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HB 391, Engrossed 1

2006 Legislature

1 A bill to be entitled
2 An act relating to community associations; creating s.
3 712.11, F.S.; providing for the revival of certain
4 covenants that have lapsed; amending s. 718.106, F.S.;
5 prohibiting local governments from limiting the access of
6 certain persons to beaches adjacent to or adjoining
7 condominium property; amending s. 718.110, F.S.; revising
8 provisions relating to the amendment of declarations;
9 providing legislative findings and a finding of compelling
10 state interest; providing criteria for consent to an
11 amendment; requiring notice regarding proposed amendments
12 to mortgagees; providing criteria for notification;
13 providing for voiding certain amendments; amending s.
14 718.112, F.S.; revising the implementation date for
15 retrofitting of common areas with a sprinkler system;
16 amending s. 718.114, F.S.; providing that certain
17 leaseholds, memberships, or other possessory or use
18 interests shall be considered a material alteration or
19 substantial addition to certain real property; amending s.
20 718.404, F.S.; providing retroactive application of
21 provisions relating to mixed-use condominiums; amending s.
22 719.103, F.S.; providing a definition; amending s.
23 719.507, F.S.; prohibiting laws, ordinances, or
24 regulations that apply only to improvements that are or
25 may be subjected to an equity club form of ownership;
26 amending s. 720.302, F.S.; revising governing provisions
27 relating to corporations that operate residential

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28 homeowners' associations; amending s. 720.303, F.S.;

29 revising application to include certain meetings;

30 requiring the association to provide certain information

31 to prospective purchasers or lienholders; authorizing the

32 association to charge a reasonable fee for providing

33 certain information; requiring the budget to provide for

34 annual operating expenses; authorizing the budget to

35 include reserve accounts for capital expenditures and

36 deferred maintenance; providing a formula for calculating

37 the amount to be reserved; authorizing the association to

38 adjust replacement reserve assessments annually;

39 authorizing the developer to vote to waive the reserves or

40 reduce the funding of reserves for a certain period;

41 revising provisions relating to financial reporting;

42 revising time periods in which the association must

43 complete its reporting; repealing s. 720.303(2), F.S., as

44 amended, relating to board meetings, to remove conflicting

45 versions of that subsection; creating s. 720.3035, F.S.;

46 providing for architectural control covenants and parcel

47 owner improvements; authorizing the review and approval of

48 plans and specifications; providing limitations; providing

49 rights and privileges for parcel owners as set forth in

50 the declaration of covenants; amending s. 720.305, F.S.;

51 providing that, where a member is entitled to collect

52 attorney's fees against the association, the member may

53 also recover additional amounts as determined by the

54 court; amending s. 720.306, F.S.; providing that certain

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55 | mergers or consolidations of an association shall not be
56 | considered a material or adverse alteration of the
57 | proportionate voting interest appurtenant to a parcel;
58 | amending s. 720.307, F.S.; requiring developers to deliver
59 | financial records to the board in any transition of
60 | association control to members; requiring certain
61 | information to be included in the records and for the
62 | records to be prepared in a specified manner; amending s.
63 | 720.308, F.S.; providing circumstances under which a
64 | guarantee of common expenses shall be effective; providing
65 | for approval of the guarantee by association members;
66 | providing for a guarantee period and extension thereof;
67 | requiring the stated dollar amount of the guarantee to be
68 | an exact dollar amount for each parcel identified in the
69 | declaration; providing payments required from the
70 | guarantor to be determined in a certain manner; providing
71 | a formula to determine the guarantor's total financial
72 | obligation to the association; providing that certain
73 | expenses incurred in the production of certain revenues
74 | shall not be included in the operating expenses; amending
75 | s. 720.311, F.S.; revising provisions relating to dispute
76 | resolution; providing that the filing of any petition for
77 | arbitration or the serving of an offer for presuit
78 | mediation shall toll the applicable statute of
79 | limitations; providing that certain disputes between an
80 | association and a parcel owner shall be subject to presuit
81 | mediation; revising provisions to conform; providing that

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

99
100 Be It Enacted by the Legislature of the State of Florida:

101
102 Section 1. Section 712.11, Florida Statutes, is created to
103 read:

104 712.11 Covenant revitalization.--A homeowners' association
105 not otherwise subject to chapter 720 may use the procedures set
106 forth in ss. 720.403-720.407 to revive covenants that have
107 lapsed under the terms of this chapter.

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

110 718.106 Condominium parcels; appurtenances; possession and
 111 enjoyment.--

112 (5) A local government may not prohibit condominium unit
 113 owners or an association from permitting guests, licensees, or
 114 invitees access to a public beach adjacent to or adjoining the
 115 condominium property.

