

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.  
14 718.114, F.S.; providing that certain leaseholds,  
15 memberships, or other possessory or use interests shall be  
16 considered a material alteration or substantial addition  
17 to certain real property; amending s. 718.404, F.S.;  
18 providing retroactive application of provisions relating  
19 to mixed-use condominiums; amending s. 719.103, F.S.;  
20 providing a definition; amending s. 719.507, F.S.;  
21 prohibiting laws, ordinances, or regulations that apply  
22 only to improvements that are or may be subjected to an  
23 equity club form of ownership; amending s. 720.302, F.S.;  
24 revising governing provisions relating to corporations  
25 that operate residential homeowners' associations;  
26 amending s. 720.303, F.S.; revising application to include  
27 certain meetings; requiring the association to provide  
28 certain information to prospective purchasers or

29 | lienholders; authorizing the association to charge a  
30 | reasonable fee for providing certain information;  
31 | requiring the budget to provide for annual operating  
32 | expenses; authorizing the budget to include reserve  
33 | accounts for capital expenditures and deferred  
34 | maintenance; providing a formula for calculating the  
35 | amount to be reserved; authorizing the association to  
36 | adjust replacement reserve assessments annually;  
37 | authorizing the developer to vote to waive the reserves or  
38 | reduce the funding of reserves for a certain period;  
39 | revising provisions relating to financial reporting;  
40 | revising time periods in which the association must  
41 | complete its reporting; repealing s. 720.303(2), F.S., as  
42 | amended, relating to board meetings, to remove conflicting  
43 | versions of that subsection; creating s. 720.3035, F.S.;  
44 | providing for architectural control covenants and parcel  
45 | owner improvements; authorizing the review and approval of  
46 | plans and specifications; providing limitations; providing  
47 | rights and privileges for parcel owners as set forth in  
48 | the declaration of covenants; amending s. 720.305, F.S.;  
49 | providing that, where a member is entitled to collect  
50 | attorney's fees against the association, the member may  
51 | also recover additional amounts as determined by the  
52 | court; amending s. 720.306, F.S.; providing that certain  
53 | mergers or consolidations of an association shall not be  
54 | considered a material or adverse alteration of the  
55 | proportionate voting interest appurtenant to a parcel;  
56 | amending s. 720.307, F.S.; requiring developers to deliver

57 financial records to the board in any transition of  
58 association control to members; requiring certain  
59 information to be included in the records and for the  
60 records to be prepared in a specified manner; amending s.  
61 720.308, F.S.; providing circumstances under which a  
62 guarantee of common expenses shall be effective; providing  
63 for approval of the guarantee by association members;  
64 providing for a guarantee period and extension thereof;  
65 requiring the stated dollar amount of the guarantee to be  
66 an exact dollar amount for each parcel identified in the  
67 declaration; providing payments required from the  
68 guarantor to be determined in a certain manner; providing  
69 a formula to determine the guarantor's total financial  
70 obligation to the association; providing that certain  
71 expenses incurred in the production of certain revenues  
72 shall not be included in the operating expenses; amending  
73 s. 720.311, F.S.; revising provisions relating to dispute  
74 resolution; providing that the filing of any petition for  
75 arbitration or the serving of an offer for presuit  
76 mediation shall toll the applicable statute of  
77 limitations; providing that certain disputes between an  
78 association and a parcel owner shall be subject to presuit  
79 mediation; revising provisions to conform; providing that  
80 temporary injunctive relief may be sought in certain  
81 disputes subject to presuit mediation; authorizing the  
82 court to refer the parties to mediation under certain  
83 circumstances; requiring the aggrieved party to serve on  
84 the responding party a written offer to participate in

85 presuit mediation; providing a form for such offer;  
 86 providing that service of the offer is effected by the  
 87 sending of such an offer in a certain manner; providing  
 88 that the prevailing party in any subsequent arbitration or  
 89 litigation proceedings is entitled to seek recovery of all  
 90 costs and attorney's fees incurred in the presuit  
 91 mediation process; requiring the mediator or arbitrator to  
 92 meet certain certification requirements; removing a  
 93 requirement relating to development of an education  
 94 program to increase awareness of the operation of  
 95 homeowners' associations and the use of alternative  
 96 dispute resolution techniques; providing effective dates.

97

98 Be It Enacted by the Legislature of the State of Florida:

99

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

102 712.11 Covenant revitalization.--A homeowners' association  
 103 not otherwise subject to chapter 720 may use the procedures set  
 104 forth in ss. 720.403-720.407 to revive covenants that have  
 105 lapsed under the terms of this chapter.

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

108 718.106 Condominium parcels; appurtenances; possession and  
 109 enjoyment.--

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

113 condominium property.

114 Section 3. Effective October 1, 2007, subsection (11) of  
 115 section 718.110, Florida Statutes, is amended to read:

116 718.110 Amendment of declaration; correction of error or  
 117 omission in declaration by circuit court.--

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

127 (a) As to any mortgage recorded on or after October 1,  
 128 2007, any provision in the declaration, articles of  
 129 incorporation, or bylaws that requires recorded after April 1,  
 130 ~~1992, may not require~~ the consent or joinder of some or all  
 131 mortgagees of units or any other portion of the condominium  
 132 property to or in amendments to the declaration, articles of  
 133 incorporation, or bylaws or for any other matter shall be  
 134 enforceable only as to the following matters: ~~unless the~~  
 135 ~~requirement is limited to amendments materially affecting the~~  
 136 ~~rights or interests of the mortgagees, or as otherwise required~~  
 137 ~~by the Federal National Mortgage Association or the Federal Home~~  
 138 ~~Loan Mortgage Corporation, and unless the requirement provides~~  
 139 ~~that such consent may not be unreasonably withheld. It shall be~~  
 140 ~~presumed that, except as to~~

141 1. Those matters described in subsections (4) and (8).<sup>7</sup>

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

147 (b) As to mortgages recorded before October 1, 2007, any  
 148 existing provisions in the declaration, articles of  
 149 incorporation, or bylaws requiring mortgagee consent shall be  
 150 enforceable.

151 (c) In securing consent or joinder, the association shall  
 152 be entitled to rely upon the public records to identify the  
 153 holders of outstanding mortgages. The association may use the  
 154 address provided in the original recorded mortgage document,  
 155 unless there is a different address for the holder of the  
 156 mortgage in a recorded assignment or modification of the  
 157 mortgage, which recorded assignment or modification must  
 158 reference the official records book and page on which the  
 159 original mortgage was recorded. Once the association has  
 160 identified the recorded mortgages of record, the association  
 161 shall, in writing, request of each unit owner whose unit is  
 162 encumbered by a mortgage of record any information the owner has  
 163 in his or her possession regarding the name and address of the  
 164 person to whom mortgage payments are currently being made.  
 165 Notice shall be sent to such person if the address provided in  
 166 the original recorded mortgage document is different from the  
 167 name and address of the mortgagee or assignee of the mortgage as  
 168 shown by the public record. The association shall be deemed to

HB 433

2007

169 have complied with this requirement by making the written  
170 request of the unit owners required under this paragraph. Any  
171 notices required to be sent to the mortgagees under this  
172 paragraph shall be sent to all available addresses provided to  
173 the association.

