

CHAMBER ACTION

1 The Judiciary Appropriations 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 covenants that have lapsed; amending s. 718.106, F.S.;  
9 prohibiting local ordinances that limit the access of  
10 certain persons to beaches that adjoin condominiums;  
11 amending s. 718.110, F.S.; revising provisions relating to  
12 the amendment of declarations; providing legislative  
13 findings and a finding of compelling state interest;  
14 providing criteria for consent to an amendment; requiring  
15 notice regarding proposed amendments to mortgagees;  
16 providing criteria for notification; providing for voiding  
17 certain amendments; amending s. 718.112, F.S.; revising  
18 the implementation date for retrofitting of common areas  
19 with a sprinkler system; amending s. 718.114, F.S.;  
20 providing that certain leaseholds, memberships, or other  
21 possessory or use interests shall be considered a material  
22 alteration or substantial addition to certain real  
23 property; amending s. 718.404, F.S.; providing retroactive

24 application of provisions relating to mixed-use  
25 condominiums; amending s. 719.103, F.S.; providing a  
26 definition; amending s. 719.507, F.S.; prohibiting laws,  
27 ordinances, or regulations that apply only to improvements  
28 that are or may be subjected to an equity club form of  
29 ownership; amending s. 720.302, F.S.; revising governing  
30 provisions relating to corporations that operate  
31 residential homeowners' associations; amending s. 720.303,  
32 F.S.; revising application to include certain meetings;  
33 requiring the association to provide certain information  
34 to prospective purchasers or lienholders; authorizing the  
35 association to charge a reasonable fee for providing  
36 certain information; requiring the budget to provide for  
37 annual operating expenses; authorizing the budget to  
38 include reserve accounts for capital expenditures and  
39 deferred maintenance; providing a formula for calculating  
40 the amount to be reserved; authorizing the association to  
41 adjust replacement reserve assessments annually;  
42 authorizing the developer to vote to waive the reserves or  
43 reduce the funding of reserves for a certain period;  
44 revising provisions relating to financial reporting;  
45 revising time periods in which the association must  
46 complete its reporting; repealing s. 720.303(2), F.S., as  
47 amended, relating to board meetings, to remove conflicting  
48 versions of that subsection; creating s. 720.3035, F.S.;  
49 providing for architectural control covenants and parcel  
50 owner improvements; authorizing the review and approval of  
51 plans and specifications; providing limitations; providing

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52 | rights and privileges for parcel owners as set forth in  
53 | the declaration of covenants; amending s. 720.305, F.S.;  
54 | providing that, where a member is entitled to collect  
55 | attorney's fees against the association, the member may  
56 | also recover additional amounts as determined by the  
57 | court; amending s. 720.306, F.S.; providing that certain  
58 | mergers or consolidations of an association shall not be  
59 | considered a material or adverse alteration of the  
60 | proportionate voting interest appurtenant to a parcel;  
61 | amending s. 720.307, F.S.; requiring developers to deliver  
62 | financial records to the board in any transition of  
63 | association control to members; requiring certain  
64 | information to be included in the records and for the  
65 | records to be prepared in a specified manner; amending s.  
66 | 720.308, F.S.; providing circumstances under which a  
67 | guarantee of common expenses shall be effective; providing  
68 | for approval of the guarantee by association members;  
69 | providing for a guarantee period and extension thereof;  
70 | requiring the stated dollar amount of the guarantee to be  
71 | an exact dollar amount for each parcel identified in the  
72 | declaration; providing payments required from the  
73 | guarantor to be determined in a certain manner; providing  
74 | a formula to determine the guarantor's total financial  
75 | obligation to the association; providing that certain  
76 | expenses incurred in the production of certain revenues  
77 | shall not be included in the operating expenses; amending  
78 | s. 720.311, F.S.; revising provisions relating to dispute  
79 | resolution; providing that the filing of any petition for

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80 arbitration or the serving of an offer for presuit  
81 mediation shall toll the applicable statute of  
82 limitations; providing that certain disputes between an  
83 association and a parcel owner shall be subject to presuit  
84 mediation; revising provisions to conform; providing that  
85 temporary injunctive relief may be sought in certain  
86 disputes subject to presuit mediation; authorizing the  
87 court to refer the parties to mediation under certain  
88 circumstances; requiring the aggrieved party to serve on  
89 the responding party a written offer to participate in  
90 presuit mediation; providing a form for such offer;  
91 providing that service of the offer is effected by the  
92 sending of such an offer in a certain manner; providing  
93 that the prevailing party in any subsequent arbitration or  
94 litigation proceedings is entitled to seek recovery of all  
95 costs and attorney's fees incurred in the presuit  
96 mediation process; requiring the mediator or arbitrator to  
97 meet certain certification requirements; removing a  
98 requirement relating to development of an education  
99 program to increase awareness of the operation of  
100 homeowners' associations and the use of alternative  
101 dispute resolution techniques; providing effective dates.

102  
103 Be It Enacted by the Legislature of the State of Florida:

104  
105 Section 1. Section 712.11, Florida Statutes, is created to  
106 read:

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107        712.11 Covenant revitalization.--A homeowners' association  
108 not otherwise subject to chapter 720 may use the procedures set  
109 forth in ss. 720.403-720.407 to revive covenants that have  
110 lapsed under the terms of this chapter.

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

113        718.106 Condominium parcels; appurtenances; possession and  
114 enjoyment.--

115        (5) A local ordinance or regulation may not establish any  
116 limitation on the ability of unit owners or an association to  
117 permit guests, licensees, members, or invitees to use or access  
118 their units or common elements for the purpose of accessing a  
119 public beach or private beach adjacent to the condominium.

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

122        718.110 Amendment of declaration; correction of error or  
123 omission in declaration by circuit court.--

124        (11) The Legislature finds that the procurement of  
125 mortgagee consent to amendments that do not affect the rights or  
126 interests of mortgagees is an unreasonable and substantial  
127 logistical and financial burden on the unit owners and that  
128 there is a compelling state interest in enabling the members of  
129 a condominium association to approve amendments to the  
130 condominium documents through legal means. Accordingly, and  
131 notwithstanding any provision to the contrary contained in this  
132 section:

133        (a) As to any mortgage recorded on or after October 1,  
134 2006, any provision in the declaration, articles of

135 incorporation, or bylaws that requires recorded after April 1,  
136 ~~1992, may not require~~ the consent or joinder of some or all  
137 mortgagees of units or any other portion of the condominium  
138 property to or in amendments to the declaration, articles of  
139 incorporation, or bylaws or for any other matter shall be  
140 enforceable only as to the following matters: unless the  
141 ~~requirement is limited to amendments materially affecting the~~  
142 ~~rights or interests of the mortgagees, or as otherwise required~~  
143 ~~by the Federal National Mortgage Association or the Federal Home~~  
144 ~~Loan Mortgage Corporation, and unless the requirement provides~~  
145 ~~that such consent may not be unreasonably withheld. It shall be~~  
146 ~~presumed that, except as to~~

147 1. Those matters described in subsections (4) and (8).  
148 2. Amendments to the declaration, articles of  
149 incorporation, or bylaws that adversely affect the priority of  
150 the mortgagee's lien or the mortgagee's rights to foreclose its  
151 lien or that otherwise materially affect the rights and  
152 interests of the mortgagees.