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

118 718.110 Amendment of declaration; correction of error or
 119 omission in declaration by circuit court.--

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

129 (a) As to any mortgage recorded on or after October 1,
 130 2006, any provision in the declaration, articles of
 131 incorporation, or bylaws that requires ~~recorded after April 1,~~
 132 ~~1992, may not require~~ the consent or joinder of some or all
 133 mortgagees of units or any other portion of the condominium
 134 property to or in amendments to the declaration, articles of

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135 incorporation, or bylaws or for any other matter shall be
 136 enforceable only as to the following matters: ~~unless the~~
 137 ~~requirement is limited to amendments materially affecting the~~
 138 ~~rights or interests of the mortgagees, or as otherwise required~~
 139 ~~by the Federal National Mortgage Association or the Federal Home~~
 140 ~~Loan Mortgage Corporation, and unless the requirement provides~~
 141 ~~that such consent may not be unreasonably withheld. It shall be~~
 142 ~~presumed that, except as to~~

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

144 2. Amendments to the declaration, articles of
 145 incorporation, or bylaws that adversely affect the priority of
 146 the mortgagee's lien or the mortgagee's rights to foreclose its
 147 lien or that otherwise materially affect the rights and
 148 interests of the mortgagees.

149 (b) As to mortgages recorded before October 1, 2006, any
 150 existing provisions in the declaration, articles of
 151 incorporation, or bylaws requiring mortgagee consent shall be
 152 enforceable.

153 (c) In securing consent or joinder, the association shall
 154 be entitled to rely upon the public records to identify the
 155 holders of outstanding mortgages. The association may use the
 156 address provided in the original recorded mortgage document,
 157 unless there is a different address for the holder of the
 158 mortgage in a recorded assignment or modification of the
 159 mortgage, which recorded assignment or modification must
 160 reference the official records book and page on which the
 161 original mortgage was recorded. Once the association has

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

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

181 (e) For those amendments requiring mortgagee consent on or
182 after October 1, 2006, ~~do not materially affect the rights or~~
183 ~~interests of mortgagees.~~ in the event mortgagee consent is
184 provided other than by properly recorded joinder, such consent
185 shall be evidenced by affidavit of the association recorded in
186 the public records of the county where the declaration is
187 recorded. Any amendment adopted without the required consent of
188 a mortgagee shall be voidable only by a mortgagee who was

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189 entitled to notice and an opportunity to consent. An action to
 190 void an amendment shall be subject to the statute of limitations
 191 beginning 5 years from the date of discovery as to the
 192 amendments described in subparagraphs (a)1. and 2. and 5 years
 193 from the date of recordation of the certificate of amendment for
 194 all other amendments. This provision shall apply to all
 195 mortgages, regardless of the date of recordation of the
 196 mortgage.

197 Section 4. Paragraph (1) of subsection (2) of section
 198 718.112, Florida Statutes, is amended to read:

199 718.112 Bylaws.--

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

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

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

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

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243 30-day notice shall be made by an affidavit executed by the
 244 person providing the notice and filed among the official records
 245 of the association. After such notice is provided to each owner,
 246 a copy of such notice shall be provided by the current owner to
 247 a new owner prior to closing and shall be provided by a unit
 248 owner to a renter prior to signing a lease.

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

257 Section 5. Section 718.114, Florida Statutes, is amended
 258 to read:

259 718.114 Association powers.--An association has the power
 260 to enter into agreements, to acquire leaseholds, memberships,
 261 and other possessory or use interests in lands or facilities
 262 such as country clubs, golf courses, marinas, and other
 263 recreational facilities. It has this power whether or not the
 264 lands or facilities are contiguous to the lands of the
 265 condominium, if they are intended to provide enjoyment,
 266 recreation, or other use or benefit to the unit owners. All of
 267 these leaseholds, memberships, and other possessory or use
 268 interests existing or created at the time of recording the
 269 declaration must be stated and fully described in the

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

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

287 718.404 Mixed-use condominiums.--When a condominium
 288 consists of both residential and commercial units, the following
 289 provisions shall apply:

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

295 (2) Subject to s. 718.301, where the number of residential
 296 units in the condominium equals or exceeds 50 percent of the

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297 total units operated by the association, owners of the
 298 residential units shall be entitled to vote for a majority of
 299 the seats on the board of administration. This subsection shall
 300 apply retroactively as a remedial measure.