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

179 (e) For those amendments requiring mortgagee consent on or  
180 after October 1, 2007, ~~do not materially affect the rights or~~  
181 ~~interests of mortgagees.~~ in the event mortgagee consent is  
182 provided other than by properly recorded joinder, such consent  
183 shall be evidenced by affidavit of the association recorded in  
184 the public records of the county where the declaration is  
185 recorded. Any amendment adopted without the required consent of  
186 a mortgagee shall be voidable only by a mortgagee who was  
187 entitled to notice and an opportunity to consent. An action to  
188 void an amendment shall be subject to the statute of limitations  
189 beginning 5 years from the date of discovery as to the  
190 amendments described in subparagraphs (a)1. and 2. and 5 years  
191 from the date of recordation of the certificate of amendment for  
192 all other amendments. This provision shall apply to all  
193 mortgages, regardless of the date of recordation of the  
194 mortgage.

195 Section 4. Section 718.114, Florida Statutes, is amended  
196 to read:

HB 433

2007

197           718.114 Association powers.--An association has the power  
198 to enter into agreements, to acquire leaseholds, memberships,  
199 and other possessory or use interests in lands or facilities  
200 such as country clubs, golf courses, marinas, and other  
201 recreational facilities. It has this power whether or not the  
202 lands or facilities are contiguous to the lands of the  
203 condominium, if they are intended to provide enjoyment,  
204 recreation, or other use or benefit to the unit owners. All of  
205 these leaseholds, memberships, and other possessory or use  
206 interests existing or created at the time of recording the  
207 declaration must be stated and fully described in the  
208 declaration. Subsequent to the recording of the declaration,  
209 agreements acquiring these leaseholds, memberships, or other  
210 possessory or use interests not entered into within 12 months  
211 following the recording of the declaration shall be considered a  
212 material alteration or substantial addition to the real property  
213 that is association property, and the association may not  
214 acquire or enter into agreements acquiring these leaseholds,  
215 memberships, or other possessory or use interests except as  
216 authorized by the declaration as provided in s. 718.113. The  
217 declaration may provide that the rental, membership fees,  
218 operations, replacements, and other expenses are common expenses  
219 and may impose covenants and restrictions concerning their use  
220 and may contain other provisions not inconsistent with this  
221 chapter. A condominium association may conduct bingo games as  
222 provided in s. 849.0931.

223           Section 5. Subsections (1) and (2) of section 718.404,  
224 Florida Statutes, are amended to read:

Page 8 of 42

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

hb0433-00



HB 433

2007

225           718.404 Mixed-use condominiums.--When a condominium  
 226 consists of both residential and commercial units, the following  
 227 provisions shall apply:

228           (1) The condominium documents shall not provide that the  
 229 owner of any commercial unit shall have the authority to veto  
 230 amendments to the declaration, articles of incorporation,  
 231 bylaws, or rules or regulations of the association. This  
 232 subsection shall apply retroactively as a remedial measure.

233           (2) Subject to s. 718.301, where the number of residential  
 234 units in the condominium equals or exceeds 50 percent of the  
 235 total units operated by the association, owners of the  
 236 residential units shall be entitled to vote for a majority of  
 237 the seats on the board of administration. This subsection shall  
 238 apply retroactively as a remedial measure.

239           Section 6. Subsections (18) through (27) of section  
 240 719.103, Florida Statutes, are renumbered as subsections (19)  
 241 through (28), respectively, and a new subsection (18) is added  
 242 to that section to read:

243           719.103 Definitions.--As used in this chapter:

244           (18) "Equity facilities club" means a club comprised of  
 245 recreational facilities in which proprietary membership  
 246 interests are sold to individuals, which membership interests  
 247 entitle the individuals to use certain physical facilities owned  
 248 by the equity club. Such physical facilities do not include a  
 249 residential unit or accommodation. For purposes of this  
 250 definition, the term "accommodation" shall include, but is not  
 251 limited to, any apartment, residential cooperative unit,  
 252 residential condominium unit, cabin, lodge, hotel or motel room,

HB 433

2007

253 or any other accommodation designed for overnight occupancy for  
254 one or more individuals.

255 Section 7. Section 719.507, Florida Statutes, is amended  
256 to read:

257 719.507 Zoning and building laws, ordinances, and  
258 regulations.--All laws, ordinances, and regulations concerning  
259 buildings or zoning shall be construed and applied with  
260 reference to the nature and use of such property, without regard  
261 to the form of ownership. No law, ordinance, or regulation shall  
262 establish any requirement concerning the use, location,  
263 placement, or construction of buildings or other improvements  
264 which are, or may thereafter be, subjected to the cooperative or  
265 equity facilities club form of ownership, unless such  
266 requirement shall be equally applicable to all buildings and  
267 improvements of the same kind not then, or thereafter to be,  
268 subjected to the cooperative or equity facilities club form of  
269 ownership. This section does not apply if the owner in fee of  
270 any land enters into and records a covenant that existing  
271 improvements or improvements to be constructed shall not be  
272 converted to the cooperative form of residential ownership prior  
273 to 5 years after the later of the date of the covenant or  
274 completion date of the improvements. Such covenant shall be  
275 entered into with the governing body of the municipality in  
276 which the land is located or, if the land is not located in a  
277 municipality, with the governing body of the county in which the  
278 land is located.

279 Section 8. Subsections (4) and (5) of section 720.302,  
280 Florida Statutes, are amended to read:

281 720.302 Purposes, scope, and application.--

282 (4) This chapter does not apply to any association that is  
 283 subject to regulation under chapter 718, chapter 719, or chapter  
 284 721~~7~~ or to any nonmandatory association formed under chapter  
 285 723, except to the extent that a provision of chapter 718,  
 286 chapter 719, or chapter 721 is expressly incorporated into this  
 287 chapter for the purpose of regulating homeowners' associations.

288 (5) Unless expressly stated to the contrary, corporations  
 289 ~~not for profit~~ that operate residential homeowners' associations  
 290 in this state shall be governed by and subject to chapter 607,  
 291 if the association was incorporated under that chapter, or to  
 292 chapter 617, if the association was incorporated under that  
 293 chapter, and this chapter. This subsection is intended to  
 294 clarify existing law.

