

By the Committee on Judiciary; and Senator Justice

590-2214-07

1 A bill to be entitled
2 An act relating to covenants and deed
3 restrictions; providing legislative intent;
4 providing definitions; requiring the chief
5 judges in the Thirteen and Sixth Judicial
6 Circuits to adopt certain rules and procedures
7 for the establishment of a pilot arbitration
8 program in Hillsborough County and Pinellas
9 County, respectively; requiring the chief
10 judges to submit a report to the Florida
11 Supreme Court regarding the program; providing
12 for jurisdiction; authorizing the filing of a
13 dispute; authorizing a parcel owner or
14 community association to commence a proceeding;
15 providing complaint procedures; requiring a
16 filing fee; providing qualifications for
17 magistrates; providing duties and
18 responsibilities of magistrates during
19 arbitration proceedings; providing proceedings
20 for appeal; providing a code of ethics for
21 magistrates; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. It is the intent of the Legislature to
26 establish the Home Court Advantage Pilot Program as a pilot
27 program in Hillsborough and Pinellas Counties for a period of
28 1 year. The purpose of the Home Court Advantage Pilot Program
29 is to establish an inexpensive, expedient, and simplified
30 court procedure as an independent venue in which certain
31 community associations and parcel owners can informally

1 resolve disputes relating to covenants and restrictions
2 without having to resort to potentially time-consuming and
3 expensive court litigation. The Home Court Advantage Pilot
4 Program shall be implemented and administered by the chief
5 judge of the Thirteenth Judicial Circuit in Hillsborough
6 County and the chief judge of the Sixth Judicial Circuit in
7 Pinellas County, subject to the supervision of the Florida
8 Supreme Court.

9 Section 2. Definitions.--As used in this act, the
10 term:

11 (1) "Community association" means an association
12 responsible for the operation of a condominium as defined by
13 s. 718.103, Florida Statutes; an association responsible for
14 the operation of a cooperative as defined by s. 719.103,
15 Florida Statutes; a timeshare condominium or cooperative
16 association regulated by chapters 718 and 721, Florida
17 Statutes; and a homeowners' association as defined by s.
18 720.301, Florida Statutes, except that the term does not
19 include any such association if a developer elects or appoints
20 a majority of the members of the board of directors of the
21 association. A community association within the meaning of
22 this act includes only those community associations operating
23 residential communities partially or totally situated in
24 Pinellas County or in Hillsborough County. An association
25 operating a commercial community is not subject to this act. A
26 mixed-use condominium as defined by s. 718.404, Florida
27 Statutes, is a community association for purposes of this act
28 to the extent that the dispute involves the association and
29 the amount of a residential unit.

30 (2) "Parcel owner" means the owner of legal title to a
31 parcel governed by a community association.

1 (3) "Dispute" means a disagreement between a community
2 association and a parcel owner concerning the validity or
3 enforcement of restrictions contained in the documents
4 governing the community, including any declaration of
5 restrictions and covenants, declaration of condominium, deed
6 restrictions, the articles of incorporation, and bylaws of the
7 community association, or any rules governing the community,
8 which dispute arises in the Thirteenth or Sixth Judicial
9 Circuits. The term also includes the failure of the
10 association or parcel owner to comply with the requirements of
11 chapter 718, chapter 719, chapter 720, or chapter 721, Florida
12 Statutes, as applicable.

13 (4) "Petitioner" means the party filing a petition
14 pursuant to this act. Respondent is the party responding to
15 the petition.

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

20 Section 3. Rules of procedure; report required.--

21 (1) The chief judges of the Thirteenth and Sixth
22 Judicial Circuits may adopt rules and procedures for the
23 creation and operation of the Home Court Advantage Pilot
24 Program in Hillsborough County and Pinellas County,
25 respectively. The chief judges shall adopt simplified rules of
26 practice and procedure which include a form petition and form
27 answer. The petition must be verified. The rules shall be
28 designed to promote the inexpensive and expedient resolution
29 of a dispute. The court shall adopt rules allowing qualified
30 lay representatives, including community association managers
31 licensed under chapter 468, Florida Statutes, to represent a

1 party and to file a petition, answer, or other pleadings with
2 the court upon proper application. The rules shall be
3 liberally construed to facilitate the inexpensive resolution
4 of disputes. The parties should be encouraged to engage in
5 proceedings under this act without the necessity of legal
6 counsel where appropriate.

7 (2) The chief judges shall direct a report to the
8 Supreme Court within 60 days following the conclusion of the
9 pilot program. This report shall review the operation and
10 results of the program. The Chief Justice of the Supreme Court
11 shall review the reports and make determinations and
12 recommendations to the Legislature by February 1, 2009,
13 concerning the feasibility of establishing a statewide program
14 and provide copies of the result to the President of the
15 Senate, the Speaker of the House of Representatives, and the
16 minority leader of each house of the Legislature.

