

Bill No. CS for SB 1444

Barcode 765544

CHAMBER ACTION

Senate

House

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The Committee on Regulated Industries (Rich) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 720.501, Florida statutes, is created to read:

720.501 Legislative intent.--It is the intent of the Legislature to establish the Home Court Advantage Pilot Program as a pilot program in Hillsborough and Pinellas Counties for a period of 2 years, commencing with petitions filed on or after January 1, 2008, and before December 31, 2009. The purpose of the Home Court Advantage Pilot Program is to establish an inexpensive, expedient, and simplified court procedure as an independent venue in which certain community associations and parcel owners can informally resolve disputes relating to covenants and restrictions without having to resort to potentially time-consuming and expensive court litigation. The Home Court Advantage Pilot Program shall

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1 consist of a mandatory, nonbinding arbitration process as
 2 described herein, and the Home Court Advantage Pilot Program
 3 shall be implemented and administered by the Department of
 4 Business and Professional Regulation in cooperation with the
 5 Chief Judge of the Thirteenth Judicial Circuit in Hillsborough
 6 County and the Chief Judge of the Sixth Judicial Circuit in
 7 Pinellas County.

8 Section 2. Section 720.502, Florida Statutes, is
 9 created to read:

10 720.502 Definitions.--As used in this act, the term:

11 (1) "Homeowners' association" or "association" means a
 12 homeowners' association within the meaning of this act and
 13 includes only those community associations operating
 14 residential communities partially or totally situated in
 15 Pinellas County or in Hillsborough County.

16 (2) "Community" means the real property that is
 17 subject to a declaration of covenants that is recorded in the
 18 county where the property is located.

19 (3) "Dispute" means a disagreement between a
 20 homeowners' association and a parcel owner concerning the
 21 validity or enforcement of restrictions contained in the
 22 governing documents of the community, including any
 23 declaration of restrictions and covenants, deed restrictions,
 24 the articles of incorporation, and bylaws of the association,
 25 or any rules governing the community, which dispute arises in
 26 the Thirteenth Judicial Circuit or Sixth Judicial Circuit. The
 27 term also includes the failure of the association or parcel
 28 owner to comply with the requirements of this chapter, as
 29 applicable.

30 (4) "Parcel owner" means the record owner of legal
 31 title to a parcel governed by an association.

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1 (5) "Petitioner" means the party filing a petition
2 pursuant to this act. "Respondent" means the party responding
3 to the petition.

4 (6) "Developer" means the entity creating the
5 community operated by the association or any entity that
6 offers residential parcels for sale or lease in the ordinary
7 course of its business within that community.

8 Section 3. Section 720.503, Florida Statutes, is
9 created to read:

10 720.503 Rules of procedure; report required.--

11 (1) The rules and procedures for the operation of the
12 Home Court Advantage Pilot Program in Hillsborough County and
13 Pinellas County shall be those rules adopted by the Division
14 of Florida Land Sales, Condominiums, and Mobile Homes pursuant
15 to s. 718.1255 and such additional rules and procedures as are
16 provided by this act.

17 (2) In cooperation with the chief judge of the
18 circuit, the division shall provide for the use of courtroom
19 facilities, case management, and recordkeeping facilities for
20 the operation of the pilot program.

21 (3) The division shall direct a report to the
22 President of the Senate, the Speaker of the House of
23 Representatives, and the minority leader of each house of the
24 Legislature within 60 days following the pilot program. The
25 report shall evaluate the successes and the shortcomings of
26 the program and the time frame for the average proceeding and
27 make recommendations concerning the program's continuation,
28 expansion, elimination, or modifications.

29 Section 4. Section 720.504, Florida Statutes, is
30 created to read:

31 720.504 Jurisdiction.--

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1 (1) Subject to subsection (2), a dispute within the
2 jurisdiction of the Home Court Advantage Pilot Program
3 includes any dispute regarding the enforceability or validity
4 of the governing documents of the community, the
5 reasonableness of any action of the board of directors of the
6 association involving the documents, any dispute in which an
7 association seeks enforcement of the governing documents, and
8 any dispute alleging the failure of an association or parcel
9 owner to comply with the requirements of this chapter or the
10 governing documents of the community.

