

1 A bill to be entitled
 2 An act relating to community associations; creating s.
 3 712.11, F.S.; providing for the revival of certain
 4 declarations that have been extinguished; amending s.
 5 718.110, F.S.; revising provisions relating to the
 6 amendment of declarations; providing legislative findings
 7 and a finding of compelling state interest; requiring a
 8 holder of a recorded mortgage on a condominium unit that
 9 requires the consent or joinder of a mortgagee to an
 10 amendment to provide certain information to a condominium
 11 association; providing definitions; providing criteria for
 12 consent to an amendment; requiring notice regarding
 13 proposed amendments to mortgagees; providing criteria for
 14 notification; requiring the association to conduct a
 15 diligent search to identify mortgagees; requiring the
 16 association's representative to execute an affidavit
 17 confirming that a diligent search was conducted;
 18 prohibiting the declaration of condominium, articles of
 19 incorporation, or bylaws from requiring the consent or
 20 joinder of more than a specified percent of the eligible
 21 mortgagees in connection with proposed amendments under
 22 certain conditions; providing criteria for enforcement;
 23 requiring mortgagees seeking to disapprove a proposed
 24 amendment to provide certain information to the
 25 association; providing for the recovery of certain costs
 26 and attorney's fees; amending s. 720.302, F.S.; revising
 27 governing provisions relating to corporations not for
 28 profit that operate residential homeowners' associations;

29 | amending s. 720.303, F.S.; providing that special
30 | assessments may not be levied at a board meeting except
31 | under certain circumstances; revising provisions relating
32 | to the closed-circuit cable broadcast notice requirement;
33 | authorizing the association to charge a reasonable fee for
34 | providing good faith responses to certain requests for
35 | information by or on behalf of a prospective purchaser or
36 | lienholder; providing conditions for exemption from
37 | liability for providing such information; revising when
38 | the association must have its financial report completed
39 | and provided to members; repealing s. 720.303(2), F.S., as
40 | amended, relating to board meetings, to remove conflicting
41 | versions of that subsection; amending s. 720.306, F.S.;
42 | providing that certain mergers or consolidations of an
43 | association shall not be considered a material or adverse
44 | alteration of the proportionate voting interest
45 | appurtenant to a parcel; revising provisions relating to
46 | items that members and parcel owners may address at
47 | membership meetings; amending s. 720.311, F.S.; revising
48 | provisions relating to dispute resolution; providing that
49 | the filing of any petition for arbitration or the serving
50 | of an offer for presuit mediation shall toll the
51 | applicable statute of limitations; providing that certain
52 | disputes between an association and a parcel owner shall
53 | be subject to presuit mediation; revising provisions to
54 | conform; providing that temporary injunctive relief may be
55 | sought in certain disputes subject to presuit mediation;
56 | authorizing the court to refer the parties to mediation

57 | under certain circumstances; requiring the aggrieved party
 58 | to serve on the responding party a written offer to
 59 | participate in presuit mediation; providing a form for
 60 | such offer; providing that service of the offer is
 61 | effected by the sending of such an offer in a certain
 62 | manner; providing that the prevailing party in any
 63 | subsequent arbitration or litigation proceedings is
 64 | entitled to seek recovery of all costs and attorney's fees
 65 | incurred in the presuit mediation process; requiring the
 66 | mediator or arbitrator to meet certain certification
 67 | requirements; removing a requirement relating to
 68 | development of an education program to increase awareness
 69 | of the operation of homeowners' associations and the use
 70 | of alternative dispute resolution techniques; amending s.
 71 | 720.405, F.S.; revising provisions relating to the
 72 | proposed revived declaration and other governing documents
 73 | for the community; providing effective dates.

74 |

75 | Be It Enacted by the Legislature of the State of Florida:

76 |

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

79 | 712.11 Covenant revitalization.--A homeowners' association
 80 | not otherwise subject to chapter 720 may use the procedures set
 81 | forth in ss. 720.403-720.407 to revive covenants that have
 82 | lapsed under the terms of this chapter.

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

85 718.110 Amendment of declaration; correction of error or
 86 omission in declaration by circuit court.--

87 (11)(a) Notwithstanding any provision to the contrary
 88 contained in this section, any provision in the declaration of
 89 condominium, articles of incorporation, or bylaws that requires
 90 declaration recorded after April 1, 1992, may not require the
 91 consent or joinder of some or all mortgagees of units or any
 92 other portion of the condominium property to or in amendments to
 93 the declaration of condominium, articles of incorporation, or
 94 bylaws shall be void to the extent not, unless the requirement
 95 ~~is~~ limited to amendments materially affecting the rights or
 96 interests of the mortgagees, or as otherwise required by the
 97 Federal National Mortgage Association or the Federal Home Loan
 98 Mortgage Corporation, and any consent or joinder shall unless
 99 ~~the requirement provides that such consent may not be~~
 100 unreasonably withheld. It shall be presumed that, except as to
 101 those matters described in subsections (4) and (8) or other
 102 issues materially affecting the mortgagee's security interest in
 103 the property, amendments to the declaration of condominium,
 104 articles of incorporation, or bylaws do not materially affect
 105 the rights or interests of mortgagees. In the event mortgagee
 106 consent is provided other than by properly recorded joinder,
 107 such consent shall be evidenced by affidavit of the association
 108 recorded in the public records of the county where the
 109 declaration of condominium, articles of incorporation, or bylaws
 110 are is recorded.

