

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to community associations; creating s.
7 712.11, F.S.; providing for the revival of certain
8 declarations that have been extinguished; amending s.
9 718.110, F.S.; revising provisions relating to the
10 amendment of declarations; providing legislative findings
11 and a finding of compelling state interest; requiring a
12 holder of a recorded mortgage on a condominium unit that
13 requires the consent or joinder of a mortgagee to an
14 amendment to provide certain information to a condominium
15 association; providing definitions; providing criteria for
16 consent to an amendment; requiring notice regarding
17 proposed amendments to mortgagees; providing criteria for
18 notification; requiring the association to conduct a
19 diligent search to identify mortgagees; requiring the
20 association's representative to execute an affidavit
21 confirming that a diligent search was conducted;
22 prohibiting the declaration of condominium, articles of
23 incorporation, or bylaws from requiring the consent or

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24 | joinder of more than a specified percent of the eligible
25 | mortgagees in connection with proposed amendments under
26 | certain conditions; providing criteria for enforcement;
27 | requiring mortgagees seeking to disapprove a proposed
28 | amendment to provide certain information to the
29 | association; providing for the recovery of certain costs
30 | and attorney's fees; amending s. 718.404, F.S.; providing
31 | retroactive application of provisions relating to mixed-
32 | use condominiums; amending s. 720.302, F.S.; revising
33 | governing provisions relating to corporations that operate
34 | residential homeowners' associations; amending s. 720.303,
35 | F.S.; providing that special assessments may not be levied
36 | at a board meeting except under certain circumstances;
37 | revising provisions relating to the closed-circuit cable
38 | broadcast notice requirement; authorizing the association
39 | to charge a reasonable fee for providing good faith
40 | responses to certain requests for information by or on
41 | behalf of a prospective purchaser or lienholder; providing
42 | conditions for exemption from liability for providing such
43 | information; revising what must be included in an
44 | association's annual budget; providing for reserve
45 | accounts for capital expenditures and deferred
46 | maintenance; revising when the association must have its
47 | financial report completed and provided to members;
48 | repealing s. 720.303(2), F.S., as amended, relating to
49 | board meetings, to remove conflicting versions of that
50 | subsection; amending s. 720.305, F.S.; providing that,
51 | where a member is entitled to collect attorney's fees

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52 | against the association, the member may also recover
53 | additional amounts as determined by the court; amending s.
54 | 720.306, F.S.; providing that certain mergers or
55 | consolidations of an association shall not be considered a
56 | material or adverse alteration of the proportionate voting
57 | interest appurtenant to a parcel; revising provisions
58 | relating to items that members and parcel owners may
59 | address at membership meetings; amending s. 720.307, F.S.;
60 | providing additional documents that the developer must
61 | deliver at the time the association members elect the
62 | board of directors; amending s. 720.308, F.S.; providing
63 | for the establishment of guarantees of common expenses
64 | shared by association members; amending s. 720.311, F.S.;
65 | revising provisions relating to dispute resolution;
66 | providing that the filing of any petition for arbitration
67 | or the serving of an offer for presuit mediation shall
68 | toll the applicable statute of limitations; providing that
69 | certain disputes between an association and a parcel owner
70 | shall be subject to presuit mediation; revising provisions
71 | to conform; providing that temporary injunctive relief may
72 | be sought in certain disputes subject to presuit
73 | mediation; authorizing the court to refer the parties to
74 | mediation under certain circumstances; requiring the
75 | aggrieved party to serve on the responding party a written
76 | offer to participate in presuit mediation; providing a
77 | form for such offer; providing that service of the offer
78 | is effected by the sending of such an offer in a certain
79 | manner; providing that the prevailing party in any

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80 subsequent arbitration or litigation proceedings is
 81 entitled to seek recovery of all costs and attorney's fees
 82 incurred in the presuit mediation process; requiring the
 83 mediator or arbitrator to meet certain certification
 84 requirements; removing a requirement relating to
 85 development of an education program to increase awareness
 86 of the operation of homeowners' associations and the use
 87 of alternative dispute resolution techniques; providing
 88 effective dates.

89

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

91

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

94 712.11 Covenant revitalization.--A homeowners' association
 95 not otherwise subject to chapter 720 may use the procedures set
 96 forth in ss. 720.403-720.407 to revive covenants that have
 97 lapsed under the terms of this chapter.

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

100 718.110 Amendment of declaration; correction of error or
 101 omission in declaration by circuit court.--

102 (11) (a) Notwithstanding any provision to the contrary
 103 contained in this section, any provision in the declaration of
 104 condominium, articles of incorporation, or bylaws that requires
 105 ~~declaration recorded after April 1, 1992, may not require the~~
 106 consent or joinder of some or all mortgagees of units or any
 107 other portion of the condominium property to or in amendments to

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108 | the declaration of condominium, articles of incorporation, or
109 | bylaws shall be void to the extent not, unless the requirement
110 | ~~is~~ limited to amendments materially affecting the rights or
111 | interests of the mortgagees, or as otherwise required by the
112 | Federal National Mortgage Association or the Federal Home Loan
113 | Mortgage Corporation, and any consent or joinder shall unless
114 | ~~the requirement provides that such consent may not be~~
115 | unreasonably withheld. It shall be presumed that, except as to
116 | those matters described in subsections (4) and (8) or other
117 | issues materially affecting the mortgagee's security interest in
118 | the property, amendments to the declaration of condominium,
119 | articles of incorporation, or bylaws do not materially affect
120 | the rights or interests of mortgagees. In the event mortgagee
121 | consent is provided other than by properly recorded joinder,
122 | such consent shall be evidenced by affidavit of the association
123 | recorded in the public records of the county where the
124 | declaration of condominium, articles of incorporation, or bylaws
125 | are ~~is~~ recorded.

