

Bill No. SB 902

Barcode 324514

CHAMBER ACTION

Senate

House

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

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

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

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

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

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

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

3 718.110 Amendment of declaration; correction of error  
4 or omission in declaration by circuit court.--

5 (11) The Legislature finds that the procurement of  
6 mortgagee consent to amendments that do not affect the rights  
7 or interests of mortgagees is an unreasonable and substantial  
8 logistical and financial burden on the unit owners and that  
9 there is a compelling state interest in enabling the members  
10 of a condominium association to approve amendments to the  
11 condominium documents through legal means. Accordingly, and  
12 notwithstanding any provision to the contrary contained in  
13 this section:

14 (a) As to any mortgage recorded on or after October 1,  
15 2007, any provision in the declaration, articles of  
16 incorporation, or bylaws that requires ~~recorded after April 1,~~  
17 ~~1992, may not require~~ the consent or joinder of some or all  
18 mortgagees of units or any other portion of the condominium  
19 property to or in amendments to the declaration, articles of  
20 incorporation, or bylaws or for any other matter shall be  
21 enforceable only as to the following matters: ~~unless the~~  
22 ~~requirement is limited to amendments materially affecting the~~  
23 ~~rights or interests of the mortgagees, or as otherwise~~  
24 ~~required by the Federal National Mortgage Association or the~~  
25 ~~Federal Home Loan Mortgage Corporation, and unless the~~  
26 ~~requirement provides that such consent may not be unreasonably~~  
27 ~~withheld. It shall be presumed that, except as to~~

28 1. Those matters described in subsections (4) and  
29 (8).~~7~~

30 2. Amendments to the declaration, articles of  
31 incorporation, or bylaws that adversely affect the priority of

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1 the mortgagee's lien or the mortgagee's rights to foreclose  
2 its lien or that otherwise materially affect the rights and  
3 interests of the mortgagees.

4 (b) As to mortgages recorded before October 1, 2007,  
5 any existing provisions in the declaration, articles of  
6 incorporation, or bylaws requiring mortgagee consent shall be  
7 enforceable.

8 (c) In securing consent or joinder, the association  
9 shall be entitled to rely upon the public records to identify  
10 the holders of outstanding mortgages. The association may use  
11 the address provided in the original recorded mortgage  
12 document, unless there is a different address for the holder  
13 of the mortgage in a recorded assignment or modification of  
14 the mortgage, which recorded assignment or modification must  
15 reference the official records book and page on which the  
16 original mortgage was recorded. Once the association has  
17 identified the recorded mortgages of record, the association  
18 shall, in writing, request of each unit owner whose unit is  
19 encumbered by a mortgage of record any information the owner  
20 has in his or her possession regarding the name and address of  
21 the person to whom mortgage payments are currently being made.  
22 Notice shall be sent to such person if the address provided in  
23 the original recorded mortgage document is different from the  
24 name and address of the mortgagee or assignee of the mortgage  
25 as shown by the public record. The association shall be deemed  
26 to have complied with this requirement by making the written  
27 request of the unit owners required under this paragraph. Any  
28 notices required to be sent to the mortgagees under this  
29 paragraph shall be sent to all available addresses provided to  
30 the association.

31 (d) Any notice to the mortgagees required under

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1 paragraph (c) may be sent by a method that establishes proof  
2 of delivery, and any mortgagee who fails to respond within 60  
3 days after the date of mailing shall be deemed to have  
4 consented to the amendment.

5 (e) For those amendments requiring mortgagee consent  
6 on or after October 1, 2007, do not materially affect the  
7 rights or interests of mortgagees. in the event mortgagee  
8 consent is provided other than by properly recorded joinder,  
9 such consent shall be evidenced by affidavit of the  
10 association recorded in the public records of the county where  
11 the declaration is recorded. Any amendment adopted without the  
12 required consent of a mortgagee shall be voidable only by a  
13 mortgagee who was entitled to notice and an opportunity to  
14 consent. An action to void an amendment shall be subject to  
15 the statute of limitations beginning 5 years after the date of  
16 discovery as to the amendments described in subparagraphs  
17 (a)1. and 2. and 5 years after the date of recordation of the  
18 certificate of amendment for all other amendments. This  
19 provision shall apply to all mortgages, regardless of the date  
20 of recordation of the mortgage.