111 (b) The Legislature finds that the procurement of
 112 mortgagee consent or joinder to amendments that do not

113 materially affect the rights or interests of mortgagees is an
114 unreasonable and substantial logistical and financial burden on
115 the unit owners and condominium associations and that there is a
116 compelling state interest in enabling the members of a
117 condominium association to approve amendments. Accordingly, any
118 holder of a recorded mortgage on a condominium unit or any other
119 portion of a condominium, which mortgage is first recorded after
120 October 1, 2006, and for which the declaration of condominium,
121 articles of incorporation, or bylaws require the consent or
122 joinder of a mortgagee to an amendment, must provide written
123 notice by certified mail to the association of the address at
124 which the mortgagee may be contacted in regard to any proposed
125 amendments. The association shall maintain the names and
126 addresses of such mortgagees in a registry of mortgagees, which
127 the association shall utilize when sending a request for such
128 consent or joinder. A request for consent or joinder must be
129 mailed to a mortgagee by certified mail, return receipt
130 requested, to the address provided by the mortgagee and retained
131 in the registry of mortgagees. As used in this subsection,
132 "certified mail" means either certified or registered mail,
133 return receipt requested. Consent to an amendment shall be
134 deemed to have been given by any holder of a mortgage that is
135 first recorded after October 1, 2006, and who fails to provide
136 the required written notice and contact information. Also, any
137 mortgagee who fails to respond by certified mail within 30 days
138 after the date the association mails a request for consent or
139 joinder shall be deemed to have consented to the proposed
140 amendment.

141 (c) As to mortgages in existence as of October 1, 2006, in
 142 those condominiums where the consent or joinder of such
 143 mortgagees is required in connection with amendments to the
 144 governing documents, and where such mortgagees are not otherwise
 145 required by the existing declaration of condominium, articles of
 146 incorporation, or bylaws to provide notice to the association of
 147 their contact information in order to be eligible to receive
 148 notices regarding proposed amendments, those condominium
 149 associations that wish to modify provisions in the declaration
 150 of condominium, articles of incorporation, or bylaws that
 151 require the consent or joinder of mortgagees must notify all
 152 mortgagees who hold mortgages on units within the condominium or
 153 other portions of the condominium property of the need to
 154 provide the same contact information as required in paragraph
 155 (b). Any mortgagee who does not provide contact information as
 156 required will be deemed to have consented to all future proposed
 157 amendments. Further, once the proper address for notifying
 158 existing mortgagees has been obtained in the manner provided for
 159 in this subsection, failure of any mortgagee to respond to a
 160 request for the consent or joinder to a proposed amendment
 161 within 30 days after the date that such request is sent to the
 162 mortgagee by certified mail shall be deemed to have consented to
 163 such amendment. In order to properly notify holders of existing
 164 mortgages:

165 1. The condominium association must first conduct a
 166 diligent search to identify all existing mortgagees and an
 167 address for the required notice to be sent to each mortgagee.
 168 Service of the notice shall be on the mortgagee's registered

169 agent based upon the information available from the Secretary of
 170 State. Where there is no registered agent, the notice shall be
 171 sent to the address in the original recorded mortgage unless
 172 there is a different address in a more recently recorded
 173 assignment or modification instrument or in the records
 174 maintained by the condominium association. All notices must be
 175 sent by certified mail and must advise the mortgagee that if he
 176 or she fails to provide the contact information requested within
 177 30 days after the date of mailing of the certified letter from
 178 the association, such mortgagee shall be deemed to have
 179 consented to the proposed amendment.

180 2. An affidavit must be executed by a representative of
 181 the condominium association confirming that a diligent search
 182 has been conducted to identify all outstanding mortgages on the
 183 condominium in the manner provided for in subparagraph 1. and
 184 summarizing the steps that were taken in connection with such
 185 diligent search and the notification of all mortgagees, and such
 186 affidavit shall be placed in the association's minute book as an
 187 attachment to the minutes of the meeting in which the board of
 188 directors considers such affidavit.