17 Section 4. Jurisdiction.--

18 (1) Subject to subsection (2), a dispute within the
19 jurisdiction of the Home Court Advantage Pilot Program
20 includes any dispute regarding the enforceability or validity
21 of those documents governing the operation of the community
22 association, the reasonableness of any action of the board of
23 directors of the community association involving the
24 documents, any dispute in which an association seeks
25 enforcement of its documents, and any dispute alleging the
26 failure of a community association or parcel owner to comply
27 with the requirements of chapter 718, chapter 719, chapter
28 720, or chapter 721, Florida Statutes, whichever is
29 applicable, or the documents governing the community.

30 (2) Only disputes between a community association and
31 a parcel owner are within the jurisdiction of the program.

1 Officers or directors of the community association may not be
2 parties in these proceedings. Disputes involving tenants or
3 quests of parcel owners are subject to this act if the tenant
4 is alleged to have violated the documents governing the
5 community, except that eviction proceedings are exempt from
6 the jurisdiction of the program. Disagreements relating to the
7 imposition, reasonableness, or collection of fines,
8 assessments, special assessments, or other fees owed by a
9 parcel owner, lien foreclosure actions, or disagreements
10 regarding the enforcement of a judgment are not subject to the
11 pilot program.

12 (3) If a dispute described by this act is also
13 otherwise subject to the mandatory nonbinding arbitration
14 programs described by s. 718.1255 or s. 719.1255, Florida
15 Statutes, applicable to condominiums or cooperatives, or is
16 otherwise subject to mandatory mediation or mandatory binding
17 arbitration as provided by s. 720.311, Florida Statutes,
18 relating to homeowners' associations, the dispute shall be
19 filed pursuant to this act and is not required or permitted to
20 be filed pursuant to chapter 718, chapter 719, or chapter 720,
21 Florida Statutes, as applicable, except that recall and
22 election disputes shall continue to be subject to s. 718.1255,
23 s. 719.1255, or s. 720.311, Florida Statutes, as applicable,
24 and are not within the jurisdiction of this act.

25 (4) Regardless of whether this authority exists in the
26 documents governing the community association, a parcel owner
27 may commence a proceeding under this act against another
28 parcel owner or against the association for any violation of
29 the documents or controlling statute, and an association may
30 also commence a proceeding against a parcel owner, or the
31 owner and his tenant or occupant, for violations of the

1 documents or statute. If authorized by a power of attorney
2 executed by an association, a parcel owner may commence an
3 enforcement proceeding in the name of the association.

4 Section 5. Procedure for mandatory filing; filing
5 fee.--

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

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

26 (3) The clerk of the court in which the petition is
27 filed shall direct an order to the respondent by certified
28 mail which shall provide the respondent 14 days in which to
29 file an answer to the petition. The answer must include any
30 defenses that the respondent has to the petition. If the
31 respondent files a motion to dismiss the petition, it must be

1 accompanied by an answer and defenses in order to promote the
2 timely resolution of the dispute. The answer may not include
3 any claim that the respondent may have against the petitioner,
4 but may address only the dispute stated in the petition.

5 (4) Any petition filed must include the circuit court
6 filing fee set forth in s. 28.241, Florida Statutes, currently
7 set in the amount of \$255, payable to the clerk of the court
8 in which the dispute is to be filed. This fee is
9 nonrefundable. The filing fees shall be used by the court to
10 defray the costs of administering the program.

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

17 Section 6. Magistrates.--

18 (1) The court shall maintain a list of qualified
19 magistrates to hear the disputes described by this act. In
20 order to be qualified, the person seeking to act as a
21 magistrate must be a member in good standing with The Florida
22 Bar and must have practiced law in the area of community
23 association disputes for at least 5 years, or must be a member
24 in good standing of The Florida Bar and licensed as a
25 community association manager pursuant to part VIII of chapter
26 468, Florida Statutes. The courts may, by rule, adopt
27 additional requirements for qualification.

28 (2) A magistrate shall serve without compensation, but
29 is entitled to immunity as provided by s. 44.107, Florida
30 Statutes. A magistrate serves at the pleasure of the chief
31 judge of the circuit court.

1 Section 7. Conduct of proceedings; appeals.--

2 (1) A magistrate may hear and decide the disputes
3 filed pursuant to this act, but she or he may not hold a
4 person in contempt. A magistrate may enter all orders
5 necessary or helpful in the conduct of the proceedings,
6 including the imposition of sanctions and fines, against a
7 party that refuses to comply with a lawful nonfinal order of
8 the magistrate. A magistrate may issue subpoenas to compel the
9 attendance and production of persons and documents. The
10 magistrate shall, unless waived by both parties to the
11 dispute, conduct a final hearing, if one is required, within
12 60 days after the filing of the petition, and shall, within 14
13 days after the final hearing, issue a final order. The final
14 order shall not be binding on the parties, except that if an
15 appeal by trial de novo is not filed in the circuit court
16 within 30 days after rendition of the final order, the final
17 order is binding on the parties and may be enforced in the
18 courts of this state as provided in subsection (2). The final
19 order of the magistrate is admissible in any appeal of the
20 final order.

21 (2) A final order of the magistrate which has not been
22 timely appealed may be enforced by filing a petition for
23 enforcement in circuit court. The prevailing party in an
24 enforcement action is entitled to reasonable costs and
25 attorney's fees.