21 (f) Notwithstanding the provisions of this section,  
22 any amendment or amendments to conform a declaration of  
23 condominium to the insurance coverage provisions in s.  
24 718,111(11), may be made as provided in that section.

25 Section 4. Section 718.114, Florida Statutes, is  
26 amended to read:

27 718.114 Association powers.--An association has the  
28 power to enter into agreements, to acquire leaseholds,  
29 memberships, and other possessory or use interests in lands or  
30 facilities such as country clubs, golf courses, marinas, and  
31 other recreational facilities. It has this power whether or

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1 not the lands or facilities are contiguous to the lands of the  
2 condominium, if they are intended to provide enjoyment,  
3 recreation, or other use or benefit to the unit owners. All of  
4 these leaseholds, memberships, and other possessory or use  
5 interests existing or created at the time of recording the  
6 declaration must be stated and fully described in the  
7 declaration. Subsequent to the recording of the declaration,  
8 agreements acquiring these leaseholds, memberships, or other  
9 possessory or use interests not entered into within 12 months  
10 following the recording of the declaration shall be considered  
11 a material alteration or substantial addition to the real  
12 property that is association property, and the association may  
13 not acquire or enter into agreements acquiring these  
14 leaseholds, memberships, or other possessory or use interests  
15 except as authorized by the declaration as provided in s.  
16 718.113. The declaration may provide that the rental,  
17 membership fees, operations, replacements, and other expenses  
18 are common expenses and may impose covenants and restrictions  
19 concerning their use and may contain other provisions not  
20 inconsistent with this chapter. A condominium association may  
21 conduct bingo games as provided in s. 849.0931.

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

24 718.404 Mixed-use condominiums.--When a condominium  
25 consists of both residential and commercial units, the  
26 following provisions shall apply:

27 (1) The condominium documents shall not provide that  
28 the owner of any commercial unit shall have the authority to  
29 veto amendments to the declaration, articles of incorporation,  
30 bylaws, or rules or regulations of the association. This  
31 subsection shall apply retroactively as a remedial measure.

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

7           Section 6. Subsections (18) through (27) of section  
 8 719.103, Florida Statutes, are renumbered as subsections (19)  
 9 through (28), respectively, and a new subsection (18) is added  
 10 to that section to read:

11           719.103 Definitions.--As used in this chapter:

12           (18) "Equity facilities club" means a club comprised  
 13 of recreational facilities in which proprietary membership  
 14 interests are sold to individuals, which membership interests  
 15 entitle the individuals to use certain physical facilities  
 16 owned by the equity club. Such physical facilities do not  
 17 include a residential unit or accommodation. For purposes of  
 18 this definition, the term "accommodation" shall include, but  
 19 is not limited to, any apartment, residential cooperative  
 20 unit, residential condominium unit, cabin, lodge, hotel or  
 21 motel room, or other accommodation designed for overnight  
 22 occupancy for one or more individuals.

23           Section 7. Section 719.507, Florida Statutes, is  
 24 amended to read:

25           719.507 Zoning and building laws, ordinances, and  
 26 regulations.--All laws, ordinances, and regulations concerning  
 27 buildings or zoning shall be construed and applied with  
 28 reference to the nature and use of such property, without  
 29 regard to the form of ownership. No law, ordinance, or  
 30 regulation shall establish any requirement concerning the use,  
 31 location, placement, or construction of buildings or other

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1 improvements which are, or may thereafter be, subjected to the  
 2 cooperative or equity facilities club form of ownership,  
 3 unless such requirement shall be equally applicable to all  
 4 buildings and improvements of the same kind not then, or  
 5 thereafter to be, subjected to the cooperative or equity  
 6 facilities club form of ownership. This section does not apply  
 7 if the owner in fee of any land enters into and records a  
 8 covenant that existing improvements or improvements to be  
 9 constructed shall not be converted to the cooperative form of  
 10 residential ownership prior to 5 years after the later of the  
 11 date of the covenant or completion date of the improvements.  
 12 Such covenant shall be entered into with the governing body of  
 13 the municipality in which the land is located or, if the land  
 14 is not located in a municipality, with the governing body of  
 15 the county in which the land is located.