295 Section 9. Paragraph (a) of subsection (2), subsection  
 296 (6), and subsection (7) of section 720.303, Florida Statutes, as  
 297 amended by section 18 of chapter 2004-345 and section 135 of  
 298 chapter 2005-2, Laws of Florida, are amended, and paragraph (d)  
 299 is added to subsection (5) of that section, to read:

300 720.303 Association powers and duties; meetings of board;  
 301 official records; budgets; financial reporting; association  
 302 funds; recalls.--

303 (2) BOARD MEETINGS.--

304 (a) A meeting of the board of directors of an association  
 305 occurs whenever a quorum of the board gathers to conduct  
 306 association business. All meetings of the board must be open to  
 307 all members except for meetings between the board and its  
 308 attorney with respect to proposed or pending litigation where

HB 433

2007

309 the contents of the discussion would otherwise be governed by  
310 the attorney-client privilege. The provisions of this subsection  
311 shall also apply to the meetings of any committee or other  
312 similar body when a final decision will be made regarding the  
313 expenditure of association funds and to meetings of any body  
314 vested with the power to approve or disapprove architectural  
315 decisions with respect to a specific parcel of residential  
316 property owned by a member of the community.

317 (5) INSPECTION AND COPYING OF RECORDS.--The official  
318 records shall be maintained within the state and must be open to  
319 inspection and available for photocopying by members or their  
320 authorized agents at reasonable times and places within 10  
321 business days after receipt of a written request for access.  
322 This subsection may be complied with by having a copy of the  
323 official records available for inspection or copying in the  
324 community. If the association has a photocopy machine available  
325 where the records are maintained, it must provide parcel owners  
326 with copies on request during the inspection if the entire  
327 request is limited to no more than 25 pages.

328 (d) The association or its authorized agent is not  
329 required to provide a prospective purchaser or lienholder with  
330 information about the residential subdivision or the association  
331 other than information or documents required by this chapter to  
332 be made available or disclosed. The association or its  
333 authorized agent may charge a reasonable fee to the prospective  
334 purchaser or lienholder or the current parcel owner or member  
335 for providing good faith responses to requests for information  
336 by or on behalf of a prospective purchaser or lienholder, other

337 than that required by law, if the fee does not exceed \$150 plus  
 338 the reasonable cost of photocopying and any attorney's fees  
 339 incurred by the association in connection with the response.

340 (6) BUDGETS.--

341 (a) The association shall prepare an annual budget that  
 342 sets out the annual operating expenses. The budget must reflect  
 343 the estimated revenues and expenses for that year and the  
 344 estimated surplus or deficit as of the end of the current year.  
 345 The budget must set out separately all fees or charges paid for  
 346 by the association for recreational amenities, whether owned by  
 347 the association, the developer, or another person. The  
 348 association shall provide each member with a copy of the annual  
 349 budget or a written notice that a copy of the budget is  
 350 available upon request at no charge to the member. The copy must  
 351 be provided to the member within the time limits set forth in  
 352 subsection (5).

353 (b) In addition to annual operating expenses, the budget  
 354 may include reserve accounts for capital expenditures and  
 355 deferred maintenance for which the association is responsible to  
 356 the extent that the governing documents do not limit increases  
 357 in assessments, including reserves. If the budget of the  
 358 association includes reserve accounts, such reserves shall be  
 359 determined, maintained, and waived in the manner provided in  
 360 this subsection. Once an association provides for reserve  
 361 accounts in the budget, the association shall thereafter  
 362 determine, maintain, and waive reserves in compliance with the  
 363 provisions of this subsection.

364 (c) If the budget of the association does not provide for

HB 433

2007

365 reserve accounts governed by this subsection and the association  
366 is responsible for the repair and maintenance of capital  
367 improvements that may result in a special assessment if reserves  
368 are not provided, each financial report for the preceding fiscal  
369 year required by subsection (7) shall contain the following  
370 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION  
371 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES  
372 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.  
373 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE  
374 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE  
375 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING  
376 INTERESTS OF THE ASSOCIATION.

377 (d) An association shall be deemed to have provided for  
378 reserve accounts when reserve accounts have been initially  
379 established by the developer or when the membership of the  
380 association affirmatively elects to provide for reserves. If  
381 reserve accounts are not initially provided for by the  
382 developer, the membership of the association may elect to do so  
383 upon the affirmative approval of not less than a majority of the  
384 total voting interests of the association. Such approval may be  
385 attained by vote of the members at a duly called meeting of the  
386 membership or upon a written consent executed by not less than a  
387 majority of the total voting interests in the community. The  
388 approval action of the membership shall state that reserve  
389 accounts shall be provided for in the budget and designate the  
390 components for which the reserve accounts are to be established.  
391 Upon approval by the membership, the board of directors shall  
392 provide for the required reserve accounts for inclusion in the

HB 433

2007

393 budget in the next fiscal year following the approval and in  
394 each year thereafter. Once established as provided in this  
395 subsection, the reserve accounts shall be funded or maintained  
396 or shall have their funding waived in the manner provided in  
397 paragraph (f).

398 (e) The amount to be reserved in any account established  
399 shall be computed by means of a formula that is based upon  
400 estimated remaining useful life and estimated replacement cost  
401 or deferred maintenance expense of each reserve item. The  
402 association may adjust replacement reserve assessments annually  
403 to take into account any changes in estimates of cost or useful  
404 life of a reserve item.

405 (f) Once a reserve account or reserve accounts are  
406 established, the membership of the association, upon a majority  
407 vote at a meeting at which a quorum is present, may provide for  
408 no reserves or less reserves than required by this section. If a  
409 meeting of the unit owners has been called to determine whether  
410 to waive or reduce the funding of reserves and no such result is  
411 achieved or a quorum is not present, the reserves as included in  
412 the budget shall go into effect. After the turnover, the  
413 developer may vote its voting interest to waive or reduce the  
414 funding of reserves. Any vote taken pursuant to this subsection  
415 to waive or reduce reserves shall be applicable only to one  
416 budget year.

417 (g) Funding formulas for reserves authorized by this  
418 section shall be based on either a separate analysis of each of  
419 the required assets or a pooled analysis of two or more of the  
420 required assets.

421 1. If the association maintains separate reserve accounts  
422 for each of the required assets, the amount of the contribution  
423 to each reserve account shall be the sum of the following two  
424 calculations:

425 a. The total amount necessary, if any, to bring a negative  
426 component balance to zero.

427 b. The total estimated deferred maintenance expense or  
428 estimated replacement cost of the reserve component less the  
429 estimated balance of the reserve component as of the beginning  
430 of the period for which the budget will be in effect. The  
431 remainder, if greater than zero, shall be divided by the  
432 estimated remaining useful life of the component.

433  
434 The formula may be adjusted each year for changes in estimates  
435 and deferred maintenance performed during the year and may  
436 include factors such as inflation and earnings on invested  
437 funds.

