

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

29 | to prospective purchasers or lienholders; authorizing the
30 | association to charge a reasonable fee for providing
31 | certain information; requiring the budget to provide for
32 | annual operating expenses; authorizing the budget to
33 | include reserve accounts for capital expenditures and
34 | deferred maintenance; providing a formula for calculating
35 | the 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; requiring financial statements to
42 | be prepared in accordance with generally accepted
43 | accounting principles as adopted by the Board of
44 | Accountancy; repealing s. 720.303(2), F.S., as amended,
45 | relating to board meetings, to remove conflicting versions
46 | of that subsection; creating s. 720.3035, F.S.; providing
47 | for architectural control covenants and parcel owner
48 | improvements; authorizing the review and approval of plans
49 | and specifications; providing limitations; providing
50 | rights and privileges for parcel owners as set forth in
51 | the declaration of covenants; amending s. 720.305, F.S.;
52 | providing that, where a member is entitled to collect
53 | attorney's fees against the association, the member may
54 | also recover additional amounts as determined by the
55 | court; amending s. 720.306, F.S.; providing that certain
56 | mergers or consolidations of an association shall not be

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

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

101 |
102 | Be It Enacted by the Legislature of the State of Florida:

103 |
104 | Section 1. Section 712.11, Florida Statutes, is created to
105 | read:

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

110 | Section 2. Subsection (5) is added to section 718.106,
111 | Florida Statutes, to read:

112 | 718.106 Condominium parcels; appurtenances; possession and

113 enjoyment.--

114 (5) A local government may not adopt an ordinance or
 115 regulation that prohibits condominium unit owners or their
 116 guests, licensees, or invitees from pedestrian access to a
 117 public beach contiguous to a condominium property, except where
 118 necessary to protect public health, safety, or natural
 119 resources. Nothing in this subsection shall prohibit a
 120 governmental entity from enacting regulations governing
 121 activities taking place on the beach.

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

124 718.110 Amendment of declaration; correction of error or
 125 omission in declaration by circuit court.--

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

135 (a) As to any mortgage recorded on or after October 1,
 136 2007, any provision in the declaration, articles of
 137 incorporation, or bylaws that requires ~~recorded after April 1,~~
 138 ~~1992, may not require~~ the consent or joinder of some or all
 139 mortgagees of units or any other portion of the condominium
 140 property to or in amendments to the declaration, articles of

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

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

150 2. Amendments to the declaration, articles of
 151 incorporation, or bylaws that adversely affect the priority of
 152 the mortgagee's lien or the mortgagee's rights to foreclose its
 153 lien or that otherwise materially affect the rights and
 154 interests of the mortgagees.

155 (b) As to mortgages recorded before October 1, 2007, any
 156 existing provision in the declaration, articles of
 157 incorporation, or bylaws requiring mortgagee consent shall be
 158 enforceable.

159 (c) In securing consent or joinder, the association shall
 160 be entitled to rely upon public records to identify the holders
 161 of outstanding mortgages. The association may use the address
 162 provided in the original recorded mortgage document, unless
 163 there is a different address for the holder of the mortgage in a
 164 recorded assignment or modification of the mortgage, which
 165 recorded assignment or modification must reference the official
 166 records book and page on which the original mortgage was
 167 recorded. Once the association has identified the recorded
 168 mortgages of record, the association shall, in writing, request

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

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

186 (e) For those amendments requiring mortgagee consent on or
187 after October 1, 2007, ~~do not materially affect the rights or~~
188 ~~interests of mortgagees.~~ in the event mortgagee consent is
189 provided other than by properly recorded joinder, such consent
190 shall be evidenced by affidavit of the association recorded in
191 the public records of the county where the declaration is
192 recorded. Any amendment adopted without the required consent of
193 a mortgagee shall be voidable only by a mortgagee who was
194 entitled to notice and an opportunity to consent. An action to
195 void an amendment shall be subject to the statute of limitations
196 beginning 5 years after the date of discovery as to the

197 amendments described in subparagraphs (a)1. and 2. and 5 years
 198 after the date of recordation of the certificate of amendment
 199 for all other amendments. This provision shall apply to all
 200 mortgages, regardless of the date of recordation of the
 201 mortgage.

202 (f) Notwithstanding the provisions of this section, any
 203 amendment or amendments to conform a declaration of condominium
 204 to the insurance coverage provisions in s. 718.111(11) may be
 205 made as provided in that section.

206 Section 4. Section 718.114, Florida Statutes, is amended
 207 to read:

208 718.114 Association powers.--An association has the power
 209 to enter into agreements, to acquire leaseholds, memberships,
 210 and other possessory or use interests in lands or facilities
 211 such as country clubs, golf courses, marinas, and other
 212 recreational facilities. It has this power whether or not the
 213 lands or facilities are contiguous to the lands of the
 214 condominium, if they are intended to provide enjoyment,
 215 recreation, or other use or benefit to the unit owners. All of
 216 these leaseholds, memberships, and other possessory or use
 217 interests existing or created at the time of recording the
 218 declaration must be stated and fully described in the
 219 declaration. Subsequent to the recording of the declaration,
 220 agreements to acquire these leaseholds, memberships, or other
 221 possessory or use interests not entered into within 12 months
 222 following the recording of the declaration shall be considered a
 223 material alteration or substantial addition to the real property
 224 that is association property, and the association may not

225 acquire or enter into agreements acquiring these leaseholds,
 226 memberships, or other possessory or use interests except as
 227 authorized by the declaration as provided in s. 718.113. The
 228 declaration may provide that the rental, membership fees,
 229 operations, replacements, and other expenses are common expenses
 230 and may impose covenants and restrictions concerning their use
 231 and may contain other provisions not inconsistent with this
 232 chapter. A condominium association may conduct bingo games as
 233 provided in s. 849.0931.

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

236 718.404 Mixed-use condominiums.--When a condominium
 237 consists of both residential and commercial units, the following
 238 provisions shall apply:

239 (1) The condominium documents shall not provide that the
 240 owner of any commercial unit shall have the authority to veto
 241 amendments to the declaration, articles of incorporation,
 242 bylaws, or rules or regulations of the association. This
 243 subsection shall apply retroactively as a remedial measure.