301 Section 7. Subsections (18) through (27) of section
 302 719.103, Florida Statutes, are renumbered as subsections (19)
 303 through (28), respectively, and a new subsection (18) is added
 304 to that section to read:

305 719.103 Definitions.--As used in this chapter:

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

317 Section 8. Section 719.507, Florida Statutes, is amended
 318 to read:

319 719.507 Zoning and building laws, ordinances, and
 320 regulations.--All laws, ordinances, and regulations concerning
 321 buildings or zoning shall be construed and applied with
 322 reference to the nature and use of such property, without regard
 323 to the form of ownership. No law, ordinance, or regulation shall

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

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

343 720.302 Purposes, scope, and application.--

344 (4) This chapter does not apply to any association that is
345 subject to regulation under chapter 718, chapter 719, or chapter
346 721~~7~~ or to any nonmandatory association formed under chapter
347 723, except to the extent that a provision of chapter 718,
348 chapter 719, or chapter 721 is expressly incorporated into this
349 chapter for the purpose of regulating homeowners' associations.

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350 (5) Unless expressly stated to the contrary, corporations
351 ~~not for profit~~ that operate residential homeowners' associations
352 in this state shall be governed by and subject to chapter 607,
353 if the association was incorporated under that chapter, or to
354 chapter 617, if the association was incorporated under that
355 chapter, and this chapter. This subsection is intended to
356 clarify existing law.

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

362 720.303 Association powers and duties; meetings of board;
363 official records; budgets; financial reporting; association
364 funds; recalls.--

365 (2) BOARD MEETINGS.--

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

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377 decisions with respect to a specific parcel of residential
378 property owned by a member of the community.

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

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

402 (6) BUDGETS.--

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403 (a) The association shall prepare an annual budget that
404 sets out the annual operating expenses. The budget must reflect
405 the estimated revenues and expenses for that year and the
406 estimated surplus or deficit as of the end of the current year.
407 The budget must set out separately all fees or charges paid for
408 by the association for recreational amenities, whether owned by
409 the association, the developer, or another person. The
410 association shall provide each member with a copy of the annual
411 budget or a written notice that a copy of the budget is
412 available upon request at no charge to the member. The copy must
413 be provided to the member within the time limits set forth in
414 subsection (5).

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

426 (c) If the budget of the association does not provide for
427 reserve accounts governed by this subsection and the association
428 is responsible for the repair and maintenance of capital
429 improvements that may result in a special assessment if reserves

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430 are not provided, each financial report for the preceding fiscal
431 year required by subsection (7) shall contain the following
432 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
433 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
434 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
435 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
436 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
437 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
438 INTERESTS OF THE ASSOCIATION.

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

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457 subsection, the reserve accounts shall be funded or maintained
458 or shall have their funding waived in the manner provided in
459 paragraph (f).

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

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

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

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

487 a. The total amount necessary, if any, to bring a negative
488 component balance to zero.

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

495
496 The formula may be adjusted each year for changes in estimates
497 and deferred maintenance performed during the year and may
498 include factors such as inflation and earnings on invested
499 funds.

500 2. If the association maintains a pooled account of two or
501 more of the required reserve assets, the amount of the
502 contribution to the pooled reserve account as disclosed on the
503 proposed budget shall not be less than that required to ensure
504 that the balance on hand at the beginning of the period for
505 which the budget will go into effect plus the projected annual
506 cash inflows over the remaining estimated useful life of all of
507 the assets that make up the reserve pool are equal to or greater
508 than the projected annual cash outflows over the remaining
509 estimated useful lives of all of the assets that make up the

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510 reserve pool, based on the current reserve analysis. The
511 projected annual cash inflows may include estimated earnings
512 from investment of principal. The reserve funding formula shall
513 not include any type of balloon payments.

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

525 (7) FINANCIAL REPORTING.--Within 90 days after the end of
526 the fiscal year, or annually on the date provided in the bylaws,
527 the association shall prepare and complete, or contract with a
528 third party for the preparation and completion of, a financial
529 report for the preceding fiscal year. Within 21 days after the
530 final financial report is completed by the association or
531 received from the third party, but not later than 120 days after
532 the end of the fiscal year or other date as provided in the
533 bylaws, the association shall ~~prepare an annual financial report~~
534 ~~within 60 days after the close of the fiscal year. The~~
535 ~~association shall~~, within the time limits set forth in
536 subsection (5), provide each member with a copy of the annual

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537 financial report or a written notice that a copy of the
 538 financial report is available upon request at no charge to the
 539 member. Financial reports shall be prepared as follows:

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

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

549 2. An association with total annual revenues of at least
 550 \$200,000, but less than \$400,000, shall prepare reviewed
 551 financial statements.

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

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

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

562 3. A report of cash receipts and disbursement must
 563 disclose the amount of receipts by accounts and receipt

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564 | classifications and the amount of expenses by accounts and
565 | expense classifications, including, but not limited to, the
566 | following, as applicable: costs for security, professional, and
567 | management fees and expenses; taxes; costs for recreation
568 | facilities; expenses for refuse collection and utility services;
569 | expenses for lawn care; costs for building maintenance and
570 | repair; insurance costs; administration and salary expenses; and
571 | reserves if maintained by the association.