438 2. If the association maintains a pooled account of two or  
439 more of the required reserve assets, the amount of the  
440 contribution to the pooled reserve account as disclosed on the  
441 proposed budget shall not be less than that required to ensure  
442 that the balance on hand at the beginning of the period for  
443 which the budget will go into effect plus the projected annual  
444 cash inflows over the remaining estimated useful life of all of  
445 the assets that make up the reserve pool are equal to or greater  
446 than the projected annual cash outflows over the remaining  
447 estimated useful lives of all of the assets that make up the  
448 reserve pool, based on the current reserve analysis. The



HB 433

2007

449 projected annual cash inflows may include estimated earnings  
450 from investment of principal. The reserve funding formula shall  
451 not include any type of balloon payments.

452 (h) Reserve funds and any interest accruing thereon shall  
453 remain in the reserve account or accounts and shall be used only  
454 for authorized reserve expenditures unless their use for other  
455 purposes is approved in advance by a majority vote at a meeting  
456 at which a quorum is present. Prior to turnover of control of an  
457 association by a developer to parcel owners, the developer-  
458 controlled association shall not vote to use reserves for  
459 purposes other than those for which they were intended without  
460 the approval of a majority of all nondeveloper voting interests  
461 voting in person or by limited proxy at a duly called meeting of  
462 the association.

463 (7) FINANCIAL REPORTING.--Within 90 days after the end of  
464 the fiscal year, or annually on the date provided in the bylaws,  
465 the association shall prepare and complete, or contract with a  
466 third party for the preparation and completion of, a financial  
467 report for the preceding fiscal year. Within 21 days after the  
468 final financial report is completed by the association or  
469 received from the third party, but not later than 120 days after  
470 the end of the fiscal year or other date as provided in the  
471 bylaws, the association shall ~~prepare an annual financial report~~  
472 ~~within 60 days after the close of the fiscal year. The~~  
473 ~~association shall,~~ within the time limits set forth in  
474 subsection (5), provide each member with a copy of the annual  
475 financial report or a written notice that a copy of the  
476 financial report is available upon request at no charge to the

HB 433

2007

477 member. Financial reports shall be prepared as follows:

478 (a) An association that meets the criteria of this  
479 paragraph shall prepare or cause to be prepared a complete set  
480 of financial statements in accordance with generally accepted  
481 accounting principles as adopted by the Board of Accountancy.

482 The financial statements shall be based upon the association's  
483 total annual revenues, as follows:

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

487 2. An association with total annual revenues of at least  
488 \$200,000, but less than \$400,000, shall prepare reviewed  
489 financial statements.

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

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

495 2. An association in a community of fewer than 50 parcels,  
496 regardless of the association's annual revenues, may prepare a  
497 report of cash receipts and expenditures in lieu of financial  
498 statements required by paragraph (a) unless the governing  
499 documents provide otherwise.

500 3. A report of cash receipts and disbursement must  
501 disclose the amount of receipts by accounts and receipt  
502 classifications and the amount of expenses by accounts and  
503 expense classifications, including, but not limited to, the  
504 following, as applicable: costs for security, professional, and

HB 433

2007

505 management fees and expenses; taxes; costs for recreation  
506 facilities; expenses for refuse collection and utility services;  
507 expenses for lawn care; costs for building maintenance and  
508 repair; insurance costs; administration and salary expenses; and  
509 reserves if maintained by the association.

510 (c) If 20 percent of the parcel owners petition the board  
511 for a level of financial reporting higher than that required by  
512 this section, the association shall duly notice and hold a  
513 meeting of members within 30 days of receipt of the petition for  
514 the purpose of voting on raising the level of reporting for that  
515 fiscal year. Upon approval of a majority of the total voting  
516 interests of the parcel owners, the association shall prepare or  
517 cause to be prepared, shall amend the budget or adopt a special  
518 assessment to pay for the financial report regardless of any  
519 provision to the contrary in the governing documents, and shall  
520 provide within 90 days of the meeting or the end of the fiscal  
521 year, whichever occurs later:

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

525 2. Reviewed or audited financial statements, if the  
526 association is otherwise required to prepare compiled financial  
527 statements; or

528 3. Audited financial statements if the association is  
529 otherwise required to prepare reviewed financial statements.

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

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

535 2. A report of cash receipts and expenditures or a  
536 compiled financial statement in lieu of a reviewed or audited  
537 financial statement; or

538 3. A report of cash receipts and expenditures, a compiled  
539 financial statement, or a reviewed financial statement in lieu  
540 of an audited financial statement.

541 Section 10. Subsection (2) of section 720.303, Florida  
542 Statutes, as amended by section 2 of chapter 2004-345 and  
543 section 15 of chapter 2004-353, Laws of Florida, is repealed.

544 Section 11. Section 720.3035, Florida Statutes, is created  
545 to read:

546 720.3035 Architectural control covenants; parcel owner  
547 improvements; rights and privileges.--

548 (1) The authority of an association or any architectural,  
549 construction improvement, or other such similar committee of an  
550 association to review and approve plans and specifications for  
551 the location, size, type, or appearance of any structure or  
552 other improvement on a parcel, or to enforce standards for the  
553 external appearance of any structure or improvement located on a  
554 parcel, shall only be permitted to the extent that the authority  
555 is specifically stated or reasonably inferred as to such  
556 location, size, type, or appearance in the declaration of  
557 covenants or other published guidelines and standards authorized  
558 by the declaration of covenants.

559 (2) If the declaration of covenants or other published  
560 guidelines and standards authorized by the declaration of

HB 433

2007

561 covenants provides options for the use of material, the size of  
562 the structure or improvement, the design of the structure or  
563 improvement, or the location of the structure or improvement on  
564 the parcel, neither the association nor any architectural,  
565 construction improvement, or other such similar committee of the  
566 association shall restrict the right of a parcel owner to select  
567 from the options provided in the declaration of covenants or  
568 other published guidelines and standards authorized by the  
569 declaration of covenants.

570 (3) Unless otherwise specifically stated in the  
571 declaration of covenants or other published guidelines and  
572 standards authorized by the declaration of covenants, each  
573 parcel shall be deemed to have only one front for purposes of  
574 determining the required front setback even if the parcel is  
575 bounded by a roadway or other easement on more than one side.  
576 When the declaration of covenants or other published guidelines  
577 and standards authorized by the declaration of covenants do not  
578 provide for specific setback limitations, the applicable county  
579 or municipal setback limitations shall apply, and neither the  
580 association nor any architectural, construction improvement, or  
581 other such similar committee of the association shall enforce or  
582 attempt to enforce any setback limitation that is inconsistent  
583 with the applicable county or municipal standard or standards.