11 (2) Only disputes between an association and a parcel
12 owner are within the jurisdiction of the program. Officers or
13 directors of the community association may not be parties in
14 these proceedings. Disputes involving tenants or guests of
15 parcel owners are subject to this act if the tenant is alleged
16 to have violated the governing documents of the community,
17 except that eviction proceedings are excluded from the
18 jurisdiction of the pilot program. Disagreements relating to
19 the imposition, reasonableness, or collection of fines,
20 assessments, special assessments, or other fees owed by a
21 parcel owner; lien foreclosure actions; and disagreements
22 regarding the enforcement of a judgment are not subject to the
23 pilot program.

24 (3) If a dispute described by this act is otherwise
25 subject to mandatory mediation or mandatory binding
26 arbitration as provided by s. 720.311 relating to homeowners'
27 associations, the dispute shall be filed pursuant to this act
28 and is not required or permitted to be filed pursuant to this
29 chapter, as applicable.

30 (4) Regardless of whether this authority exists in the
31 governing documents, a parcel owner may commence a proceeding

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1 under this act against another parcel owner or against the
 2 association for any violation of the documents or controlling
 3 statute, and an association may also commence a proceeding
 4 against a parcel owner, or the owner and his tenant or
 5 occupant, for violations of the governing documents or
 6 statute.

7 Section 5. Section 720.505, Florida Statutes, is
 8 created to read:

9 720.505 Procedure for mandatory filing; filing fee.--

10 (1) Before filing a petition with the division, the
 11 petitioner shall provide the intended respondent with a
 12 written demand identifying the nature of the dispute,
 13 demanding the relief sought, stating that, if the relief is
 14 not provided, the dispute will be filed in the courts, and
 15 providing the respondent with a reasonable period of time
 16 within which to provide the relief sought. The failure to have
 17 provided advance written notice shall result in the dismissal
 18 of a petition.

19 (2) Before filing a dispute with the court, a dispute
 20 within the jurisdiction of the pilot program must be filed
 21 with the division. At the same time the petition is filed, the
 22 petitioner shall provide a copy of the petition and
 23 attachments to the respondent by United States certified mail.
 24 The petition must be on a form adopted by the division, or
 25 must be substantially similar to the form, and must include a
 26 copy of the demand letter required by subsection (1). The
 27 petition must include those portions of the governing
 28 documents relied upon in the petition.

29 (3) The division shall direct an order to the
 30 respondent by certified mail which shall provide the
 31 respondent 14 days in which to file an answer to the petition.

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1 The answer must include any defenses that the respondent has
 2 to the petition. If the respondent files a motion to dismiss
 3 the petition, it must be accompanied by an answer and defenses
 4 in order to promote the timely resolution of the dispute. The
 5 answer may not include any claim that the respondent may have
 6 against the petitioner but may address only the dispute stated
 7 in the petition.

8 (4) Any petition filed must include a filing fee in
 9 the amount of \$150, payable to the division. This fee is
 10 nonrefundable. The filing fees shall be used by the division
 11 to defray the costs of administering the pilot program.

12 (5) When a party filing a petition demonstrates to the
 13 arbitrator at the time of the filing of the petition or
 14 thereafter that the party is in need of and entitled to
 15 immediate emergency injunctive relief, the arbitrator may
 16 abate the proceeding and allow the party to file for a
 17 temporary injunction in court.

18 Section 6. Section 720.506, Florida Statutes, is
 19 created to read:

20 720.506 Arbitrators.--

21 (1) The division shall maintain a list of qualified
 22 arbitrators to hear the disputes described by this act. In
 23 order to be qualified, the person seeking to act as a
 24 arbitrator must be a member in good standing of The Florida
 25 Bar. The division may, by rule, adopt additional requirements
 26 for qualification.

27 (2) An arbitrator shall be compensated as provide
 28 herein and is entitled to immunity as provided by s. 44.107.
 29 An arbitrator serves at the pleasure of the director of the
 30 division.

31 (3) An arbitrator shall be compensated at the rate of

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1 \$150 per hour but shall not receive more than \$600 for any
 2 single case. The total fees of the arbitrator shall appear in
 3 the final order and shall be divided equally between the
 4 parties to the dispute. Such fees shall be paid in full within
 5 15 days of receipt of the final order and shall become
 6 delinquent thereafter. The arbitrator shall be entitled to
 7 recover reasonable attorney's fees and costs incurred in the
 8 collection of any delinquent sums.