572 | (c) If 20 percent of the parcel owners petition the board
573 | for a level of financial reporting higher than that required by
574 | this section, the association shall duly notice and hold a
575 | meeting of members within 30 days of receipt of the petition for
576 | the purpose of voting on raising the level of reporting for that
577 | fiscal year. Upon approval of a majority of the total voting
578 | interests of the parcel owners, the association shall prepare or
579 | cause to be prepared, shall amend the budget or adopt a special
580 | assessment to pay for the financial report regardless of any
581 | provision to the contrary in the governing documents, and shall
582 | provide within 90 days of the meeting or the end of the fiscal
583 | year, whichever occurs later:

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

587 | 2. Reviewed or audited financial statements, if the
588 | association is otherwise required to prepare compiled financial
589 | statements; or

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590 3. Audited financial statements if the association is
591 otherwise required to prepare reviewed financial statements.

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

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

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

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

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

606 Section 12. Section 720.3035, Florida Statutes, is created
607 to read:

608 720.3035 Architectural control covenants; parcel owner
609 improvements; rights and privileges.--

610 (1) The authority of an association or any architectural,
611 construction improvement, or other such similar committee of an
612 association to review and approve plans and specifications for
613 the location, size, type, or appearance of any structure or
614 other improvement on a parcel, or to enforce standards for the
615 external appearance of any structure or improvement located on a
616 parcel, shall only be permitted to the extent that the authority

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617 is specifically stated or reasonably inferred as to such
618 location, size, type, or appearance in the declaration of
619 covenants or other published guidelines and standards authorized
620 by the declaration of covenants.

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

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

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644 attempt to enforce any setback limitation that is inconsistent
645 with the applicable county or municipal standard or standards.

646 (4) Each parcel owner shall be entitled to the rights and
647 privileges set forth in the declaration of covenants or other
648 published guidelines and standards authorized by the declaration
649 of covenants concerning the architectural use of the parcel, and
650 the construction of permitted structures and improvements on the
651 parcel and such rights and privileges shall not be unreasonably
652 infringed upon or impaired by the association or any
653 architectural, construction improvement, or other such similar
654 committee of the association. If the association or any
655 architectural, construction improvement, or other such similar
656 committee of the association should unreasonably, knowingly, and
657 willfully infringe upon or impair the rights and privileges set
658 forth in the declaration of covenants or other published
659 guidelines and standards authorized by the declaration of
660 covenants, the adversely affected parcel owner shall be entitled
661 to recover damages caused by such infringement or impairment,
662 including any costs and reasonable attorney's fees incurred in
663 preserving or restoring the rights and privileges of the parcel
664 owner set forth in the declaration of covenants or other
665 published guidelines and standards authorized by the declaration
666 of covenants.

667 (5) Neither the association nor any architectural,
668 construction improvement, or other such similar committee of the
669 association shall enforce any policy or restriction that is
670 inconsistent with the rights and privileges of a parcel owner

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

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

683 720.305 Obligations of members; remedies at law or in
 684 equity; levy of fines and suspension of use rights; failure to
 685 fill sufficient number of vacancies on board of directors to
 686 constitute a quorum; appointment of receiver upon petition of
 687 any member.--

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

- 695 (a) The association;
- 696 (b) A member;

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697 (c) Any director or officer of an association who
 698 willfully and knowingly fails to comply with these provisions;
 699 and

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

702
 703 The prevailing party in any such litigation is entitled to
 704 recover reasonable attorney's fees and costs. A member
 705 prevailing in an action between the association and the member
 706 under this section, in addition to recovering his or her
 707 reasonable attorney's fees, may recover additional amounts as
 708 determined by the court to be necessary to reimburse the member
 709 for his or her share of assessments levied by the association to
 710 fund its expenses of the litigation. This relief does not
 711 exclude other remedies provided by law. This section does not
 712 deprive any person of any other available right or remedy.

713 Section 14. Paragraph (c) of subsection (1) of section
 714 720.306, Florida Statutes, is amended to read:

715 720.306 Meetings of members; voting and election
 716 procedures; amendments.--

717 (1) QUORUM; AMENDMENTS.--

718 (c) Unless otherwise provided in the governing documents
 719 as originally recorded or permitted by this chapter or chapter
 720 617, an amendment may not materially and adversely alter the
 721 proportionate voting interest appurtenant to a parcel or
 722 increase the proportion or percentage by which a parcel shares
 723 in the common expenses of the association unless the record

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724 parcel owner and all record owners of liens on the parcels join
 725 in the execution of the amendment. For purposes of this section,
 726 a change in quorum requirements is not an alteration of voting
 727 interests. The merger or consolidation of one or more
 728 associations under a plan of merger or consolidation under
 729 chapter 607 or chapter 617 shall not be considered a material or
 730 adverse alteration of the proportionate voting interest
 731 appurtenant to a parcel.