584 (4) Each parcel owner shall be entitled to the rights and  
585 privileges set forth in the declaration of covenants or other  
586 published guidelines and standards authorized by the declaration  
587 of covenants concerning the architectural use of the parcel, and  
588 the construction of permitted structures and improvements on the

HB 433

2007

589 parcel and such rights and privileges shall not be unreasonably  
590 infringed upon or impaired by the association or any  
591 architectural, construction improvement, or other such similar  
592 committee of the association. If the association or any  
593 architectural, construction improvement, or other such similar  
594 committee of the association should unreasonably, knowingly, and  
595 willfully infringe upon or impair the rights and privileges set  
596 forth in the declaration of covenants or other published  
597 guidelines and standards authorized by the declaration of  
598 covenants, the adversely affected parcel owner shall be entitled  
599 to recover damages caused by such infringement or impairment,  
600 including any costs and reasonable attorney's fees incurred in  
601 preserving or restoring the rights and privileges of the parcel  
602 owner set forth in the declaration of covenants or other  
603 published guidelines and standards authorized by the declaration  
604 of covenants.

605 (5) Neither the association nor any architectural,  
606 construction improvement, or other such similar committee of the  
607 association shall enforce any policy or restriction that is  
608 inconsistent with the rights and privileges of a parcel owner  
609 set forth in the declaration of covenants or other published  
610 guidelines and standards authorized by the declaration of  
611 covenants, whether uniformly applied or not. Neither the  
612 association nor any architectural, construction improvement, or  
613 other such similar committee of the association may rely upon a  
614 policy or restriction that is inconsistent with the declaration  
615 of covenants or other published guidelines and standards  
616 authorized by the declaration of covenants, whether uniformly

617 applied or not, in defense of any action taken in the name of or  
 618 on behalf of the association against a parcel owner.

619 Section 12. Subsection (1) of section 720.305, Florida  
 620 Statutes, is amended to read:

621 720.305 Obligations of members; remedies at law or in  
 622 equity; levy of fines and suspension of use rights; failure to  
 623 fill sufficient number of vacancies on board of directors to  
 624 constitute a quorum; appointment of receiver upon petition of  
 625 any member.--

626 (1) Each member and the member's tenants, guests, and  
 627 invitees, and each association, are governed by, and must comply  
 628 with, this chapter, the governing documents of the community,  
 629 and the rules of the association. Actions at law or in equity,  
 630 or both, to redress alleged failure or refusal to comply with  
 631 these provisions may be brought by the association or by any  
 632 member against:

633 (a) The association;

634 (b) A member;

635 (c) Any director or officer of an association who  
 636 willfully and knowingly fails to comply with these provisions;  
 637 and

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

640  
 641 The prevailing party in any such litigation is entitled to  
 642 recover reasonable attorney's fees and costs. A member  
 643 prevailing in an action between the association and the member  
 644 under this section, in addition to recovering his or her

645 reasonable attorney's fees, may recover additional amounts as  
 646 determined by the court to be necessary to reimburse the member  
 647 for his or her share of assessments levied by the association to  
 648 fund its expenses of the litigation. This relief does not  
 649 exclude other remedies provided by law. This section does not  
 650 deprive any person of any other available right or remedy.

651 Section 13. Paragraph (c) of subsection (1) of section  
 652 720.306, Florida Statutes, is amended to read:

653 720.306 Meetings of members; voting and election  
 654 procedures; amendments.--

655 (1) QUORUM; AMENDMENTS.--

656 (c) Unless otherwise provided in the governing documents  
 657 as originally recorded or permitted by this chapter or chapter  
 658 617, an amendment may not materially and adversely alter the  
 659 proportionate voting interest appurtenant to a parcel or  
 660 increase the proportion or percentage by which a parcel shares  
 661 in the common expenses of the association unless the record  
 662 parcel owner and all record owners of liens on the parcels join  
 663 in the execution of the amendment. For purposes of this section,  
 664 a change in quorum requirements is not an alteration of voting  
 665 interests. The merger or consolidation of one or more  
 666 associations under a plan of merger or consolidation under  
 667 chapter 607 or chapter 617 shall not be considered a material or  
 668 adverse alteration of the proportionate voting interest  
 669 appurtenant to a parcel.

670 Section 14. Paragraph (t) is added to subsection (3) of  
 671 section 720.307, Florida Statutes, to read:

672 720.307 Transition of association control in a



HB 433

2007

673 community.--With respect to homeowners' associations:

674 (3) At the time the members are entitled to elect at least  
675 a majority of the board of directors of the homeowners'  
676 association, the developer shall, at the developer's expense,  
677 within no more than 90 days deliver the following documents to  
678 the board:

679 (t) The financial records, including financial statements  
680 of the association, and source documents from the incorporation  
681 of the association through the date of turnover. The records  
682 shall be audited by an independent certified public accountant  
683 for the period from the incorporation of the association or from  
684 the period covered by the last audit, if an audit has been  
685 performed for each fiscal year since incorporation. All  
686 financial statements shall be prepared in accordance with  
687 generally accepted accounting principles and shall be audited in  
688 accordance with generally accepted auditing standards, as  
689 prescribed by the Board of Accountancy, pursuant to chapter 473.  
690 The certified public accountant performing the audit shall  
691 examine to the extent necessary supporting documents and  
692 records, including the cash disbursements and related paid  
693 invoices to determine if expenditures were for association  
694 purposes and the billings, cash receipts, and related records of  
695 the association to determine that the developer was charged and  
696 paid the proper amounts of assessments. This paragraph applies  
697 to associations with a date of incorporation after December 31,  
698 2007.

699 Section 15. Section 720.308, Florida Statutes, is amended  
700 to read:

HB 433

2007

701           720.308 Assessments and charges.--  
702           (1) ASSESSMENTS.--For any community created after October  
703 1, 1995, the governing documents must describe the manner in  
704 which expenses are shared and specify the member's proportional  
705 share thereof. Assessments levied pursuant to the annual budget  
706 or special assessment must be in the member's proportional share  
707 of expenses as described in the governing document, which share  
708 may be different among classes of parcels based upon the state  
709 of development thereof, levels of services received by the  
710 applicable members, or other relevant factors. While the  
711 developer is in control of the homeowners' association, it may  
712 be excused from payment of its share of the operating expenses  
713 and assessments related to its parcels for any period of time  
714 for which the developer has, in the declaration, obligated  
715 itself to pay any operating expenses incurred that exceed the  
716 assessments receivable from other members and other income of  
717 the association. This section does not apply to an association,  
718 no matter when created, if the association is created in a  
719 community that is included in an effective development-of-  
720 regional-impact development order as of the effective date of  
721 this act, together with any approved modifications thereto.

