

CHAMBER ACTION

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1 The Justice Council recommends the following:

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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

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

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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 subparagraphs (a)1. and 2. and 5 years  
 197 | from the date of recordation of the certificate of amendment for  
 198 | all other amendments. This provision shall apply to all  
 199 | mortgages, regardless of the date of recordation of the  
 200 | mortgage.

201 | Section 4. Paragraph (1) of subsection (2) of section  
 202 | 718.112, Florida Statutes, is amended to read:

203 | 718.112 Bylaws.--

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

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

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219 entity, if the unit owners have voted to forego such  
220 retrofitting and engineered lifesafety system by the affirmative  
221 vote of two-thirds of all voting interests in the affected  
222 condominium. However, a condominium association may not vote to  
223 forego the retrofitting with a fire sprinkler system of common  
224 areas in a high-rise building. For purposes of this subsection,  
225 the term "high-rise building" means a building that is greater  
226 than 75 feet in height where the building height is measured  
227 from the lowest level of fire department access to the floor of  
228 the highest occupiable story. For purposes of this subsection,  
229 the term "common areas" means any enclosed hallway, corridor,  
230 lobby, stairwell, or entryway. In no event shall the local  
231 authority having jurisdiction require completion of retrofitting  
232 of common areas with a sprinkler system before the end of 2025  
233 ~~2014~~.

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

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247 30-day notice shall be made by an affidavit executed by the  
 248 person providing the notice and filed among the official records  
 249 of the association. After such notice is provided to each owner,  
 250 a copy of such notice shall be provided by the current owner to  
 251 a new owner prior to closing and shall be provided by a unit  
 252 owner to a renter prior to signing a lease.

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

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

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

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

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

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

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

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

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

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

309 |       719.103 Definitions.--As used in this chapter:

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

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

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

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

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

347 720.302 Purposes, scope, and application.--

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

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

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

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

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

369 |       (2) BOARD MEETINGS.--

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

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

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

394 (d) The association or its authorized agent is not  
395 required to provide a prospective purchaser or lienholder with  
396 information about the residential subdivision or the association  
397 other than information or documents required by this chapter to  
398 be made available or disclosed. The association or its  
399 authorized agent may charge a reasonable fee to the prospective  
400 purchaser or lienholder or the current parcel owner or member  
401 for providing good faith responses to requests for information  
402 by or on behalf of a prospective purchaser or lienholder, other  
403 than that required by law, if the fee does not exceed \$150 plus  
404 the reasonable cost of photocopying and any attorney's fees  
405 incurred by the association in connection with the response.

406 (6) BUDGETS.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

699 (a) The association;

700 (b) A member;

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

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

706

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

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717 Section 14. Paragraph (c) of subsection (1) of section  
718 720.306, Florida Statutes, is amended to read:

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

721 (1) QUORUM; AMENDMENTS.--

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

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

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

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

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745       (t) The financial records, including financial statements  
746 of the association, and source documents from the incorporation  
747 of the association through the date of turnover. The records  
748 shall be audited by an independent certified public accountant  
749 for the period from the incorporation of the association or from  
750 the period covered by the last audit, if an audit has been  
751 performed for each fiscal year since incorporation. All  
752 financial statements shall be prepared in accordance with  
753 generally accepted accounting principles and shall be audited in  
754 accordance with generally accepted auditing standards, as  
755 prescribed by the Board of Accountancy, pursuant to chapter 473.  
756 The certified public accountant performing the audit shall  
757 examine to the extent necessary supporting documents and  
758 records, including the cash disbursements and related paid  
759 invoices to determine if expenditures were for association  
760 purposes and the billings, cash receipts, and related records of  
761 the association to determine that the developer was charged and  
762 paid the proper amounts of assessments. This paragraph applies  
763 to associations with a date of incorporation after December 31,  
764 2006.