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

734 720.307 Transition of association control in a
 735 community.--With respect to homeowners' associations:

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

741 (t) The financial records, including financial statements
 742 of the association, and source documents from the incorporation
 743 of the association through the date of turnover. The records
 744 shall be audited by an independent certified public accountant
 745 for the period from the incorporation of the association or from
 746 the period covered by the last audit, if an audit has been
 747 performed for each fiscal year since incorporation. All
 748 financial statements shall be prepared in accordance with
 749 generally accepted accounting principles and shall be audited in
 750 accordance with generally accepted auditing standards, as

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751 prescribed by the Board of Accountancy, pursuant to chapter 473.
 752 The certified public accountant performing the audit shall
 753 examine to the extent necessary supporting documents and
 754 records, including the cash disbursements and related paid
 755 invoices to determine if expenditures were for association
 756 purposes and the billings, cash receipts, and related records of
 757 the association to determine that the developer was charged and
 758 paid the proper amounts of assessments. This paragraph applies
 759 to associations with a date of incorporation after December 31,
 760 2006.

761 Section 16. Section 720.308, Florida Statutes, is amended
 762 to read:

763 720.308 Assessments and charges.--

764 (1) ASSESSMENTS.--For any community created after October
 765 1, 1995, the governing documents must describe the manner in
 766 which expenses are shared and specify the member's proportional
 767 share thereof. Assessments levied pursuant to the annual budget
 768 or special assessment must be in the member's proportional share
 769 of expenses as described in the governing document, which share
 770 may be different among classes of parcels based upon the state
 771 of development thereof, levels of services received by the
 772 applicable members, or other relevant factors. While the
 773 developer is in control of the homeowners' association, it may
 774 be excused from payment of its share of the operating expenses
 775 and assessments related to its parcels for any period of time
 776 for which the developer has, in the declaration, obligated
 777 itself to pay any operating expenses incurred that exceed the

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778 assessments receivable from other members and other income of
 779 the association. This section does not apply to an association,
 780 no matter when created, if the association is created in a
 781 community that is included in an effective development-of-
 782 regional-impact development order as of the effective date of
 783 this act, together with any approved modifications thereto.

784 (2) GUARANTEES OF COMMON EXPENSES.--

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

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

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

797 1. The ending date or event shall be the same for all of
 798 the members of an association, including members in different
 799 phases of the development.

800 2. The guarantee may provide for different intervals of
 801 time during a guarantee period with different dollar amounts for
 802 each such interval.

803 3. The guarantee may provide that after the initial stated
 804 period, the developer has an option to extend the guarantee for

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805 one or more additional stated periods. The extension of a
806 guarantee is limited to extending the ending date or event;
807 therefore, the developer does not have the option of changing
808 the level of assessments guaranteed.

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

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

819 (a) If at any time during the guarantee period the funds
820 collected from member assessments at the guaranteed level and
821 other revenues collected by the association are not sufficient
822 to provide payment, on a timely basis, of all assessments,
823 including the full funding of the reserves unless properly
824 waived, the guarantor shall advance sufficient cash to the
825 association at the time such payments are due.

826 (b) Expenses incurred in the production of nonassessment
827 revenues, not in excess of the nonassessment revenues, shall not
828 be included in the assessments. If the expenses attributable to
829 nonassessment revenues exceed nonassessment revenues, only the
830 excess expenses must be funded by the guarantor. Interest earned
831 on the investment of association funds may be used to pay the

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832 income tax expense incurred as a result of the investment; such
833 expense shall not be charged to the guarantor; and the net
834 investment income shall be retained by the association. Each
835 such nonassessment-revenue-generating activity shall be
836 considered separately. Any portion of the parcel assessment that
837 is budgeted for designated capital contributions of the
838 association shall not be used to pay operating expenses.

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

848 (6) EXPENSES.--Expenses incurred in the production of
849 nonassessment revenues, not in excess of the nonassessment
850 revenues, shall not be included in the operating expenses. If
851 the expenses attributable to nonassessment revenues exceed
852 nonassessment revenues, only the excess expenses must be funded
853 by the guarantor. Interest earned on the investment of
854 association funds may be used to pay the income tax expense
855 incurred as a result of the investment; such expense shall not
856 be charged to the guarantor; and the net investment income shall
857 be retained by the association. Each such nonassessment-revenue-
858 generating activity shall be considered separately. Any portion

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859 of the parcel assessment that is budgeted for designated capital
860 contributions of the association shall not be used to pay
861 operating expenses.