126 | (b) The Legislature finds that the procurement of
127 | mortgagee consent or joinder to amendments that do not
128 | materially affect the rights or interests of mortgagees is an
129 | unreasonable and substantial logistical and financial burden on
130 | the unit owners and condominium associations and that there is a
131 | compelling state interest in enabling the members of a
132 | condominium association to approve amendments. Accordingly, any
133 | holder of a recorded mortgage on a condominium unit or any other
134 | portion of a condominium, which mortgage is first recorded after
135 | October 1, 2006, and for which the declaration of condominium,

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136 articles of incorporation, or bylaws require the consent or
137 joinder of a mortgagee to an amendment, must provide written
138 notice by certified mail to the association of the address at
139 which the mortgagee may be contacted in regard to any proposed
140 amendments. The association shall maintain the names and
141 addresses of such mortgagees in a registry of mortgagees, which
142 the association shall utilize when sending a request for such
143 consent or joinder. A request for consent or joinder must be
144 mailed to a mortgagee by certified mail, return receipt
145 requested, to the address provided by the mortgagee and retained
146 in the registry of mortgagees. As used in this subsection,
147 "certified mail" means either certified or registered mail,
148 return receipt requested. Consent to an amendment shall be
149 deemed to have been given by any holder of a mortgage that is
150 first recorded after October 1, 2006, and who fails to provide
151 the required written notice and contact information. Also, any
152 mortgagee who fails to respond by certified mail within 30 days
153 after the date the association mails a request for consent or
154 joinder shall be deemed to have consented to the proposed
155 amendment.

156 (c) As to mortgages in existence as of October 1, 2006, in
157 those condominiums where the consent or joinder of such
158 mortgagees is required in connection with amendments to the
159 governing documents, and where such mortgagees are not otherwise
160 required by the existing declaration of condominium, articles of
161 incorporation, or bylaws to provide notice to the association of
162 their contact information in order to be eligible to receive
163 notices regarding proposed amendments, those condominium

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164 associations that wish to modify provisions in the declaration
165 of condominium, articles of incorporation, or bylaws that
166 require the consent or joinder of mortgagees must notify all
167 mortgagees who hold mortgages on units within the condominium or
168 other portions of the condominium property of the need to
169 provide the same contact information as required in paragraph
170 (b). Any mortgagee who does not provide contact information as
171 required will be deemed to have consented to all future proposed
172 amendments. Further, once the proper address for notifying
173 existing mortgagees has been obtained in the manner provided for
174 in this subsection, failure of any mortgagee to respond to a
175 request for the consent or joinder to a proposed amendment
176 within 30 days after the date that such request is sent to the
177 mortgagee by certified mail shall be deemed to have consented to
178 such amendment. In order to properly notify holders of existing
179 mortgages:

180 1. The condominium association must first conduct a
181 diligent search to identify all existing mortgagees and an
182 address for the required notice to be sent to each mortgagee.
183 Service of the notice shall be on the mortgagee's registered
184 agent based upon the information available from the Secretary of
185 State. Where there is no registered agent, the notice shall be
186 sent to the address in the original recorded mortgage unless
187 there is a different address in a more recently recorded
188 assignment or modification instrument or in the records
189 maintained by the condominium association. All notices must be
190 sent by certified mail and must advise the mortgagee that if he
191 or she fails to provide the contact information requested within

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192 30 days after the date of mailing of the certified letter from
 193 the association, such mortgagee shall be deemed to have
 194 consented to the proposed amendment.

195 2. An affidavit must be executed by a representative of
 196 the condominium association confirming that a diligent search
 197 has been conducted to identify all outstanding mortgages on the
 198 condominium in the manner provided for in subparagraph 1. and
 199 summarizing the steps that were taken in connection with such
 200 diligent search and the notification of all mortgagees, and such
 201 affidavit shall be placed in the association's minute book as an
 202 attachment to the minutes of the meeting in which the board of
 203 directors considers such affidavit.

204 (d) After October 1, 2006, no new declaration of
 205 condominium, articles of incorporation, or bylaws may require
 206 the consent or joinder of more than 51 percent of the eligible
 207 mortgagees in connection with any proposed amendment unless a
 208 higher percentage is required in order to comply with the
 209 requirements of the Federal National Mortgage Association or
 210 Federal Home Loan Mortgage Corporation. Any new declaration of
 211 condominium, articles of incorporation, or bylaws must also
 212 require mortgagees to provide to the condominium association the
 213 address to which notices may be sent, as provided for in
 214 paragraph (b), in order for such mortgagees to have the right to
 215 be contacted in connection with any proposed amendment.

216 (e) A provision requiring the consent or joinder of some
 217 or all holders of mortgages on units or other portions of the
 218 condominium property to any proposed amendment shall be
 219 enforceable only by mortgagees of record as of the date an

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220 amendment is recorded in the public records and only by those
221 mortgagees who have complied with the requirements of paragraph
222 (b) or paragraph (c). Any amendment adopted without the required
223 consent of a mortgagee shall be deemed voidable by any mortgagee
224 who was entitled to notice and the opportunity to consent, and
225 actions to void such amendments shall be subject to the statute
226 of limitations applicable to actions founded upon written
227 instruments, which statute shall commence to run as of the date
228 such amendment is recorded in the public records and, for
229 amendments recorded prior to October 1, 2006, shall commence on
230 October 1, 2006.

231 (f) In order to establish that he or she is not
232 unreasonably withholding consent, any mortgagee who seeks to
233 disapprove of a proposed amendment by withholding his or her
234 consent or joinder must include in his or her reply to the
235 condominium association's request for consent or joinder a
236 statement of the specific reasons the proposed amendment is
237 claimed to materially and adversely affect the rights and
238 interests of such mortgagee.