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

767       720.308 Assessments and charges.--

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

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

788 (2) GUARANTEES OF COMMON EXPENSES.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

868 720.311 Dispute resolution.--

869 (1) The Legislature finds that alternative dispute  
870 resolution has made progress in reducing court dockets and  
871 trials and in offering a more efficient, cost-effective option  
872 to litigation. The filing of any petition for ~~mediation or~~  
873 arbitration or the serving of an offer for presuit mediation as  
874 provided for in this section shall toll the applicable statute  
875 of limitations. Any recall dispute filed with the department  
876 pursuant to s. 720.303(10) shall be conducted by the department  
877 in accordance with the provisions of ss. 718.112(2)(j) and  
878 718.1255 and the rules adopted by the division. In addition, the  
879 department shall conduct mandatory binding arbitration of  
880 election disputes between a member and an association pursuant  
881 to s. 718.1255 and rules adopted by the division. Neither  
882 election disputes nor recall disputes are eligible for presuit  
883 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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884 At the conclusion of the proceeding, the department shall charge  
885 the parties a fee in an amount adequate to cover all costs and  
886 expenses incurred by the department in conducting the  
887 proceeding. Initially, the petitioner shall remit a filing fee  
888 of at least \$200 to the department. The fees paid to the  
889 department shall become a recoverable cost in the arbitration  
890 proceeding, and the prevailing party in an arbitration  
891 proceeding shall recover its reasonable costs and attorney's  
892 fees in an amount found reasonable by the arbitrator. The  
893 department shall adopt rules to effectuate the purposes of this  
894 section.

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

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

934  
 935 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION  
 936

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

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

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

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

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

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

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

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

996 | that one party may be familiar with one or more of the  
 997 | listed mediators does not mean that the mediator  
 998 | cannot act as a neutral and impartial facilitator. Any  
 999 | mediator who cannot act in this capacity ethically  
 1000 | must decline to accept engagement. The mediators that  
 1001 | we suggest, and their current hourly rates, are as  
 1002 | follows:

1003 |  
 1004 | (List the names, addresses, telephone numbers, and  
 1005 | hourly rates of the mediators. Other pertinent  
 1006 | information about the background of the mediators may  
 1007 | be included as an attachment.)

1008 |  
 1009 | You may contact the offices of these mediators to  
 1010 | confirm that the listed mediators will be neutral and  
 1011 | will not show any favoritism toward either party. The  
 1012 | names of certified mediators may be found through the  
 1013 | office of the clerk of the circuit court for this  
 1014 | circuit.

1015 |  
 1016 | If you agree to participate in the presuit mediation  
 1017 | process, the statute requires that each party is to  
 1018 | pay one-half of the costs and fees involved in the  
 1019 | presuit mediation process unless otherwise agreed by  
 1020 | all parties. An average mediation may require 3 to 4  
 1021 | hours of the mediator's time, including some  
 1022 | preparation time, and each party would need to pay  
 1023 | one-half of the mediator's fees as well as his or her

1024 own attorney's fees if he or she chooses to employ an  
1025 attorney in connection with the mediation. However,  
1026 use of an attorney is not required and is at the  
1027 option of each party. The mediator may require the  
1028 advance payment of some or all of the anticipated  
1029 fees. The aggrieved party hereby agrees to pay or  
1030 prepay one-half of the mediator's estimated fees and  
1031 to forward this amount or such other reasonable  
1032 advance deposits as the mediator may require for this  
1033 purpose. Any funds deposited will be returned to you  
1034 if these are in excess of your share of the fees  
1035 incurred.

1036  
1037 If you agree to participate in presuit mediation in  
1038 order to attempt to resolve the dispute and thereby  
1039 avoid further legal action, please sign below and  
1040 clearly indicate which mediator is acceptable to you.  
1041 We will then ask the mediator to schedule a mutually  
1042 convenient time and place for the mediation conference  
1043 to be held. The mediation conference must be held  
1044 within 90 days after the date of this letter unless  
1045 extended by mutual written agreement. In the event  
1046 that you fail to respond within 20 days after the date  
1047 of this letter, or if you fail to agree to at least  
1048 one of the mediators that we have suggested and to pay  
1049 or prepay to the mediator one-half of the costs  
1050 involved, the aggrieved party will be authorized to  
1051 proceed with the filing of a lawsuit against you

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1052 | without further notice and may seek an award of  
 1053 | attorney's fees or costs incurred in attempting to  
 1054 | obtain mediation.