244 (2) Subject to s. 718.301, where the number of residential
 245 units in the condominium equals or exceeds 50 percent of the
 246 total units operated by the association, owners of the
 247 residential units shall be entitled to vote for a majority of
 248 the seats on the board of administration. This subsection shall
 249 apply retroactively as a remedial measure.

250 Section 6. Subsections (18) through (27) of section
 251 719.103, Florida Statutes, are renumbered as subsections (19)
 252 through (28), respectively, and a new subsection (18) is added

253 to that section to read:

254 719.103 Definitions.--As used in this chapter:

255 (18) "Equity facilities club" means a club comprised of
 256 recreational facilities in which proprietary membership
 257 interests are sold to individuals, which membership interests
 258 entitle the individuals to use certain physical facilities owned
 259 by the equity club. Such physical facilities do not include a
 260 residential unit or accommodation. For purposes of this
 261 definition, the term "accommodation" shall include, but is not
 262 limited to, any apartment, residential cooperative unit,
 263 residential condominium unit, cabin, lodge, hotel or motel room,
 264 or other accommodation designed for overnight occupancy for one
 265 or more individuals.

266 Section 7. Section 719.507, Florida Statutes, is amended
 267 to read:

268 719.507 Zoning and building laws, ordinances, and
 269 regulations.--All laws, ordinances, and regulations concerning
 270 buildings or zoning shall be construed and applied with
 271 reference to the nature and use of such property, without regard
 272 to the form of ownership. No law, ordinance, or regulation shall
 273 establish any requirement concerning the use, location,
 274 placement, or construction of buildings or other improvements
 275 which are, or may thereafter be, subjected to the cooperative or
 276 equity facilities club form of ownership, unless such
 277 requirement shall be equally applicable to all buildings and
 278 improvements of the same kind not then, or thereafter to be,
 279 subjected to the cooperative or equity facilities club form of
 280 ownership. This section does not apply if the owner in fee of

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281 any land enters into and records a covenant that existing
282 improvements or improvements to be constructed shall not be
283 converted to the cooperative form of residential ownership prior
284 to 5 years after the later of the date of the covenant or
285 completion date of the improvements. Such covenant shall be
286 entered into with the governing body of the municipality in
287 which the land is located or, if the land is not located in a
288 municipality, with the governing body of the county in which the
289 land is located.

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

292 720.302 Purposes, scope, and application.--

293 (4) This chapter does not apply to any association that is
294 subject to regulation under chapter 718, chapter 719, or chapter
295 721~~7~~ or to any nonmandatory association formed under chapter
296 723, except to the extent that a provision of chapter 718,
297 chapter 719, or chapter 721 is expressly incorporated into this
298 chapter for the purpose of regulating homeowners' associations.

299 (5) Unless expressly stated to the contrary, corporations
300 ~~not for profit~~ that operate residential homeowners' associations
301 in this state shall be governed by and subject to chapter 607,
302 if the association was incorporated under that chapter, or to
303 chapter 617, if the association was incorporated under that
304 chapter, and this chapter. This subsection is intended to
305 clarify existing law.

306 Section 9. Subsections (2), (6), and (7) of section
307 720.303, Florida Statutes, are amended, and paragraph (d) is
308 added to subsection (5) of that section, to read:

309 720.303 Association powers and duties; meetings of board;
310 official records; budgets; financial reporting; association
311 funds; recalls.--

312 (2) BOARD MEETINGS.--

313 (a) A meeting of the board of directors of an association
314 occurs whenever a quorum of the board gathers to conduct
315 association business. All meetings of the board must be open to
316 all members except for meetings between the board and its
317 attorney with respect to proposed or pending litigation where
318 the contents of the discussion would otherwise be governed by
319 the attorney-client privilege. The provisions of this subsection
320 shall also apply to the meetings of any committee or other
321 similar body when a final decision will be made regarding the
322 expenditure of association funds and to meetings of any body
323 vested with the power to approve or disapprove architectural
324 decisions with respect to a specific parcel of residential
325 property owned by a member of the community.

326 (b) Members have the right to attend all meetings of the
327 board and to speak on any matter placed on the agenda by
328 petition of the voting interests for at least 3 minutes. The
329 association may adopt written reasonable rules expanding the
330 right of members to speak and governing the frequency, duration,
331 and other manner of member statements, which rules must be
332 consistent with this paragraph and may include a sign-up sheet
333 for members wishing to speak. Notwithstanding any other law, the
334 requirement that board meetings and committee meetings be open
335 to the members is inapplicable to meetings between the board or
336 a committee and the association's attorney, with respect to

337 meetings of the board held for the purpose of discussing
338 personnel matters.

339 (c) The bylaws shall provide for giving notice to parcel
340 owners and members of all board meetings and, if they do not do
341 so, shall be deemed to provide the following:

342 1. Notices of all board meetings must be posted in a
343 conspicuous place in the community at least 48 hours in advance
344 of a meeting, except in an emergency. In the alternative, if
345 notice is not posted in a conspicuous place in the community,
346 notice of each board meeting must be mailed or delivered to each
347 member at least 7 days before the meeting, except in an
348 emergency. Notwithstanding this general notice requirement, for
349 communities with more than 100 members, the bylaws may provide
350 for a reasonable alternative to posting or mailing of notice for
351 each board meeting, including publication of notice, provision
352 of a schedule of board meetings, or the conspicuous posting and
353 repeated broadcasting of the notice on a closed-circuit cable
354 television system serving the homeowners' association. However,
355 if broadcast notice is used in lieu of a notice posted
356 physically in the community, the notice must be broadcast at
357 least four times every broadcast hour of each day that a posted
358 notice is otherwise required. When broadcast notice is provided,
359 the notice and agenda must be broadcast in a manner and for a
360 sufficient continuous length of time so as to allow an average
361 reader to observe the notice and read and comprehend the entire
362 content of the notice and the agenda. The bylaws or amended
363 bylaws may provide for giving notice by electronic transmission
364 in a manner authorized by law for meetings of the board of

365 directors, committee meetings requiring notice under this
366 section, and annual and special meetings of the members;
367 however, a member must consent in writing to receiving notice by
368 electronic transmission.

369 2. An assessment may not be levied at a board meeting
370 unless the notice of the meeting includes a statement that
371 assessments will be considered and the nature of the
372 assessments. Written notice of any meeting at which special
373 assessments will be considered or at which amendments to rules
374 regarding parcel use will be considered must be mailed,
375 delivered, or electronically transmitted to the members and
376 parcel owners and posted conspicuously on the property or
377 broadcast on closed-circuit cable television not less than 14
378 days before the meeting.