189 (d) After October 1, 2006, no new declaration of
 190 condominium, articles of incorporation, or bylaws may require
 191 the consent or joinder of more than 51 percent of the eligible
 192 mortgagees in connection with any proposed amendment unless a
 193 higher percentage is required in order to comply with the
 194 requirements of the Federal National Mortgage Association or
 195 Federal Home Loan Mortgage Corporation. Any new declaration of
 196 condominium, articles of incorporation, or bylaws must also

197 require mortgagees to provide to the condominium association the
 198 address to which notices may be sent, as provided for in
 199 paragraph (b), in order for such mortgagees to have the right to
 200 be contacted in connection with any proposed amendment.

201 (e) A provision requiring the consent or joinder of some
 202 or all holders of mortgages on units or other portions of the
 203 condominium property to any proposed amendment shall be
 204 enforceable only by mortgagees of record as of the date an
 205 amendment is recorded in the public records and only by those
 206 mortgagees who have complied with the requirements of paragraph
 207 (b) or paragraph (c). Any amendment adopted without the required
 208 consent of a mortgagee shall be deemed voidable by any mortgagee
 209 who was entitled to notice and the opportunity to consent, and
 210 actions to void such amendments shall be subject to the statute
 211 of limitations applicable to actions founded upon written
 212 instruments, which statute shall commence to run as of the date
 213 such amendment is recorded in the public records and, for
 214 amendments recorded prior to October 1, 2006, shall commence on
 215 October 1, 2006.

216 (f) In order to establish that he or she is not
 217 unreasonably withholding consent, any mortgagee who seeks to
 218 disapprove of a proposed amendment by withholding his or her
 219 consent or joinder must include in his or her reply to the
 220 condominium association's request for consent or joinder a
 221 statement of the specific reasons the proposed amendment is
 222 claimed to materially and adversely affect the rights and
 223 interests of such mortgagee.

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

229 Section 3. Subsections (4) and (5) of section 720.302,
 230 Florida Statutes, are amended to read:

231 720.302 Purposes, scope, and application.--

232 (4) This chapter does not apply to any association that is
 233 subject to regulation under chapter 718, chapter 719, or chapter
 234 721~~+~~ or to any nonmandatory association formed under chapter
 235 723, except to the extent that a provision of chapter 718,
 236 chapter 719, or chapter 721 is expressly incorporated into this
 237 chapter for the purpose of regulating homeowners' associations.

238 (5) Unless expressly stated to the contrary, corporations
 239 not for profit that operate residential homeowners' associations
 240 in this state shall be governed by and subject to chapter 607,
 241 if the association was incorporated thereunder, or to chapter
 242 617, if the association was incorporated thereunder, and this
 243 chapter. This subsection is intended to clarify existing law.

244 Section 4. Subsections (2) and (7) of section 720.303,
 245 Florida Statutes, as amended by section 18 of chapter 2004-345
 246 and section 135 of chapter 2005-2, Laws of Florida, are amended,
 247 and paragraphs (d) and (e) are added to subsection (5) of that
 248 section, to read:

249 720.303 Association powers and duties; meetings of board;
 250 official records; budgets; financial reporting; association
 251 funds; recalls.--

252 (2) BOARD MEETINGS.--

253 (a) A meeting of the board of directors of an association
 254 occurs whenever a quorum of the board gathers to conduct
 255 association business. All meetings of the board must be open to
 256 all members except for meetings between the board and its
 257 attorney with respect to proposed or pending litigation where
 258 the contents of the discussion would otherwise be governed by
 259 the attorney-client privilege. The provisions of this subsection
 260 shall also apply to the meetings of any committee or other
 261 similar body when a final decision will be made regarding the
 262 expenditure of association funds and to meetings of any body
 263 vested with the power to approve or disapprove architectural
 264 decisions with respect to a specific parcel of residential
 265 property owned by a member of the community.

266 (b) Members have the right to attend all meetings of the
 267 board and to speak on any matter placed on the agenda by
 268 petition of the voting interests for at least 3 minutes. The
 269 association may adopt written reasonable rules expanding the
 270 right of members to speak and governing the frequency, duration,
 271 and other manner of member statements, which rules must be
 272 consistent with this paragraph and may include a sign-up sheet
 273 for members wishing to speak. Notwithstanding any other law, the
 274 requirement that board meetings and committee meetings be open
 275 to the members is inapplicable to meetings between the board or
 276 a committee and the association's attorney, with respect to
 277 meetings of the board held for the purpose of discussing
 278 personnel matters.