1055 |  
 1056 | Should you wish, you may also elect to waive presuit  
 1057 | mediation so that this matter may proceed directly to  
 1058 | court.

1059 |  
 1060 | Therefore, please give this matter your immediate  
 1061 | attention. By law, your response must be mailed by  
 1062 | certified mail, return receipt requested, with an  
 1063 | additional copy being sent by regular first-class mail  
 1064 | to the address shown on this offer.

1065 |  
 1066 | \_\_\_\_\_  
 1067 | \_\_\_\_\_

1068 |  
 1069 | RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS  
 1070 | BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT  
 1071 | CHOICE.

1072 |  
 1073 | AGREEMENT TO MEDIATE

1074 |  
 1075 | The undersigned hereby agrees to participate in  
 1076 | presuit mediation and agrees to the following mediator  
 1077 | or mediators as acceptable to mediate this dispute:

1078 |  
 1079 | (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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1108        (b) Service of the statutory offer to participate in  
1109 presuit mediation shall be effected by sending a letter in  
1110 substantial conformity with the above form by certified mail,  
1111 return receipt requested, with an additional copy being sent by  
1112 regular first-class mail, to the address of the responding party  
1113 as it last appears on the books and records of the association.  
1114 The responding party shall have 20 days from the date of the  
1115 mailing of the statutory offer to serve a response to the  
1116 aggrieved party in writing. The response shall be served by  
1117 certified mail, return receipt requested, with an additional  
1118 copy being sent by regular first-class mail, to the address  
1119 shown on the statutory offer. In the alternative, the responding  
1120 party may waive mediation in writing. Notwithstanding the  
1121 foregoing, once the parties have agreed on a mediator, the  
1122 mediator may reschedule the mediation for a date and time  
1123 mutually convenient to the parties. ~~The department shall conduct~~  
1124 ~~the proceedings through the use of department mediators or refer~~  
1125 ~~the disputes to private mediators who have been duly certified~~  
1126 ~~by the department as provided in paragraph (c).~~ The parties  
1127 shall share the costs of presuit mediation equally, including  
1128 the fee charged by the mediator, if any, unless the parties  
1129 agree otherwise, and the mediator may require advance payment of  
1130 its reasonable fees and costs. The failure of any party to  
1131 respond to a demand or response, to agree upon a mediator, to  
1132 make payment of fees and costs within the time established by  
1133 the mediator, or to appear for a scheduled mediation session  
1134 shall operate as an impasse in the presuit mediation by such  
1135 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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1136 | an award of the costs and fees associated with the mediation.  
 1137 | Additionally, if any presuit mediation session cannot be  
 1138 | scheduled and conducted within 90 days after the offer to  
 1139 | participate in mediation was filed, an impasse shall be deemed  
 1140 | to have occurred unless both parties agree to extend this  
 1141 | deadline. ~~If a department mediator is used, the department may~~  
 1142 | ~~charge such fee as is necessary to pay expenses of the~~  
 1143 | ~~mediation, including, but not limited to, the salary and~~  
 1144 | ~~benefits of the mediator and any travel expenses incurred. The~~  
 1145 | ~~petitioner shall initially file with the department upon filing~~  
 1146 | ~~the disputes, a filing fee of \$200, which shall be used to~~  
 1147 | ~~defray the costs of the mediation. At the conclusion of the~~  
 1148 | ~~mediation, the department shall charge to the parties, to be~~  
 1149 | ~~shared equally unless otherwise agreed by the parties, such~~  
 1150 | ~~further fees as are necessary to fully reimburse the department~~  
 1151 | ~~for all expenses incurred in the mediation.~~