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

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

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246 718.404 Mixed-use condominiums.--When a condominium
247 consists of both residential and commercial units, the following
248 provisions shall apply:

249 (1) The condominium documents shall not provide that the
250 owner of any commercial unit shall have the authority to veto
251 amendments to the declaration, articles of incorporation,
252 bylaws, or rules or regulations of the association. This
253 subsection shall apply retroactively as a remedial measure.

254 (2) Subject to s. 718.301, where the number of residential
255 units in the condominium equals or exceeds 50 percent of the
256 total units operated by the association, owners of the
257 residential units shall be entitled to vote for a majority of
258 the seats on the board of administration. This subsection shall
259 apply retroactively as a remedial measure.

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

262 720.302 Purposes, scope, and application.--

263 (4) This chapter does not apply to any association that is
264 subject to regulation under chapter 718, chapter 719, or chapter
265 721~~+~~ or to any nonmandatory association formed under chapter
266 723, except to the extent that a provision of chapter 718,
267 chapter 719, or chapter 721 is expressly incorporated into this
268 chapter for the purpose of regulating homeowners' associations.

269 (5) Unless expressly stated to the contrary, corporations
270 ~~not for profit~~ that operate residential homeowners' associations
271 in this state shall be governed by and subject to chapter 607,
272 if the association was incorporated thereunder, or to chapter

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273 | 617, if the association was incorporated thereunder, and this
274 | chapter. This subsection is intended to clarify existing law.

275 | Section 5. Subsections (2), (6), and (7) of section
276 | 720.303, Florida Statutes, as amended by section 18 of chapter
277 | 2004-345 and section 135 of chapter 2005-2, Laws of Florida, are
278 | amended, and paragraphs (d) and (e) are added to subsection (5)
279 | of that section, to read:

280 | 720.303 Association powers and duties; meetings of board;
281 | official records; budgets; financial reporting; association
282 | funds; recalls.--

283 | (2) BOARD MEETINGS.--

284 | (a) A meeting of the board of directors of an association
285 | occurs whenever a quorum of the board gathers to conduct
286 | association business. All meetings of the board must be open to
287 | all members except for meetings between the board and its
288 | attorney with respect to proposed or pending litigation where
289 | the contents of the discussion would otherwise be governed by
290 | the attorney-client privilege. The provisions of this subsection
291 | shall also apply to the meetings of any committee or other
292 | similar body when a final decision will be made regarding the
293 | expenditure of association funds and to meetings of any body
294 | vested with the power to approve or disapprove architectural
295 | decisions with respect to a specific parcel of residential
296 | property owned by a member of the community.

297 | (b) Members have the right to attend all meetings of the
298 | board and to speak on any matter placed on the agenda by
299 | petition of the voting interests for at least 3 minutes. The
300 | association may adopt written reasonable rules expanding the

301 right of members to speak and governing the frequency, duration,
 302 and other manner of member statements, which rules must be
 303 consistent with this paragraph and may include a sign-up sheet
 304 for members wishing to speak. Notwithstanding any other law, the
 305 requirement that board meetings and committee meetings be open
 306 to the members is inapplicable to meetings between the board or
 307 a committee and the association's attorney, with respect to
 308 meetings of the board held for the purpose of discussing
 309 personnel matters.

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

313 1. Notices of all board meetings must be posted in a
 314 conspicuous place in the community at least 48 hours in advance
 315 of a meeting, except in an emergency. In the alternative, if
 316 notice is not posted in a conspicuous place in the community,
 317 notice of each board meeting must be mailed or delivered to each
 318 member at least 7 days before the meeting, except in an
 319 emergency. Notwithstanding this general notice requirement, for
 320 communities with more than 100 parcels ~~members~~, the bylaws may
 321 provide for a reasonable alternative to posting or mailing of
 322 notice for each board meeting, including publication of notice,
 323 provision of a schedule of board meetings, or the conspicuous
 324 posting and repeated broadcasting of the notice on a closed-
 325 circuit cable television system serving the homeowners'
 326 association. However, if broadcast notice is used in lieu of a
 327 notice posted physically in the community, the notice must be
 328 broadcast at least four times every broadcast hour of each day

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329 that a posted notice is otherwise required. When broadcast
330 notice is provided, the notice ~~and agenda~~ must be broadcast in a
331 manner and for a sufficient continuous length of time so as to
332 allow an average reader to observe the notice and read and
333 comprehend the entire content of the notice ~~and the agenda~~. The
334 bylaws or amended bylaws may provide for giving notice by
335 electronic transmission in a manner authorized by law for
336 meetings of the board of directors, committee meetings requiring
337 notice under this section, and annual and special meetings of
338 the members; however, a member must consent in writing to
339 receiving notice by electronic transmission.

340 2. A special ~~An~~ assessment may not be levied at a board
341 meeting unless the notice of the meeting includes a statement
342 that special assessments will be considered and the nature of
343 the special assessments. Written notice of any meeting at which
344 special assessments will be considered or at which amendments to
345 rules regarding parcel use will be considered must be mailed,
346 delivered, or electronically transmitted to the members and
347 parcel owners and posted conspicuously on the property or
348 broadcast on closed-circuit cable television not less than 14
349 days before the meeting.

350 3. Directors may not vote by proxy or by secret ballot at
351 board meetings, except that secret ballots may be used in the
352 election of officers. ~~This subsection also applies to the~~
353 ~~meetings of any committee or other similar body, when a final~~
354 ~~decision will be made regarding the expenditure of association~~
355 ~~funds, and to any body vested with the power to approve or~~
356 ~~disapprove architectural decisions with respect to a specific~~

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357 ~~parcel of residential property owned by a member of the~~
358 ~~community.~~

359 (d) If 20 percent of the total voting interests petition
360 the board to address an item of business, the board shall at its
361 next regular board meeting or at a special meeting of the board,
362 but not later than 60 days after the receipt of the petition,
363 take the petitioned item up on an agenda. The board shall give
364 all members notice of the meeting at which the petitioned item
365 shall be addressed in accordance with the 14-day notice
366 requirement pursuant to subparagraph (c)2. Each member shall
367 have the right to speak for at least 3 minutes on each matter
368 placed on the agenda by petition, provided that the member signs
369 the sign-up sheet, if one is provided, or submits a written
370 request to speak prior to the meeting. Other than addressing the
371 petitioned item at the meeting, the board is not obligated to
372 take any other action requested by the petition.