153 (b) As to mortgages recorded before October 1, 2006, any  
154 existing provisions in the declaration, articles of  
155 incorporation, or bylaws requiring mortgagee consent shall be  
156 enforceable.

157 (c) In securing consent or joinder, the association shall  
158 be entitled to rely upon the public records to identify the  
159 holders of outstanding mortgages. The association may use the  
160 address provided in the original recorded mortgage document,  
161 unless there is a different address for the holder of the  
162 mortgage in a recorded assignment or modification of the

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163 mortgage, which recorded assignment or modification must  
164 reference the official records book and page on which the  
165 original mortgage was recorded. Once the association has  
166 identified the recorded mortgages of record, the association  
167 shall, in writing, request of each unit owner whose unit is  
168 encumbered by a mortgage of record any information the owner has  
169 in his or her possession regarding the name and address of the  
170 person to whom mortgage payments are currently being made.  
171 Notice shall be sent to such person if the address provided in  
172 the original recorded mortgage document is different from the  
173 name and address of the mortgagee or assignee of the mortgage as  
174 shown by the public record. The association shall be deemed to  
175 have complied with this requirement by making the written  
176 request of the unit owners required under this paragraph. Any  
177 notices required to be sent to the mortgagees under this  
178 paragraph shall be sent to all available addresses provided to  
179 the association.

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

185 (e) For those amendments requiring mortgagee consent on or  
186 after October 1, 2006, ~~do not materially affect the rights or~~  
187 ~~interests of mortgagees.~~ in the event mortgagee consent is  
188 provided other than by properly recorded joinder, such consent  
189 shall be evidenced by affidavit of the association recorded in  
190 the public records of the county where the declaration is

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191 | recorded. Any amendment adopted without the required consent of  
 192 | a mortgagee shall be voidable only by a mortgagee who was  
 193 | entitled to notice and an opportunity to consent. An action to  
 194 | void an amendment shall be subject to the statute of limitations  
 195 | beginning 5 years from the date of discovery as to the  
 196 | amendments described in subparagraph (a)2. and 5 years from the  
 197 | date of recordation of the certificate of amendment for all  
 198 | other amendments. This provision shall apply to all mortgages,  
 199 | regardless of the date of recordation of the mortgage.

200 | Section 4. Paragraph (1) of subsection (2) of section  
 201 | 718.112, Florida Statutes, is amended to read:

202 | 718.112 Bylaws.--

203 | (2) REQUIRED PROVISIONS.--The bylaws shall provide for the  
 204 | following and, if they do not do so, shall be deemed to include  
 205 | the following:

206 | (1) Certificate of compliance.--There shall be a provision  
 207 | that a certificate of compliance from a licensed electrical  
 208 | contractor or electrician may be accepted by the association's  
 209 | board as evidence of compliance of the condominium units with  
 210 | the applicable fire and life safety code. Notwithstanding the  
 211 | provisions of chapter 633 or of any other code, statute,  
 212 | ordinance, administrative rule, or regulation, or any  
 213 | interpretation of the foregoing, an association, condominium, or  
 214 | unit owner is not obligated to retrofit the common elements or  
 215 | units of a residential condominium with a fire sprinkler system  
 216 | or other engineered lifesafety system in a building that has  
 217 | been certified for occupancy by the applicable governmental  
 218 | entity, if the unit owners have voted to forego such



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219 retrofitting and engineered lifesafety system by the affirmative  
220 vote of two-thirds of all voting interests in the affected  
221 condominium. However, a condominium association may not vote to  
222 forego the retrofitting with a fire sprinkler system of common  
223 areas in a high-rise building. For purposes of this subsection,  
224 the term "high-rise building" means a building that is greater  
225 than 75 feet in height where the building height is measured  
226 from the lowest level of fire department access to the floor of  
227 the highest occupiable story. For purposes of this subsection,  
228 the term "common areas" means any enclosed hallway, corridor,  
229 lobby, stairwell, or entryway. In no event shall the local  
230 authority having jurisdiction require completion of retrofitting  
231 of common areas with a sprinkler system before the end of 2025  
232 ~~2014~~.

233 1. A vote to forego retrofitting may be obtained by  
234 limited proxy or by a ballot personally cast at a duly called  
235 membership meeting, or by execution of a written consent by the  
236 member, and shall be effective upon the recording of a  
237 certificate attesting to such vote in the public records of the  
238 county where the condominium is located. The association shall  
239 mail, hand deliver, or electronically transmit to each unit  
240 owner written notice at least 14 days prior to such membership  
241 meeting in which the vote to forego retrofitting of the required  
242 fire sprinkler system is to take place. Within 30 days after the  
243 association's opt-out vote, notice of the results of the opt-out  
244 vote shall be mailed, hand delivered, or electronically  
245 transmitted to all unit owners. Evidence of compliance with this  
246 30-day notice shall be made by an affidavit executed by the

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247 | person providing the notice and filed among the official records  
 248 | of the association. After such notice is provided to each owner,  
 249 | a copy of such notice shall be provided by the current owner to  
 250 | a new owner prior to closing and shall be provided by a unit  
 251 | owner to a renter prior to signing a lease.

252 |         2. As part of the information collected annually from  
 253 | condominiums, the division shall require condominium  
 254 | associations to report the membership vote and recording of a  
 255 | certificate under this subsection and, if retrofitting has been  
 256 | undertaken, the per-unit cost of such work. The division shall  
 257 | annually report to the Division of State Fire Marshal of the  
 258 | Department of Financial Services the number of condominiums that  
 259 | have elected to forego retrofitting.

260 |         Section 5. Section 718.114, Florida Statutes, is amended  
 261 | to read:

262 |         718.114 Association powers.--An association has the power  
 263 | to enter into agreements, to acquire leaseholds, memberships,  
 264 | and other possessory or use interests in lands or facilities  
 265 | such as country clubs, golf courses, marinas, and other  
 266 | recreational facilities. It has this power whether or not the  
 267 | lands or facilities are contiguous to the lands of the  
 268 | condominium, if they are intended to provide enjoyment,  
 269 | recreation, or other use or benefit to the unit owners. All of  
 270 | these leaseholds, memberships, and other possessory or use  
 271 | interests existing or created at the time of recording the  
 272 | declaration must be stated and fully described in the  
 273 | declaration. Subsequent to the recording of the declaration,  
 274 | agreements acquiring these leaseholds, memberships, or other

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275 possessory or use interests not entered into within 12 months  
 276 following the recording of the declaration shall be considered a  
 277 material alteration or substantial addition to the real property  
 278 that is association property, and the association may not  
 279 acquire or enter into agreements acquiring these leaseholds,  
 280 memberships, or other possessory or use interests except as  
 281 authorized by the declaration as provided in s. 718.113. The  
 282 declaration may provide that the rental, membership fees,  
 283 operations, replacements, and other expenses are common expenses  
 284 and may impose covenants and restrictions concerning their use  
 285 and may contain other provisions not inconsistent with this  
 286 chapter. A condominium association may conduct bingo games as  
 287 provided in s. 849.0931.

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

290 718.404 Mixed-use condominiums.--When a condominium  
 291 consists of both residential and commercial units, the following  
 292 provisions shall apply:

293 (1) The condominium documents shall not provide that the  
 294 owner of any commercial unit shall have the authority to veto  
 295 amendments to the declaration, articles of incorporation,  
 296 bylaws, or rules or regulations of the association. This  
 297 subsection shall apply retroactively as a remedial measure.