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

282 1. Notices of all board meetings must be posted in a
 283 conspicuous place in the community at least 48 hours in advance
 284 of a meeting, except in an emergency. In the alternative, if
 285 notice is not posted in a conspicuous place in the community,
 286 notice of each board meeting must be mailed or delivered to each
 287 member at least 7 days before the meeting, except in an
 288 emergency. Notwithstanding this general notice requirement, for
 289 communities with more than 100 members, the bylaws may provide
 290 for a reasonable alternative to posting or mailing of notice for
 291 each board meeting, including publication of notice, provision
 292 of a schedule of board meetings, or the conspicuous posting and
 293 repeated broadcasting of the notice on a closed-circuit cable
 294 television system serving the homeowners' association. However,
 295 if broadcast notice is used in lieu of a notice posted
 296 physically in the community, the notice must be broadcast at
 297 least four times every broadcast hour of each day that a posted
 298 notice is otherwise required. When broadcast notice is provided,
 299 the notice ~~and agenda~~ must be broadcast in a manner and for a
 300 sufficient continuous length of time so as to allow an average
 301 reader to observe the notice and read and comprehend the entire
 302 content of the notice ~~and the agenda~~. The bylaws or amended
 303 bylaws may provide for giving notice by electronic transmission
 304 in a manner authorized by law for meetings of the board of
 305 directors, committee meetings requiring notice under this
 306 section, and annual and special meetings of the members;

307 however, a member must consent in writing to receiving notice by
 308 electronic transmission.

309 2. A special ~~An~~ assessment may not be levied at a board
 310 meeting unless the notice of the meeting includes a statement
 311 that special assessments will be considered and the nature of
 312 the special assessments. Written notice of any meeting at which
 313 special assessments will be considered or at which amendments to
 314 rules regarding parcel use will be considered must be mailed,
 315 delivered, or electronically transmitted to the members and
 316 parcel owners and posted conspicuously on the property or
 317 broadcast on closed-circuit cable television not less than 14
 318 days before the meeting.

319 3. Directors may not vote by proxy or by secret ballot at
 320 board meetings, except that secret ballots may be used in the
 321 election of officers. ~~This subsection also applies to the~~
 322 ~~meetings of any committee or other similar body, when a final~~
 323 ~~decision will be made regarding the expenditure of association~~
 324 ~~funds, and to any body vested with the power to approve or~~
 325 ~~disapprove architectural decisions with respect to a specific~~
 326 ~~parcel of residential property owned by a member of the~~
 327 ~~community.~~

328 (d) If 20 percent of the total voting interests petition
 329 the board to address an item of business, the board shall at its
 330 next regular board meeting or at a special meeting of the board,
 331 but not later than 60 days after the receipt of the petition,
 332 take the petitioned item up on an agenda. The board shall give
 333 all members notice of the meeting at which the petitioned item
 334 shall be addressed in accordance with the 14-day notice

335 requirement pursuant to subparagraph (c)2. Each member shall
 336 have the right to speak for at least 3 minutes on each matter
 337 placed on the agenda by petition, provided that the member signs
 338 the sign-up sheet, if one is provided, or submits a written
 339 request to speak prior to the meeting. Other than addressing the
 340 petitioned item at the meeting, the board is not obligated to
 341 take any other action requested by the petition.

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

353 (d) The association or its authorized agent is not
 354 required to provide a prospective purchaser or lienholder with
 355 information about the residential subdivision or the association
 356 other than information or documents required by this chapter to
 357 be made available or disclosed. The association or its
 358 authorized agent may charge a reasonable fee to the prospective
 359 purchaser or lienholder or the current parcel owner or member
 360 for providing good faith responses to requests for information
 361 by or on behalf of a prospective purchaser or lienholder, other
 362 than that required by law, if the fee does not exceed \$150 plus

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

365 (e) An association and its authorized agent are not liable
 366 for providing such information in good faith pursuant to a
 367 written request if the person providing the information includes
 368 a written statement in substantially the following form: "The
 369 responses herein are made in good faith and to the best of my
 370 ability as to their accuracy."

371 (7) FINANCIAL REPORTING.--Within 90 days after the end of
 372 the fiscal year, or annually on a date provided in the bylaws,
 373 the association shall prepare and complete, or contract for the
 374 preparation and completion of, a financial report for the
 375 preceding fiscal year. Within 21 days after the final financial
 376 report is completed by the association or received from the
 377 third party, but not later than 120 days after the end of the
 378 fiscal year or other date as provided in the bylaws, the
 379 ~~association shall prepare an annual financial report within 60~~
 380 ~~days after the close of the fiscal year. The association shall,~~
 381 ~~within the time limits set forth in subsection (5), provide each~~
 382 member with a copy of the annual financial report or a written
 383 notice that a copy of the financial report is available upon
 384 request at no charge to the member. Financial reports shall be
 385 prepared as follows:

386 (a) An association that meets the criteria of this
 387 paragraph shall prepare or cause to be prepared a complete set
 388 of financial statements in accordance with generally accepted
 389 accounting principles. The financial statements shall be based
 390 upon the association's total annual revenues, as follows:

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

394 2. An association with total annual revenues of at least
 395 \$200,000, but less than \$400,000, shall prepare reviewed
 396 financial statements.

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

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

402 2. An association in a community of fewer than 50 parcels,
 403 regardless of the association's annual revenues, may prepare a
 404 report of cash receipts and expenditures in lieu of financial
 405 statements required by paragraph (a) unless the governing
 406 documents provide otherwise.