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

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384 (d) The association or its authorized agent is not
385 required to provide a prospective purchaser or lienholder with
386 information about the residential subdivision or the association
387 other than information or documents required by this chapter to
388 be made available or disclosed. The association or its
389 authorized agent may charge a reasonable fee to the prospective
390 purchaser or lienholder or the current parcel owner or member
391 for providing good faith responses to requests for information
392 by or on behalf of a prospective purchaser or lienholder, other
393 than that required by law, if the fee does not exceed \$150 plus
394 the reasonable cost of photocopying and any attorney's fees
395 incurred by the association in connection with the response.

396 (e) An association and its authorized agent are not liable
397 for providing such information in good faith pursuant to a
398 written request if the person providing the information includes
399 a written statement in substantially the following form: "The
400 responses herein are made in good faith and to the best of my
401 ability as to their accuracy."

402 (6) BUDGETS.--

403 (a) The association shall prepare an annual budget that
404 sets out the annual operating expenses. The budget must reflect
405 the estimated revenues and expenses for that year and the
406 estimated surplus or deficit as of the end of the current year.
407 The budget must set out separately all fees or charges for
408 recreational amenities, whether owned by the association, the
409 developer, or another person. The association shall provide each
410 member with a copy of the annual budget or a written notice that
411 a copy of the budget is available upon request at no charge to

412 the member. The copy must be provided to the member within the
413 time limits set forth in subsection (5).

414 (b) In addition to annual operating expenses, the budget
415 shall include reserve accounts for capital expenditures and
416 deferred maintenance. These accounts shall include, but are not
417 limited to, accounts for roof replacement, building painting,
418 and pavement resurfacing, regardless of the amount of deferred
419 maintenance expense or replacement cost, and for any other item
420 for which the deferred maintenance expense or replacement cost
421 exceeds \$10,000. The amount to be reserved shall be computed by
422 means of a formula that is based upon the estimated remaining
423 useful life and estimated replacement cost or deferred
424 maintenance expense of each reserve item. The association may
425 adjust replacement reserve assessments annually to take into
426 account any changes in estimates or extension of the useful life
427 of a reserve item caused by deferred maintenance. This
428 subsection does not apply to an adopted budget in which the
429 members of an association have determined, by a majority vote at
430 a duly called meeting of the association, to provide no reserves
431 or fewer reserves than required by this subsection. However,
432 prior to turnover of control of an association by a developer to
433 unit owners, the developer may vote to waive the reserves or
434 reduce the funding of reserves for the first 2 fiscal years of
435 the association's operation, beginning with the fiscal year in
436 which the initial declaration is recorded, after which time
437 reserves may be waived or reduced only upon the vote of a
438 majority of all nondeveloper voting interests voting in person
439 or by limited proxy at a duly called meeting of the association.

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440 If a meeting of the unit owners has been called to determine
441 whether to waive or reduce the funding of reserves and no such
442 result is achieved or a quorum is not attained, the reserves as
443 included in the budget shall go into effect. After the turnover,
444 the developer may vote its voting interest to waive or reduce
445 the funding of reserves.

446 (c) Funding formulas for reserves required by this
447 subsection shall be based on either a separate analysis of each
448 of the required assets or a pooled analysis of two or more of
449 the required assets.

450 1. If the association maintains separate reserve accounts
451 for each of the required assets, the amount of the contribution
452 to each reserve account shall be the sum of the following two
453 calculations:

454 a. The total amount necessary, if any, to bring a negative
455 component balance to zero.

456 b. The total estimated deferred maintenance expense or
457 estimated replacement cost of the reserve component less the
458 estimated balance of the reserve component as of the beginning
459 of the period for which the budget will be in effect. The
460 remainder, if greater than zero, shall be divided by the
461 estimated remaining useful life of the component.

462
463 The formula may be adjusted each year for changes in estimates
464 and deferred maintenance performed during the year and may
465 consider factors such as inflation and earnings on invested
466 funds.

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467 2. If the association maintains a pooled account of two or
468 more of the required reserve assets, the amount of the
469 contribution to the pooled reserve account as disclosed in the
470 proposed budget shall be not less than that required to ensure
471 that the balance on hand at the beginning of the period for
472 which the budget will go into effect plus the projected annual
473 cash inflows over the remaining estimated useful lives of all of
474 the assets that make up the reserve pool are equal to or greater
475 than the projected annual cash outflows over the remaining
476 estimated useful lives of all of the assets that make up the
477 reserve pool, based on the current reserve analysis. The
478 projected annual cash inflows may include estimated earnings
479 from investment of principal. The reserve funding formula shall
480 not include any type of balloon payments.

481 (d) Reserve funds and any interest accruing thereon shall
482 remain in the reserve account or accounts and shall be used only
483 for authorized reserve expenditures unless their use for other
484 purposes is approved in advance by a majority vote at a duly
485 called meeting of the association. Prior to turnover of control
486 of an association by a developer to unit owners, the developer-
487 controlled association shall not vote to use reserves for
488 purposes other than that for which they were intended without
489 the approval of a majority of all nondeveloper voting interests
490 voting in person or by limited proxy at a duly called meeting of
491 the association.

