one or more additional stated periods. The extension of a
709 guarantee is limited to extending the ending date or event;
710 therefore, the developer does not have the option of changing
711 the level of assessments guaranteed.

712 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
713 amount of the guarantee shall be an exact dollar amount for each
714 parcel identified in the declaration. Regardless of the stated
715 dollar amount of the guarantee, assessments charged to a member
716 shall not exceed the maximum obligation of the member based on
717 the total amount of the adopted budget and the member's
718 proportionate ownership share of the common elements.

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

722 (a) If at any time during the guarantee period the funds
723 collected from member assessments at the guaranteed level and
724 other revenues collected by the association are not sufficient
725 to provide payment, on a timely basis, of all assessments,
726 including the full funding of the reserves unless properly
727 waived, the guarantor shall advance sufficient cash to the
728 association at the time such payments are due.

729 (b) Expenses incurred in the production of nonassessment
730 revenues, not in excess of the nonassessment revenues, shall not
731 be included in the assessments. If the expenses attributable to
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732 nonassessment revenues exceed nonassessment revenues, only the
733 excess expenses must be funded by the guarantor. Interest earned
734 on the investment of association funds may be used to pay the
735 income tax expense incurred as a result of the investment; such
736 expense shall not be charged to the guarantor; and the net
737 investment income shall be retained by the association. Each
738 such nonassessment-revenue-generating activity shall be
739 considered separately. Any portion of the parcel assessment that
740 is budgeted for designated capital contributions of the
741 association shall not be used to pay operating expenses.

742 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
743 guarantor's total financial obligation to the association at the
744 end of the guarantee period shall be determined on the accrual
745 basis using the following formula: the guarantor shall pay any
746 deficits that exceed the guaranteed amount, less the total
747 regular periodic assessments earned by the association from the
748 members other than the guarantor during the guarantee period
749 regardless of whether the actual level charged was less than the
750 maximum guaranteed amount.

751 (6) EXPENSES.--Expenses incurred in the production of
752 nonassessment revenues, not in excess of the nonassessment
753 revenues, shall not be included in the operating expenses. If
754 the expenses attributable to nonassessment revenues exceed
755 nonassessment revenues, only the excess expenses must be funded
756 by the guarantor. Interest earned on the investment of
757 association funds may be used to pay the income tax expense
758 incurred as a result of the investment; such expense shall not
759 be charged to the guarantor; and the net investment income shall
760 be retained by the association. Each such nonassessment-revenue-
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761 generating activity shall be considered separately. Any portion
762 of the parcel assessment that is budgeted for designated capital
763 contributions of the association shall not be used to pay
764 operating expenses.

765 Section 17. Section 720.311, Florida Statutes, is amended
766 to read:

767 720.311 Dispute resolution.--

768 (1) The Legislature finds that alternative dispute
769 resolution has made progress in reducing court dockets and
770 trials and in offering a more efficient, cost-effective option
771 to litigation. The filing of any petition for ~~mediation or~~
772 arbitration or the serving of an offer for presuit mediation as
773 provided for in this section shall toll the applicable statute
774 of limitations. Any recall dispute filed with the department
775 pursuant to s. 720.303(10) shall be conducted by the department
776 in accordance with the provisions of ss. 718.112(2)(j) and
777 718.1255 and the rules adopted by the division. In addition, the
778 department shall conduct mandatory binding arbitration of
779 election disputes between a member and an association pursuant
780 to s. 718.1255 and rules adopted by the division. Neither
781 election disputes nor recall disputes are eligible for presuit
782 mediation; these disputes shall be arbitrated by the department.
783 At the conclusion of the proceeding, the department shall charge
784 the parties a fee in an amount adequate to cover all costs and
785 expenses incurred by the department in conducting the
786 proceeding. Initially, the petitioner shall remit a filing fee
787 of at least \$200 to the department. The fees paid to the
788 department shall become a recoverable cost in the arbitration
789 proceeding, and the prevailing party in an arbitration

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790 proceeding shall recover its reasonable costs and attorney's
791 fees in an amount found reasonable by the arbitrator. The
792 department shall adopt rules to effectuate the purposes of this
793 section.