379 3. Directors may not vote by proxy or by secret ballot at
380 board meetings, except that secret ballots may be used in the
381 election of officers. This subsection also applies to the
382 meetings of any committee or other similar body, when a final
383 decision will be made regarding the expenditure of association
384 funds, and to any body vested with the power to approve or
385 disapprove architectural decisions with respect to a specific
386 parcel of residential property owned by a member of the
387 community.

388 (d) If 20 percent of the total voting interests petition
389 the board to address an item of business, the board shall at its
390 next regular board meeting or at a special meeting of the board,
391 but not later than 60 days after the receipt of the petition,
392 take the petitioned item up on an agenda. The board shall give

393 all members notice of the meeting at which the petitioned item
394 shall be addressed in accordance with the 14-day notice
395 requirement pursuant to subparagraph (c)2. Each member shall
396 have the right to speak for at least 3 minutes on each matter
397 placed on the agenda by petition, provided that the member signs
398 the sign-up sheet, if one is provided, or submits a written
399 request to speak prior to the meeting. Other than addressing the
400 petitioned item at the meeting, the board is not obligated to
401 take any other action requested by the petition.

402 (5) INSPECTION AND COPYING OF RECORDS.--The official
403 records shall be maintained within the state and must be open to
404 inspection and available for photocopying by members or their
405 authorized agents at reasonable times and places within 10
406 business days after receipt of a written request for access.
407 This subsection may be complied with by having a copy of the
408 official records available for inspection or copying in the
409 community. If the association has a photocopy machine available
410 where the records are maintained, it must provide parcel owners
411 with copies on request during the inspection if the entire
412 request is limited to no more than 25 pages.

413 (d) The association or its authorized agent is not
414 required to provide a prospective purchaser or lienholder with
415 information about the residential subdivision or the association
416 other than information or documents required by this chapter to
417 be made available or disclosed. The association or its
418 authorized agent may charge a reasonable fee to the prospective
419 purchaser or lienholder or the current parcel owner or member
420 for providing good faith responses to requests for information

421 by or on behalf of a prospective purchaser or lienholder, other
422 than that required by law, if the fee does not exceed \$150 plus
423 the reasonable cost of photocopying and any attorney's fees
424 incurred by the association in connection with the response.

425 (6) BUDGETS.--

426 (a) The association shall prepare an annual budget that
427 sets out the annual operating expenses. The budget must reflect
428 the estimated revenues and expenses for that year and the
429 estimated surplus or deficit as of the end of the current year.
430 The budget must set out separately all fees or charges paid for
431 by the association for recreational amenities, whether owned by
432 the association, the developer, or another person. The
433 association shall provide each member with a copy of the annual
434 budget or a written notice that a copy of the budget is
435 available upon request at no charge to the member. The copy must
436 be provided to the member within the time limits set forth in
437 subsection (5).

438 (b) In addition to annual operating expenses, the budget
439 may include reserve accounts for capital expenditures and
440 deferred maintenance for which the association is responsible to
441 the extent that the governing documents do not limit increases
442 in assessments, including reserves. If the budget of the
443 association includes reserve accounts, such reserves shall be
444 determined, maintained, and waived in the manner provided in
445 this subsection. Once an association provides for reserve
446 accounts in the budget, the association shall thereafter
447 determine, maintain, and waive reserves in compliance with this
448 subsection.

449 (c) If the budget of the association does not provide for
450 reserve accounts governed by this subsection and the association
451 is responsible for the repair and maintenance of capital
452 improvements that may result in a special assessment if reserves
453 are not provided, each financial report for the preceding fiscal
454 year required by subsection (7) shall contain the following
455 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
456 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
457 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
458 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
459 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
460 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
461 INTERESTS OF THE ASSOCIATION.

462 (d) An association shall be deemed to have provided for
463 reserve accounts when reserve accounts have been initially
464 established by the developer or when the membership of the
465 association affirmatively elects to provide for reserves. If
466 reserve accounts are not initially provided for by the
467 developer, the membership of the association may elect to do so
468 upon the affirmative approval of not less than a majority of the
469 total voting interests of the association. Such approval may be
470 attained by vote of the members at a duly called meeting of the
471 membership or upon a written consent executed by not less than a
472 majority of the total voting interests in the community. The
473 approval action of the membership shall state that reserve
474 accounts shall be provided for in the budget and designate the
475 components for which the reserve accounts are to be established.
476 Upon approval by the membership, the board of directors shall

477 provide for the required reserve accounts for inclusion in the
478 budget in the next fiscal year following the approval and in
479 each year thereafter. Once established as provided in this
480 subsection, the reserve accounts shall be funded or maintained
481 or shall have their funding waived in the manner provided in
482 paragraph (f).

483 (e) The amount to be reserved in any account established
484 shall be computed by means of a formula that is based upon
485 estimated remaining useful life and estimated replacement cost
486 or deferred maintenance expense of each reserve item. The
487 association may adjust replacement reserve assessments annually
488 to take into account any changes in estimates of cost or useful
489 life of a reserve item.

490 (f) Once a reserve account or reserve accounts are
491 established, the membership of the association, upon a majority
492 vote at a meeting at which a quorum is present, may provide for
493 no reserves or less reserves than required by this section. If a
494 meeting of the unit owners has been called to determine whether
495 to waive or reduce the funding of reserves and no such result is
496 achieved or a quorum is not present, the reserves as included in
497 the budget shall go into effect. After the turnover, the
498 developer may vote its voting interest to waive or reduce the
499 funding of reserves. Any vote taken pursuant to this subsection
500 to waive or reduce reserves shall be applicable only to one
501 budget year.

502 (g) Funding formulas for reserves authorized by this
503 section shall be based on either a separate analysis of each of
504 the required assets or a pooled analysis of two or more of the

505 required assets.

506 1. If the association maintains separate reserve accounts
507 for each of the required assets, the amount of the contribution
508 to each reserve account shall be the sum of the following two
509 calculations:

510 a. The total amount necessary, if any, to bring a negative
511 component balance to zero.