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

18 720.302 Purposes, scope, and application.--

19 (4) This chapter does not apply to any association  
 20 that is subject to regulation under chapter 718, chapter 719,  
 21 or chapter 721~~7~~ or to any nonmandatory association formed  
 22 under chapter 723, except to the extent that a provision of  
 23 chapter 718, chapter 719, or chapter 721 is expressly  
 24 incorporated into this chapter for the purpose of regulating  
 25 homeowners' associations.

26 (5) Unless expressly stated to the contrary,  
 27 corporations ~~not for profit~~ that operate residential  
 28 homeowners' associations in this state shall be governed by  
 29 and subject to chapter 607, if the association was  
 30 incorporated under that chapter, or to chapter 617, if the  
 31 association was incorporated under that chapter, and this

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1 chapter. This subsection is intended to clarify existing law.

2 Section 9. Subsections (2), (6), and (7) of section  
3 720.303, Florida Statutes, are amended, and paragraph (d) is  
4 added to subsection (5) of that section, to read:

5 720.303 Association powers and duties; meetings of  
6 board; official records; budgets; financial reporting;  
7 association funds; recalls.--

8 (2) BOARD MEETINGS.--

9 (a) A meeting of the board of directors of an  
10 association occurs whenever a quorum of the board gathers to  
11 conduct association business. All meetings of the board must  
12 be open to all members except for meetings between the board  
13 and its attorney with respect to proposed or pending  
14 litigation where the contents of the discussion would  
15 otherwise be governed by the attorney-client privilege. The  
16 provisions of this subsection shall also apply to the meetings  
17 of any committee or other similar body when a final decision  
18 will be made regarding the expenditure of association funds  
19 and to meetings of any body vested with the power to approve  
20 or disapprove architectural decisions with respect to a  
21 specific parcel of residential property owned by a member of  
22 the community.

23 (b) Members have the right to attend all meetings of  
24 the board and to speak on any matter placed on the agenda by  
25 petition of the voting interests for at least 3 minutes. The  
26 association may adopt written reasonable rules expanding the  
27 right of members to speak and governing the frequency,  
28 duration, and other manner of member statements, which rules  
29 must be consistent with this paragraph and may include a  
30 sign-up sheet for members wishing to speak. Notwithstanding  
31 any other law, the requirement that board meetings and



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1 committee meetings be open to the members is inapplicable to  
2 meetings between the board or a committee and the  
3 association's attorney, with respect to meetings of the board  
4 held for the purpose of discussing personnel matters.

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

8 1. Notices of all board meetings must be posted in a  
9 conspicuous place in the community at least 48 hours in  
10 advance of a meeting, except in an emergency. In the  
11 alternative, if notice is not posted in a conspicuous place in  
12 the community, notice of each board meeting must be mailed or  
13 delivered to each member at least 7 days before the meeting,  
14 except in an emergency. Notwithstanding this general notice  
15 requirement, for communities with more than 100 members, the  
16 bylaws may provide for a reasonable alternative to posting or  
17 mailing of notice for each board meeting, including  
18 publication of notice, provision of a schedule of board  
19 meetings, or the conspicuous posting and repeated broadcasting  
20 of the notice on a closed-circuit cable television system  
21 serving the homeowners' association. However, if broadcast  
22 notice is used in lieu of a notice posted physically in the  
23 community, the notice must be broadcast at least four times  
24 every broadcast hour of each day that a posted notice is  
25 otherwise required. When broadcast notice is provided, the  
26 notice and agenda must be broadcast in a manner and for a  
27 sufficient continuous length of time so as to allow an average  
28 reader to observe the notice and read and comprehend the  
29 entire content of the notice and the agenda. The bylaws or  
30 amended bylaws may provide for giving notice by electronic  
31 transmission in a manner authorized by law for meetings of the

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1 board of directors, committee meetings requiring notice under  
 2 this section, and annual and special meetings of the members;  
 3 however, a member must consent in writing to receiving notice  
 4 by electronic transmission.

5           2. An assessment may not be levied at a board meeting  
 6 unless the notice of the meeting includes a statement that  
 7 assessments will be considered and the nature of the  
 8 assessments. Written notice of any meeting at which special  
 9 assessments will be considered or at which amendments to rules  
 10 regarding parcel use will be considered must be mailed,  
 11 delivered, or electronically transmitted to the members and  
 12 parcel owners and posted conspicuously on the property or  
 13 broadcast on closed-circuit cable television not less than 14  
 14 days before the meeting.