298 (2) Subject to s. 718.301, where the number of residential  
 299 units in the condominium equals or exceeds 50 percent of the  
 300 total units operated by the association, owners of the  
 301 residential units shall be entitled to vote for a majority of

302 | the seats on the board of administration. This subsection shall  
 303 | apply retroactively as a remedial measure.

304 |       Section 7. Subsections (18) through (27) of section  
 305 | 719.103, Florida Statutes, are renumbered as subsections (19)  
 306 | through (28), respectively, and a new subsection (18) is added  
 307 | to that section to read:

308 |       719.103 Definitions.--As used in this chapter:

309 |       (18) "Equity facilities club" means a club comprised of  
 310 | recreational facilities in which proprietary membership  
 311 | interests are sold to individuals, which membership interests  
 312 | entitle the individuals to use certain physical facilities owned  
 313 | by the equity club. Such physical facilities do not include a  
 314 | residential unit or accommodation. For purposes of this  
 315 | definition, the term "accommodation" shall include, but is not  
 316 | limited to, any apartment, residential cooperative unit,  
 317 | residential condominium unit, cabin, lodge, hotel or motel room,  
 318 | or any other accommodation designed for overnight occupancy for  
 319 | one or more individuals.

320 |       Section 8. Section 719.507, Florida Statutes, is amended  
 321 | to read:

322 |       719.507 Zoning and building laws, ordinances, and  
 323 | regulations.--All laws, ordinances, and regulations concerning  
 324 | buildings or zoning shall be construed and applied with  
 325 | reference to the nature and use of such property, without regard  
 326 | to the form of ownership. No law, ordinance, or regulation shall  
 327 | establish any requirement concerning the use, location,  
 328 | placement, or construction of buildings or other improvements  
 329 | which are, or may thereafter be, subjected to the cooperative or

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330 equity facilities club form of ownership, unless such  
 331 requirement shall be equally applicable to all buildings and  
 332 improvements of the same kind not then, or thereafter to be,  
 333 subjected to the cooperative or equity facilities club form of  
 334 ownership. This section does not apply if the owner in fee of  
 335 any land enters into and records a covenant that existing  
 336 improvements or improvements to be constructed shall not be  
 337 converted to the cooperative form of residential ownership prior  
 338 to 5 years after the later of the date of the covenant or  
 339 completion date of the improvements. Such covenant shall be  
 340 entered into with the governing body of the municipality in  
 341 which the land is located or, if the land is not located in a  
 342 municipality, with the governing body of the county in which the  
 343 land is located.

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

346 720.302 Purposes, scope, and application.--

347 (4) This chapter does not apply to any association that is  
 348 subject to regulation under chapter 718, chapter 719, or chapter  
 349 ~~721~~ or to any nonmandatory association formed under chapter  
 350 723, except to the extent that a provision of chapter 718,  
 351 chapter 719, or chapter 721 is expressly incorporated into this  
 352 chapter for the purpose of regulating homeowners' associations.

353 (5) Unless expressly stated to the contrary, corporations  
 354 ~~not for profit~~ that operate residential homeowners' associations  
 355 in this state shall be governed by and subject to chapter 607,  
 356 if the association was incorporated under that chapter, or to  
 357 chapter 617, if the association was incorporated under that

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358 | chapter, and this chapter. This subsection is intended to  
359 | clarify existing law.

360 |       Section 10. Paragraph (a) of subsection (2), subsection  
361 | (6), and subsection (7) of section 720.303, Florida Statutes, as  
362 | amended by section 18 of chapter 2004-345 and section 135 of  
363 | chapter 2005-2, Laws of Florida, are amended, and paragraph (d)  
364 | is added to subsection (5) of that section, to read:

365 |       720.303 Association powers and duties; meetings of board;  
366 | official records; budgets; financial reporting; association  
367 | funds; recalls.--

368 |       (2) BOARD MEETINGS.--

369 |       (a) A meeting of the board of directors of an association  
370 | occurs whenever a quorum of the board gathers to conduct  
371 | association business. All meetings of the board must be open to  
372 | all members except for meetings between the board and its  
373 | attorney with respect to proposed or pending litigation where  
374 | the contents of the discussion would otherwise be governed by  
375 | the attorney-client privilege. The provisions of this subsection  
376 | shall also apply to the meetings of any committee or other  
377 | similar body when a final decision will be made regarding the  
378 | expenditure of association funds and to meetings of any body  
379 | vested with the power to approve or disapprove architectural  
380 | decisions with respect to a specific parcel of residential  
381 | property owned by a member of the community.

382 |       (5) INSPECTION AND COPYING OF RECORDS.--The official  
383 | records shall be maintained within the state and must be open to  
384 | inspection and available for photocopying by members or their  
385 | authorized agents at reasonable times and places within 10

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386 business days after receipt of a written request for access.  
387 This subsection may be complied with by having a copy of the  
388 official records available for inspection or copying in the  
389 community. If the association has a photocopy machine available  
390 where the records are maintained, it must provide parcel owners  
391 with copies on request during the inspection if the entire  
392 request is limited to no more than 25 pages.

393 (d) The association or its authorized agent is not  
394 required to provide a prospective purchaser or lienholder with  
395 information about the residential subdivision or the association  
396 other than information or documents required by this chapter to  
397 be made available or disclosed. The association or its  
398 authorized agent may charge a reasonable fee to the prospective  
399 purchaser or lienholder or the current parcel owner or member  
400 for providing good faith responses to requests for information  
401 by or on behalf of a prospective purchaser or lienholder, other  
402 than that required by law, if the fee does not exceed \$50 plus  
403 the reasonable cost of photocopying and any attorney's fees  
404 incurred by the association in connection with the response.

405 (6) BUDGETS.--

406 (a) The association shall prepare an annual budget that  
407 sets out the annual operating expenses. The budget must reflect  
408 the estimated revenues and expenses for that year and the  
409 estimated surplus or deficit as of the end of the current year.  
410 The budget must set out separately all fees or charges paid for  
411 by the association for recreational amenities, whether owned by  
412 the association, the developer, or another person. The  
413 association shall provide each member with a copy of the annual

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414 budget or a written notice that a copy of the budget is  
415 available upon request at no charge to the member. The copy must  
416 be provided to the member within the time limits set forth in  
417 subsection (5).

418 (b) In addition to annual operating expenses, the budget  
419 may include reserve accounts for capital expenditures and  
420 deferred maintenance for which the association is responsible to  
421 the extent that the governing documents do not limit increases  
422 in assessments, including reserves. If the budget of the  
423 association includes reserve accounts, such reserves shall be  
424 determined, maintained, and waived in the manner provided in  
425 this subsection. Once an association provides for reserve  
426 accounts in the budget, the association shall thereafter  
427 determine, maintain, and waive reserves in compliance with the  
428 provisions of this subsection.

429 (c) If the budget of the association does not provide for  
430 reserve accounts governed by this subsection and the association  
431 is responsible for the repair and maintenance of capital  
432 improvements that may result in a special assessment if reserves  
433 are not provided, each financial report for the preceding fiscal  
434 year required by subsection (7) shall contain the following  
435 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION  
436 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES  
437 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.  
438 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE  
439 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE  
440 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING  
441 INTERESTS OF THE ASSOCIATION.