794 (2) (a) Disputes between an association and a parcel owner
795 regarding use of or changes to the parcel or the common areas
796 and other covenant enforcement disputes, disputes regarding
797 amendments to the association documents, disputes regarding
798 meetings of the board and committees appointed by the board,
799 membership meetings not including election meetings, and access
800 to the official records of the association shall be the subject
801 of an offer filed with the department for presuit mandatory
802 mediation served by an aggrieved party before the dispute is
803 filed in court. Presuit mediation proceedings must be conducted
804 in accordance with the applicable Florida Rules of Civil
805 Procedure, and these proceedings are privileged and confidential
806 to the same extent as court-ordered mediation. Disputes subject
807 to presuit mediation under this section shall not include the
808 collection of any assessment, fine, or other financial
809 obligation, including attorney's fees and costs, claimed to be
810 due or any action to enforce a prior mediation settlement
811 agreement between the parties. Also, in any dispute subject to
812 presuit mediation under this section where emergency relief is
813 required, a motion for temporary injunctive relief may be filed
814 with the court without first complying with the presuit
815 mediation requirements of this section. After any issues
816 regarding emergency or temporary relief are resolved, the court
817 may either refer the parties to a mediation program administered
818 by the courts or require mediation under this section. An

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819 arbitrator or judge may not consider any information or evidence
820 arising from the presuit mediation proceeding except in a
821 proceeding to impose sanctions for failure to attend a presuit
822 mediation session or with the parties' agreement in a proceeding
823 seeking to enforce the agreement. Persons who are not parties to
824 the dispute may not attend the presuit mediation conference
825 without the consent of all parties, except for counsel for the
826 parties and a corporate representative designated by the
827 association. When mediation is attended by a quorum of the
828 board, such mediation is not a board meeting for purposes of
829 notice and participation set forth in s. 720.303. An aggrieved
830 party shall serve on the responding party a written offer to
831 participate in presuit mediation in substantially the following
832 form:

833
834 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

835
836 The alleged aggrieved party, _____, hereby
837 offers to _____, as the responding party,
838 to enter into presuit mediation in connection with the
839 following dispute, which by statute is of a type that
840 is subject to presuit mediation:

841
842 (List specific nature of the dispute or disputes to be
843 mediated and the authority supporting a finding of a
844 violation as to each dispute.)

845
846 Pursuant to section 720.311, Florida Statutes, this
847 offer to resolve the dispute through presuit mediation

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848 is required before a lawsuit can be filed concerning
849 the dispute. Pursuant to the statute, the aggrieved
850 party is hereby offering to engage in presuit
851 mediation with a neutral third-party mediator in order
852 to attempt to resolve this dispute without court
853 action, and the aggrieved party demands that you
854 likewise agree to this process. If you fail to agree
855 to presuit mediation, or if you agree and later fail
856 to follow through with your agreement to mediate, suit
857 may be brought against you without further warning.

858
859 The process of mediation involves a supervised
860 negotiation process in which a trained, neutral third-
861 party mediator meets with both parties and assists
862 them in exploring possible opportunities for resolving
863 part or all of the dispute. The mediation process is a
864 voluntary one. By agreeing to participate in presuit
865 mediation, you are not bound in any way to change your
866 position or to enter into any type of agreement.
867 Furthermore, the mediator has no authority to make any
868 decisions in this matter or to determine who is right
869 or wrong and merely acts as a facilitator to ensure
870 that each party understands the position of the other
871 party and that all reasonable settlement options are
872 fully explored. All mediation communications are
873 confidential under the Mediation Confidentiality and
874 Privilege Act pursuant to sections 44.401-44.406,
875 Florida Statutes, and a mediation participant may not
876 disclose a mediation communication to a person other

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877 than a mediation participant or a participant's
878 counsel.