15           3. Directors may not vote by proxy or by secret ballot  
 16 at board meetings, except that secret ballots may be used in  
 17 the election of officers. This subsection also applies to the  
 18 meetings of any committee or other similar body, when a final  
 19 decision will be made regarding the expenditure of association  
 20 funds, and to any body vested with the power to approve or  
 21 disapprove architectural decisions with respect to a specific  
 22 parcel of residential property owned by a member of the  
 23 community.

24           (d) If 20 percent of the total voting interests  
 25 petition the board to address an item of business, the board  
 26 shall at its next regular board meeting or at a special  
 27 meeting of the board, but not later than 60 days after the  
 28 receipt of the petition, take the petitioned item up on an  
 29 agenda. The board shall give all members notice of the meeting  
 30 at which the petitioned item shall be addressed in accordance  
 31 with the 14-day notice requirement pursuant to subparagraph

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1 (c)2. Each member shall have the right to speak for at least 3  
 2 minutes on each matter placed on the agenda by petition,  
 3 provided that the member signs the sign-up sheet, if one is  
 4 provided, or submits a written request to speak prior to the  
 5 meeting. Other than addressing the petitioned item at the  
 6 meeting, the board is not obligated to take any other action  
 7 requested by the petition.

8 (5) INSPECTION AND COPYING OF RECORDS.--The official  
 9 records shall be maintained within the state and must be open  
 10 to inspection and available for photocopying by members or  
 11 their authorized agents at reasonable times and places within  
 12 10 business days after receipt of a written request for  
 13 access. This subsection may be complied with by having a copy  
 14 of the official records available for inspection or copying in  
 15 the community. If the association has a photocopy machine  
 16 available where the records are maintained, it must provide  
 17 parcel owners with copies on request during the inspection if  
 18 the entire request is limited to no more than 25 pages.

19 (d) The association or its authorized agent is not  
 20 required to provide a prospective purchaser or lienholder with  
 21 information about the residential subdivision or the  
 22 association other than information or documents required by  
 23 this chapter to be made available or disclosed. The  
 24 association or its authorized agent may charge a reasonable  
 25 fee to the prospective purchaser or lienholder or the current  
 26 parcel owner or member for providing good faith responses to  
 27 requests for information by or on behalf of a prospective  
 28 purchaser or lienholder, other than that required by law, if  
 29 the fee does not exceed \$150 plus the reasonable cost of  
 30 photocopying and any attorney's fees incurred by the  
 31 association in connection with the response.

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1 (6) BUDGETS.--

2 (a) The association shall prepare an annual budget  
3 that sets out the annual operating expenses. The budget must  
4 reflect the estimated revenues and expenses for that year and  
5 the estimated surplus or deficit as of the end of the current  
6 year. The budget must set out separately all fees or charges  
7 paid for by the association for recreational amenities,  
8 whether owned by the association, the developer, or another  
9 person. The association shall provide each member with a copy  
10 of the annual budget or a written notice that a copy of the  
11 budget is available upon request at no charge to the member.  
12 The copy must be provided to the member within the time limits  
13 set forth in subsection (5).

14 (b) In addition to annual operating expenses, the  
15 budget may include reserve accounts for capital expenditures  
16 and deferred maintenance for which the association is  
17 responsible to the extent that the governing documents do not  
18 limit increases in assessments, including reserves. If the  
19 budget of the association includes reserve accounts, such  
20 reserves shall be determined, maintained, and waived in the  
21 manner provided in this subsection. Once an association  
22 provides for reserve accounts in the budget, the association  
23 shall thereafter determine, maintain, and waive reserves in  
24 compliance with this subsection.