407 3. A report of cash receipts and disbursement must
 408 disclose the amount of receipts by accounts and receipt
 409 classifications and the amount of expenses by accounts and
 410 expense classifications, including, but not limited to, the
 411 following, as applicable: costs for security, professional, and
 412 management fees and expenses; taxes; costs for recreation
 413 facilities; expenses for refuse collection and utility services;
 414 expenses for lawn care; costs for building maintenance and
 415 repair; insurance costs; administration and salary expenses; and
 416 reserves if maintained by the association.

417 (c) If 20 percent of the parcel owners petition the board
 418 for a level of financial reporting higher than that required by

419 | this section, the association shall duly notice and hold a
 420 | meeting of members within 30 days of receipt of the petition for
 421 | the purpose of voting on raising the level of reporting for that
 422 | fiscal year. Upon approval of a majority of the total voting
 423 | interests of the parcel owners, the association shall prepare or
 424 | cause to be prepared, shall amend the budget or adopt a special
 425 | assessment to pay for the financial report regardless of any
 426 | provision to the contrary in the governing documents, and shall
 427 | provide within 90 days of the meeting or the end of the fiscal
 428 | year, whichever occurs later:

429 | 1. Compiled, reviewed, or audited financial statements, if
 430 | the association is otherwise required to prepare a report of
 431 | cash receipts and expenditures;

432 | 2. Reviewed or audited financial statements, if the
 433 | association is otherwise required to prepare compiled financial
 434 | statements; or

435 | 3. Audited financial statements if the association is
 436 | otherwise required to prepare reviewed financial statements.

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

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

442 | 2. A report of cash receipts and expenditures or a
 443 | compiled financial statement in lieu of a reviewed or audited
 444 | financial statement; or

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

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

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

453 720.306 Meetings of members; voting and election
 454 procedures; amendments.--

455 (1) QUORUM; AMENDMENTS.--

456 (c) Unless otherwise provided in the governing documents
 457 as originally recorded or permitted by this chapter or chapter
 458 617, an amendment may not materially and adversely alter the
 459 proportionate voting interest appurtenant to a parcel or
 460 increase the proportion or percentage by which a parcel shares
 461 in the common expenses of the association unless the record
 462 parcel owner and all record owners of liens on the parcels join
 463 in the execution of the amendment. For purposes of this section,
 464 a change in quorum requirements is not an alteration of voting
 465 interests. The merger or consolidation of one or more
 466 associations under a plan of merger or consolidation under
 467 chapter 607 or chapter 617 shall not be considered a material or
 468 adverse alteration of the proportionate voting interest
 469 appurtenant to a parcel.

470 (6) RIGHT TO SPEAK.--Members and parcel owners have the
 471 right to attend all membership meetings and to speak at any
 472 meeting with reference to all items ~~opened for discussion or~~

473 included on the agenda. Notwithstanding any provision to the
 474 contrary in the governing documents or any rules adopted by the
 475 board or by the membership, a member and a parcel owner have the
 476 right to speak for at least 3 minutes on any agenda item,
 477 provided that the member or parcel owner submits a written
 478 request to speak prior to the meeting. The association may adopt
 479 written reasonable rules governing the frequency, duration, and
 480 other manner of member and parcel owner statements, which rules
 481 must be consistent with this subsection.

482 Section 7. Section 720.311, Florida Statutes, is amended
 483 to read:

484 720.311 Dispute resolution.--

485 (1) The Legislature finds that alternative dispute
 486 resolution has made progress in reducing court dockets and
 487 trials and in offering a more efficient, cost-effective option
 488 to litigation. The filing of any petition for ~~mediation or~~
 489 arbitration or the serving of an offer for presuit mediation as
 490 provided for in this section shall toll the applicable statute
 491 of limitations. Any recall dispute filed with the department
 492 pursuant to s. 720.303(10) shall be conducted by the department
 493 in accordance with the provisions of ss. 718.112(2)(j) and
 494 718.1255 and the rules adopted by the division. In addition, the
 495 department shall conduct mandatory binding arbitration of
 496 election disputes between a member and an association pursuant
 497 to s. 718.1255 and rules adopted by the division. Neither
 498 election disputes nor recall disputes are eligible for presuit
 499 mediation; these disputes shall be arbitrated by the department.
 500 At the conclusion of the proceeding, the department shall charge

501 the parties a fee in an amount adequate to cover all costs and
 502 expenses incurred by the department in conducting the
 503 proceeding. Initially, the petitioner shall remit a filing fee
 504 of at least \$200 to the department. The fees paid to the
 505 department shall become a recoverable cost in the arbitration
 506 proceeding, and the prevailing party in an arbitration
 507 proceeding shall recover its reasonable costs and attorney's
 508 fees in an amount found reasonable by the arbitrator. The
 509 department shall adopt rules to effectuate the purposes of this
 510 section.