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442        (d) An association shall be deemed to have provided for  
443 reserve accounts when reserve accounts have been initially  
444 established by the developer or when the membership of the  
445 association affirmatively elects to provide for reserves. If  
446 reserve accounts are not initially provided for by the  
447 developer, the membership of the association may elect to do so  
448 upon the affirmative approval of not less than a majority of the  
449 total voting interests of the association. Such approval may be  
450 attained by vote of the members at a duly called meeting of the  
451 membership or upon a written consent executed by not less than a  
452 majority of the total voting interests in the community. The  
453 approval action of the membership shall state that reserve  
454 accounts shall be provided for in the budget and designate the  
455 components for which the reserve accounts are to be established.  
456 Upon approval by the membership, the board of directors shall  
457 provide for the required reserve accounts for inclusion in the  
458 budget in the next fiscal year following the approval and in  
459 each year thereafter. Once established as provided in this  
460 subsection, the reserve accounts shall be funded or maintained  
461 or shall have their funding waived in the manner provided in  
462 paragraph (f).

463        (e) The amount to be reserved in any account established  
464 shall be computed by means of a formula that is based upon  
465 estimated remaining useful life and estimated replacement cost  
466 or deferred maintenance expense of each reserve item. The  
467 association may adjust replacement reserve assessments annually  
468 to take into account any changes in estimates of cost or useful  
469 life of a reserve item.

470 (f) Once a reserve account or reserve accounts are  
471 established, the membership of the association, upon a majority  
472 vote at a meeting at which a quorum is present, may provide for  
473 no reserves or less reserves than required by this section. If a  
474 meeting of the unit owners has been called to determine whether  
475 to waive or reduce the funding of reserves and no such result is  
476 achieved or a quorum is not present, the reserves as included in  
477 the budget shall go into effect. After the turnover, the  
478 developer may vote its voting interest to waive or reduce the  
479 funding of reserves. Any vote taken pursuant to this subsection  
480 to waive or reduce reserves shall be applicable only to one  
481 budget year.

482 (g) Funding formulas for reserves authorized by this  
483 section shall be based on either a separate analysis of each of  
484 the required assets or a pooled analysis of two or more of the  
485 required assets.

486 1. If the association maintains separate reserve accounts  
487 for each of the required assets, the amount of the contribution  
488 to each reserve account shall be the sum of the following two  
489 calculations:

490 a. The total amount necessary, if any, to bring a negative  
491 component balance to zero.

492 b. The total estimated deferred maintenance expense or  
493 estimated replacement cost of the reserve component less the  
494 estimated balance of the reserve component as of the beginning  
495 of the period for which the budget will be in effect. The  
496 remainder, if greater than zero, shall be divided by the  
497 estimated remaining useful life of the component.

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498  
499 The formula may be adjusted each year for changes in estimates  
500 and deferred maintenance performed during the year and may  
501 include factors such as inflation and earnings on invested  
502 funds.

503 2. If the association maintains a pooled account of two or  
504 more of the required reserve assets, the amount of the  
505 contribution to the pooled reserve account as disclosed on the  
506 proposed budget shall not be less than that required to ensure  
507 that the balance on hand at the beginning of the period for  
508 which the budget will go into effect plus the projected annual  
509 cash inflows over the remaining estimated useful life of all of  
510 the assets that make up the reserve pool are equal to or greater  
511 than the projected annual cash outflows over the remaining  
512 estimated useful lives of all of the assets that make up the  
513 reserve pool, based on the current reserve analysis. The  
514 projected annual cash inflows may include estimated earnings  
515 from investment of principal. The reserve funding formula shall  
516 not include any type of balloon payments.

517 (h) Reserve funds and any interest accruing thereon shall  
518 remain in the reserve account or accounts and shall be used only  
519 for authorized reserve expenditures unless their use for other  
520 purposes is approved in advance by a majority vote at a meeting  
521 at which a quorum is present. Prior to turnover of control of an  
522 association by a developer to parcel owners, the developer-  
523 controlled association shall not vote to use reserves for  
524 purposes other than those for which they were intended without  
525 the approval of a majority of all nondeveloper voting interests

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526 | voting in person or by limited proxy at a duly called meeting of  
527 | the association.

528 |       (7) FINANCIAL REPORTING.--Within 90 days after the end of  
529 | the fiscal year, or annually on the date provided in the bylaws,  
530 | the association shall prepare and complete, or contract with a  
531 | third party for the preparation and completion of, a financial  
532 | report for the preceding fiscal year. Within 21 days after the  
533 | final financial report is completed by the association or  
534 | received from the third party, but not later than 120 days after  
535 | the end of the fiscal year or other date as provided in the  
536 | bylaws, the association shall ~~prepare an annual financial report~~  
537 | ~~within 60 days after the close of the fiscal year. The~~  
538 | ~~association shall, within the time limits set forth in~~  
539 | subsection (5), provide each member with a copy of the annual  
540 | financial report or a written notice that a copy of the  
541 | financial report is available upon request at no charge to the  
542 | member. Financial reports shall be prepared as follows:

543 |       (a) An association that meets the criteria of this  
544 | paragraph shall prepare or cause to be prepared a complete set  
545 | of financial statements in accordance with generally accepted  
546 | accounting principles as adopted by the Board of Accountancy.  
547 | The financial statements shall be based upon the association's  
548 | total annual revenues, as follows:

549 |       1. An association with total annual revenues of \$100,000  
550 | or more, but less than \$200,000, shall prepare compiled  
551 | financial statements.

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552           2. An association with total annual revenues of at least  
553 \$200,000, but less than \$400,000, shall prepare reviewed  
554 financial statements.

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

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

560           2. An association in a community of fewer than 50 parcels,  
561 regardless of the association's annual revenues, may prepare a  
562 report of cash receipts and expenditures in lieu of financial  
563 statements required by paragraph (a) unless the governing  
564 documents provide otherwise.

565           3. A report of cash receipts and disbursement must  
566 disclose the amount of receipts by accounts and receipt  
567 classifications and the amount of expenses by accounts and  
568 expense classifications, including, but not limited to, the  
569 following, as applicable: costs for security, professional, and  
570 management fees and expenses; taxes; costs for recreation  
571 facilities; expenses for refuse collection and utility services;  
572 expenses for lawn care; costs for building maintenance and  
573 repair; insurance costs; administration and salary expenses; and  
574 reserves if maintained by the association.

575           (c) If 20 percent of the parcel owners petition the board  
576 for a level of financial reporting higher than that required by  
577 this section, the association shall duly notice and hold a  
578 meeting of members within 30 days of receipt of the petition for  
579 the purpose of voting on raising the level of reporting for that

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580 fiscal year. Upon approval of a majority of the total voting  
581 interests of the parcel owners, the association shall prepare or  
582 cause to be prepared, shall amend the budget or adopt a special  
583 assessment to pay for the financial report regardless of any  
584 provision to the contrary in the governing documents, and shall  
585 provide within 90 days of the meeting or the end of the fiscal  
586 year, whichever occurs later:

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

590 2. Reviewed or audited financial statements, if the  
591 association is otherwise required to prepare compiled financial  
592 statements; or

593 3. Audited financial statements if the association is  
594 otherwise required to prepare reviewed financial statements.