25 (c) If the budget of the association does not provide  
26 for reserve accounts governed by this subsection and the  
27 association is responsible for the repair and maintenance of  
28 capital improvements that may result in a special assessment  
29 if reserves are not provided, each financial report for the  
30 preceding fiscal year required by subsection (7) shall contain  
31 the following statement in conspicuous type: THE BUDGET OF THE

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1 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL  
 2 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN  
 3 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE  
 4 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),  
 5 FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A  
 6 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

7       (d) An association shall be deemed to have provided  
 8 for reserve accounts when reserve accounts have been initially  
 9 established by the developer or when the membership of the  
 10 association affirmatively elects to provide for reserves. If  
 11 reserve accounts are not initially provided for by the  
 12 developer, the membership of the association may elect to do  
 13 so upon the affirmative approval of not less than a majority  
 14 of the total voting interests of the association. Such  
 15 approval may be attained by vote of the members at a duly  
 16 called meeting of the membership or upon a written consent  
 17 executed by not less than a majority of the total voting  
 18 interests in the community. The approval action of the  
 19 membership shall state that reserve accounts shall be provided  
 20 for in the budget and designate the components for which the  
 21 reserve accounts are to be established. Upon approval by the  
 22 membership, the board of directors shall provide for the  
 23 required reserve accounts for inclusion in the budget in the  
 24 next fiscal year following the approval and in each year  
 25 thereafter. Once established as provided in this subsection,  
 26 the reserve accounts shall be funded or maintained or shall  
 27 have their funding waived in the manner provided in paragraph  
 28 (f).

29       (e) The amount to be reserved in any account  
 30 established shall be computed by means of a formula that is  
 31 based upon estimated remaining useful life and estimated

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1 replacement cost or deferred maintenance expense of each  
 2 reserve item. The association may adjust replacement reserve  
 3 assessments annually to take into account any changes in  
 4 estimates of cost or useful life of a reserve item.

5 (f) Once a reserve account or reserve accounts are  
 6 established, the membership of the association, upon a  
 7 majority vote at a meeting at which a quorum is present, may  
 8 provide for no reserves or less reserves than required by this  
 9 section. If a meeting of the unit owners has been called to  
 10 determine whether to waive or reduce the funding of reserves  
 11 and no such result is achieved or a quorum is not present, the  
 12 reserves as included in the budget shall go into effect. After  
 13 the turnover, the developer may vote its voting interest to  
 14 waive or reduce the funding of reserves. Any vote taken  
 15 pursuant to this subsection to waive or reduce reserves shall  
 16 be applicable only to one budget year.

17 (g) Funding formulas for reserves authorized by this  
 18 section shall be based on either a separate analysis of each  
 19 of the required assets or a pooled analysis of two or more of  
 20 the required assets.

21 1. If the association maintains separate reserve  
 22 accounts for each of the required assets, the amount of the  
 23 contribution to each reserve account shall be the sum of the  
 24 following two calculations:

25 a. The total amount necessary, if any, to bring a  
 26 negative component balance to zero.

27 b. The total estimated deferred maintenance expense or  
 28 estimated replacement cost of the reserve component less the  
 29 estimated balance of the reserve component as of the beginning  
 30 of the period for which the budget will be in effect. The  
 31 remainder, if greater than zero, shall be divided by the

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1 estimated remaining useful life of the component.

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3 The formula may be adjusted each year for changes in estimates  
4 and deferred maintenance performed during the year and may  
5 include factors such as inflation and earnings on invested  
6 funds.

7       2. If the association maintains a pooled account of  
8 two or more of the required reserve assets, the amount of the  
9 contribution to the pooled reserve account as disclosed on the  
10 proposed budget shall not be less than that required to ensure  
11 that the balance on hand at the beginning of the period for  
12 which the budget will go into effect plus the projected annual  
13 cash inflows over the remaining estimated useful life of all  
14 of the assets that make up the reserve pool are equal to or  
15 greater than the projected annual cash outflows over the  
16 remaining estimated useful lives of all of the assets that  
17 make up the reserve pool, based on the current reserve  
18 analysis. The projected annual cash inflows may include  
19 estimated earnings from investment of principal. The reserve  
20 funding formula shall not include any type of balloon  
21 payments.

22       (h) Reserve funds and any interest accruing thereon  
23 shall remain in the reserve account or accounts and shall be  
24 used only for authorized reserve expenditures unless their use  
25 for other purposes is approved in advance by a majority vote  
26 at a meeting at which a quorum is present. Prior to turnover  
27 of control of an association by a developer to parcel owners,  
28 the developer-controlled association shall not vote to use  
29 reserves for purposes other than those for which they were  
30 intended without the approval of a majority of all  
31 nondeveloper voting interests voting in person or by limited

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1 proxy at a duly called meeting of the association.