512 b. The total estimated deferred maintenance expense or
513 estimated replacement cost of the reserve component less the
514 estimated balance of the reserve component as of the beginning
515 of the period for which the budget will be in effect. The
516 remainder, if greater than zero, shall be divided by the
517 estimated remaining useful life of the component.

518
519 The formula may be adjusted each year for changes in estimates
520 and deferred maintenance performed during the year and may
521 include factors such as inflation and earnings on invested
522 funds.

523 2. If the association maintains a pooled account of two or
524 more of the required reserve assets, the amount of the
525 contribution to the pooled reserve account as disclosed on the
526 proposed budget shall not be less than that required to ensure
527 that the balance on hand at the beginning of the period for
528 which the budget will go into effect plus the projected annual
529 cash inflows over the remaining estimated useful life of all of
530 the assets that make up the reserve pool are equal to or greater
531 than the projected annual cash outflows over the remaining
532 estimated useful lives of all of the assets that make up the

533 reserve pool, based on the current reserve analysis. The
534 projected annual cash inflows may include estimated earnings
535 from investment of principal. The reserve funding formula shall
536 not include any type of balloon payments.

537 (h) Reserve funds and any interest accruing thereon shall
538 remain in the reserve account or accounts and shall be used only
539 for authorized reserve expenditures unless their use for other
540 purposes is approved in advance by a majority vote at a meeting
541 at which a quorum is present. Prior to turnover of control of an
542 association by a developer to parcel owners, the developer-
543 controlled association shall not vote to use reserves for
544 purposes other than those for which they were intended without
545 the approval of a majority of all nondeveloper voting interests
546 voting in person or by limited proxy at a duly called meeting of
547 the association.

548 (7) FINANCIAL REPORTING.--Within 90 days after the end of
549 the fiscal year, or annually on the date provided in the bylaws,
550 the association shall prepare and complete, or contract with a
551 third party for the preparation and completion of, a financial
552 report for the preceding fiscal year. Within 21 days after the
553 final financial report is completed by the association or
554 received from the third party, but not later than 120 days after
555 the end of the fiscal year or other date as provided in the
556 bylaws, the association shall ~~prepare an annual financial report~~
557 ~~within 60 days after the close of the fiscal year. The~~
558 ~~association shall,~~ within the time limits set forth in
559 subsection (5), provide each member with a copy of the annual
560 financial report or a written notice that a copy of the

561 financial report is available upon request at no charge to the
 562 member. Financial reports shall be prepared as follows:

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

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

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

572 2. An association with total annual revenues of at least
 573 \$200,000, but less than \$400,000, shall prepare reviewed
 574 financial statements.

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

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

580 2. An association in a community of fewer than 50 parcels,
 581 regardless of the association's annual revenues, may prepare a
 582 report of cash receipts and expenditures in lieu of financial
 583 statements required by paragraph (a) unless the governing
 584 documents provide otherwise.

585 3. A report of cash receipts and disbursement must
 586 disclose the amount of receipts by accounts and receipt
 587 classifications and the amount of expenses by accounts and
 588 expense classifications, including, but not limited to, the

589 following, as applicable: costs for security, professional, and
590 management fees and expenses; taxes; costs for recreation
591 facilities; expenses for refuse collection and utility services;
592 expenses for lawn care; costs for building maintenance and
593 repair; insurance costs; administration and salary expenses; and
594 reserves if maintained by the association.

595 (c) If 20 percent of the parcel owners petition the board
596 for a level of financial reporting higher than that required by
597 this section, the association shall duly notice and hold a
598 meeting of members within 30 days of receipt of the petition for
599 the purpose of voting on raising the level of reporting for that
600 fiscal year. Upon approval of a majority of the total voting
601 interests of the parcel owners, the association shall prepare or
602 cause to be prepared, shall amend the budget or adopt a special
603 assessment to pay for the financial report regardless of any
604 provision to the contrary in the governing documents, and shall
605 provide within 90 days of the meeting or the end of the fiscal
606 year, whichever occurs later:

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

610 2. Reviewed or audited financial statements, if the
611 association is otherwise required to prepare compiled financial
612 statements; or

613 3. Audited financial statements if the association is
614 otherwise required to prepare reviewed financial statements.

615 (d) If approved by a majority of the voting interests
616 present at a properly called meeting of the association, an

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617 association may prepare or cause to be prepared:

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

620 2. A report of cash receipts and expenditures or a
621 compiled financial statement in lieu of a reviewed or audited
622 financial statement; or

623 3. A report of cash receipts and expenditures, a compiled
624 financial statement, or a reviewed financial statement in lieu
625 of an audited financial statement.

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

629 Section 11. Section 720.3035, Florida Statutes, is created
630 to read:

631 720.3035 Architectural control covenants; parcel owner
632 improvements; rights and privileges.--

633 (1) The authority of an association or any architectural,
634 construction improvement, or other such similar committee of an
635 association to review and approve plans and specifications for
636 the location, size, type, or appearance of any structure or
637 other improvement on a parcel, or to enforce standards for the
638 external appearance of any structure or improvement located on a
639 parcel, shall be permitted only to the extent that the authority
640 is specifically stated or reasonably inferred as to such
641 location, size, type, or appearance in the declaration of
642 covenants or other published guidelines and standards authorized
643 by the declaration of covenants.

644 (2) If the declaration of covenants or other published

645 guidelines and standards authorized by the declaration of
646 covenants provide options for the use of material, the size of
647 the structure or improvement, the design of the structure or
648 improvement, or the location of the structure or improvement on
649 the parcel, neither the association nor any architectural,
650 construction improvement, or other such similar committee of the
651 association shall restrict the right of a parcel owner to select
652 from the options provided in the declaration of covenants or
653 other published guidelines and standards authorized by the
654 declaration of covenants.

655 (3) Unless otherwise specifically stated in the
656 declaration of covenants or other published guidelines and
657 standards authorized by the declaration of covenants, each
658 parcel shall be deemed to have only one front for purposes of
659 determining the required front setback even if the parcel is
660 bounded by a roadway or other easement on more than one side.
661 When the declaration of covenants or other published guidelines
662 and standards authorized by the declaration of covenants do not
663 provide for specific setback limitations, the applicable county
664 or municipal setback limitations shall apply, and neither the
665 association nor any architectural, construction improvement, or
666 other such similar committee of the association shall enforce or
667 attempt to enforce any setback limitation that is inconsistent
668 with the applicable county or municipal standard or standards.