9 Section 7. Section 720.507, Florida Statutes, is
 10 created to read:

11 720.507 Conduct of proceedings; appeals.--

12 (1) An arbitrator may hear and decide the disputes
 13 filed pursuant to this act, but she or he may not hold a
 14 person in contempt. An arbitrator may issue subpoenas to
 15 compel the attendance and production of persons and documents
 16 at the request of any party to the proceedings. The arbitrator
 17 shall, unless waived by both parties to the dispute, conduct a
 18 final hearing, if one is required, within 60 days after the
 19 filing of the petition and shall, within 14 days after the
 20 final hearing, issue a final order. The final order is binding
 21 on the parties, if a complaint for a trial de novo is not
 22 filed in a court of competent jurisdiction within 30 days
 23 after rendition of the final order, and may be enforced in the
 24 courts of this state as provided in subsection (2). The final
 25 order of the arbitrator is admissible in any appeal of the
 26 final order.

27 (2) A final order of the arbitrator which has not been
 28 timely appealed may be enforced by filing a petition for
 29 enforcement in circuit court. The prevailing party in an
 30 enforcement action is entitled to reasonable costs and
 31 attorney's fees.

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1 (3) If no timely appeal has been filed in a case in
2 which a party who was ordered by final order of the arbitrator
3 to take some action or to refrain from taking some action does
4 not comply with the final order of the arbitrator within 30
5 days after rendition of the final order, the arbitrator
6 retains jurisdiction upon the petition or request of a party
7 to modify the final order to require the party failing to
8 comply with all of the cost of the proceeding, including
9 reasonable attorney's fees.

10 (4) The arbitrator shall conduct these proceedings,
11 including the final hearing, in accordance with the rules of
12 procedure adopted by the division pursuant to s. 718.1255 and
13 the procedures established by this act.

14 (5) An arbitrator may grant all relief necessary for
15 the disposition of the dispute, including, but not limited to,
16 making a finding that a provision contained in the governing
17 documents is invalid and unenforceable; an order enforcing the
18 provisions of the governing documents and statute; an order
19 requiring an association or parcel owner, tenant, or guest to
20 comply with the governing documents or statute; or an order
21 finding that the association has selectively enforced its
22 governing documents. However, an arbitrator may not reform the
23 governing documents governing the community.

24 (6) In deciding a dispute, an arbitrator shall follow
25 and apply the applicable statute as well as controlling case
26 law.

27 (7) An arbitrator is subject to the standards of
28 professional conduct contained in the Florida Rules for
29 Court-Appointed Arbitrators. An arbitrator may not preside
30 over a dispute involving a party currently represented by the
31 arbitrator but may preside over a dispute involving a former

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1 client when both parties, upon disclosure of the prior
2 representation, consent in writing.

3 (8) An arbitrator may, in the exercise of his or her
4 discretion, award reasonable prevailing party costs and
5 attorney's fees when an arbitrator has determined that the
6 conduct of a party has been unreasonable.

7 Section 8. This act shall take effect October 1, 2007.

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10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

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14 and insert:

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A bill to be entitled

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An act relating to covenants and deed

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restrictions; creating s. 720.501, F.S.;

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providing legislative intent; creating s.

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720.502, F.S.; providing definitions; creating

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s. 720.503, F.S.; requiring the adoption of

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certain rules and procedures adopted by the

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Division of Florida Land Sales, Condominiums,

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and Mobile Homes for the establishment of a

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pilot arbitration program in Hillsborough

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County and Pinellas County; requiring the

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division to submit a report to the President of

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the Senate, the Speaker of the House of

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Representatives, and the minority leader of

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each house of the Legislature regarding the

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program; creating s. 720.504, F.S.; providing

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for jurisdiction; creating s. 720.505, F.S.;

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1 authorizing the filing of a petition;
2 authorizing a parcel owner or association to
3 commence a proceeding; providing complaint
4 procedures; requiring a filing fee; creating s.
5 720.506, F.S.; providing qualifications for
6 arbitrators; creating s. 720.507, F.S.;
7 providing duties and responsibilities of
8 arbitrators during arbitration proceedings;
9 providing proceedings for appeal; providing a
10 code of ethics for arbitrators; providing an
11 effective date.

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