2 (7) FINANCIAL REPORTING.--Within 90 days after the end  
3 of the fiscal year, or annually on the date provided in the  
4 bylaws, the association shall prepare and complete, or  
5 contract with a third party for the preparation and completion  
6 of, a financial report for the preceding fiscal year. Within  
7 21 days after the final financial report is completed by the  
8 association or received from the third party, but not later  
9 than 120 days after the end of the fiscal year or other date  
10 as provided in the bylaws, the association shall ~~prepare an~~  
11 ~~annual financial report within 60 days after the close of the~~  
12 ~~fiscal year. The association shall,~~ within the time limits set  
13 forth in subsection (5), provide each member with a copy of  
14 the annual financial report or a written notice that a copy of  
15 the financial report is available upon request at no charge to  
16 the member. Financial reports shall be prepared as follows:

17 (a) An association that meets the criteria of this  
18 paragraph shall prepare or cause to be prepared a complete set  
19 of financial statements in accordance with generally accepted  
20 accounting principles as adopted by the Board of Accountancy.  
21 The financial statements shall be based upon the association's  
22 total annual revenues, as follows:

23 1. An association with total annual revenues of  
24 \$100,000 or more, but less than \$200,000, shall prepare  
25 compiled financial statements.

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

29 3. An association with total annual revenues of  
30 \$400,000 or more shall prepare audited financial statements.

31 (b)1. An association with total annual revenues of



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1 less than \$100,000 shall prepare a report of cash receipts and  
2 expenditures.

3           2. An association in a community of fewer than 50  
4 parcels, regardless of the association's annual revenues, may  
5 prepare a report of cash receipts and expenditures in lieu of  
6 financial statements required by paragraph (a) unless the  
7 governing documents provide otherwise.

8           3. A report of cash receipts and disbursement must  
9 disclose the amount of receipts by accounts and receipt  
10 classifications and the amount of expenses by accounts and  
11 expense classifications, including, but not limited to, the  
12 following, as applicable: costs for security, professional,  
13 and management fees and expenses; taxes; costs for recreation  
14 facilities; expenses for refuse collection and utility  
15 services; expenses for lawn care; costs for building  
16 maintenance and repair; insurance costs; administration and  
17 salary expenses; and reserves if maintained by the  
18 association.

19           (c) If 20 percent of the parcel owners petition the  
20 board for a level of financial reporting higher than that  
21 required by this section, the association shall duly notice  
22 and hold a meeting of members within 30 days of receipt of the  
23 petition for the purpose of voting on raising the level of  
24 reporting for that fiscal year. Upon approval of a majority of  
25 the total voting interests of the parcel owners, the  
26 association shall prepare or cause to be prepared, shall amend  
27 the budget or adopt a special assessment to pay for the  
28 financial report regardless of any provision to the contrary  
29 in the governing documents, and shall provide within 90 days  
30 of the meeting or the end of the fiscal year, whichever occurs  
31 later:

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

4           2. Reviewed or audited financial statements, if the  
5 association is otherwise required to prepare compiled  
6 financial statements; or

7           3. Audited financial statements if the association is  
8 otherwise required to prepare reviewed financial statements.

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

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

14           2. A report of cash receipts and expenditures or a  
15 compiled financial statement in lieu of a reviewed or audited  
16 financial statement; or

17           3. A report of cash receipts and expenditures, a  
18 compiled financial statement, or a reviewed financial  
19 statement in lieu of an audited financial statement.

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

23           Section 11. Section 720.3035, Florida Statutes, is  
24 created to read:

25           720.3035 Architectural control covenants; parcel owner  
26 improvements; rights and privileges.--

27           (1) The authority of an association or any  
28 architectural, construction improvement, or other such similar  
29 committee of an association to review and approve plans and  
30 specifications for the location, size, type, or appearance of  
31 any structure or other improvement on a parcel, or to enforce

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1 standards for the external appearance of any structure or  
 2 improvement located on a parcel, shall be permitted only to  
 3 the extent that the authority is specifically stated or  
 4 reasonably inferred as to such location, size, type, or  
 5 appearance in the declaration of covenants or other published  
 6 guidelines and standards authorized by the declaration of  
 7 covenants.