722           (2) GUARANTEES OF COMMON EXPENSES.--  
723           (a) Establishment of a guarantee.--If a guarantee of the  
724 assessments of parcel owners is not included in the purchase  
725 contracts or declaration, any agreement establishing a guarantee  
726 shall only be effective upon the approval of a majority of the  
727 voting interests of the members other than the developer.  
728 Approval shall be expressed at a meeting of the members voting

HB 433

2007

729 in person or by limited proxy or by agreement in writing without  
730 a meeting if provided in the bylaws. Such guarantee shall meet  
731 the requirements of this section.

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

735 1. The ending date or event shall be the same for all of  
736 the members of an association, including members in different  
737 phases of the development.

738 2. The guarantee may provide for different intervals of  
739 time during a guarantee period with different dollar amounts for  
740 each such interval.

741 3. The guarantee may provide that after the initial stated  
742 period, the developer has an option to extend the guarantee for  
743 one or more additional stated periods. The extension of a  
744 guarantee is limited to extending the ending date or event;  
745 therefore, the developer does not have the option of changing  
746 the level of assessments guaranteed.

747 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar  
748 amount of the guarantee shall be an exact dollar amount for each  
749 parcel identified in the declaration. Regardless of the stated  
750 dollar amount of the guarantee, assessments charged to a member  
751 shall not exceed the maximum obligation of the member based on  
752 the total amount of the adopted budget and the member's  
753 proportionate ownership share of the common elements.

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

757 (a) If at any time during the guarantee period the funds  
758 collected from member assessments at the guaranteed level and  
759 other revenues collected by the association are not sufficient  
760 to provide payment, on a timely basis, of all assessments,  
761 including the full funding of the reserves unless properly  
762 waived, the guarantor shall advance sufficient cash to the  
763 association at the time such payments are due.

764 (b) Expenses incurred in the production of nonassessment  
765 revenues, not in excess of the nonassessment revenues, shall not  
766 be included in the assessments. If the expenses attributable to  
767 nonassessment revenues exceed nonassessment revenues, only the  
768 excess expenses must be funded by the guarantor. Interest earned  
769 on the investment of association funds may be used to pay the  
770 income tax expense incurred as a result of the investment; such  
771 expense shall not be charged to the guarantor; and the net  
772 investment income shall be retained by the association. Each  
773 such nonassessment-revenue-generating activity shall be  
774 considered separately. Any portion of the parcel assessment that  
775 is budgeted for designated capital contributions of the  
776 association shall not be used to pay operating expenses.

777 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The  
778 guarantor's total financial obligation to the association at the  
779 end of the guarantee period shall be determined on the accrual  
780 basis using the following formula: the guarantor shall pay any  
781 deficits that exceed the guaranteed amount, less the total  
782 regular periodic assessments earned by the association from the  
783 members other than the guarantor during the guarantee period  
784 regardless of whether the actual level charged was less than the

785 maximum guaranteed amount.

786 (6) EXPENSES.--Expenses incurred in the production of  
 787 nonassessment revenues, not in excess of the nonassessment  
 788 revenues, shall not be included in the operating expenses. If  
 789 the expenses attributable to nonassessment revenues exceed  
 790 nonassessment revenues, only the excess expenses must be funded  
 791 by the guarantor. Interest earned on the investment of  
 792 association funds may be used to pay the income tax expense  
 793 incurred as a result of the investment; such expense shall not  
 794 be charged to the guarantor; and the net investment income shall  
 795 be retained by the association. Each such nonassessment-revenue-  
 796 generating activity shall be considered separately. Any portion  
 797 of the parcel assessment that is budgeted for designated capital  
 798 contributions of the association shall not be used to pay  
 799 operating expenses.

800 Section 16. Section 720.311, Florida Statutes, is amended  
 801 to read:

802 720.311 Dispute resolution.--

803 (1) The Legislature finds that alternative dispute  
 804 resolution has made progress in reducing court dockets and  
 805 trials and in offering a more efficient, cost-effective option  
 806 to litigation. The filing of any petition for ~~mediation or~~  
 807 arbitration or the serving of an offer for presuit mediation as  
 808 provided for in this section shall toll the applicable statute  
 809 of limitations. Any recall dispute filed with the department  
 810 pursuant to s. 720.303(10) shall be conducted by the department  
 811 in accordance with the provisions of ss. 718.112(2)(j) and  
 812 718.1255 and the rules adopted by the division. In addition, the

HB 433

2007

813 department shall conduct mandatory binding arbitration of  
814 election disputes between a member and an association pursuant  
815 to s. 718.1255 and rules adopted by the division. Neither  
816 election disputes nor recall disputes are eligible for presuit  
817 mediation; these disputes shall be arbitrated by the department.  
818 At the conclusion of the proceeding, the department shall charge  
819 the parties a fee in an amount adequate to cover all costs and  
820 expenses incurred by the department in conducting the  
821 proceeding. Initially, the petitioner shall remit a filing fee  
822 of at least \$200 to the department. The fees paid to the  
823 department shall become a recoverable cost in the arbitration  
824 proceeding, and the prevailing party in an arbitration  
825 proceeding shall recover its reasonable costs and attorney's  
826 fees in an amount found reasonable by the arbitrator. The  
827 department shall adopt rules to effectuate the purposes of this  
828 section.

829 (2) (a) Disputes between an association and a parcel owner  
830 regarding use of or changes to the parcel or the common areas  
831 and other covenant enforcement disputes, disputes regarding  
832 amendments to the association documents, disputes regarding  
833 meetings of the board and committees appointed by the board,  
834 membership meetings not including election meetings, and access  
835 to the official records of the association shall be the subject  
836 of an offer filed with the department for presuit mandatory  
837 mediation served by an aggrieved party before the dispute is  
838 filed in court. Presuit mediation proceedings must be conducted  
839 in accordance with the applicable Florida Rules of Civil  
840 Procedure, and these proceedings are privileged and confidential

HB 433

2007

841 to the same extent as court-ordered mediation. Disputes subject  
842 to presuit mediation under this section shall not include the  
843 collection of any assessment, fine, or other financial  
844 obligation, including attorney's fees and costs, claimed to be  
845 due or any action to enforce a prior mediation settlement  
846 agreement between the parties. Also, in any dispute subject to  
847 presuit mediation under this section where emergency relief is  
848 required, a motion for temporary injunctive relief may be filed  
849 with the court without first complying with the presuit  
850 mediation requirements of this section. After any issues  
851 regarding emergency or temporary relief are resolved, the court  
852 may either refer the parties to a mediation program administered  
853 by the courts or require mediation under this section. An  
854 arbitrator or judge may not consider any information or evidence  
855 arising from the presuit mediation proceeding except in a  
856 proceeding to impose sanctions for failure to attend a presuit  
857 mediation session or with the parties' agreement in a proceeding  
858 seeking to enforce the agreement. Persons who are not parties to  
859 the dispute may not attend the presuit mediation conference  
860 without the consent of all parties, except for counsel for the  
861 parties and a corporate representative designated by the  
862 association. When mediation is attended by a quorum of the  
863 board, such mediation is not a board meeting for purposes of  
864 notice and participation set forth in s. 720.303. An aggrieved  
865 party shall serve on the responding party a written offer to  
866 participate in presuit mediation in substantially the following  
867 form:

868

STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

The alleged aggrieved party, \_\_\_\_\_, hereby offers to \_\_\_\_\_, as the responding party, to enter into presuit mediation in connection with the following dispute, which by statute is of a type that is subject to presuit mediation:

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

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

The process of mediation involves a supervised negotiation process in which a trained, neutral third-party mediator meets with both parties and assists



897 them in exploring possible opportunities for resolving  
898 part or all of the dispute. The mediation process is a  
899 voluntary one. By agreeing to participate in presuit  
900 mediation, you are not bound in any way to change your  
901 position or to enter into any type of agreement.  
902 Furthermore, the mediator has no authority to make any  
903 decisions in this matter or to determine who is right  
904 or wrong and merely acts as a facilitator to ensure  
905 that each party understands the position of the other  
906 party and that all reasonable settlement options are  
907 fully explored. All mediation communications are  
908 confidential under the Mediation Confidentiality and  
909 Privilege Act pursuant to sections 44.401-44.406,  
910 Florida Statutes, and a mediation participant may not  
911 disclose a mediation communication to a person other  
912 than a mediation participant or a participant's  
913 counsel.

914  
915 If an agreement is reached, it shall be reduced to  
916 writing and becomes a binding and enforceable  
917 commitment of the parties. A resolution of one or more  
918 disputes in this fashion avoids the need to litigate  
919 these issues in court. The failure to reach an  
920 agreement, or the failure of a party to participate in  
921 the process, results in the mediator's declaring an  
922 impasse in the mediation, after which the aggrieved  
923 party may proceed to court on all outstanding,  
924 unsettled disputes.

925  
926 The aggrieved party has selected and hereby lists  
927 three certified mediators who we believe to be neutral  
928 and qualified to mediate the dispute. You have the  
929 right to select any one of these mediators. The fact  
930 that one party may be familiar with one or more of the  
931 listed mediators does not mean that the mediator  
932 cannot act as a neutral and impartial facilitator. Any  
933 mediator who cannot act in this capacity ethically  
934 must decline to accept engagement. The mediators that  
935 we suggest, and their current hourly rates, are as  
936 follows:

937  
938 (List the names, addresses, telephone numbers, and  
939 hourly rates of the mediators. Other pertinent  
940 information about the background of the mediators may  
941 be included as an attachment.)

942  
943 You may contact the offices of these mediators to  
944 confirm that the listed mediators will be neutral and  
945 will not show any favoritism toward either party. The  
946 names of certified mediators may be found through the  
947 office of the clerk of the circuit court for this  
948 circuit.

949  
950 If you agree to participate in the presuit mediation  
951 process, the statute requires that each party is to  
952 pay one-half of the costs and fees involved in the

953 presuit mediation process unless otherwise agreed by  
954 all parties. An average mediation may require 3 to 4  
955 hours of the mediator's time, including some  
956 preparation time, and each party would need to pay  
957 one-half of the mediator's fees as well as his or her  
958 own attorney's fees if he or she chooses to employ an  
959 attorney in connection with the mediation. However,  
960 use of an attorney is not required and is at the  
961 option of each party. The mediator may require the  
962 advance payment of some or all of the anticipated  
963 fees. The aggrieved party hereby agrees to pay or  
964 prepay one-half of the mediator's estimated fees and  
965 to forward this amount or such other reasonable  
966 advance deposits as the mediator may require for this  
967 purpose. Any funds deposited will be returned to you  
968 if these are in excess of your share of the fees  
969 incurred.

970  
971 If you agree to participate in presuit mediation in  
972 order to attempt to resolve the dispute and thereby  
973 avoid further legal action, please sign below and  
974 clearly indicate which mediator is acceptable to you.  
975 We will then ask the mediator to schedule a mutually  
976 convenient time and place for the mediation conference  
977 to be held. The mediation conference must be held  
978 within 90 days after the date of this letter unless  
979 extended by mutual written agreement. In the event  
980 that you fail to respond within 20 days after the date

981 of this letter, or if you fail to agree to at least  
 982 one of the mediators that we have suggested and to pay  
 983 or prepay to the mediator one-half of the costs  
 984 involved, the aggrieved party will be authorized to  
 985 proceed with the filing of a lawsuit against you  
 986 without further notice and may seek an award of  
 987 attorney's fees or costs incurred in attempting to  
 988 obtain mediation.

989  
 990 Should you wish, you may also elect to waive presuit  
 991 mediation so that this matter may proceed directly to  
 992 court.

993  
 994 Therefore, please give this matter your immediate  
 995 attention. By law, your response must be mailed by  
 996 certified mail, return receipt requested, with an  
 997 additional copy being sent by regular first-class mail  
 998 to the address shown on this offer.

999  
 1000 \_\_\_\_\_  
 1001 \_\_\_\_\_

1002  
 1003 RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS  
 1004 BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT  
 1005 CHOICE.

1006  
 1007 AGREEMENT TO MEDIATE  
 1008

1009 The undersigned hereby agrees to participate in  
 1010 presuit mediation and agrees to the following mediator  
 1011 or mediators as acceptable to mediate this dispute:

1012  
 1013 (List acceptable mediator or mediators.)

1014  
 1015 I/we further agree to pay or prepay one-half of the  
 1016 mediator's fees and to forward such advance deposits  
 1017 as the mediator may require for this purpose.

1018  
 1019 \_\_\_\_\_  
 1020 Signature of responding party #1

1021  
 1022 \_\_\_\_\_  
 1023 Signature of responding party #2 (if applicable) (if  
 1024 property is owned by more than one person, all owners  
 1025 must sign)

1026  
 1027 WAIVER OF MEDIATION

1028  
 1029 The undersigned hereby waives the right to participate  
 1030 in presuit mediation of the dispute listed above and  
 1031 agrees to allow the aggrieved party to proceed in  
 1032 court on such matters.