492 (7) FINANCIAL REPORTING.--Within 90 days after the end of
493 the fiscal year, or annually on a date provided in the bylaws,
494 the association shall prepare and complete, or contract for the

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495 preparation and completion of, a financial report for the
496 preceding fiscal year. Within 21 days after the final financial
497 report is completed by the association or received from the
498 third party, but not later than 120 days after the end of the
499 fiscal year or other date as provided in the bylaws, the
500 association shall ~~prepare an annual financial report within 60~~
501 ~~days after the close of the fiscal year. The association shall,~~
502 within the time limits set forth in subsection (5), provide each
503 member with a copy of the annual financial report or a written
504 notice that a copy of the financial report is available upon
505 request at no charge to the member. Financial reports shall be
506 prepared as follows:

507 (a) An association that meets the criteria of this
508 paragraph shall prepare or cause to be prepared a complete set
509 of financial statements in accordance with generally accepted
510 accounting principles as adopted by the Florida Board of
511 Accountancy. The financial statements shall be based upon the
512 association's total annual revenues, as follows:

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

516 2. An association with total annual revenues of at least
517 \$200,000, but less than \$400,000, shall prepare reviewed
518 financial statements.

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

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

524 2. An association in a community of fewer than 50 parcels,
525 regardless of the association's annual revenues, may prepare a
526 report of cash receipts and expenditures in lieu of financial
527 statements required by paragraph (a) unless the governing
528 documents provide otherwise.

529 3. A report of cash receipts and disbursement must
530 disclose the amount of receipts by accounts and receipt
531 classifications and the amount of expenses by accounts and
532 expense classifications, including, but not limited to, the
533 following, as applicable: costs for security, professional, and
534 management fees and expenses; taxes; costs for recreation
535 facilities; expenses for refuse collection and utility services;
536 expenses for lawn care; costs for building maintenance and
537 repair; insurance costs; administration and salary expenses; and
538 reserves if maintained by the association.

539 (c) If 20 percent of the parcel owners petition the board
540 for a level of financial reporting higher than that required by
541 this section, the association shall duly notice and hold a
542 meeting of members within 30 days of receipt of the petition for
543 the purpose of voting on raising the level of reporting for that
544 fiscal year. Upon approval of a majority of the total voting
545 interests of the parcel owners, the association shall prepare or
546 cause to be prepared, shall amend the budget or adopt a special
547 assessment to pay for the financial report regardless of any
548 provision to the contrary in the governing documents, and shall

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549 provide within 90 days of the meeting or the end of the fiscal
550 year, whichever occurs later:

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

554 2. Reviewed or audited financial statements, if the
555 association is otherwise required to prepare compiled financial
556 statements; or

557 3. Audited financial statements if the association is
558 otherwise required to prepare reviewed financial statements.

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

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

564 2. A report of cash receipts and expenditures or a
565 compiled financial statement in lieu of a reviewed or audited
566 financial statement; or

567 3. A report of cash receipts and expenditures, a compiled
568 financial statement, or a reviewed financial statement in lieu
569 of an audited financial statement.

570 Section 6. Subsection (2) of section 720.303, Florida
571 Statutes, as amended by section 2 of chapter 2004-345 and
572 section 15 of chapter 2004-353, Laws of Florida, is repealed.

573 Section 7. Subsection (1) of section 720.305, Florida
574 Statutes, is amended to read:

575 720.305 Obligations of members; remedies at law or in
576 equity; levy of fines and suspension of use rights; failure to

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577 fill sufficient number of vacancies on board of directors to
578 constitute a quorum; appointment of receiver upon petition of
579 any member.--

580 (1) Each member and the member's tenants, guests, and
581 invitees, and each association, are governed by, and must comply
582 with, this chapter, the governing documents of the community,
583 and the rules of the association. Actions at law or in equity,
584 or both, to redress alleged failure or refusal to comply with
585 these provisions may be brought by the association or by any
586 member against:

587 (a) The association;

588 (b) A member;

589 (c) Any director or officer of an association who
590 willfully and knowingly fails to comply with these provisions;
591 and

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

594

595 The prevailing party in any such litigation is entitled to
596 recover reasonable attorney's fees and costs. A member
597 prevailing in an action between the association and the member
598 under this section, in addition to recovering his or her
599 reasonable attorney's fees, may recover additional amounts as
600 determined by the court to be necessary to reimburse the member
601 for his or her share of assessments levied by the association to
602 fund its expenses of the litigation. This relief does not
603 exclude other remedies provided by law. This section does not
604 deprive any person of any other available right or remedy.

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

607 720.306 Meetings of members; voting and election
608 procedures; amendments.--

609 (1) QUORUM; AMENDMENTS.--

610 (c) Unless otherwise provided in the governing documents
611 as originally recorded or permitted by this chapter or chapter
612 617, an amendment may not materially and adversely alter the
613 proportionate voting interest appurtenant to a parcel or
614 increase the proportion or percentage by which a parcel shares
615 in the common expenses of the association unless the record
616 parcel owner and all record owners of liens on the parcels join
617 in the execution of the amendment. For purposes of this section,
618 a change in quorum requirements is not an alteration of voting
619 interests. The merger or consolidation of one or more
620 associations under a plan of merger or consolidation under
621 chapter 607 or chapter 617 shall not be considered a material or
622 adverse alteration of the proportionate voting interest
623 appurtenant to a parcel.

624 (6) RIGHT TO SPEAK.--Members and parcel owners have the
625 right to attend all membership meetings and to speak at any
626 meeting with reference to all items ~~opened for discussion or~~
627 included on the agenda. Notwithstanding any provision to the
628 contrary in the governing documents or any rules adopted by the
629 board or by the membership, a member and a parcel owner have the
630 right to speak for at least 3 minutes on any agenda item,
631 provided that the member or parcel owner submits a written
632 request to speak prior to the meeting. The association may adopt

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633 written reasonable rules governing the frequency, duration, and
634 other manner of member and parcel owner statements, which rules
635 must be consistent with this subsection.