8       (2) If the declaration of covenants or other published  
 9 guidelines and standards authorized by the declaration of  
 10 covenants provides options for the use of material, the size  
 11 of the structure or improvement, the design of the structure  
 12 or improvement, or the location of the structure or  
 13 improvement on the parcel, neither the association nor any  
 14 architectural, construction improvement, or other such similar  
 15 committee of the association shall restrict the right of a  
 16 parcel owner to select from the options provided in the  
 17 declaration of covenants or other published guidelines and  
 18 standards authorized by the declaration of covenants.

19       (3) Unless otherwise specifically stated in the  
 20 declaration of covenants or other published guidelines and  
 21 standards authorized by the declaration of covenants, each  
 22 parcel shall be deemed to have only one front for purposes of  
 23 determining the required front setback even if the parcel is  
 24 bounded by a roadway or other easement on more than one side.  
 25 When the declaration of covenants or other published  
 26 guidelines and standards authorized by the declaration of  
 27 covenants do not provide for specific setback limitations, the  
 28 applicable county or municipal setback limitations shall  
 29 apply, and neither the association nor any architectural,  
 30 construction improvement, or other such similar committee of  
 31 the association shall enforce or attempt to enforce any

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1 setback limitation that is inconsistent with the applicable  
2 county or municipal standard or standards.

3       (4) Each parcel owner shall be entitled to the rights  
4 and privileges set forth in the declaration of covenants or  
5 other published guidelines and standards authorized by the  
6 declaration of covenants concerning the architectural use of  
7 the parcel, and the construction of permitted structures and  
8 improvements on the parcel and such rights and privileges  
9 shall not be unreasonably infringed upon or impaired by the  
10 association or any architectural, construction improvement, or  
11 other such similar committee of the association. If the  
12 association or any architectural, construction improvement, or  
13 other such similar committee of the association should  
14 unreasonably, knowingly, and willfully infringe upon or impair  
15 the rights and privileges set forth in the declaration of  
16 covenants or other published guidelines and standards  
17 authorized by the declaration of covenants, the adversely  
18 affected parcel owner shall be entitled to recover damages  
19 caused by such infringement or impairment, including any costs  
20 and reasonable attorney's fees incurred in preserving or  
21 restoring the rights and privileges of the parcel owner set  
22 forth in the declaration of covenants or other published  
23 guidelines and standards authorized by the declaration of  
24 covenants.

25       (5) Neither the association nor any architectural,  
26 construction improvement, or other such similar committee of  
27 the association shall enforce any policy or restriction that  
28 is inconsistent with the rights and privileges of a parcel  
29 owner set forth in the declaration of covenants or other  
30 published guidelines and standards authorized by the  
31 declaration of covenants, whether uniformly applied or not.

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1 Neither the association nor any architectural, construction  
 2 improvement, or other such similar committee of the  
 3 association may rely upon a policy or restriction that is  
 4 inconsistent with the declaration of covenants or other  
 5 published guidelines and standards authorized by the  
 6 declaration of covenants, whether uniformly applied or not, in  
 7 defense of any action taken in the name of or on behalf of the  
 8 association against a parcel owner.

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

11           720.305 Obligations of members; remedies at law or in  
 12 equity; levy of fines and suspension of use rights; failure to  
 13 fill sufficient number of vacancies on board of directors to  
 14 constitute a quorum; appointment of receiver upon petition of  
 15 any member.--

16           (1) Each member and the member's tenants, guests, and  
 17 invitees, and each association, are governed by, and must  
 18 comply with, this chapter, the governing documents of the  
 19 community, and the rules of the association. Actions at law or  
 20 in equity, or both, to redress alleged failure or refusal to  
 21 comply with these provisions may be brought by the association  
 22 or by any member against:

- 23           (a) The association;
- 24           (b) A member;
- 25           (c) Any director or officer of an association who
- 26 willfully and knowingly fails to comply with these provisions;
- 27 and
- 28           (d) Any tenants, guests, or invitees occupying a
- 29 parcel or using the common areas.

30  
 31 The prevailing party in any such litigation is entitled to

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1 recover reasonable attorney's fees and costs. A member  
 2 prevailing in an action between the association and the member  
 3 under this section, in addition to recovering his or her  
 4 reasonable attorney's fees, may recover additional amounts as  
 5 determined by the court to be necessary to reimburse the  
 6 member for his or her share of assessments levied by the  
 7 association to fund its expenses of the litigation. This  
 8 relief does not exclude other remedies provided by law. This  
 9 section does not deprive any person of any other available  
 10 right or remedy.

