

1 Circuit in Hillsborough County and the chief judge of the
2 Sixth Judicial Circuit in Pinellas County, subject to the
3 supervision of the Supreme Court.

4 Section 2. Definitions.--

5 (1) "Community association" has the same meaning as
6 provided in s. 468.431(1), Florida Statutes.

7 (2) "Community association manager" has the same
8 meaning as provided in s. 468.431(3), Florida Statutes.

9 (3) "Complainant" means a party filing a complaint in
10 home court.

11 (4) "Complaint" means an allegation by:

12 (a) A homeowners' association, condominium unit
13 owners' association, cooperative association, community
14 development district, or civic association that a property
15 owner in a deed-restricted community is violating one or more
16 restrictions that apply to the property; or

17 (b) A homeowner, condominium unit owner, member of a
18 cooperative, resident of a community development district, or
19 property owner in any deed-restricted community in which the
20 respective association or district is selectively enforcing a
21 deed restriction or covenant or is improperly or unlawfully
22 seeking to enforce a deed restriction or covenant.

23 (5) "Deed-restricted community" means a residential
24 community, condominium, cooperative, or community development
25 district in which the properties in the community are subject
26 to limitations or restrictions on or covenants restricting the
27 use, design, or operation of properties in the community.

28 (6) "Defendant" means a party against whom a complaint
29 is filed in home court.

30 Section 3. Objectives.--The chief judges of the
31 Thirteenth and Sixth Judicial Circuits may adopt rules and

1 procedures for the establishment and operation of the Home
2 Court Advantage Pilot Program in Hillsborough County and
3 Pinellas County, respectively. The chief judges shall report
4 to the Supreme Court at the end of the program an analysis of
5 the operation and results of the program. The Chief Justice of
6 the Supreme Court shall review the reports and make
7 determinations and recommendations to the Legislature by
8 February 1, 2009, on the feasibility of establishing a
9 statewide program and provide copies of the reports to the
10 Speaker of the House of Representatives, the President of the
11 Senate, and the minority leader of each house of the
12 Legislature.

13 Section 4. Jurisdiction; limitations.--

14 (1) Home court magistrates may be empowered to accept
15 complaints about and decide the reasonableness of any
16 restriction imposed pursuant to a deed to real property or
17 fine imposed for a failure to comply with a deed restriction
18 and may be empowered to issue orders, impose fines, and
19 authorize the imposition of a lien on real property in the
20 same manner as a circuit court judge under the laws, rules,
21 and procedures presently existing or as subsequently amended,
22 except that home court magistrates may not:

23 (a) Hold a party in contempt of court but may file a
24 motion for order of contempt with the appropriate state
25 circuit court judge; or

26 (b) Hear a case involving any dispute other than a
27 deed restriction.

28 (2) This section does not prohibit a circuit court
29 judge from exercising concurrent jurisdiction with a home
30 court magistrate.

31 Section 5. Filing and complaint procedures.--

1 (1) Any party may file, on its own behalf or through
2 an attorney appointed by a party as attorney in fact, a
3 complaint in home court alleging a violation of a deed
4 restriction or covenant and seeking enforcement of the
5 restriction or covenant or alleging unlawful enforcement of a
6 deed restriction or covenant and seeking an injunction against
7 such unlawful enforcement. A property owner in a
8 deed-restricted community for which there is a community
9 association may appoint the community association as his or
10 her attorney in fact, pursuant to the provisions of s. 709.08,
11 Florida Statutes, for the purposes of filing an action against
12 another property owner in the deed-restricted community, or a
13 member or officer of a homeowners' association of the
14 community if there is one, seeking enforcement of a
15 restriction or covenant or alleging unlawful enforcement of a
16 restriction or covenant. The complainant shall pay a \$75
17 filing fee to the home court. The complaint shall contain a
18 completed checklist specifying:
19 (a) What restriction or covenant is being violated.
20 (b) When the violation occurred or began and if the
21 violation is continuing.
22 (c) Whether the party in violation of the restriction
23 or covenant was provided notice of the violation and, if so:
24 1. When the notice was provided.
25 2. If the notice was in writing.
26 (d) Whether the party in violation was provided an
27 opportunity to comply with the restriction or covenant or cure
28 the violation.
29 (e) Whether the attempt to enforce the restriction or
30 covenant was selectively enforced or improper.
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1 (f) Whether there were any special considerations
2 relating to the failure to comply with the restriction or
3 covenant.

4 (g) The remedy being sought against the party in
5 violation.

6 (2) Upon filing proof of service of the complaint, a
7 home court magistrate shall issue an order requiring the
8 complainant and the defendant to appear for a final hearing
9 within 60 days after receipt of service of the complaint. The
10 defendant shall provide to the complainant a copy of the
11 defendant's response to the notice to comply at least 10 days
12 prior to the final hearing.

13 (3)(a) Within 30 days after the home court magistrate
14 issues an order requiring the final hearing, the parties shall
15 be required to attend mediation conducted pursuant to the
16 rules of practice and procedure adopted by the Supreme Court
17 pursuant to s. 44.102, Florida Statutes.

18 (b) The parties to the mediation shall provide copies
19 of the documents referenced in the checklist in subsection
20 (1).