669 (4) Each parcel owner shall be entitled to the rights and
670 privileges set forth in the declaration of covenants or other
671 published guidelines and standards authorized by the declaration
672 of covenants concerning the architectural use of the parcel, and

673 the construction of permitted structures and improvements on the
674 parcel and such rights and privileges shall not be unreasonably
675 infringed upon or impaired by the association or any
676 architectural, construction improvement, or other such similar
677 committee of the association. If the association or any
678 architectural, construction improvement, or other such similar
679 committee of the association should unreasonably, knowingly, and
680 willfully infringe upon or impair the rights and privileges set
681 forth in the declaration of covenants or other published
682 guidelines and standards authorized by the declaration of
683 covenants, the adversely affected parcel owner shall be entitled
684 to recover damages caused by such infringement or impairment,
685 including any costs and reasonable attorney's fees incurred in
686 preserving or restoring the rights and privileges of the parcel
687 owner set forth in the declaration of covenants or other
688 published guidelines and standards authorized by the declaration
689 of covenants.

690 (5) Neither the association nor any architectural,
691 construction improvement, or other such similar committee of the
692 association shall enforce any policy or restriction that is
693 inconsistent with the rights and privileges of a parcel owner
694 set forth in the declaration of covenants or other published
695 guidelines and standards authorized by the declaration of
696 covenants, whether uniformly applied or not. Neither the
697 association nor any architectural, construction improvement, or
698 other such similar committee of the association may rely upon a
699 policy or restriction that is inconsistent with the declaration
700 of covenants or other published guidelines and standards

701 authorized by the declaration of covenants, whether uniformly
 702 applied or not, in defense of any action taken in the name of or
 703 on behalf of the association against a parcel owner.

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

706 720.305 Obligations of members; remedies at law or in
 707 equity; levy of fines and suspension of use rights; failure to
 708 fill sufficient number of vacancies on board of directors to
 709 constitute a quorum; appointment of receiver upon petition of
 710 any member.--

711 (1) Each member and the member's tenants, guests, and
 712 invitees, and each association, are governed by, and must comply
 713 with, this chapter, the governing documents of the community,
 714 and the rules of the association. Actions at law or in equity,
 715 or both, to redress alleged failure or refusal to comply with
 716 these provisions may be brought by the association or by any
 717 member against:

718 (a) The association;

719 (b) A member;

720 (c) Any director or officer of an association who
 721 willfully and knowingly fails to comply with these provisions;
 722 and

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

725
 726 The prevailing party in any such litigation is entitled to
 727 recover reasonable attorney's fees and costs. A member
 728 prevailing in an action between the association and the member

729 under this section, in addition to recovering his or her
730 reasonable attorney's fees, may recover additional amounts as
731 determined by the court to be necessary to reimburse the member
732 for his or her share of assessments levied by the association to
733 fund its expenses of the litigation. This relief does not
734 exclude other remedies provided by law. This section does not
735 deprive any person of any other available right or remedy.

736 Section 13. Paragraph (c) of subsection (1) of section
737 720.306, Florida Statutes, is amended to read:

738 720.306 Meetings of members; voting and election
739 procedures; amendments.--

740 (1) QUORUM; AMENDMENTS.--

741 (c) Unless otherwise provided in the governing documents
742 as originally recorded or permitted by this chapter or chapter
743 617, an amendment may not materially and adversely alter the
744 proportionate voting interest appurtenant to a parcel or
745 increase the proportion or percentage by which a parcel shares
746 in the common expenses of the association unless the record
747 parcel owner and all record owners of liens on the parcels join
748 in the execution of the amendment. For purposes of this section,
749 a change in quorum requirements is not an alteration of voting
750 interests. The merger or consolidation of one or more
751 associations under a plan of merger or consolidation under
752 chapter 607 or chapter 617 shall not be considered a material or
753 adverse alteration of the proportionate voting interest
754 appurtenant to a parcel.

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

757 720.307 Transition of association control in a
758 community.--With respect to homeowners' associations:

759 (3) At the time the members are entitled to elect at least
760 a majority of the board of directors of the homeowners'
761 association, the developer shall, at the developer's expense,
762 within no more than 90 days deliver the following documents to
763 the board:

764 (t) The financial records, including financial statements
765 of the association, and source documents from the incorporation
766 of the association through the date of turnover. The records
767 shall be audited by an independent certified public accountant
768 for the period from the incorporation of the association or from
769 the period covered by the last audit if an audit has been
770 performed for each fiscal year since incorporation. All
771 financial statements shall be prepared in accordance with
772 generally accepted accounting principles and shall be audited in
773 accordance with generally accepted auditing standards, as
774 prescribed by the Board of Accountancy, pursuant to chapter 473.
775 The certified public accountant performing the audit shall
776 examine to the extent necessary supporting documents and
777 records, including the cash disbursements and related paid
778 invoices, to determine whether expenditures were for association
779 purposes and the billings, cash receipts, and related records of
780 the association to determine whether the developer was charged
781 and paid the proper amounts of assessments. This paragraph
782 applies to associations with a date of incorporation after
783 December 31, 2007.

784 Section 15. Section 720.308, Florida Statutes, is amended

785 to read:

786 720.308 Assessments and charges.--

787 (1) ASSESSMENTS.--For any community created after October
 788 1, 1995, the governing documents must describe the manner in
 789 which expenses are shared and specify the member's proportional
 790 share thereof. Assessments levied pursuant to the annual budget
 791 or special assessment must be in the member's proportional share
 792 of expenses as described in the governing document, which share
 793 may be different among classes of parcels based upon the state
 794 of development thereof, levels of services received by the
 795 applicable members, or other relevant factors. While the
 796 developer is in control of the homeowners' association, it may
 797 be excused from payment of its share of the operating expenses
 798 and assessments related to its parcels for any period of time
 799 for which the developer has, in the declaration, obligated
 800 itself to pay any operating expenses incurred that exceed the
 801 assessments receivable from other members and other income of
 802 the association. This section does not apply to an association,
 803 no matter when created, if the association is created in a
 804 community that is included in an effective development-of-
 805 regional-impact development order as of the effective date of
 806 this act, together with any approved modifications thereto.