879
880 If an agreement is reached, it shall be reduced to
881 writing and becomes a binding and enforceable
882 commitment of the parties. A resolution of one or more
883 disputes in this fashion avoids the need to litigate
884 these issues in court. The failure to reach an
885 agreement, or the failure of a party to participate in
886 the process, results in the mediator's declaring an
887 impasse in the mediation, after which the aggrieved
888 party may proceed to court on all outstanding,
889 unsettled disputes.

890
891 The aggrieved party has selected and hereby lists
892 three certified mediators who we believe to be neutral
893 and qualified to mediate the dispute. You have the
894 right to select any one of these mediators. The fact
895 that one party may be familiar with one or more of the
896 listed mediators does not mean that the mediator
897 cannot act as a neutral and impartial facilitator. Any
898 mediator who cannot act in this capacity ethically
899 must decline to accept engagement. The mediators that
900 we suggest, and their current hourly rates, are as
901 follows:

902
903 (List the names, addresses, telephone numbers, and
904 hourly rates of the mediators. Other pertinent

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905 information about the background of the mediators may
906 be included as an attachment.)

907
908 You may contact the offices of these mediators to
909 confirm that the listed mediators will be neutral and
910 will not show any favoritism toward either party. The
911 names of certified mediators may be found through the
912 office of the clerk of the circuit court for this
913 circuit.

914
915 If you agree to participate in the presuit mediation
916 process, the statute requires that each party is to
917 pay one-half of the costs and fees involved in the
918 presuit mediation process unless otherwise agreed by
919 all parties. An average mediation may require 3 to 4
920 hours of the mediator's time, including some
921 preparation time, and each party would need to pay
922 one-half of the mediator's fees as well as his or her
923 own attorney's fees if he or she chooses to employ an
924 attorney in connection with the mediation. However,
925 use of an attorney is not required and is at the
926 option of each party. The mediator may require the
927 advance payment of some or all of the anticipated
928 fees. The aggrieved party hereby agrees to pay or
929 prepay one-half of the mediator's estimated fees and
930 to forward this amount or such other reasonable
931 advance deposits as the mediator may require for this
932 purpose. Any funds deposited will be returned to you

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933 if these are in excess of your share of the fees
934 incurred.

935
936 If you agree to participate in presuit mediation in
937 order to attempt to resolve the dispute and thereby
938 avoid further legal action, please sign below and
939 clearly indicate which mediator is acceptable to you.
940 We will then ask the mediator to schedule a mutually
941 convenient time and place for the mediation conference
942 to be held. The mediation conference must be held
943 within 90 days after the date of this letter unless
944 extended by mutual written agreement. In the event
945 that you fail to respond within 20 days after the date
946 of this letter, or if you fail to agree to at least
947 one of the mediators that we have suggested and to pay
948 or prepay to the mediator one-half of the costs
949 involved, the aggrieved party will be authorized to
950 proceed with the filing of a lawsuit against you
951 without further notice and may seek an award of
952 attorney's fees or costs incurred in attempting to
953 obtain mediation.

954
955 Should you wish, you may also elect to waive presuit
956 mediation so that this matter may proceed directly to
957 court.

958
959 Therefore, please give this matter your immediate
960 attention. By law, your response must be mailed by
961 certified mail, return receipt requested, with an

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962 additional copy being sent by regular first-class mail
963 to the address shown on this offer.

964 _____
965 _____
966 _____

967
968 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
969 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
970 CHOICE.

971
972 AGREEMENT TO MEDIATE

973
974 The undersigned hereby agrees to participate in
975 presuit mediation and agrees to the following mediator
976 or mediators as acceptable to mediate this dispute:

977
978 (List acceptable mediator or mediators.)