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

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

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

645 (t) The financial records, including financial statements
646 of the association, and source documents from the incorporation
647 of the association through the date of turnover. The records
648 shall be audited by an independent certified public accountant
649 for the period from the incorporation of the association or from
650 the period covered by the last audit, if an audit has been
651 performed for each fiscal year since incorporation. All
652 financial statements shall be prepared in accordance with
653 generally accepted accounting principles and shall be audited in
654 accordance with generally accepted auditing standards, as
655 prescribed by the Florida Board of Accountancy, pursuant to
656 chapter 473. The certified public accountant performing the
657 audit shall examine to the extent necessary supporting documents
658 and records, including the cash disbursements and related paid
659 invoices to determine if expenditures were for association
660 purposes and the billings, cash receipts, and related records to

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661 determine that the developer was charged and paid the proper
662 amounts of assessments.

663 Section 10. Section 720.308, Florida Statutes, is amended
664 to read:

665 720.308 Assessments and charges.--

666 (1) ASSESSMENTS.--For any community created after October
667 1, 1995, the governing documents must describe the manner in
668 which expenses are shared and specify the member's proportional
669 share thereof. Assessments levied pursuant to the annual budget
670 or special assessment must be in the member's proportional share
671 of expenses as described in the governing document, which share
672 may be different among classes of parcels based upon the state
673 of development thereof, levels of services received by the
674 applicable members, or other relevant factors. While the
675 developer is in control of the homeowners' association, it may
676 be excused from payment of its share of the operating expenses
677 and assessments related to its parcels for any period of time
678 for which the developer has, in the declaration, obligated
679 itself to pay any operating expenses incurred that exceed the
680 assessments receivable from other members and other income of
681 the association. This section does not apply to an association,
682 no matter when created, if the association is created in a
683 community that is included in an effective development-of-
684 regional-impact development order as of the effective date of
685 this act, together with any approved modifications thereto.

686 (2) GUARANTEES OF COMMON EXPENSES.--

687 (a) Establishment of guarantee.--If a guarantee is not
688 included in the purchase contracts, declaration, or prospectus,

689 any agreement establishing a guarantee shall only be effective
690 either upon the vote of a majority of all nondeveloper voting
691 interests voting in person or by limited proxy at a duly called
692 meeting of the association or by agreement in writing without a
693 meeting if provided in the bylaws. Such guarantee shall meet the
694 requirements of this section.

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

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

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

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

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

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

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

727 (b) Expenses incurred in the production of nonassessment
728 revenues, not in excess of the nonassessment revenues, shall not
729 be included in the common expenses. If the expenses attributable
730 to nonassessment revenues exceed nonassessment revenues, only
731 the excess expenses must be funded by the guarantor. For
732 example, if the association operates a rental program in which
733 rental expenses exceed rental revenues, the guarantor shall fund
734 the rental expenses in excess of the rental revenues. Interest
735 earned on the investment of association funds may be used to pay
736 the income tax expense incurred as a result of the investment,
737 such expense shall not be charged to the guarantor, and the net
738 investment income shall be retained by the association. Each
739 such nonassessment revenue-generating activity shall be
740 considered separately. Capital contributions collected from
741 members are not revenues and shall not be used to pay common
742 expenses.

743 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
744 guarantor's total financial obligation to the association at the

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745 end of the guarantee period shall be determined on the accrual
746 basis using the following formula:

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

750 (b) The total regular periodic assessments earned by the
751 association from the members other than the guarantor during the
752 guarantee period regardless of whether the actual level charged
753 was less than the maximum guaranteed amount.

754 (6) EXPENSES.--Expenses incurred in the production of
755 nonassessment revenues, not in excess of the nonassessment
756 revenues, shall not be included in the common expenses. If the
757 expenses attributable to nonassessment revenues exceed
758 nonassessment revenues, only the excess expenses must be funded
759 by the guarantor. For example, if the association operates a
760 rental program in which rental expenses exceed rental revenues,
761 the guarantor shall fund the rental expenses in excess of the
762 rental revenues. Interest earned on the investment of
763 association funds may be used to pay the income tax expense
764 incurred as a result of the investment, such expense shall not
765 be charged to the guarantor, and the net investment income shall
766 be retained by the association. Each such nonassessment revenue-
767 generating activity shall be considered separately. Capital
768 contributions collected from members are not revenues and shall
769 not be used to pay common expenses.

770 Section 11. Section 720.311, Florida Statutes, is amended
771 to read:

772 720.311 Dispute resolution.--

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

799 (2) (a) Disputes between an association and a parcel owner
 800 regarding use of or changes to the parcel or the common areas

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801 and other covenant enforcement disputes, disputes regarding
802 amendments to the association documents, disputes regarding
803 meetings of the board and committees appointed by the board,
804 membership meetings not including election meetings, and access
805 to the official records of the association shall be the subject
806 of an offer filed with the department for presuit mandatory
807 mediation served by an aggrieved party before the dispute is
808 filed in court. Presuit mediation proceedings must be conducted
809 in accordance with the applicable Florida Rules of Civil
810 Procedure, and these proceedings are privileged and confidential
811 to the same extent as court-ordered mediation. Disputes subject
812 to presuit mediation under this section shall not include the
813 collection of any assessment, fine, or other financial
814 obligation, including attorney's fees and costs, claimed to be
815 due or any action to enforce a prior mediation settlement
816 agreement between the parties. Also, in any dispute subject to
817 presuit mediation under this section where emergency relief is
818 required, a motion for temporary injunctive relief may be filed
819 with the court without first complying with the presuit
820 mediation requirements of this section. After any issues
821 regarding emergency or temporary relief are resolved, the court
822 may either refer the parties to a mediation program administered
823 by the courts or require mediation under this section. An
824 arbitrator or judge may not consider any information or evidence
825 arising from the presuit mediation proceeding except in a
826 proceeding to impose sanctions for failure to attend a presuit
827 mediation session or with the parties' agreement in a proceeding
828 seeking to enforce the agreement. Persons who are not parties to