807 (2) GUARANTEES OF COMMON EXPENSES.--

808 (a) Establishment of a guarantee.--If a guarantee of the
 809 assessments of parcel owners is not included in the purchase
 810 contracts or declaration, any agreement establishing a guarantee
 811 shall only be effective upon the approval of a majority of the
 812 voting interests of the members other than the developer.

813 Approval shall be expressed at a meeting of the members voting
814 in person or by limited proxy or by agreement in writing without
815 a meeting if provided in the bylaws. Such guarantee must meet
816 the requirements of this section.

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

820 1. The ending date or event shall be the same for all of
821 the members of an association, including members in different
822 phases of the development.

823 2. The guarantee may provide for different intervals of
824 time during a guarantee period with a different dollar amount
825 for each such interval.

826 3. The guarantee may provide that after the initial stated
827 period, the developer has an option to extend the guarantee for
828 one or more additional stated periods. The extension of a
829 guarantee is limited to extending the ending date or event;
830 therefore, the developer does not have the option of changing
831 the level of assessments guaranteed.

832 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
833 amount of the guarantee shall be an exact dollar amount for each
834 parcel identified in the declaration. Regardless of the stated
835 dollar amount of the guarantee, assessments charged to a member
836 shall not exceed the maximum obligation of the member based on
837 the total amount of the adopted budget and the member's
838 proportionate share of the expenses as described in the
839 governing documents.

840 (4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash

841 payments required from the guarantor during the guarantee period
842 shall be determined as follows:

843 (a) If at any time during the guarantee period the funds
844 collected from member assessments at the guaranteed level and
845 other revenues collected by the association are not sufficient
846 to provide payment, on a timely basis, of all assessments,
847 including the full funding of the reserves unless properly
848 waived, the guarantor shall advance sufficient cash to the
849 association at the time such payments are due.

850 (b) Expenses incurred in the production of nonassessment
851 revenues, not in excess of the nonassessment revenues, shall not
852 be included in the assessments. If the expenses attributable to
853 nonassessment revenues exceed nonassessment revenues, only the
854 excess expenses must be funded by the guarantor. Interest earned
855 on the investment of association funds may be used to pay the
856 income tax expense incurred as a result of the investment, such
857 expense shall not be charged to the guarantor, and the net
858 investment income shall be retained by the association. Each
859 such nonassessment-revenue-generating activity shall be
860 considered separately. Any portion of the parcel assessment that
861 is budgeted for designated capital contributions of the
862 association shall not be used to pay operating expenses.

863 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
864 guarantor's total financial obligation to the association at the
865 end of the guarantee period shall be determined on the accrual
866 basis using the following formula: the guarantor shall pay any
867 deficits that exceed the guaranteed amount, less the total
868 regular periodic assessments earned by the association from the

869 members other than the guarantor during the guarantee period
 870 regardless of whether the actual level charged was less than the
 871 maximum guaranteed amount.

872 (6) EXPENSES.--Expenses incurred in the production of
 873 nonassessment revenues, not in excess of the nonassessment
 874 revenues, shall not be included in the operating expenses. If
 875 the expenses attributable to nonassessment revenues exceed
 876 nonassessment revenues, only the excess expenses must be funded
 877 by the guarantor. Interest earned on the investment of
 878 association funds may be used to pay the income tax expense
 879 incurred as a result of the investment, such expense shall not
 880 be charged to the guarantor, and the net investment income shall
 881 be retained by the association. Each such nonassessment-revenue-
 882 generating activity shall be considered separately. Any portion
 883 of the parcel assessment that is budgeted for designated capital
 884 contributions of the association shall not be used to pay
 885 operating expenses.

886 Section 16. Section 720.311, Florida Statutes, is amended
 887 to read:

888 720.311 Dispute resolution.--

889 (1) The Legislature finds that alternative dispute
 890 resolution has made progress in reducing court dockets and
 891 trials and in offering a more efficient, cost-effective option
 892 to litigation. The filing of any petition for ~~mediation or~~
 893 arbitration or the serving of a demand for presuit mediation as
 894 provided for in this section shall toll the applicable statute
 895 of limitations. Any recall dispute filed with the department
 896 pursuant to s. 720.303(10) shall be conducted by the department

897 in accordance with the provisions of ss. 718.112(2)(j) and
898 718.1255 and the rules adopted by the division. In addition, the
899 department shall conduct mandatory binding arbitration of
900 election disputes between a member and an association pursuant
901 to s. 718.1255 and rules adopted by the division. Neither
902 election disputes nor recall disputes are eligible for presuit
903 mediation; these disputes shall be arbitrated by the department.
904 At the conclusion of the proceeding, the department shall charge
905 the parties a fee in an amount adequate to cover all costs and
906 expenses incurred by the department in conducting the
907 proceeding. Initially, the petitioner shall remit a filing fee
908 of at least \$200 to the department. The fees paid to the
909 department shall become a recoverable cost in the arbitration
910 proceeding, and the prevailing party in an arbitration
911 proceeding shall recover its reasonable costs and attorney's
912 fees in an amount found reasonable by the arbitrator. The
913 department shall adopt rules to effectuate the purposes of this
914 section.

915 (2)(a) Disputes between an association and a parcel owner
916 regarding use of or changes to the parcel or the common areas
917 and other covenant enforcement disputes, disputes regarding
918 amendments to the association documents, disputes regarding
919 meetings of the board and committees appointed by the board,
920 membership meetings not including election meetings, and access
921 to the official records of the association shall be the subject
922 of a demand filed with the department for presuit mandatory
923 mediation served by an aggrieved party before the dispute is
924 filed in court. Presuit mediation proceedings must be conducted

925 in accordance with the applicable Florida Rules of Civil
926 Procedure, and these proceedings are privileged and confidential
927 to the same extent as court-ordered mediation. Disputes subject
928 to presuit mediation under this section shall not include the
929 collection of any assessment, fine, or other financial
930 obligation, including attorney's fees and costs, claimed to be
931 due or any action to enforce a prior mediation settlement
932 agreement between the parties. Also, in any dispute subject to
933 presuit mediation under this section where emergency relief is
934 required, a motion for temporary injunctive relief may be filed
935 with the court without first complying with the presuit
936 mediation requirements of this section. After any issues
937 regarding emergency or temporary relief are resolved, the court
938 may either refer the parties to a mediation program administered
939 by the courts or require mediation under this section. An
940 arbitrator or judge may not consider any information or evidence
941 arising from the presuit mediation proceeding except in a
942 proceeding to impose sanctions for failure to attend a presuit
943 mediation session or to enforce a mediated settlement agreement.
944 Persons who are not parties to the dispute may not attend the
945 presuit mediation conference without the consent of all parties,
946 except for counsel for the parties and a corporate
947 representative designated by the association. When mediation is
948 attended by a quorum of the board, such mediation is not a board
949 meeting for purposes of notice and participation set forth in s.
950 720.303. An aggrieved party shall serve on the responding party
951 a written demand to participate in presuit mediation in
952 substantially the following form:

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STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

The alleged aggrieved party, _____, hereby demands that _____, as the responding party, engage in mandatory presuit mediation in connection with the following disputes, which by statute are of a type that are 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 demand to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the parties are required 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 participate in the mediation process, 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 them in exploring possible opportunities for resolving part or all of the dispute. By agreeing to participate in presuit mediation, you are not bound

981 in any way to change your position. Furthermore, the mediator
982 has no authority to make any decisions in this matter or to
983 determine who is right or wrong and merely acts as a facilitator
984 to ensure that each party understands the position of the other
985 party and that all options for reasonable settlement are fully
986 explored.

987
988 If an agreement is reached, it shall be reduced to writing and
989 becomes a binding and enforceable commitment of the parties. A
990 resolution of one or more disputes in this fashion avoids the
991 need to litigate these issues in court. The failure to reach an
992 agreement, or the failure of a party to participate in the
993 process, results in the mediator declaring an impasse in the
994 mediation, after which the aggrieved party may proceed to court
995 on all outstanding, unsettled disputes. If you have failed or
996 refused to participate in the entire mediation process, you will
997 not be entitled to recover attorney's fees, even if you prevail.

998
999 The aggrieved party has selected and hereby lists five certified
1000 mediators who we believe to be neutral and qualified to mediate
1001 the dispute. You have the right to select any one of these
1002 mediators. The fact that one party may be familiar with one or
1003 more of the listed mediators does not mean that the mediator
1004 cannot act as a neutral and impartial facilitator. Any mediator
1005 who cannot act in this capacity is required ethically to decline
1006 to accept engagement. The mediators whom we suggest, and their
1007 current hourly rates, are as follows:

1008

1009 (List the names, addresses, telephone numbers, and hourly rates
 1010 of the mediators. Other pertinent information about the
 1011 background of the mediators may be included as an attachment.)

1012
 1013 You may contact the offices of these mediators to confirm that
 1014 the listed mediators will be neutral and will not show any
 1015 favoritism toward either party. The Florida Supreme Court can
 1016 provide you a list of certified mediators.

1017
 1018 Unless otherwise agreed by the parties, section 720.311(2)(b),
 1019 Florida Statutes, requires that the parties share the costs of
 1020 presuit mediation equally, including the fee charged by the
 1021 mediator. An average mediation may require three to four hours
 1022 of the mediator's time, including some preparation time, and the
 1023 parties would need to share equally the mediator's fees as well
 1024 as their own attorney's fees if they choose to employ an
 1025 attorney in connection with the mediation. However, use of an
 1026 attorney is not required and is at the option of each party. The
 1027 mediators may require the advance payment of some or all of the
 1028 anticipated fees. The aggrieved party hereby agrees to pay or
 1029 prepay one-half of the mediator's estimated fees and to forward
 1030 this amount or such other reasonable advance deposits as the
 1031 mediator requires for this purpose. Any funds deposited will be
 1032 returned to you if these are in excess of your share of the fees
 1033 incurred.

1034
 1035 To begin your participation in presuit mediation to try to
 1036 resolve the dispute and avoid further legal action, please sign

1037 below and clearly indicate which mediator is acceptable to you.
 1038 We will then ask the mediator to schedule a mutually convenient
 1039 time and place for the mediation conference to be held. The
 1040 mediation conference must be held within ninety (90) days of
 1041 this date, unless extended by mutual written agreement. In the
 1042 event that you fail to respond within 20 days from the date of
 1043 this letter, or if you fail to agree to at least one of the
 1044 mediators that we have suggested or to pay or prepay to the
 1045 mediator one-half of the costs involved, the aggrieved party
 1046 will be authorized to proceed with the filing of a lawsuit
 1047 against you without further notice and may seek an award of
 1048 attorney's fees or costs incurred in attempting to obtain
 1049 mediation.

1050
 1051 Therefore, please give this matter your immediate attention. By
 1052 law, your response must be mailed by certified mail, return
 1053 receipt requested, and by first-class mail to the address shown
 1054 on this demand.

1055
 1056 _____
 1057 _____

1058
 1059 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO
 1060 THAT CHOICE.

1061 AGREEMENT TO MEDIATE

1062
 1063 The undersigned hereby agrees to participate in presuit
 1064 mediation and agrees to attend a mediation conducted by the

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1065 following mediator or mediators who are listed above as someone
 1066 who would be acceptable to mediate this dispute:

1067
 1068 (List acceptable mediator or mediators.)

1069
 1070 I/we further agree to pay or prepay one-half of the mediator's
 1071 fees and to forward such advance deposits as the mediator may
 1072 require for this purpose.

1073
 1074 _____
 1075 Signature of responding party #1

1076
 1077 _____
 1078
 1079 Telephone contact information

1080
 1081 _____
 1082 Signature and telephone contact information of responding party
 1083 #2 (if applicable) (if property is owned by more than one person,
 1084 all owners must sign)

1085
 1086 (b) Service of the statutory demand to participate in
 1087 presuit mediation shall be effected by sending a letter in
 1088 substantial conformity with the above form by certified mail,
 1089 return receipt requested, with an additional copy being sent by
 1090 regular first-class mail, to the address of the responding party
 1091 as it last appears on the books and records of the association.
 1092 The responding party has 20 days from the date of the mailing of