21 (c) Upon the showing of good cause, the home court
22 magistrate may continue the hearing to require the parties to
23 produce additional information and documentation. The parties
24 shall provide any additional information or documentation
25 required by the home court magistrate within 15 days after the
26 home court magistrate's request.

27 (d) The home court magistrate shall make findings of
28 reasonableness of the restriction or covenant and any fines to
29 be imposed under the restriction. The home court magistrate
30 shall rule on the validity of the restriction and the fine
31 imposed by the community association.

1 (e) The purpose of the hearing shall be the issuance
2 of an order by the home court magistrate imposing a fine on
3 the party in violation, compelling the party in violation to
4 comply with the restriction, and enjoining the party in
5 violation from continuing the violation. The party in
6 violation shall have 30 days to comply with the order unless
7 good cause is shown to the home court magistrate why a longer
8 period should be allowed.

9 (f) The maximum fine the home court magistrate may
10 impose is the fine alleged by the party bringing the
11 complaint. The home court magistrate may reduce the fine. The
12 fine shall be paid to and retained by the home court program.
13 If the action for compliance is for dues or special
14 assessments, the amount of the dues or special assessments
15 shall be paid to the community association, minus 10 percent
16 of such amount to be retained by the home court program for
17 purposes of administering the program.

18 (4) If the party in violation does not comply with the
19 home court magistrate's order within 30 days after the order
20 is issued and, prior to the expiration of the 30-day period,
21 good cause has not been shown to the home court magistrate for
22 extending the period, or within the period of an extension of
23 the 30-day period if good cause has been shown to the home
24 court magistrate for extending the period and the home court
25 magistrate grants an extension, and the violation of the deed
26 restriction or covenant is monetary, notwithstanding the
27 limitations of chapter 713, Florida Statutes, s. 720.305,
28 Florida Statutes, or any other provision of law restricting
29 the perfecting of a lien on real property, the complainant may
30 file a lien to be placed upon the property for all amounts
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1 included in the home court magistrate's order plus filing fees
2 and costs for bringing the action.

3 (5)(a) Upon application to the home court by a party
4 to the mediation or the mediator, a home court magistrate, in
5 the course of his or her jurisdiction, may issue subpoenas for
6 the attendance of necessary and material witnesses and for the
7 production of books, records, documents, and other evidence
8 and may administer oaths. Subpoenas shall be served and
9 enforced in the manner provided by law for the service and
10 enforcement of subpoenas in a civil action. A party or
11 mediator applying to the home court for issuance of a subpoena
12 shall provide to the court a separate envelope for each person
13 the party or mediator requests the home court magistrate to
14 subpoena. The envelope shall be addressed to the person and
15 have the postage paid for certified, return receipt requested,
16 mail. The home court magistrate shall mail the subpoena to the
17 person subject to the subpoena.

18 (b) Upon application of a party to the mediation and
19 for use as evidence, the mediator, in the course of his or her
20 jurisdiction, may permit a deposition to be taken of a witness
21 who cannot be subpoenaed or is unable to attend the mediation
22 in the manner and upon the terms designated by the mediator.
23 All provisions of law compelling a person under subpoena to
24 testify apply to the deposition.

25 (6) This section does not limit the rights of the
26 parties to seek injunctive relief in circuit court to compel
27 compliance.

28 Section 6. Appeals.--An order of a home court
29 magistrate may be appealed, under the rules of court, to the
30 circuit court. The appeal shall be based upon the record of
31 the hearing before the home court magistrate and shall not be

1 a hearing de novo. The appellant is responsible for producing
2 the record of the hearing beyond that which normally results
3 from the home court hearing process.

4 Section 7. Qualifications.--An applicant for the
5 position of home court magistrate shall be a member in good
6 standing of The Florida Bar with at least 5 years of
7 experience in litigation actions involving enforcement of deed
8 restrictions or covenants or be a community association
9 manager licensed under s. 468.433, Florida Statutes.

10 Section 8. Compensation; terms of service.--A home
11 court magistrate is an independent contractor and shall serve
12 without compensation and at the pleasure of the chief judge of
13 the judicial circuit in which he or she is to hear cases.

14 Section 9. Code of ethics.--A home court magistrate is
15 subject to the Code of Ethics for Arbitrators in Commercial
16 Disputes published by the American Arbitration Association or
17 the standards and procedures for professional conduct and
18 discipline for mediators and arbitrators established by the
19 Supreme Court pursuant to s. 44.106, Florida Statutes. A home
20 court magistrate is not subject to the Judicial Code of
21 Ethics, except a home court magistrate shall avoid practices
22 or occupations that would constitute a conflict of interest or
23 give the appearance of impropriety. Whether serving full time
24 or part time, a home court magistrate is prohibited from
25 representing clients or practicing before any other home court
26 or from representing any client appealing the decision of any
27 other home court magistrate. A home court magistrate appointed
28 under section 1 has judicial immunity in the same manner and
29 to the same extent as judges.

30 Section 10. Nonseverability.--If the provisions of
31 section 4 authorizing home court magistrates to impose

1 sanctions are found to be unconstitutional by the Supreme
2 Court, the home court magistrates shall have no further
3 jurisdiction over civil infractions.

4 Section 11. This act shall take effect July 1, 2007.
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