1033  
 1034 \_\_\_\_\_  
 1035 Signature of responding party #1

1036

1037 \_\_\_\_\_  
 1038 Signature of responding party #2 (if applicable) (if  
 1039 property is owned by more than one person, all owners  
 1040 must sign)  
 1041  
 1042 (b) Service of the statutory offer to participate in  
 1043 presuit mediation shall be effected by sending a letter in  
 1044 substantial conformity with the above form by certified mail,  
 1045 return receipt requested, with an additional copy being sent by  
 1046 regular first-class mail, to the address of the responding party  
 1047 as it last appears on the books and records of the association.  
 1048 The responding party shall have 20 days from the date of the  
 1049 mailing of the statutory offer to serve a response to the  
 1050 aggrieved party in writing. The response shall be served by  
 1051 certified mail, return receipt requested, with an additional  
 1052 copy being sent by regular first-class mail, to the address  
 1053 shown on the statutory offer. In the alternative, the responding  
 1054 party may waive mediation in writing. Notwithstanding the  
 1055 foregoing, once the parties have agreed on a mediator, the  
 1056 mediator may reschedule the mediation for a date and time  
 1057 mutually convenient to the parties. ~~The department shall conduct~~  
 1058 ~~the proceedings through the use of department mediators or refer~~  
 1059 ~~the disputes to private mediators who have been duly certified~~  
 1060 ~~by the department as provided in paragraph (c).~~ The parties  
 1061 shall share the costs of presuit mediation equally, including  
 1062 the fee charged by the mediator, if any, unless the parties  
 1063 agree otherwise, and the mediator may require advance payment of  
 1064 its reasonable fees and costs. The failure of any party to

1065 respond to a demand or response, to agree upon a mediator, to  
 1066 make payment of fees and costs within the time established by  
 1067 the mediator, or to appear for a scheduled mediation session  
 1068 shall operate as an impasse in the presuit mediation by such  
 1069 party, entitling the other party to proceed in court and to seek  
 1070 an award of the costs and fees associated with the mediation.  
 1071 Additionally, if any presuit mediation session cannot be  
 1072 scheduled and conducted within 90 days after the offer to  
 1073 participate in mediation was filed, an impasse shall be deemed  
 1074 to have occurred unless both parties agree to extend this  
 1075 deadline. ~~If a department mediator is used, the department may~~  
 1076 ~~charge such fee as is necessary to pay expenses of the~~  
 1077 ~~mediation, including, but not limited to, the salary and~~  
 1078 ~~benefits of the mediator and any travel expenses incurred. The~~  
 1079 ~~petitioner shall initially file with the department upon filing~~  
 1080 ~~the disputes, a filing fee of \$200, which shall be used to~~  
 1081 ~~defray the costs of the mediation. At the conclusion of the~~  
 1082 ~~mediation, the department shall charge to the parties, to be~~  
 1083 ~~shared equally unless otherwise agreed by the parties, such~~  
 1084 ~~further fees as are necessary to fully reimburse the department~~  
 1085 ~~for all expenses incurred in the mediation.~~

1086 (c) ~~(b)~~ If presuit mediation as described in paragraph (a)  
 1087 is not successful in resolving all issues between the parties,  
 1088 the parties may file the unresolved dispute in a court of  
 1089 competent jurisdiction or elect to enter into binding or  
 1090 nonbinding arbitration pursuant to the procedures set forth in  
 1091 s. 718.1255 and rules adopted by the division, with the  
 1092 arbitration proceeding to be conducted by a department

HB 433

2007

1093 arbitrator or by a private arbitrator certified by the  
 1094 department. If all parties do not agree to arbitration  
 1095 proceedings following an unsuccessful presuit mediation, any  
 1096 party may file the dispute in court. A final order resulting  
 1097 from nonbinding arbitration is final and enforceable in the  
 1098 courts if a complaint for trial de novo is not filed in a court  
 1099 of competent jurisdiction within 30 days after entry of the  
 1100 order. As to any issue or dispute that is not resolved at  
 1101 presuit mediation, and as to any issue that is settled at  
 1102 presuit mediation but is thereafter subject to an action seeking  
 1103 enforcement of the mediation settlement, the prevailing party in  
 1104 any subsequent arbitration or litigation proceeding shall be  
 1105 entitled to seek recovery of all costs and attorney's fees  
 1106 incurred in the presuit mediation process.

1107 ~~(d)(c) The department shall develop a certification and~~  
 1108 ~~training program for private mediators and private arbitrators~~  
 1109 ~~which shall emphasize experience and expertise in the area of~~  
 1110 ~~the operation of community associations. A mediator or~~  
 1111 ~~arbitrator shall be certified to conduct mediation or~~  
 1112 ~~arbitration under this section by the department only if he or~~  
 1113 ~~she has been certified as a circuit court civil mediator or~~  
 1114 ~~arbitrator, respectively, pursuant to the requirements~~  
 1115 ~~established attended at least 20 hours of training in mediation~~  
 1116 ~~or arbitration, as appropriate, and only if the applicant has~~  
 1117 ~~mediated or arbitrated at least 10 disputes involving community~~  
 1118 ~~associations within 5 years prior to the date of the~~  
 1119 ~~application, or has mediated or arbitrated 10 disputes in any~~  
 1120 ~~area within 5 years prior to the date of application and has~~



HB 433

2007

1121 ~~completed 20 hours of training in community association~~  
1122 ~~disputes. In order to be certified by the department, any~~  
1123 ~~mediator must also be certified by the Florida Supreme Court.~~  
1124 ~~The department may conduct the training and certification~~  
1125 ~~program within the department or may contract with an outside~~  
1126 ~~vendor to perform the training or certification. The expenses of~~  
1127 ~~operating the training and certification and training program~~  
1128 ~~shall be paid by the moneys and filing fees generated by the~~  
1129 ~~arbitration of recall and election disputes and by the mediation~~  
1130 ~~of those disputes referred to in this subsection and by the~~  
1131 ~~training fees.~~

1132       ~~(e)-(d)~~ The presuit mediation procedures provided by this  
1133 subsection may be used by a Florida corporation responsible for  
1134 the operation of a community in which the voting members are  
1135 parcel owners or their representatives, in which membership in  
1136 the corporation is not a mandatory condition of parcel  
1137 ownership, or which is not authorized to impose an assessment  
1138 that may become a lien on the parcel.

1139       ~~(3)~~ ~~The department shall develop an education program to~~  
1140 ~~assist homeowners, associations, board members, and managers in~~  
1141 ~~understanding and increasing awareness of the operation of~~  
1142 ~~homeowners' associations pursuant to this chapter and in~~  
1143 ~~understanding the use of alternative dispute resolution~~  
1144 ~~techniques in resolving disputes between parcel owners and~~  
1145 ~~associations or between owners. Such education program may~~  
1146 ~~include the development of pamphlets and other written~~  
1147 ~~instructional guides, the holding of classes and meetings by~~  
1148 ~~department employees or outside vendors, as the department~~

HB 433

2007

1149 ~~determines, and the creation and maintenance of a website~~  
1150 ~~containing instructional materials. The expenses of operating~~  
1151 ~~the education program shall be initially paid by the moneys and~~  
1152 ~~filing fees generated by the arbitration of recall and election~~  
1153 ~~disputes and by the mediation of those disputes referred to in~~  
1154 ~~this subsection.~~

1155 Section 17. Except as otherwise expressly provided in this  
1156 act, this act shall take effect July 1, 2007.