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1093 the statutory demand to serve a response to the aggrieved party
1094 in writing. The response shall be served by certified mail,
1095 return receipt requested, with an additional copy being sent by
1096 regular first-class mail, to the address shown on the statutory
1097 demand. Notwithstanding the foregoing, once the parties have
1098 agreed on a mediator, the mediator may reschedule the mediation
1099 for a date and time mutually convenient to the parties. The
1100 ~~department shall conduct the proceedings through the use of~~
1101 ~~department mediators or refer the disputes to private mediators~~
1102 ~~who have been duly certified by the department as provided in~~
1103 ~~paragraph (c).~~ The parties shall share the costs of presuit
1104 mediation equally, including the fee charged by the mediator, if
1105 any, unless the parties agree otherwise, and the mediator may
1106 require advance payment of his or her reasonable fees and costs.
1107 The failure of any party to respond to a demand or response, to
1108 agree upon a mediator, to make payment of fees and costs within
1109 the time established by the mediator, or to appear for a
1110 scheduled mediation session without the approval of the
1111 mediator, shall constitute the failure or refusal to participate
1112 in the mediation process and shall operate as an impasse in the
1113 presuit mediation by such party, entitling the other party to
1114 proceed in court and to seek an award of the costs and fees
1115 associated with the mediation. Additionally, notwithstanding the
1116 provisions of any other law or document, persons who fail or
1117 refuse to participate in the entire mediation process may not
1118 recover attorney's fees and costs in subsequent litigation
1119 relating to the dispute. If any presuit mediation session cannot
1120 be scheduled and conducted within 90 days after the offer to

1121 participate in mediation was filed, an impasse shall be deemed
1122 to have occurred unless both parties agree to extend this
1123 deadline. If a department mediator is used, the department may
1124 charge such fee as is necessary to pay expenses of the
1125 mediation, including, but not limited to, the salary and
1126 benefits of the mediator and any travel expenses incurred. The
1127 petitioner shall initially file with the department upon filing
1128 the disputes, a filing fee of \$200, which shall be used to
1129 defray the costs of the mediation. At the conclusion of the
1130 mediation, the department shall charge to the parties, to be
1131 shared equally unless otherwise agreed by the parties, such
1132 further fees as are necessary to fully reimburse the department
1133 for all expenses incurred in the mediation.

1134 (c) ~~(b)~~ If presuit mediation as described in paragraph (a)
1135 is not successful in resolving all issues between the parties,
1136 the parties may file the unresolved dispute in a court of
1137 competent jurisdiction or elect to enter into binding or
1138 nonbinding arbitration pursuant to the procedures set forth in
1139 s. 718.1255 and rules adopted by the division, with the
1140 arbitration proceeding to be conducted by a department
1141 arbitrator or by a private arbitrator certified by the
1142 department. If all parties do not agree to arbitration
1143 proceedings following an unsuccessful presuit mediation, any
1144 party may file the dispute in court. A final order resulting
1145 from nonbinding arbitration is final and enforceable in the
1146 courts if a complaint for trial de novo is not filed in a court
1147 of competent jurisdiction within 30 days after entry of the
1148 order. As to any issue or dispute that is not resolved at

1149 presuit mediation, and as to any issue that is settled at
1150 presuit mediation but is thereafter subject to an action seeking
1151 enforcement of the mediation settlement, the prevailing party in
1152 any subsequent arbitration or litigation proceeding shall be
1153 entitled to seek recovery of all costs and attorney's fees
1154 incurred in the presuit mediation process.

1155 ~~(d)(c) The department shall develop a certification and~~
1156 ~~training program for private mediators and private arbitrators~~
1157 ~~which shall emphasize experience and expertise in the area of~~
1158 ~~the operation of community associations. A mediator or~~
1159 ~~arbitrator shall be authorized to conduct mediation or~~
1160 ~~arbitration under this section certified by the department only~~
1161 ~~if he or she has been certified as a circuit court civil~~
1162 ~~mediator or arbitrator, respectively, pursuant to the~~
1163 ~~requirements established attended at least 20 hours of training~~
1164 ~~in mediation or arbitration, as appropriate, and only if the~~
1165 ~~applicant has mediated or arbitrated at least 10 disputes~~
1166 ~~involving community associations within 5 years prior to the~~
1167 ~~date of the application, or has mediated or arbitrated 10~~
1168 ~~disputes in any area within 5 years prior to the date of~~
1169 ~~application and has completed 20 hours of training in community~~
1170 ~~association disputes. In order to be certified by the~~
1171 ~~department, any mediator must also be certified by the Florida~~
1172 ~~Supreme Court. Settlement agreements resulting from mediation~~
1173 ~~shall not have precedential value in proceedings involving~~
1174 ~~parties other than those participating in the mediation to~~
1175 ~~support either a claim or defense in other disputes. The~~
1176 ~~department may conduct the training and certification program~~

1177 ~~within the department or may contract with an outside vendor to~~
 1178 ~~perform the training or certification. The expenses of operating~~
 1179 ~~the training and certification and training program shall be~~
 1180 ~~paid by the moneys and filing fees generated by the arbitration~~
 1181 ~~of recall and election disputes and by the mediation of those~~
 1182 ~~disputes referred to in this subsection and by the training~~
 1183 ~~fees.~~

1184 ~~(e)~~ (d) The presuit mediation procedures provided by this
 1185 subsection may be used by a Florida corporation responsible for
 1186 the operation of a community in which the voting members are
 1187 parcel owners or their representatives, in which membership in
 1188 the corporation is not a mandatory condition of parcel
 1189 ownership, or which is not authorized to impose an assessment
 1190 that may become a lien on the parcel.

1191 ~~(3)~~ ~~The department shall develop an education program to~~
 1192 ~~assist homeowners, associations, board members, and managers in~~
 1193 ~~understanding and increasing awareness of the operation of~~
 1194 ~~homeowners' associations pursuant to this chapter and in~~
 1195 ~~understanding the use of alternative dispute resolution~~
 1196 ~~techniques in resolving disputes between parcel owners and~~
 1197 ~~associations or between owners. Such education program may~~
 1198 ~~include the development of pamphlets and other written~~
 1199 ~~instructional guides, the holding of classes and meetings by~~
 1200 ~~department employees or outside vendors, as the department~~
 1201 ~~determines, and the creation and maintenance of a website~~
 1202 ~~containing instructional materials. The expenses of operating~~
 1203 ~~the education program shall be initially paid by the moneys and~~
 1204 ~~filing fees generated by the arbitration of recall and election~~

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1205 ~~disputes and by the mediation of those disputes referred to in~~
1206 ~~this subsection.~~

1207 Section 17. Except as otherwise expressly provided in this
1208 act, this act shall take effect July 1, 2007.