829 | the dispute may not attend the presuit mediation conference
 830 | without the consent of all parties, except for counsel for the
 831 | parties and a corporate representative designated by the
 832 | association. When mediation is attended by a quorum of the
 833 | board, such mediation is not a board meeting for purposes of
 834 | notice and participation set forth in s. 720.303. An aggrieved
 835 | party shall serve on the responding party a written offer to
 836 | participate in presuit mediation in substantially the following
 837 | form:

838 |
 839 | STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

840 |
 841 | The alleged aggrieved party, _____, hereby
 842 | offers to _____, as the responding party,
 843 | to enter into presuit mediation in connection with the
 844 | following dispute, which by statute is of a type that
 845 | is subject to presuit mediation:

846 |
 847 | (List specific nature of the dispute or disputes to be
 848 | mediated and the authority supporting a finding of a
 849 | violation as to each dispute.)

850 |
 851 | Pursuant to section 720.311, Florida Statutes, this
 852 | offer to resolve the dispute through presuit mediation
 853 | is required before a lawsuit can be filed concerning
 854 | the dispute. Pursuant to the statute, the aggrieved
 855 | party is hereby offering to engage in presuit
 856 | mediation with a neutral third-party mediator in order

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857 to attempt to resolve this dispute without court
858 action, and the aggrieved party demands that you
859 likewise agree to this process. If you fail to agree
860 to presuit mediation, or if you agree and later fail
861 to follow through with your agreement to mediate, suit
862 may be brought against you without further warning.

863
864 The process of mediation involves a supervised
865 negotiation process in which a trained, neutral third-
866 party mediator meets with both parties and assists
867 them in exploring possible opportunities for resolving
868 part or all of the dispute. The mediation process is a
869 voluntary one. By agreeing to participate in presuit
870 mediation, you are not bound in any way to change your
871 position or to enter into any type of agreement.
872 Furthermore, the mediator has no authority to make any
873 decisions in this matter or to determine who is right
874 or wrong and merely acts as a facilitator to ensure
875 that each party understands the position of the other
876 party and that all reasonable settlement options are
877 fully explored.

878
879 If an agreement is reached, it shall be reduced to
880 writing and becomes a binding and enforceable
881 commitment of the parties. A resolution of one or more
882 disputes in this fashion avoids the need to litigate
883 these issues in court. The failure to reach an
884 agreement, or the failure of a party to participate in

885 the process, results in the mediator's declaring an
886 impasse in the mediation, after which the aggrieved
887 party may proceed to court on all outstanding,
888 unsettled disputes.

889
890 The aggrieved party has selected and hereby lists
891 three certified mediators who we believe to be neutral
892 and qualified to mediate the dispute. You have the
893 right to select any one of these mediators. The fact
894 that one party may be familiar with one or more of the
895 listed mediators does not mean that the mediator
896 cannot act as a neutral and impartial facilitator. Any
897 mediator who cannot act in this capacity ethically
898 must decline to accept engagement. The mediators that
899 we suggest, and their current hourly rates, are as
900 follows:

901
902 (List the names, addresses, telephone numbers, and
903 hourly rates of the mediators. Other pertinent
904 information about the background of the mediators may
905 be included as an attachment.)

906
907 You may contact the offices of these mediators to
908 confirm that the listed mediators will be neutral and
909 will not show any favoritism toward either party. The
910 names of certified mediators may be found through the
911 office of the clerk of the circuit court for this
912 circuit.

913
914 If you agree to participate in the presuit mediation
915 process, the statute requires that each party is to
916 pay one-half of the costs and fees involved in the
917 presuit mediation process unless otherwise agreed by
918 all parties. An average mediation may require 3 to 4
919 hours of the mediator's time, including some
920 preparation time, and each party would need to pay
921 one-half of the mediator's fees as well as his or her
922 own attorney's fees if he or she chooses to employ an
923 attorney in connection with the mediation. However,
924 use of an attorney is not required and is at the
925 option of each party. The mediator may require the
926 advance payment of some or all of the anticipated
927 fees. The aggrieved party hereby agrees to pay or
928 prepay one-half of the mediator's estimated fees and
929 to forward this amount or such other reasonable
930 advance deposits as the mediator may require for this
931 purpose. Any funds deposited will be returned to you
932 if these are in excess of your share of the fees
933 incurred.

934
935 If you agree to participate in presuit mediation in
936 order to attempt to resolve the dispute and thereby
937 avoid further legal action, please sign below and
938 clearly indicate which mediator is acceptable to you.
939 We will then ask the mediator to schedule a mutually
940 convenient time and place for the mediation conference

941 to be held. The mediation conference must be held
 942 within 90 days after the date of this letter unless
 943 extended by mutual written agreement. In the event
 944 that you fail to respond within 20 days after the date
 945 of this letter, or if you fail to agree to at least
 946 one of the mediators that we have suggested and to pay
 947 or prepay to the mediator one-half of the costs
 948 involved, the aggrieved party will be authorized to
 949 proceed with the filing of a lawsuit against you
 950 without further notice and may seek an award of
 951 attorney's fees or costs incurred in attempting to
 952 obtain mediation.

953
 954 Should you wish, you may also elect to waive presuit
 955 mediation so that this matter may proceed directly to
 956 court.

957
 958 Therefore, please give this matter your immediate
 959 attention. By law, your response must be mailed by
 960 certified mail, return receipt requested, with an
 961 additional copy being sent by regular first-class mail
 962 to the address shown on this offer.