26 (3) If no timely appeal has been filed in a case in
27 which a party who was ordered by final order of the magistrate
28 to take some action or to refrain from taking some action does
29 not comply with the final order of the magistrate within 30
30 days after rendition of the final order, the magistrate
31 retains jurisdiction upon the petition or request of a party

1 to impose a fine against the offending party for noncompliance
2 with the final order. A fine may not exceed \$100 per
3 violation. However, a fine may be levied on the basis of each
4 day of a continuing violation which may not, in the aggregate,
5 exceed \$1,000 per violation. A fine shall be imposed only upon
6 notice and upon the conduct of a proceeding conducted by the
7 magistrate during which the parties have an opportunity to
8 appear and be heard on the issue of the intended fine. Any
9 order imposing a fine may be appealed to the circuit court
10 within 30 days after rendition of the order. If a fine is
11 imposed against a parcel owner for noncompliance with the
12 final order of the magistrate, the association is entitled to
13 one-half of the amount of the fine imposed, and the
14 association may use its lien authority to collect its half of
15 the unpaid fine. The other half of the fine shall be paid to
16 the clerk of the circuit court and used to defray the costs of
17 administering the pilot program.

18 (4) The magistrate shall conduct these proceedings,
19 including the final hearing, in accordance with simplified
20 rules of procedure adopted by the chief judge of the court in
21 which the petition is filed. Discovery rights shall be
22 restricted to cases in which manifest prejudice to a party is
23 shown to result from a denial of discovery. The magistrate is
24 not bound by formal rules of evidence and evidence of a kind
25 normally relied upon by persons in the conduct of their
26 affairs is admissible and shall be considered by the
27 magistrate. Evidence that is cumulative shall be excluded from
28 consideration.

29 (5) A magistrate may grant all relief necessary for
30 the disposition of the dispute including, but not limited to,
31 making a finding that a provision contained in the documents

1 is invalid and unenforceable; an order enforcing the
2 provisions of the documents and statute; an order requiring an
3 association or parcel owner, tenant, or guest to comply with
4 the documents or statute; or and an order finding that the
5 association has selectively enforced its documents. However, a
6 magistrate may not reform the documents governing the
7 community.

8 (6) In deciding a dispute, a magistrate shall follow
9 and apply the applicable statute as well as controlling case
10 law, including case law holding that in a community
11 association a declaration may be unreasonable yet be
12 nonetheless enforceable.

13 (7) A magistrate is subject to the standards of
14 professional conduct contained in the Florida Rules for
15 Court-Appointed Arbitrators. A magistrate may not preside over
16 a dispute involving a party currently represented by the
17 magistrate, but may preside over a dispute involving a former
18 client where both parties, upon disclosure of the prior
19 representation, consent in writing.

20 (8) A magistrate may, in the exercise of his or her
21 discretion, award reasonable prevailing party costs and
22 attorney's fees.

23 Section 8. This act shall take effect July 1, 2007.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1444

4 The committee substitute:

5 -- Revises the definition of "community association" to mean
6 an association responsible for the operation of a
7 condominium, a cooperative, a timeshare condominium or
8 cooperative, and a homeowners' association.

9 -- Provides definitions for the terms "parcel owner,"
10 "dispute," "petitioner," and "developer."

11 -- Provides that the chief judge must direct a report
12 reviewing the operation and results of the program to the
13 Florida Supreme Court within 60 days following the
14 conclusion of the Pilot Program.

15 -- Provides that the home court has jurisdiction involving
16 any dispute regarding the enforceability or validity of
17 those documents governing the operation of the community
18 association, the reasonableness of any action of the
19 board of directors involving the documents, any dispute
20 in which an association seeks enforcement of its
21 documents, and any dispute alleging the failure of a
22 community association or parcel owner to comply with the
23 requirements of chapters 718, 719, 720, or 721, F.S.

24 -- Provides that disagreements relating to the imposition,
25 reasonableness, or collection of fines, assessments,
26 special assessments or other fees owed by a parcel owner,
27 lien foreclosure actions, or disagreements regarding the
28 enforcement of a judgment are not subject to the Pilot
29 Program.

30 -- Provides that where a dispute is also subject to the
31 arbitration and mediation provisions in chapters 718,
719, and 720, F.S., the dispute must be filed under the
Pilot Program provisions, except for recall or election
disputes.

-- Authorizes a parcel owner or community association to
commence a proceeding in the home court, regardless of
whether this authority exists in the documents governing
the community association.

-- Provides procedures for filing petitions with the clerk
of the court in the county where the community
association is located.

-- Increases the filing fee under the program to \$255 from
\$75.

-- Provides that a magistrate must be a member of the
Florida Bar.

-- Provides the magistrate with certain powers and authority
required to carry out the provisions of the Pilot
Program, including the authority to impose sanctions and

1 | fines, issue subpoenas, award reasonable prevailing party
2 | costs and attorney's fees, and grant all relief necessary
3 | for the disposition of the dispute.
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