862 Section 17. Section 720.311, Florida Statutes, is amended
863 to read:

864 720.311 Dispute resolution.--

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

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886 proceeding, and the prevailing party in an arbitration
887 proceeding shall recover its reasonable costs and attorney's
888 fees in an amount found reasonable by the arbitrator. The
889 department shall adopt rules to effectuate the purposes of this
890 section.

891 (2)(a) Disputes between an association and a parcel owner
892 regarding use of or changes to the parcel or the common areas
893 and other covenant enforcement disputes, disputes regarding
894 amendments to the association documents, disputes regarding
895 meetings of the board and committees appointed by the board,
896 membership meetings not including election meetings, and access
897 to the official records of the association shall be the subject
898 of an offer filed with the department for presuit mandatory
899 mediation served by an aggrieved party before the dispute is
900 filed in court. Presuit mediation proceedings must be conducted
901 in accordance with the applicable Florida Rules of Civil
902 Procedure, and these proceedings are privileged and confidential
903 to the same extent as court-ordered mediation. Disputes subject
904 to presuit mediation under this section shall not include the
905 collection of any assessment, fine, or other financial
906 obligation, including attorney's fees and costs, claimed to be
907 due or any action to enforce a prior mediation settlement
908 agreement between the parties. Also, in any dispute subject to
909 presuit mediation under this section where emergency relief is
910 required, a motion for temporary injunctive relief may be filed
911 with the court without first complying with the presuit
912 mediation requirements of this section. After any issues

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

931 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

932
 933 The alleged aggrieved party, _____, hereby
 934 offers to _____, as the responding party,
 935 to enter into presuit mediation in connection with the
 936 following dispute, which by statute is of a type that
 937 is subject to presuit mediation:

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939 (List specific nature of the dispute or disputes to be
940 mediated and the authority supporting a finding of a
941 violation as to each dispute.)

942
943 Pursuant to section 720.311, Florida Statutes, this
944 offer to resolve the dispute through presuit mediation
945 is required before a lawsuit can be filed concerning
946 the dispute. Pursuant to the statute, the aggrieved
947 party is hereby offering to engage in presuit
948 mediation with a neutral third-party mediator in order
949 to attempt to resolve this dispute without court
950 action, and the aggrieved party demands that you
951 likewise agree to this process. If you fail to agree
952 to presuit mediation, or if you agree and later fail
953 to follow through with your agreement to mediate, suit
954 may be brought against you without further warning.

955
956 The process of mediation involves a supervised
957 negotiation process in which a trained, neutral third-
958 party mediator meets with both parties and assists
959 them in exploring possible opportunities for resolving
960 part or all of the dispute. The mediation process is a
961 voluntary one. By agreeing to participate in presuit
962 mediation, you are not bound in any way to change your
963 position or to enter into any type of agreement.

964 Furthermore, the mediator has no authority to make any
965 decisions in this matter or to determine who is right

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966 or wrong and merely acts as a facilitator to ensure
967 that each party understands the position of the other
968 party and that all reasonable settlement options are
969 fully explored. All mediation communications are
970 confidential under the Mediation Confidentiality and
971 Privilege Act pursuant to sections 44.401-44.406,
972 Florida Statutes, and a mediation participant may not
973 disclose a mediation communication to a person other
974 than a mediation participant or a participant's
975 counsel.

976
977 If an agreement is reached, it shall be reduced to
978 writing and becomes a binding and enforceable
979 commitment of the parties. A resolution of one or more
980 disputes in this fashion avoids the need to litigate
981 these issues in court. The failure to reach an
982 agreement, or the failure of a party to participate in
983 the process, results in the mediator's declaring an
984 impasse in the mediation, after which the aggrieved
985 party may proceed to court on all outstanding,
986 unsettled disputes.

987
988 The aggrieved party has selected and hereby lists
989 three certified mediators who we believe to be neutral
990 and qualified to mediate the dispute. You have the
991 right to select any one of these mediators. The fact
992 that one party may be familiar with one or more of the

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993 listed mediators does not mean that the mediator
994 cannot act as a neutral and impartial facilitator. Any
995 mediator who cannot act in this capacity ethically
996 must decline to accept engagement. The mediators that
997 we suggest, and their current hourly rates, are as
998 follows:

999
1000 (List the names, addresses, telephone numbers, and
1001 hourly rates of the mediators. Other pertinent
1002 information about the background of the mediators may
1003 be included as an attachment.)

1004
1005 You may contact the offices of these mediators to
1006 confirm that the listed mediators will be neutral and
1007 will not show any favoritism toward either party. The
1008 names of certified mediators may be found through the
1009 office of the clerk of the circuit court for this
1010 circuit.