511 (2)(a) Disputes between an association and a parcel owner
 512 regarding use of or changes to the parcel or the common areas
 513 and other covenant enforcement disputes, disputes regarding
 514 amendments to the association documents, disputes regarding
 515 meetings of the board and committees appointed by the board,
 516 membership meetings not including election meetings, and access
 517 to the official records of the association shall be the subject
 518 of an offer filed with the department for presuit mandatory
 519 mediation served by an aggrieved party before the dispute is
 520 filed in court. Presuit mediation proceedings must be conducted
 521 in accordance with the applicable Florida Rules of Civil
 522 Procedure, and these proceedings are privileged and confidential
 523 to the same extent as court-ordered mediation. Disputes subject
 524 to presuit mediation under this section shall not include the
 525 collection of any assessment, fine, or other financial
 526 obligation, including attorney's fees and costs, claimed to be
 527 due or any action to enforce a prior mediation settlement
 528 agreement between the parties. Also, in any dispute subject to

529 presuit mediation under this section where emergency relief is
 530 required, a motion for temporary injunctive relief may be filed
 531 with the court without first complying with the presuit
 532 mediation requirements of this section. After any issues
 533 regarding emergency or temporary relief are resolved, the court
 534 may either refer the parties to a mediation program administered
 535 by the courts or require mediation under this section. An
 536 arbitrator or judge may not consider any information or evidence
 537 arising from the presuit mediation proceeding except in a
 538 proceeding to impose sanctions for failure to attend a presuit
 539 mediation session or with the parties' agreement in a proceeding
 540 seeking to enforce the agreement. Persons who are not parties to
 541 the dispute may not attend the presuit mediation conference
 542 without the consent of all parties, except for counsel for the
 543 parties and a corporate representative designated by the
 544 association. When mediation is attended by a quorum of the
 545 board, such mediation is not a board meeting for purposes of
 546 notice and participation set forth in s. 720.303. An aggrieved
 547 party shall serve on the responding party a written offer to
 548 participate in presuit mediation in substantially the following
 549 form:

551 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

553 The alleged aggrieved party, _____, hereby
 554 offers to _____, as the responding party,
 555 to enter into presuit mediation in connection with the
 556 following dispute, which by statute is of a type that

557 is subject to presuit mediation:

558

559 (List specific nature of the dispute or disputes to be
560 mediated and the authority supporting a finding of a
561 violation as to each dispute.)

562

563 Pursuant to section 720.311, Florida Statutes, this
564 offer to resolve the dispute through presuit mediation
565 is required before a lawsuit can be filed concerning
566 the dispute. Pursuant to the statute, the aggrieved
567 party is hereby offering to engage in presuit
568 mediation with a neutral third-party mediator in order
569 to attempt to resolve this dispute without court
570 action, and the aggrieved party demands that you
571 likewise agree to this process. If you fail to agree
572 to presuit mediation, or if you agree and later fail
573 to follow through with your agreement to mediate, suit
574 may be brought against you without further warning.

575

576 The process of mediation involves a supervised
577 negotiation process in which a trained, neutral third-
578 party mediator meets with both parties and assists
579 them in exploring possible opportunities for resolving
580 part or all of the dispute. The mediation process is a
581 voluntary one. By agreeing to participate in presuit
582 mediation, you are not bound in any way to change your
583 position or to enter into any type of agreement.

584 Furthermore, the mediator has no authority to make any

585 decisions in this matter or to determine who is right
586 or wrong and merely acts as a facilitator to ensure
587 that each party understands the position of the other
588 party and that all reasonable settlement options are
589 fully explored.

590
591 If an agreement is reached, it shall be reduced to
592 writing and becomes a binding and enforceable
593 commitment of the parties. A resolution of one or more
594 disputes in this fashion avoids the need to litigate
595 these issues in court. The failure to reach an
596 agreement, or the failure of a party to participate in
597 the process, results in the mediator's declaring an
598 impasse in the mediation, after which the aggrieved
599 party may proceed to court on all outstanding,
600 unsettled disputes.

601
602 The aggrieved party has selected and hereby lists
603 three certified mediators who we believe to be neutral
604 and qualified to mediate the dispute. You have the
605 right to select any one of these mediators. The fact
606 that one party may be familiar with one or more of the
607 listed mediators does not mean that the mediator
608 cannot act as a neutral and impartial facilitator. Any
609 mediator who cannot act in this capacity ethically
610 must decline to accept engagement. The mediators that
611 we suggest, and their current hourly rates, are as
612 follows:

613
614 (List the names, addresses, telephone numbers, and
615 hourly rates of the mediators. Other pertinent
616 information about the background of the mediators may
617 be included as an attachment.)

618
619 You may contact the offices of these mediators to
620 confirm that the listed mediators will be neutral and
621 will not show any favoritism toward either party. The
622 names of certified mediators may be found through the
623 office of the clerk of the circuit court for this
624 circuit.