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

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

600 2. A report of cash receipts and expenditures or a  
601 compiled financial statement in lieu of a reviewed or audited  
602 financial statement; or

603 3. A report of cash receipts and expenditures, a compiled  
604 financial statement, or a reviewed financial statement in lieu  
605 of an audited financial statement.

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

609           Section 12. Section 720.3035, Florida Statutes, is created  
 610 to read:

611           720.3035 Architectural control covenants; parcel owner  
 612 improvements; rights and privileges.--

613           (1) The authority of an association or any architectural,  
 614 construction improvement, or other such similar committee of an  
 615 association to review and approve plans and specifications for  
 616 the location, size, type, or appearance of any structure or  
 617 other improvement on a parcel, or to enforce standards for the  
 618 external appearance of any structure or improvement located on a  
 619 parcel, shall only be permitted to the extent that the authority  
 620 is specifically stated or reasonably inferred as to such  
 621 location, size, type, or appearance in the declaration of  
 622 covenants or other published guidelines and standards authorized  
 623 by the declaration of covenants.

624           (2) If the declaration of covenants or other published  
 625 guidelines and standards authorized by the declaration of  
 626 covenants provides options for the use of material, the size of  
 627 the structure or improvement, the design of the structure or  
 628 improvement, or the location of the structure or improvement on  
 629 the parcel, neither the association nor any architectural,  
 630 construction improvement, or other such similar committee of the  
 631 association shall restrict the right of a parcel owner to select  
 632 from the options provided in the declaration of covenants or

633 other published guidelines and standards authorized by the  
634 declaration of covenants.

635 (3) Unless otherwise specifically stated in the  
636 declaration of covenants or other published guidelines and  
637 standards authorized by the declaration of covenants, each  
638 parcel shall be deemed to have only one front for purposes of  
639 determining the required front setback even if the parcel is  
640 bounded by a roadway or other easement on more than one side.  
641 When the declaration of covenants or other published guidelines  
642 and standards authorized by the declaration of covenants do not  
643 provide for specific setback limitations, the applicable county  
644 or municipal setback limitations shall apply, and neither the  
645 association nor any architectural, construction improvement, or  
646 other such similar committee of the association shall enforce or  
647 attempt to enforce any setback limitation that is inconsistent  
648 with the applicable county or municipal standard or standards.

649 (4) Each parcel owner shall be entitled to the rights and  
650 privileges set forth in the declaration of covenants or other  
651 published guidelines and standards authorized by the declaration  
652 of covenants concerning the use of the parcel, and the  
653 construction of permitted structures and improvements on the  
654 parcel and such rights and privileges shall not be unreasonably  
655 infringed upon or impaired by the association or any  
656 architectural, construction improvement, or other such similar  
657 committee of the association. If the association or any  
658 architectural, construction improvement, or other such similar  
659 committee of the association should knowingly and willfully  
660 infringe upon or impair the rights and privileges set forth in



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661 the declaration of covenants or other published guidelines and  
662 standards authorized by the declaration of covenants, the  
663 adversely affected parcel owner shall be entitled to recover  
664 damages caused by such infringement or impairment, including any  
665 costs and reasonable attorney's fees incurred in preserving or  
666 restoring the rights and privileges of the parcel owner set  
667 forth in the declaration of covenants or other published  
668 guidelines and standards authorized by the declaration of  
669 covenants.

670 (5) Neither the association nor any architectural,  
671 construction improvement, or other such similar committee of the  
672 association shall enforce any policy or restriction that is  
673 inconsistent with the rights and privileges of a parcel owner  
674 set forth in the declaration of covenants or other published  
675 guidelines and standards authorized by the declaration of  
676 covenants, whether uniformly applied or not. Neither the  
677 association nor any architectural, construction improvement, or  
678 other such similar committee of the association may rely upon a  
679 policy or restriction that is inconsistent with the declaration  
680 of covenants or other published guidelines and standards  
681 authorized by the declaration of covenants, whether uniformly  
682 applied or not, in defense of any action taken in the name of or  
683 on behalf of the association against a parcel owner.

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

686 720.305 Obligations of members; remedies at law or in  
687 equity; levy of fines and suspension of use rights; failure to  
688 fill sufficient number of vacancies on board of directors to

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689 constitute a quorum; appointment of receiver upon petition of  
690 any member.--

691 (1) Each member and the member's tenants, guests, and  
692 invitees, and each association, are governed by, and must comply  
693 with, this chapter, the governing documents of the community,  
694 and the rules of the association. Actions at law or in equity,  
695 or both, to redress alleged failure or refusal to comply with  
696 these provisions may be brought by the association or by any  
697 member against:

698 (a) The association;

699 (b) A member;

700 (c) Any director or officer of an association who  
701 willfully and knowingly fails to comply with these provisions;  
702 and

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

705

706 The prevailing party in any such litigation is entitled to  
707 recover reasonable attorney's fees and costs. A member  
708 prevailing in an action between the association and the member  
709 under this section, in addition to recovering his or her  
710 reasonable attorney's fees, may recover additional amounts as  
711 determined by the court to be necessary to reimburse the member  
712 for his or her share of assessments levied by the association to  
713 fund its expenses of the litigation. This relief does not  
714 exclude other remedies provided by law. This section does not  
715 deprive any person of any other available right or remedy.

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716 Section 14. Paragraph (c) of subsection (1) of section  
717 720.306, Florida Statutes, is amended to read:

718 720.306 Meetings of members; voting and election  
719 procedures; amendments.--

720 (1) QUORUM; AMENDMENTS.--

721 (c) Unless otherwise provided in the governing documents  
722 as originally recorded or permitted by this chapter or chapter  
723 617, an amendment may not materially and adversely alter the  
724 proportionate voting interest appurtenant to a parcel or  
725 increase the proportion or percentage by which a parcel shares  
726 in the common expenses of the association unless the record  
727 parcel owner and all record owners of liens on the parcels join  
728 in the execution of the amendment. For purposes of this section,  
729 a change in quorum requirements is not an alteration of voting  
730 interests. The merger or consolidation of one or more  
731 associations under a plan of merger or consolidation under  
732 chapter 607 or chapter 617 shall not be considered a material or  
733 adverse alteration of the proportionate voting interest  
734 appurtenant to a parcel.

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

737 720.307 Transition of association control in a  
738 community.--With respect to homeowners' associations:

739 (3) At the time the members are entitled to elect at least  
740 a majority of the board of directors of the homeowners'  
741 association, the developer shall, at the developer's expense,  
742 within no more than 90 days deliver the following documents to  
743 the board:

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744       (t) The financial records, including financial statements  
745 of the association, and source documents from the incorporation  
746 of the association through the date of turnover. The records  
747 shall be audited by an independent certified public accountant  
748 for the period from the incorporation of the association or from  
749 the period covered by the last audit, if an audit has been  
750 performed for each fiscal year since incorporation. All  
751 financial statements shall be prepared in accordance with  
752 generally accepted accounting principles and shall be audited in  
753 accordance with generally accepted auditing standards, as  
754 prescribed by the Board of Accountancy, pursuant to chapter 473.  
755 The certified public accountant performing the audit shall  
756 examine to the extent necessary supporting documents and  
757 records, including the cash disbursements and related paid  
758 invoices to determine if expenditures were for association  
759 purposes and the billings, cash receipts, and related records of  
760 the association to determine that the developer was charged and  
761 paid the proper amounts of assessments. This paragraph applies  
762 to associations with a date of incorporation after December 31,  
763 2006.