1011
1012 If you agree to participate in the presuit mediation
1013 process, the statute requires that each party is to
1014 pay one-half of the costs and fees involved in the
1015 presuit mediation process unless otherwise agreed by
1016 all parties. An average mediation may require 3 to 4
1017 hours of the mediator's time, including some
1018 preparation time, and each party would need to pay
1019 one-half of the mediator's fees as well as his or her

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1020 own attorney's fees if he or she chooses to employ an
1021 attorney in connection with the mediation. However,
1022 use of an attorney is not required and is at the
1023 option of each party. The mediator may require the
1024 advance payment of some or all of the anticipated
1025 fees. The aggrieved party hereby agrees to pay or
1026 prepay one-half of the mediator's estimated fees and
1027 to forward this amount or such other reasonable
1028 advance deposits as the mediator may require for this
1029 purpose. Any funds deposited will be returned to you
1030 if these are in excess of your share of the fees
1031 incurred.

1032
1033 If you agree to participate in presuit mediation in
1034 order to attempt to resolve the dispute and thereby
1035 avoid further legal action, please sign below and
1036 clearly indicate which mediator is acceptable to you.
1037 We will then ask the mediator to schedule a mutually
1038 convenient time and place for the mediation conference
1039 to be held. The mediation conference must be held
1040 within 90 days after the date of this letter unless
1041 extended by mutual written agreement. In the event
1042 that you fail to respond within 20 days after the date
1043 of this letter, or if you fail to agree to at least
1044 one of the mediators that we have suggested and to pay
1045 or prepay to the mediator one-half of the costs
1046 involved, the aggrieved party will be authorized to

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1047 proceed with the filing of a lawsuit against you
 1048 without further notice and may seek an award of
 1049 attorney's fees or costs incurred in attempting to
 1050 obtain mediation.

1051
 1052 Should you wish, you may also elect to waive presuit
 1053 mediation so that this matter may proceed directly to
 1054 court.

1055
 1056 Therefore, please give this matter your immediate
 1057 attention. By law, your response must be mailed by
 1058 certified mail, return receipt requested, with an
 1059 additional copy being sent by regular first-class mail
 1060 to the address shown on this offer.

1061
 1062 _____
 1063 _____

1064
 1065 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
 1066 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
 1067 CHOICE.

1068
 1069 AGREEMENT TO MEDIATE

1070
 1071 The undersigned hereby agrees to participate in
 1072 presuit mediation and agrees to the following mediator
 1073 or mediators as acceptable to mediate this dispute:

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1099

(List acceptable mediator or mediators.)

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

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1100 Signature of responding party #2 (if applicable) (if
 1101 property is owned by more than one person, all owners
 1102 must sign)

1103
 1104 (b) Service of the statutory offer to participate in
 1105 presuit mediation shall be effected by sending a letter in
 1106 substantial conformity with the above form by certified mail,
 1107 return receipt requested, with an additional copy being sent by
 1108 regular first-class mail, to the address of the responding party
 1109 as it last appears on the books and records of the association.
 1110 The responding party shall have 20 days from the date of the
 1111 mailing of the statutory offer to serve a response to the
 1112 aggrieved party in writing. The response shall be served by
 1113 certified mail, return receipt requested, with an additional
 1114 copy being sent by regular first-class mail, to the address
 1115 shown on the statutory offer. In the alternative, the responding
 1116 party may waive mediation in writing. Notwithstanding the
 1117 foregoing, once the parties have agreed on a mediator, the
 1118 mediator may reschedule the mediation for a date and time
 1119 mutually convenient to the parties. ~~The department shall conduct~~
 1120 ~~the proceedings through the use of department mediators or refer~~
 1121 ~~the disputes to private mediators who have been duly certified~~
 1122 ~~by the department as provided in paragraph (c).~~ The parties
 1123 shall share the costs of presuit mediation equally, including
 1124 the fee charged by the mediator, if any, unless the parties
 1125 agree otherwise, and the mediator may require advance payment of
 1126 its reasonable fees and costs. The failure of any party to

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1127 respond to a demand or response, to agree upon a mediator, to
1128 make payment of fees and costs within the time established by
1129 the mediator, or to appear for a scheduled mediation session
1130 shall operate as an impasse in the presuit mediation by such
1131 party, entitling the other party to proceed in court and to seek
1132 an award of the costs and fees associated with the mediation.
1133 Additionally, if any presuit mediation session cannot be
1134 scheduled and conducted within 90 days after the offer to
1135 participate in mediation was filed, an impasse shall be deemed
1136 to have occurred unless both parties agree to extend this
1137 deadline. If a department mediator is used, the department may
1138 charge such fee as is necessary to pay expenses of the
1139 mediation, including, but not limited to, the salary and
1140 benefits of the mediator and any travel expenses incurred. The
1141 petitioner shall initially file with the department upon filing
1142 the disputes, a filing fee of \$200, which shall be used to
1143 defray the costs of the mediation. At the conclusion of the
1144 mediation, the department shall charge to the parties, to be
1145 shared equally unless otherwise agreed by the parties, such
1146 further fees as are necessary to fully reimburse the department
1147 for all expenses incurred in the mediation.