1152 | (c) ~~(b)~~ If presuit mediation as described in paragraph (a)  
 1153 | is not successful in resolving all issues between the parties,  
 1154 | the parties may file the unresolved dispute in a court of  
 1155 | competent jurisdiction or elect to enter into binding or  
 1156 | nonbinding arbitration pursuant to the procedures set forth in  
 1157 | s. 718.1255 and rules adopted by the division, with the  
 1158 | arbitration proceeding to be conducted by a department  
 1159 | arbitrator or by a private arbitrator certified by the  
 1160 | department. If all parties do not agree to arbitration  
 1161 | proceedings following an unsuccessful presuit mediation, any  
 1162 | party may file the dispute in court. A final order resulting  
 1163 | from nonbinding arbitration is final and enforceable in the

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1164 courts if a complaint for trial de novo is not filed in a court  
1165 of competent jurisdiction within 30 days after entry of the  
1166 order. As to any issue or dispute that is not resolved at  
1167 presuit mediation, and as to any issue that is settled at  
1168 presuit mediation but is thereafter subject to an action seeking  
1169 enforcement of the mediation settlement, the prevailing party in  
1170 any subsequent arbitration or litigation proceeding shall be  
1171 entitled to seek recovery of all costs and attorney's fees  
1172 incurred in the presuit mediation process.

1173 ~~(d)(e) The department shall develop a certification and~~  
1174 ~~training program for private mediators and private arbitrators~~  
1175 ~~which shall emphasize experience and expertise in the area of~~  
1176 ~~the operation of community associations. A mediator or~~  
1177 ~~arbitrator shall be certified to conduct mediation or~~  
1178 ~~arbitration under this section by the department only if he or~~  
1179 ~~she has been certified as a circuit court civil mediator or~~  
1180 ~~arbitrator, respectively, pursuant to the requirements~~  
1181 ~~established attended at least 20 hours of training in mediation~~  
1182 ~~or arbitration, as appropriate, and only if the applicant has~~  
1183 ~~mediated or arbitrated at least 10 disputes involving community~~  
1184 ~~associations within 5 years prior to the date of the~~  
1185 ~~application, or has mediated or arbitrated 10 disputes in any~~  
1186 ~~area within 5 years prior to the date of application and has~~  
1187 ~~completed 20 hours of training in community association~~  
1188 ~~disputes. In order to be certified by the department, any~~  
1189 ~~mediator must also be certified by the Florida Supreme Court.~~  
1190 ~~The department may conduct the training and certification~~  
1191 ~~program within the department or may contract with an outside~~

1192 ~~vendor to perform the training or certification. The expenses of~~  
 1193 ~~operating the training and certification and training program~~  
 1194 ~~shall be paid by the moneys and filing fees generated by the~~  
 1195 ~~arbitration of recall and election disputes and by the mediation~~  
 1196 ~~of those disputes referred to in this subsection and by the~~  
 1197 ~~training fees.~~

1198 (e)~~(d)~~ The presuit mediation procedures provided by this  
 1199 subsection may be used by a Florida corporation responsible for  
 1200 the operation of a community in which the voting members are  
 1201 parcel owners or their representatives, in which membership in  
 1202 the corporation is not a mandatory condition of parcel  
 1203 ownership, or which is not authorized to impose an assessment  
 1204 that may become a lien on the parcel.

1205 ~~(3) The department shall develop an education program to~~  
 1206 ~~assist homeowners, associations, board members, and managers in~~  
 1207 ~~understanding and increasing awareness of the operation of~~  
 1208 ~~homeowners' associations pursuant to this chapter and in~~  
 1209 ~~understanding the use of alternative dispute resolution~~  
 1210 ~~techniques in resolving disputes between parcel owners and~~  
 1211 ~~associations or between owners. Such education program may~~  
 1212 ~~include the development of pamphlets and other written~~  
 1213 ~~instructional guides, the holding of classes and meetings by~~  
 1214 ~~department employees or outside vendors, as the department~~  
 1215 ~~determines, and the creation and maintenance of a website~~  
 1216 ~~containing instructional materials. The expenses of operating~~  
 1217 ~~the education program shall be initially paid by the moneys and~~  
 1218 ~~filing fees generated by the arbitration of recall and election~~

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1219 | ~~disputes and by the mediation of those disputes referred to in~~  
1220 | ~~this subsection.~~

1221 |       Section 18. Except as otherwise expressly provided in this  
1222 | act, this act shall take effect July 1, 2006.