979
980 I/we further agree to pay or prepay one-half of the
981 mediator's fees and to forward such advance deposits
982 as the mediator may require for this purpose.

983
984 _____
985 Signature of responding party #1

986
987 _____
988 Signature of responding party #2 (if applicable) (if
989 property is owned by more than one person, all owners
990 must sign)

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WAIVER OF MEDIATION

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

Signature of responding party #1

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

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

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1020 foregoing, once the parties have agreed on a mediator, the
1021 mediator may reschedule the mediation for a date and time
1022 mutually convenient to the parties. ~~The department shall conduct~~
1023 ~~the proceedings through the use of department mediators or refer~~
1024 ~~the disputes to private mediators who have been duly certified~~
1025 ~~by the department as provided in paragraph (c).~~ The parties
1026 shall share the costs of presuit mediation equally, including
1027 the fee charged by the mediator, if any, unless the parties
1028 agree otherwise, and the mediator may require advance payment of
1029 its reasonable fees and costs. The failure of any party to
1030 respond to a demand or response, to agree upon a mediator, to
1031 make payment of fees and costs within the time established by
1032 the mediator, or to appear for a scheduled mediation session
1033 shall operate as an impasse in the presuit mediation by such
1034 party, entitling the other party to proceed in court and to seek
1035 an award of the costs and fees associated with the mediation.
1036 Additionally, if any presuit mediation session cannot be
1037 scheduled and conducted within 90 days after the offer to
1038 participate in mediation was filed, an impasse shall be deemed
1039 to have occurred unless both parties agree to extend this
1040 deadline. ~~If a department mediator is used, the department may~~
1041 ~~charge such fee as is necessary to pay expenses of the~~
1042 ~~mediation, including, but not limited to, the salary and~~
1043 ~~benefits of the mediator and any travel expenses incurred. The~~
1044 ~~petitioner shall initially file with the department upon filing~~
1045 ~~the disputes, a filing fee of \$200, which shall be used to~~
1046 ~~defray the costs of the mediation. At the conclusion of the~~
1047 ~~mediation, the department shall charge to the parties, to be~~
1048 ~~shared equally unless otherwise agreed by the parties, such~~

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1049 ~~further fees as are necessary to fully reimburse the department~~
1050 ~~for all expenses incurred in the mediation.~~

1051 ~~(c)-(b)~~ If presuit mediation as described in paragraph (a)
1052 is not successful in resolving all issues between the parties,
1053 the parties may file the unresolved dispute in a court of
1054 competent jurisdiction or elect to enter into binding or
1055 nonbinding arbitration pursuant to the procedures set forth in
1056 s. 718.1255 and rules adopted by the division, with the
1057 arbitration proceeding to be conducted by a department
1058 arbitrator or by a private arbitrator certified by the
1059 department. If all parties do not agree to arbitration
1060 proceedings following an unsuccessful presuit mediation, any
1061 party may file the dispute in court. A final order resulting
1062 from nonbinding arbitration is final and enforceable in the
1063 courts if a complaint for trial de novo is not filed in a court
1064 of competent jurisdiction within 30 days after entry of the
1065 order. As to any issue or dispute that is not resolved at
1066 presuit mediation, and as to any issue that is settled at
1067 presuit mediation but is thereafter subject to an action seeking
1068 enforcement of the mediation settlement, the prevailing party in
1069 any subsequent arbitration or litigation proceeding shall be
1070 entitled to seek recovery of all costs and attorney's fees
1071 incurred in the presuit mediation process.