764       Section 16. Section 720.308, Florida Statutes, is amended  
765 to read:

766       720.308 Assessments and charges.--

767       (1) ASSESSMENTS.--For any community created after October  
768 1, 1995, the governing documents must describe the manner in  
769 which expenses are shared and specify the member's proportional  
770 share thereof. Assessments levied pursuant to the annual budget  
771 or special assessment must be in the member's proportional share

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772 of expenses as described in the governing document, which share  
773 may be different among classes of parcels based upon the state  
774 of development thereof, levels of services received by the  
775 applicable members, or other relevant factors. While the  
776 developer is in control of the homeowners' association, it may  
777 be excused from payment of its share of the operating expenses  
778 and assessments related to its parcels for any period of time  
779 for which the developer has, in the declaration, obligated  
780 itself to pay any operating expenses incurred that exceed the  
781 assessments receivable from other members and other income of  
782 the association. This section does not apply to an association,  
783 no matter when created, if the association is created in a  
784 community that is included in an effective development-of-  
785 regional-impact development order as of the effective date of  
786 this act, together with any approved modifications thereto.

787 (2) GUARANTEES OF COMMON EXPENSES.--

788 (a) Establishment of a guarantee.--If a guarantee of the  
789 assessments of parcel owners is not included in the purchase  
790 contracts or declaration, any agreement establishing a guarantee  
791 shall only be effective upon the approval of a majority of the  
792 voting interests of the members other than the developer.

793 Approval shall be expressed at a meeting of the members voting  
794 in person or by limited proxy or by agreement in writing without  
795 a meeting if provided in the bylaws. Such guarantee shall meet  
796 the requirements of this section.

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

800       1. The ending date or event shall be the same for all of  
801 the members of an association, including members in different  
802 phases of the development.

803       2. The guarantee may provide for different intervals of  
804 time during a guarantee period with different dollar amounts for  
805 each such interval.

806       3. The guarantee may provide that after the initial stated  
807 period, the developer has an option to extend the guarantee for  
808 one or more additional stated periods. The extension of a  
809 guarantee is limited to extending the ending date or event;  
810 therefore, the developer does not have the option of changing  
811 the level of assessments guaranteed.

812       (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar  
813 amount of the guarantee shall be an exact dollar amount for each  
814 parcel identified in the declaration. Regardless of the stated  
815 dollar amount of the guarantee, assessments charged to a member  
816 shall not exceed the maximum obligation of the member based on  
817 the total amount of the adopted budget and the member's  
818 proportionate ownership share of the common elements.

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

822       (a) If at any time during the guarantee period the funds  
823 collected from member assessments at the guaranteed level and  
824 other revenues collected by the association are not sufficient  
825 to provide payment, on a timely basis, of all assessments,  
826 including the full funding of the reserves unless properly

827 waived, the guarantor shall advance sufficient cash to the  
828 association at the time such payments are due.

829 (b) Expenses incurred in the production of nonassessment  
830 revenues, not in excess of the nonassessment revenues, shall not  
831 be included in the assessments. If the expenses attributable to  
832 nonassessment revenues exceed nonassessment revenues, only the  
833 excess expenses must be funded by the guarantor. Interest earned  
834 on the investment of association funds may be used to pay the  
835 income tax expense incurred as a result of the investment; such  
836 expense shall not be charged to the guarantor; and the net  
837 investment income shall be retained by the association. Each  
838 such nonassessment-revenue-generating activity shall be  
839 considered separately. Any portion of the parcel assessment that  
840 is budgeted for designated capital contributions of the  
841 association shall not be used to pay operating expenses.

842 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The  
843 guarantor's total financial obligation to the association at the  
844 end of the guarantee period shall be determined on the accrual  
845 basis using the following formula: the guarantor shall pay any  
846 deficits that exceed the guaranteed amount, less the total  
847 regular periodic assessments earned by the association from the  
848 members other than the guarantor during the guarantee period  
849 regardless of whether the actual level charged was less than the  
850 maximum guaranteed amount.

851 (6) EXPENSES.--Expenses incurred in the production of  
852 nonassessment revenues, not in excess of the nonassessment  
853 revenues, shall not be included in the operating expenses. If  
854 the expenses attributable to nonassessment revenues exceed

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855 nonassessment revenues, only the excess expenses must be funded  
856 by the guarantor. Interest earned on the investment of  
857 association funds may be used to pay the income tax expense  
858 incurred as a result of the investment; such expense shall not  
859 be charged to the guarantor; and the net investment income shall  
860 be retained by the association. Each such nonassessment-revenue-  
861 generating activity shall be considered separately. Any portion  
862 of the parcel assessment that is budgeted for designated capital  
863 contributions of the association shall not be used to pay  
864 operating expenses.

865 Section 17. Section 720.311, Florida Statutes, is amended  
866 to read:

867 720.311 Dispute resolution.--

868 (1) The Legislature finds that alternative dispute  
869 resolution has made progress in reducing court dockets and  
870 trials and in offering a more efficient, cost-effective option  
871 to litigation. The filing of any petition for ~~mediation or~~  
872 arbitration or the serving of an offer for presuit mediation as  
873 provided for in this section shall toll the applicable statute  
874 of limitations. Any recall dispute filed with the department  
875 pursuant to s. 720.303(10) shall be conducted by the department  
876 in accordance with the provisions of ss. 718.112(2)(j) and  
877 718.1255 and the rules adopted by the division. In addition, the  
878 department shall conduct mandatory binding arbitration of  
879 election disputes between a member and an association pursuant  
880 to s. 718.1255 and rules adopted by the division. Neither  
881 election disputes nor recall disputes are eligible for presuit  
882 mediation; these disputes shall be arbitrated by the department.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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883 At the conclusion of the proceeding, the department shall charge  
884 the parties a fee in an amount adequate to cover all costs and  
885 expenses incurred by the department in conducting the  
886 proceeding. Initially, the petitioner shall remit a filing fee  
887 of at least \$200 to the department. The fees paid to the  
888 department shall become a recoverable cost in the arbitration  
889 proceeding, and the prevailing party in an arbitration  
890 proceeding shall recover its reasonable costs and attorney's  
891 fees in an amount found reasonable by the arbitrator. The  
892 department shall adopt rules to effectuate the purposes of this  
893 section.