963
 964 _____
 965 _____

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

971 AGREEMENT TO MEDIATE

972
 973 The undersigned hereby agrees to participate in
 974 presuit mediation and agrees to the following mediator
 975 or mediators as acceptable to mediate this dispute:

976
 977 (List acceptable mediator or mediators.)

978
 979 I/we further agree to pay or prepay one-half of the
 980 mediator's fees and to forward such advance deposits
 981 as the mediator may require for this purpose.

982
 983 _____
 984 Signature of responding party #1

985
 986 _____
 987 Signature of responding party #2 (if applicable) (if
 988 property is owned by more than one person, all owners
 989 must sign)

991 WAIVER OF MEDIATION

992
 993 The undersigned hereby waives the right to participate
 994 in presuit mediation of the dispute listed above and

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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
foregoing, once the parties have agreed on a mediator, the
mediator may reschedule the mediation for a date and time
mutually convenient to the parties. ~~The department shall conduct
the proceedings through the use of department mediators or refer~~

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1023 ~~the disputes to private mediators who have been duly certified~~
1024 ~~by the department as provided in paragraph (c). The parties~~
1025 shall share the costs of presuit mediation equally, including
1026 the fee charged by the mediator, if any, unless the parties
1027 agree otherwise, and the mediator may require advance payment of
1028 its reasonable fees and costs. The failure of any party to
1029 respond to a demand or response, to agree upon a mediator, to
1030 make payment of fees and costs within the time established by
1031 the mediator, or to appear for a scheduled mediation session
1032 shall operate as an impasse in the presuit mediation by such
1033 party, entitling the other party to proceed in court and to seek
1034 an award of the costs and fees associated with the mediation.
1035 Additionally, if any presuit mediation session cannot be
1036 scheduled and conducted within 90 days after the offer to
1037 participate in mediation was filed, an impasse shall be deemed
1038 to have occurred unless both parties agree to extend this
1039 deadline. ~~If a department mediator is used, the department may~~
1040 ~~charge such fee as is necessary to pay expenses of the~~
1041 ~~mediation, including, but not limited to, the salary and~~
1042 ~~benefits of the mediator and any travel expenses incurred. The~~
1043 ~~petitioner shall initially file with the department upon filing~~
1044 ~~the disputes, a filing fee of \$200, which shall be used to~~
1045 ~~defray the costs of the mediation. At the conclusion of the~~
1046 ~~mediation, the department shall charge to the parties, to be~~
1047 ~~shared equally unless otherwise agreed by the parties, such~~
1048 ~~further fees as are necessary to fully reimburse the department~~
1049 ~~for all expenses incurred in the mediation.~~

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1050 ~~(c)-(b)~~ If presuit mediation as described in paragraph (a)
1051 is not successful in resolving all issues between the parties,
1052 the parties may file the unresolved dispute in a court of
1053 competent jurisdiction or elect to enter into binding or
1054 nonbinding arbitration pursuant to the procedures set forth in
1055 s. 718.1255 and rules adopted by the division, with the
1056 arbitration proceeding to be conducted by a department
1057 arbitrator or by a private arbitrator certified by the
1058 department. If all parties do not agree to arbitration
1059 proceedings following an unsuccessful mediation, any party may
1060 file the dispute in court. A final order resulting from
1061 nonbinding arbitration is final and enforceable in the courts if
1062 a complaint for trial de novo is not filed in a court of
1063 competent jurisdiction within 30 days after entry of the order.
1064 As to any issue or dispute that is not resolved at presuit
1065 mediation, and as to any issue that is settled at presuit
1066 mediation but is thereafter subject to an action seeking
1067 enforcement of the mediation settlement, the prevailing party in
1068 any subsequent arbitration or litigation proceeding shall be
1069 entitled to seek recovery of all costs and attorney's fees
1070 incurred in the presuit mediation process.

1071 ~~(d)-(e)~~ ~~The department shall develop a certification and~~
1072 ~~training program for private mediators and private arbitrators~~
1073 ~~which shall emphasize experience and expertise in the area of~~
1074 ~~the operation of community associations.~~ A mediator or
1075 arbitrator shall be certified to conduct mediation or
1076 arbitration under this section ~~by the department~~ only if he or
1077 she has been certified as a circuit court civil mediator or

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

1096 (e)-(d) The presuit mediation procedures provided by this
1097 subsection may be used by a Florida corporation responsible for
1098 the operation of a community in which the voting members are
1099 parcel owners or their representatives, in which membership in
1100 the corporation is not a mandatory condition of parcel
1101 ownership, or which is not authorized to impose an assessment
1102 that may become a lien on the parcel.

1103 ~~(3)~~ ~~The department shall develop an education program to~~
1104 ~~assist homeowners, associations, board members, and managers in~~
1105 ~~understanding and increasing awareness of the operation of~~

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1106 ~~homeowners' associations pursuant to this chapter and in~~
1107 ~~understanding the use of alternative dispute resolution~~
1108 ~~techniques in resolving disputes between parcel owners and~~
1109 ~~associations or between owners. Such education program may~~
1110 ~~include the development of pamphlets and other written~~
1111 ~~instructional guides, the holding of classes and meetings by~~
1112 ~~department employees or outside vendors, as the department~~
1113 ~~determines, and the creation and maintenance of a website~~
1114 ~~containing instructional materials. The expenses of operating~~
1115 ~~the education program shall be initially paid by the moneys and~~
1116 ~~filing fees generated by the arbitration of recall and election~~
1117 ~~disputes and by the mediation of those disputes referred to in~~
1118 ~~this subsection.~~

1119 Section 12. Except as otherwise expressly provided in this
1120 act, this act shall take effect July 1, 2006.