625
626 If you agree to participate in the presuit mediation
627 process, the statute requires that each party is to
628 pay one-half of the costs and fees involved in the
629 presuit mediation process unless otherwise agreed by
630 all parties. An average mediation may require 3 to 4
631 hours of the mediator's time, including some
632 preparation time, and each party would need to pay
633 one-half of the mediator's fees as well as his or her
634 own attorney's fees if he or she chooses to employ an
635 attorney in connection with the mediation. However,
636 use of an attorney is not required and is at the
637 option of each party. The mediator may require the
638 advance payment of some or all of the anticipated
639 fees. The aggrieved party hereby agrees to pay or
640 prepay one-half of the mediator's estimated fees and

641 to forward this amount or such other reasonable
642 advance deposits as the mediator may require for this
643 purpose. Any funds deposited will be returned to you
644 if these are in excess of your share of the fees
645 incurred.

646
647 If you agree to participate in presuit mediation in
648 order to attempt to resolve the dispute and thereby
649 avoid further legal action, please sign below and
650 clearly indicate which mediator is acceptable to you.
651 We will then ask the mediator to schedule a mutually
652 convenient time and place for the mediation conference
653 to be held. The mediation conference must be held
654 within 90 days after the date of this letter unless
655 extended by mutual written agreement. In the event
656 that you fail to respond within 20 days after the date
657 of this letter, or if you fail to agree to at least
658 one of the mediators that we have suggested and to pay
659 or prepay to the mediator one-half of the costs
660 involved, the aggrieved party will be authorized to
661 proceed with the filing of a lawsuit against you
662 without further notice and may seek an award of
663 attorney's fees or costs incurred in attempting to
664 obtain mediation.

665
666 Should you wish, you may also elect to waive presuit
667 mediation so that this matter may proceed directly to
668 court.

669
 670 Therefore, please give this matter your immediate
 671 attention. By law, your response must be mailed by
 672 certified mail, return receipt requested, with an
 673 additional copy being sent by regular first-class mail
 674 to the address shown on this offer.

675
 676 _____
 677 _____

678
 679 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
 680 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
 681 CHOICE.

682
 683 AGREEMENT TO MEDIATE

684
 685 The undersigned hereby agrees to participate in
 686 presuit mediation and agrees to the following mediator
 687 or mediators as acceptable to mediate this dispute:

688
 689 (List acceptable mediator or mediators.)

690
 691 I/we further agree to pay or prepay one-half of the
 692 mediator's fees and to forward such advance deposits
 693 as the mediator may require for this purpose.

694
 695 _____
 696 Signature of responding party #1

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

WAIVER OF MEDIATION

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

Signature of responding party #1

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

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

725 mailing of the statutory offer to serve a response to the
726 aggrieved party in writing. The response shall be served by
727 certified mail, return receipt requested, with an additional
728 copy being sent by regular first-class mail, to the address
729 shown on the statutory offer. In the alternative, the responding
730 party may waive mediation in writing. Notwithstanding the
731 foregoing, once the parties have agreed on a mediator, the
732 mediator may reschedule the mediation for a date and time
733 mutually convenient to the parties. ~~The department shall conduct~~
734 ~~the proceedings through the use of department mediators or refer~~
735 ~~the disputes to private mediators who have been duly certified~~
736 ~~by the department as provided in paragraph (c).~~ The parties
737 shall share the costs of presuit mediation equally, including
738 the fee charged by the mediator, if any, unless the parties
739 agree otherwise, and the mediator may require advance payment of
740 its reasonable fees and costs. The failure of any party to
741 respond to a demand or response, to agree upon a mediator, to
742 make payment of fees and costs within the time established by
743 the mediator, or to appear for a scheduled mediation session
744 shall operate as an impasse in the presuit mediation by such
745 party, entitling the other party to proceed in court and to seek
746 an award of the costs and fees associated with the mediation.
747 Additionally, if any presuit mediation session cannot be
748 scheduled and conducted within 90 days after the offer to
749 participate in mediation was filed, an impasse shall be deemed
750 to have occurred unless both parties agree to extend this
751 deadline. ~~If a department mediator is used, the department may~~
752 ~~charge such fee as is necessary to pay expenses of the~~

753 ~~mediation, including, but not limited to, the salary and~~
 754 ~~benefits of the mediator and any travel expenses incurred. The~~
 755 ~~petitioner shall initially file with the department upon filing~~
 756 ~~the disputes, a filing fee of \$200, which shall be used to~~
 757 ~~defray the costs of the mediation. At the conclusion of the~~
 758 ~~mediation, the department shall charge to the parties, to be~~
 759 ~~shared equally unless otherwise agreed by the parties, such~~
 760 ~~further fees as are necessary to fully reimburse the department~~
 761 ~~for all expenses incurred in the mediation.~~