1072 ~~(d)-(c)~~ ~~The department shall develop a certification and~~
1073 ~~training program for private mediators and private arbitrators~~
1074 ~~which shall emphasize experience and expertise in the area of~~
1075 ~~the operation of community associations.~~ A mediator or
1076 arbitrator shall be certified to conduct mediation or
1077 arbitration under this section ~~by the department~~ only if he or

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1078 she has been certified as a circuit court civil mediator or
1079 arbitrator, respectively, pursuant to the requirements
1080 established ~~attended at least 20 hours of training in mediation~~
1081 ~~or arbitration, as appropriate, and only if the applicant has~~
1082 ~~mediated or arbitrated at least 10 disputes involving community~~
1083 ~~associations within 5 years prior to the date of the~~
1084 ~~application, or has mediated or arbitrated 10 disputes in any~~
1085 ~~area within 5 years prior to the date of application and has~~
1086 ~~completed 20 hours of training in community association~~
1087 ~~disputes. In order to be certified by the department, any~~
1088 ~~mediator must also be certified by the Florida Supreme Court.~~
1089 ~~The department may conduct the training and certification~~
1090 ~~program within the department or may contract with an outside~~
1091 ~~vendor to perform the training or certification. The expenses of~~
1092 ~~operating the training and certification and training program~~
1093 ~~shall be paid by the moneys and filing fees generated by the~~
1094 ~~arbitration of recall and election disputes and by the mediation~~
1095 ~~of those disputes referred to in this subsection and by the~~
1096 ~~training fees.~~

1097 (e)-(d) The presuit mediation procedures provided by this
1098 subsection may be used by a Florida corporation responsible for
1099 the operation of a community in which the voting members are
1100 parcel owners or their representatives, in which membership in
1101 the corporation is not a mandatory condition of parcel
1102 ownership, or which is not authorized to impose an assessment
1103 that may become a lien on the parcel.

1104 ~~(3) The department shall develop an education program to~~
1105 ~~assist homeowners, associations, board members, and managers in~~
1106 ~~understanding and increasing awareness of the operation of~~

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1107 ~~homeowners' associations pursuant to this chapter and in~~
1108 ~~understanding the use of alternative dispute resolution~~
1109 ~~techniques in resolving disputes between parcel owners and~~
1110 ~~associations or between owners. Such education program may~~
1111 ~~include the development of pamphlets and other written~~
1112 ~~instructional guides, the holding of classes and meetings by~~
1113 ~~department employees or outside vendors, as the department~~
1114 ~~determines, and the creation and maintenance of a website~~
1115 ~~containing instructional materials. The expenses of operating~~
1116 ~~the education program shall be initially paid by the moneys and~~
1117 ~~filing fees generated by the arbitration of recall and election~~
1118 ~~disputes and by the mediation of those disputes referred to in~~
1119 ~~this subsection.~~

1120 Section 18. Except as otherwise expressly provided in this
1121 act, this act shall take effect July 1, 2006.

1122

1123 ===== T I T L E A M E N D M E N T =====

1124 Remove the entire title and insert:

1125 A bill to be entitled

1126 An act relating to community associations; creating s.
1127 712.11, F.S.; providing for the revival of certain
1128 covenants that have lapsed; amending s. 718.106, F.S.;
1129 prohibiting local governments from limiting the access of
1130 certain persons to beaches adjacent to or adjoining
1131 condominium property; amending s. 718.110, F.S.; revising
1132 provisions relating to the amendment of declarations;
1133 providing legislative findings and a finding of compelling
1134 state interest; providing criteria for consent to an
1135 amendment; requiring notice regarding proposed amendments