894 (2) (a) Disputes between an association and a parcel owner  
895 regarding use of or changes to the parcel or the common areas  
896 and other covenant enforcement disputes, disputes regarding  
897 amendments to the association documents, disputes regarding  
898 meetings of the board and committees appointed by the board,  
899 membership meetings not including election meetings, and access  
900 to the official records of the association shall be the subject  
901 of an offer filed with the department for presuit mandatory  
902 mediation served by an aggrieved party before the dispute is  
903 filed in court. Presuit mediation proceedings must be conducted  
904 in accordance with the applicable Florida Rules of Civil  
905 Procedure, and these proceedings are privileged and confidential  
906 to the same extent as court-ordered mediation. Disputes subject  
907 to presuit mediation under this section shall not include the  
908 collection of any assessment, fine, or other financial  
909 obligation, including attorney's fees and costs, claimed to be  
910 due or any action to enforce a prior mediation settlement

911 | agreement between the parties. Also, in any dispute subject to  
 912 | presuit mediation under this section where emergency relief is  
 913 | required, a motion for temporary injunctive relief may be filed  
 914 | with the court without first complying with the presuit  
 915 | mediation requirements of this section. After any issues  
 916 | regarding emergency or temporary relief are resolved, the court  
 917 | may either refer the parties to a mediation program administered  
 918 | by the courts or require mediation under this section. An  
 919 | arbitrator or judge may not consider any information or evidence  
 920 | arising from the presuit mediation proceeding except in a  
 921 | proceeding to impose sanctions for failure to attend a presuit  
 922 | mediation session or with the parties' agreement in a proceeding  
 923 | seeking to enforce the agreement. Persons who are not parties to  
 924 | the dispute may not attend the presuit mediation conference  
 925 | without the consent of all parties, except for counsel for the  
 926 | parties and a corporate representative designated by the  
 927 | association. When mediation is attended by a quorum of the  
 928 | board, such mediation is not a board meeting for purposes of  
 929 | notice and participation set forth in s. 720.303. An aggrieved  
 930 | party shall serve on the responding party a written offer to  
 931 | participate in presuit mediation in substantially the following  
 932 | form:

934 |                   STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

936 |           The alleged aggrieved party, \_\_\_\_\_, hereby  
 937 | offers to \_\_\_\_\_, as the responding party,  
 938 | to enter into presuit mediation in connection with the

939 | following dispute, which by statute is of a type that  
 940 | is subject to presuit mediation:

941 |  
 942 | (List specific nature of the dispute or disputes to be  
 943 | mediated and the authority supporting a finding of a  
 944 | violation as to each dispute.)

945 |  
 946 | Pursuant to section 720.311, Florida Statutes, this  
 947 | offer to resolve the dispute through presuit mediation  
 948 | is required before a lawsuit can be filed concerning  
 949 | the dispute. Pursuant to the statute, the aggrieved  
 950 | party is hereby offering to engage in presuit  
 951 | mediation with a neutral third-party mediator in order  
 952 | to attempt to resolve this dispute without court  
 953 | action, and the aggrieved party demands that you  
 954 | likewise agree to this process. If you fail to agree  
 955 | to presuit mediation, or if you agree and later fail  
 956 | to follow through with your agreement to mediate, suit  
 957 | may be brought against you without further warning.

958 |  
 959 | The process of mediation involves a supervised  
 960 | negotiation process in which a trained, neutral third-  
 961 | party mediator meets with both parties and assists  
 962 | them in exploring possible opportunities for resolving  
 963 | part or all of the dispute. The mediation process is a  
 964 | voluntary one. By agreeing to participate in presuit  
 965 | mediation, you are not bound in any way to change your  
 966 | position or to enter into any type of agreement.

967 Furthermore, the mediator has no authority to make any  
968 decisions in this matter or to determine who is right  
969 or wrong and merely acts as a facilitator to ensure  
970 that each party understands the position of the other  
971 party and that all reasonable settlement options are  
972 fully explored. All mediation communications are  
973 confidential under the Mediation Confidentiality and  
974 Privilege Act pursuant to sections 44.401-44.406,  
975 Florida Statutes, and a mediation participant may not  
976 disclose a mediation communication to a person other  
977 than a mediation participant or a participant's  
978 counsel.

979  
980 If an agreement is reached, it shall be reduced to  
981 writing and becomes a binding and enforceable  
982 commitment of the parties. A resolution of one or more  
983 disputes in this fashion avoids the need to litigate  
984 these issues in court. The failure to reach an  
985 agreement, or the failure of a party to participate in  
986 the process, results in the mediator's declaring an  
987 impasse in the mediation, after which the aggrieved  
988 party may proceed to court on all outstanding,  
989 unsettled disputes.

990  
991 The aggrieved party has selected and hereby lists  
992 three certified mediators who we believe to be neutral  
993 and qualified to mediate the dispute. You have the  
994 right to select any one of these mediators. The fact

995 that one party may be familiar with one or more of the  
 996 listed mediators does not mean that the mediator  
 997 cannot act as a neutral and impartial facilitator. Any  
 998 mediator who cannot act in this capacity ethically  
 999 must decline to accept engagement. The mediators that  
 1000 we suggest, and their current hourly rates, are as  
 1001 follows:

1002  
 1003 (List the names, addresses, telephone numbers, and  
 1004 hourly rates of the mediators. Other pertinent  
 1005 information about the background of the mediators may  
 1006 be included as an attachment.)

1007  
 1008 You may contact the offices of these mediators to  
 1009 confirm that the listed mediators will be neutral and  
 1010 will not show any favoritism toward either party. The  
 1011 names of certified mediators may be found through the  
 1012 office of the clerk of the circuit court for this  
 1013 circuit.

1014  
 1015 If you agree to participate in the presuit mediation  
 1016 process, the statute requires that each party is to  
 1017 pay one-half of the costs and fees involved in the  
 1018 presuit mediation process unless otherwise agreed by  
 1019 all parties. An average mediation may require 3 to 4  
 1020 hours of the mediator's time, including some  
 1021 preparation time, and each party would need to pay  
 1022 one-half of the mediator's fees as well as his or her

1023 own attorney's fees if he or she chooses to employ an  
1024 attorney in connection with the mediation. However,  
1025 use of an attorney is not required and is at the  
1026 option of each party. The mediator may require the  
1027 advance payment of some or all of the anticipated  
1028 fees. The aggrieved party hereby agrees to pay or  
1029 prepay one-half of the mediator's estimated fees and  
1030 to forward this amount or such other reasonable  
1031 advance deposits as the mediator may require for this  
1032 purpose. Any funds deposited will be returned to you  
1033 if these are in excess of your share of the fees  
1034 incurred.

1035  
1036 If you agree to participate in presuit mediation in  
1037 order to attempt to resolve the dispute and thereby  
1038 avoid further legal action, please sign below and  
1039 clearly indicate which mediator is acceptable to you.  
1040 We will then ask the mediator to schedule a mutually  
1041 convenient time and place for the mediation conference  
1042 to be held. The mediation conference must be held  
1043 within 90 days after the date of this letter unless  
1044 extended by mutual written agreement. In the event  
1045 that you fail to respond within 20 days after the date  
1046 of this letter, or if you fail to agree to at least  
1047 one of the mediators that we have suggested and to pay  
1048 or prepay to the mediator one-half of the costs  
1049 involved, the aggrieved party will be authorized to  
1050 proceed with the filing of a lawsuit against you

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1051 without further notice and may seek an award of  
 1052 attorney's fees or costs incurred in attempting to  
 1053 obtain mediation.

1054  
 1055 Should you wish, you may also elect to waive presuit  
 1056 mediation so that this matter may proceed directly to  
 1057 court.

1058  
 1059 Therefore, please give this matter your immediate  
 1060 attention. By law, your response must be mailed by  
 1061 certified mail, return receipt requested, with an  
 1062 additional copy being sent by regular first-class mail  
 1063 to the address shown on this offer.

1064  
 1065 \_\_\_\_\_  
 1066 \_\_\_\_\_

1067  
 1068 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS  
 1069 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT  
 1070 CHOICE.