762 (c)(b) If presuit mediation as described in paragraph (a)
 763 is not successful in resolving all issues between the parties,
 764 the parties may file the unresolved dispute in a court of
 765 competent jurisdiction or elect to enter into binding or
 766 nonbinding arbitration pursuant to the procedures set forth in
 767 s. 718.1255 and rules adopted by the division, with the
 768 arbitration proceeding to be conducted by a department
 769 arbitrator or by a private arbitrator certified by the
 770 department. If all parties do not agree to arbitration
 771 proceedings following an unsuccessful mediation, any party may
 772 file the dispute in court. A final order resulting from
 773 nonbinding arbitration is final and enforceable in the courts if
 774 a complaint for trial de novo is not filed in a court of
 775 competent jurisdiction within 30 days after entry of the order.
 776 As to any issue or dispute that is not resolved at presuit
 777 mediation, and as to any issue that is settled at presuit
 778 mediation but is thereafter subject to an action seeking
 779 enforcement of the mediation settlement, the prevailing party in
 780 any subsequent arbitration or litigation proceeding shall be

781 entitled to seek recovery of all costs and attorney's fees
782 incurred in the presuit mediation process.

783 ~~(d)(c) The department shall develop a certification and~~
784 ~~training program for private mediators and private arbitrators~~
785 ~~which shall emphasize experience and expertise in the area of~~
786 ~~the operation of community associations. A mediator or~~
787 ~~arbitrator shall be certified to conduct mediation or~~
788 ~~arbitration under this section by the department only if he or~~
789 ~~she has been certified as a circuit court civil mediator or~~
790 ~~arbitrator, respectively, pursuant to the requirements~~
791 ~~established attended at least 20 hours of training in mediation~~
792 ~~or arbitration, as appropriate, and only if the applicant has~~
793 ~~mediated or arbitrated at least 10 disputes involving community~~
794 ~~associations within 5 years prior to the date of the~~
795 ~~application, or has mediated or arbitrated 10 disputes in any~~
796 ~~area within 5 years prior to the date of application and has~~
797 ~~completed 20 hours of training in community association~~
798 ~~disputes. In order to be certified by the department, any~~
799 ~~mediator must also be certified by the Florida Supreme Court.~~
800 ~~The department may conduct the training and certification~~
801 ~~program within the department or may contract with an outside~~
802 ~~vendor to perform the training or certification. The expenses of~~
803 ~~operating the training and certification and training program~~
804 ~~shall be paid by the moneys and filing fees generated by the~~
805 ~~arbitration of recall and election disputes and by the mediation~~
806 ~~of those disputes referred to in this subsection and by the~~
807 ~~training fees.~~

808 (e)~~(d)~~ The presuit mediation procedures provided by this
809 subsection may be used by a Florida corporation responsible for
810 the operation of a community in which the voting members are
811 parcel owners or their representatives, in which membership in
812 the corporation is not a mandatory condition of parcel
813 ownership, or which is not authorized to impose an assessment
814 that may become a lien on the parcel.

815 ~~(3) The department shall develop an education program to~~
816 ~~assist homeowners, associations, board members, and managers in~~
817 ~~understanding and increasing awareness of the operation of~~
818 ~~homeowners' associations pursuant to this chapter and in~~
819 ~~understanding the use of alternative dispute resolution~~
820 ~~techniques in resolving disputes between parcel owners and~~
821 ~~associations or between owners. Such education program may~~
822 ~~include the development of pamphlets and other written~~
823 ~~instructional guides, the holding of classes and meetings by~~
824 ~~department employees or outside vendors, as the department~~
825 ~~determines, and the creation and maintenance of a website~~
826 ~~containing instructional materials. The expenses of operating~~
827 ~~the education program shall be initially paid by the moneys and~~
828 ~~filing fees generated by the arbitration of recall and election~~
829 ~~disputes and by the mediation of those disputes referred to in~~
830 ~~this subsection.~~

831 Section 8. Paragraphs (c), (d), and (e) of subsection (4)
832 of section 720.405, Florida Statutes, are amended to read:

833 720.405 Organizing committee; parcel owner approval.--

834 (4) The proposed revived declaration and other governing
835 documents for the community shall:

836 (c) Contain the same respective amendment provisions as
837 the previous governing documents or, if there were no amendment
838 provisions in the previous governing document, amendment
839 provisions that require approval of not less than two-thirds of
840 the affected parcel owners; and

841 ~~(d) Contain no covenants that are more restrictive on the~~
842 ~~affected parcel owners than the covenants contained in the~~
843 ~~previous governing documents, except as permitted under s.~~
844 ~~720.404(3); and~~

845 ~~(e)~~ Comply with the other requirements for a declaration
846 of covenants and other governing documents as specified in this
847 chapter.

848 Section 9. Except as otherwise expressly provided in this
849 act, this act shall take effect July 1, 2006.