1148 (c)(b) If presuit mediation as described in paragraph (a)
1149 is not successful in resolving all issues between the parties,
1150 the parties may file the unresolved dispute in a court of
1151 competent jurisdiction or elect to enter into binding or
1152 nonbinding arbitration pursuant to the procedures set forth in
1153 s. 718.1255 and rules adopted by the division, with the

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1154 arbitration proceeding to be conducted by a department
1155 arbitrator or by a private arbitrator certified by the
1156 department. If all parties do not agree to arbitration
1157 proceedings following an unsuccessful presuit mediation, any
1158 party may file the dispute in court. A final order resulting
1159 from nonbinding arbitration is final and enforceable in the
1160 courts if a complaint for trial de novo is not filed in a court
1161 of competent jurisdiction within 30 days after entry of the
1162 order. As to any issue or dispute that is not resolved at
1163 presuit mediation, and as to any issue that is settled at
1164 presuit mediation but is thereafter subject to an action seeking
1165 enforcement of the mediation settlement, the prevailing party in
1166 any subsequent arbitration or litigation proceeding shall be
1167 entitled to seek recovery of all costs and attorney's fees
1168 incurred in the presuit mediation process.

1169 ~~(d)-(e) The department shall develop a certification and~~
1170 ~~training program for private mediators and private arbitrators~~
1171 ~~which shall emphasize experience and expertise in the area of~~
1172 ~~the operation of community associations. A mediator or~~
1173 ~~arbitrator shall be certified to conduct mediation or~~
1174 ~~arbitration under this section by the department only if he or~~
1175 ~~she has been certified as a circuit court civil mediator or~~
1176 ~~arbitrator, respectively, pursuant to the requirements~~
1177 ~~established attended at least 20 hours of training in mediation~~
1178 ~~or arbitration, as appropriate, and only if the applicant has~~
1179 ~~mediated or arbitrated at least 10 disputes involving community~~
1180 ~~associations within 5 years prior to the date of the~~

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1181 ~~application, or has mediated or arbitrated 10 disputes in any~~
 1182 ~~area within 5 years prior to the date of application and has~~
 1183 ~~completed 20 hours of training in community association~~
 1184 ~~disputes. In order to be certified by the department, any~~
 1185 ~~mediator must also be certified by the Florida Supreme Court.~~
 1186 ~~The department may conduct the training and certification~~
 1187 ~~program within the department or may contract with an outside~~
 1188 ~~vendor to perform the training or certification. The expenses of~~
 1189 ~~operating the training and certification and training program~~
 1190 ~~shall be paid by the moneys and filing fees generated by the~~
 1191 ~~arbitration of recall and election disputes and by the mediation~~
 1192 ~~of those disputes referred to in this subsection and by the~~
 1193 ~~training fees.~~

1194 (e) ~~(d)~~ The presuit mediation procedures provided by this
 1195 subsection may be used by a Florida corporation responsible for
 1196 the operation of a community in which the voting members are
 1197 parcel owners or their representatives, in which membership in
 1198 the corporation is not a mandatory condition of parcel
 1199 ownership, or which is not authorized to impose an assessment
 1200 that may become a lien on the parcel.

1201 ~~(3)~~ The department shall develop an education program to
 1202 assist homeowners, associations, board members, and managers in
 1203 understanding and increasing awareness of the operation of
 1204 homeowners' associations pursuant to this chapter and in
 1205 understanding the use of alternative dispute resolution
 1206 techniques in resolving disputes between parcel owners and
 1207 associations or between owners. Such education program may

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1208 ~~include the development of pamphlets and other written~~
1209 ~~instructional guides, the holding of classes and meetings by~~
1210 ~~department employees or outside vendors, as the department~~
1211 ~~determines, and the creation and maintenance of a website~~
1212 ~~containing instructional materials. The expenses of operating~~
1213 ~~the education program shall be initially paid by the moneys and~~
1214 ~~filing fees generated by the arbitration of recall and election~~
1215 ~~disputes and by the mediation of those disputes referred to in~~
1216 ~~this subsection.~~

1217 Section 18. Except as otherwise expressly provided in this
1218 act, this act shall take effect July 1, 2006.