1071  
 1072 AGREEMENT TO MEDIATE

1073  
 1074 The undersigned hereby agrees to participate in  
 1075 presuit mediation and agrees to the following mediator  
 1076 or mediators as acceptable to mediate this dispute:

1077  
 1078 (List acceptable mediator or mediators.)

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

\_\_\_\_\_  
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)

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)



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1107        (b) Service of the statutory offer to participate in  
1108 presuit mediation shall be effected by sending a letter in  
1109 substantial conformity with the above form by certified mail,  
1110 return receipt requested, with an additional copy being sent by  
1111 regular first-class mail, to the address of the responding party  
1112 as it last appears on the books and records of the association.  
1113 The responding party shall have 20 days from the date of the  
1114 mailing of the statutory offer to serve a response to the  
1115 aggrieved party in writing. The response shall be served by  
1116 certified mail, return receipt requested, with an additional  
1117 copy being sent by regular first-class mail, to the address  
1118 shown on the statutory offer. In the alternative, the responding  
1119 party may waive mediation in writing. Notwithstanding the  
1120 foregoing, once the parties have agreed on a mediator, the  
1121 mediator may reschedule the mediation for a date and time  
1122 mutually convenient to the parties. ~~The department shall conduct~~  
1123 ~~the proceedings through the use of department mediators or refer~~  
1124 ~~the disputes to private mediators who have been duly certified~~  
1125 ~~by the department as provided in paragraph (c).~~ The parties  
1126 shall share the costs of presuit mediation equally, including  
1127 the fee charged by the mediator, if any, unless the parties  
1128 agree otherwise, and the mediator may require advance payment of  
1129 its reasonable fees and costs. The failure of any party to  
1130 respond to a demand or response, to agree upon a mediator, to  
1131 make payment of fees and costs within the time established by  
1132 the mediator, or to appear for a scheduled mediation session  
1133 shall operate as an impasse in the presuit mediation by such  
1134 party, entitling the other party to proceed in court and to seek

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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1135 an award of the costs and fees associated with the mediation.  
1136 Additionally, if any presuit mediation session cannot be  
1137 scheduled and conducted within 90 days after the offer to  
1138 participate in mediation was filed, an impasse shall be deemed  
1139 to have occurred unless both parties agree to extend this  
1140 deadline. ~~If a department mediator is used, the department may~~  
1141 ~~charge such fee as is necessary to pay expenses of the~~  
1142 ~~mediation, including, but not limited to, the salary and~~  
1143 ~~benefits of the mediator and any travel expenses incurred. The~~  
1144 ~~petitioner shall initially file with the department upon filing~~  
1145 ~~the disputes, a filing fee of \$200, which shall be used to~~  
1146 ~~defray the costs of the mediation. At the conclusion of the~~  
1147 ~~mediation, the department shall charge to the parties, to be~~  
1148 ~~shared equally unless otherwise agreed by the parties, such~~  
1149 ~~further fees as are necessary to fully reimburse the department~~  
1150 ~~for all expenses incurred in the mediation.~~

1151 (c) ~~(b)~~ If presuit mediation as described in paragraph (a)  
1152 is not successful in resolving all issues between the parties,  
1153 the parties may file the unresolved dispute in a court of  
1154 competent jurisdiction or elect to enter into binding or  
1155 nonbinding arbitration pursuant to the procedures set forth in  
1156 s. 718.1255 and rules adopted by the division, with the  
1157 arbitration proceeding to be conducted by a department  
1158 arbitrator or by a private arbitrator certified by the  
1159 department. If all parties do not agree to arbitration  
1160 proceedings following an unsuccessful presuit mediation, any  
1161 party may file the dispute in court. A final order resulting  
1162 from nonbinding arbitration is final and enforceable in the

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1163 courts if a complaint for trial de novo is not filed in a court  
1164 of competent jurisdiction within 30 days after entry of the  
1165 order. As to any issue or dispute that is not resolved at  
1166 presuit mediation, and as to any issue that is settled at  
1167 presuit mediation but is thereafter subject to an action seeking  
1168 enforcement of the mediation settlement, the prevailing party in  
1169 any subsequent arbitration or litigation proceeding shall be  
1170 entitled to seek recovery of all costs and attorney's fees  
1171 incurred in the presuit mediation process.

1172 ~~(d)(e) The department shall develop a certification and~~  
1173 ~~training program for private mediators and private arbitrators~~  
1174 ~~which shall emphasize experience and expertise in the area of~~  
1175 ~~the operation of community associations. A mediator or~~  
1176 ~~arbitrator shall be certified to conduct mediation or~~  
1177 ~~arbitration under this section by the department only if he or~~  
1178 ~~she has been certified as a circuit court civil mediator or~~  
1179 ~~arbitrator, respectively, pursuant to the requirements~~  
1180 ~~established attended at least 20 hours of training in mediation~~  
1181 ~~or arbitration, as appropriate, and only if the applicant has~~  
1182 ~~mediated or arbitrated at least 10 disputes involving community~~  
1183 ~~associations within 5 years prior to the date of the~~  
1184 ~~application, or has mediated or arbitrated 10 disputes in any~~  
1185 ~~area within 5 years prior to the date of application and has~~  
1186 ~~completed 20 hours of training in community association~~  
1187 ~~disputes. In order to be certified by the department, any~~  
1188 ~~mediator must also be certified by the Florida Supreme Court.~~  
1189 ~~The department may conduct the training and certification~~  
1190 ~~program within the department or may contract with an outside~~

1191 ~~vendor to perform the training or certification. The expenses of~~  
 1192 ~~operating the training and certification and training program~~  
 1193 ~~shall be paid by the moneys and filing fees generated by the~~  
 1194 ~~arbitration of recall and election disputes and by the mediation~~  
 1195 ~~of those disputes referred to in this subsection and by the~~  
 1196 ~~training fees.~~

1197 (e)~~(d)~~ The presuit mediation procedures provided by this  
 1198 subsection may be used by a Florida corporation responsible for  
 1199 the operation of a community in which the voting members are  
 1200 parcel owners or their representatives, in which membership in  
 1201 the corporation is not a mandatory condition of parcel  
 1202 ownership, or which is not authorized to impose an assessment  
 1203 that may become a lien on the parcel.

1204 ~~(3) The department shall develop an education program to~~  
 1205 ~~assist homeowners, associations, board members, and managers in~~  
 1206 ~~understanding and increasing awareness of the operation of~~  
 1207 ~~homeowners' associations pursuant to this chapter and in~~  
 1208 ~~understanding the use of alternative dispute resolution~~  
 1209 ~~techniques in resolving disputes between parcel owners and~~  
 1210 ~~associations or between owners. Such education program may~~  
 1211 ~~include the development of pamphlets and other written~~  
 1212 ~~instructional guides, the holding of classes and meetings by~~  
 1213 ~~department employees or outside vendors, as the department~~  
 1214 ~~determines, and the creation and maintenance of a website~~  
 1215 ~~containing instructional materials. The expenses of operating~~  
 1216 ~~the education program shall be initially paid by the moneys and~~  
 1217 ~~filing fees generated by the arbitration of recall and election~~

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1218 | ~~disputes and by the mediation of those disputes referred to in~~  
1219 | ~~this subsection.~~

1220 |       Section 18. Except as otherwise expressly provided in this  
1221 | act, this act shall take effect July 1, 2006.