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1136 to mortgagees; providing criteria for notification;
1137 providing for voiding certain amendments; amending s.
1138 718.112, F.S.; revising the implementation date for
1139 retrofitting of common areas with a sprinkler system;
1140 amending s. 718.114, F.S.; providing that certain
1141 leaseholds, memberships, or other possessory or use
1142 interests shall be considered a material alteration or
1143 substantial addition to certain real property; amending s.
1144 718.404, F.S.; providing retroactive application of
1145 provisions relating to mixed-use condominiums; amending s.
1146 719.103, F.S.; providing a definition; amending s.
1147 719.507, F.S.; prohibiting laws, ordinances, or
1148 regulations that apply only to improvements that are or
1149 may be subjected to an equity club form of ownership;
1150 amending s. 720.302, F.S.; revising governing provisions
1151 relating to corporations that operate residential
1152 homeowners' associations; amending s. 720.303, F.S.;
1153 revising application to include certain meetings;
1154 requiring the association to provide certain information
1155 to prospective purchasers or lienholders; authorizing the
1156 association to charge a reasonable fee for providing
1157 certain information; requiring the budget to provide for
1158 annual operating expenses; authorizing the budget to
1159 include reserve accounts for capital expenditures and
1160 deferred maintenance; providing a formula for calculating
1161 the amount to be reserved; authorizing the association to
1162 adjust replacement reserve assessments annually;
1163 authorizing the developer to vote to waive the reserves or
1164 reduce the funding of reserves for a certain period;

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1165 | revising provisions relating to financial reporting;
1166 | revising time periods in which the association must
1167 | complete its reporting; repealing s. 720.303(2), F.S., as
1168 | amended, relating to board meetings, to remove conflicting
1169 | versions of that subsection; creating s. 720.3035, F.S.;
1170 | providing for architectural control covenants and parcel
1171 | owner improvements; authorizing the review and approval of
1172 | plans and specifications; providing limitations; providing
1173 | rights and privileges for parcel owners as set forth in
1174 | the declaration of covenants; amending s. 720.305, F.S.;
1175 | providing that, where a member is entitled to collect
1176 | attorney's fees against the association, the member may
1177 | also recover additional amounts as determined by the
1178 | court; amending s. 720.306, F.S.; providing that certain
1179 | mergers or consolidations of an association shall not be
1180 | considered a material or adverse alteration of the
1181 | proportionate voting interest appurtenant to a parcel;
1182 | amending s. 720.307, F.S.; requiring developers to deliver
1183 | financial records to the board in any transition of
1184 | association control to members; requiring certain
1185 | information to be included in the records and for the
1186 | records to be prepared in a specified manner; amending s.
1187 | 720.308, F.S.; providing circumstances under which a
1188 | guarantee of common expenses shall be effective; providing
1189 | for approval of the guarantee by association members;
1190 | providing for a guarantee period and extension thereof;
1191 | requiring the stated dollar amount of the guarantee to be
1192 | an exact dollar amount for each parcel identified in the
1193 | declaration; providing payments required from the

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1194 guarantor to be determined in a certain manner; providing
1195 a formula to determine the guarantor's total financial
1196 obligation to the association; providing that certain
1197 expenses incurred in the production of certain revenues
1198 shall not be included in the operating expenses; amending
1199 s. 720.311, F.S.; revising provisions relating to dispute
1200 resolution; providing that the filing of any petition for
1201 arbitration or the serving of an offer for presuit
1202 mediation shall toll the applicable statute of
1203 limitations; providing that certain disputes between an
1204 association and a parcel owner shall be subject to presuit
1205 mediation; revising provisions to conform; providing that
1206 temporary injunctive relief may be sought in certain
1207 disputes subject to presuit mediation; authorizing the
1208 court to refer the parties to mediation under certain
1209 circumstances; requiring the aggrieved party to serve on
1210 the responding party a written offer to participate in
1211 presuit mediation; providing a form for such offer;
1212 providing that service of the offer is effected by the
1213 sending of such an offer in a certain manner; providing
1214 that the prevailing party in any subsequent arbitration or
1215 litigation proceedings is entitled to seek recovery of all
1216 costs and attorney's fees incurred in the presuit
1217 mediation process; requiring the mediator or arbitrator to
1218 meet certain certification requirements; removing a
1219 requirement relating to development of an education
1220 program to increase awareness of the operation of
1221 homeowners' associations and the use of alternative
1222 dispute resolution techniques; providing effective dates.

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