11 Section 13. Paragraph (c) of subsection (1) of section  
 12 720.306, Florida Statutes, is amended to read:

13 720.306 Meetings of members; voting and election  
 14 procedures; amendments.--

15 (1) QUORUM; AMENDMENTS.--

16 (c) Unless otherwise provided in the governing  
 17 documents as originally recorded or permitted by this chapter  
 18 or chapter 617, an amendment may not materially and adversely  
 19 alter the proportionate voting interest appurtenant to a  
 20 parcel or increase the proportion or percentage by which a  
 21 parcel shares in the common expenses of the association unless  
 22 the record parcel owner and all record owners of liens on the  
 23 parcels join in the execution of the amendment. For purposes  
 24 of this section, a change in quorum requirements is not an  
 25 alteration of voting interests. The merger or consolidation of  
 26 one or more associations under a plan of merger or  
 27 consolidation under chapter 607 or chapter 617 shall not be  
 28 considered a material or adverse alteration of the  
 29 proportionate voting interest appurtenant to a parcel.

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

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1           720.307 Transition of association control in a  
2 community.--With respect to homeowners' associations:

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

8           (t) The financial records, including financial  
9 statements of the association, and source documents from the  
10 incorporation of the association through the date of turnover.  
11 The records shall be audited by an independent certified  
12 public accountant for the period from the incorporation of the  
13 association or from the period covered by the last audit, if  
14 an audit has been performed for each fiscal year since  
15 incorporation. All financial statements shall be prepared in  
16 accordance with generally accepted accounting principles and  
17 shall be audited in accordance with generally accepted  
18 auditing standards, as prescribed by the Board of Accountancy,  
19 pursuant to chapter 473. The certified public accountant  
20 performing the audit shall examine to the extent necessary  
21 supporting documents and records, including the cash  
22 disbursements and related paid invoices to determine if  
23 expenditures were for association purposes and the billings,  
24 cash receipts, and related records of the association to  
25 determine that the developer was charged and paid the proper  
26 amounts of assessments. This paragraph applies to associations  
27 with a date of incorporation after December 31, 2007.

28           Section 15. Section 720.308, Florida Statutes, is  
29 amended to read:

30           720.308 Assessments and charges.--

31           (1) ASSESSMENTS.--For any community created after

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1 October 1, 1995, the governing documents must describe the  
2 manner in which expenses are shared and specify the member's  
3 proportional share thereof. Assessments levied pursuant to the  
4 annual budget or special assessment must be in the member's  
5 proportional share of expenses as described in the governing  
6 document, which share may be different among classes of  
7 parcels based upon the state of development thereof, levels of  
8 services received by the applicable members, or other relevant  
9 factors. While the developer is in control of the homeowners'  
10 association, it may be excused from payment of its share of  
11 the operating expenses and assessments related to its parcels  
12 for any period of time for which the developer has, in the  
13 declaration, obligated itself to pay any operating expenses  
14 incurred that exceed the assessments receivable from other  
15 members and other income of the association. This section does  
16 not apply to an association, no matter when created, if the  
17 association is created in a community that is included in an  
18 effective development-of-regional-impact development order as  
19 of the effective date of this act, together with any approved  
20 modifications thereto.

21 (2) GUARANTEES OF COMMON EXPENSES.--

22 (a) Establishment of a guarantee.--If a guarantee of  
23 the assessments of parcel owners is not included in the  
24 purchase contracts or declaration, any agreement establishing  
25 a guarantee shall only be effective upon the approval of a  
26 majority of the voting interests of the members other than the  
27 developer. Approval shall be expressed at a meeting of the  
28 members voting in person or by limited proxy or by agreement  
29 in writing without a meeting if provided in the bylaws. Such  
30 guarantee must meet the requirements of this section.

31 (b) Guarantee period.--The period of time for the



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1 guarantee shall be indicated by a specific beginning and  
2 ending date or event.

3 1. The ending date or event shall be the same for all  
4 of the members of an association, including members in  
5 different phases of the development.

6 2. The guarantee may provide for different intervals  
7 of time during a guarantee period with different dollar  
8 amounts for each such interval.

9 3. The guarantee may provide that after the initial  
10 stated period, the developer has an option to extend the  
11 guarantee for one or more additional stated periods. The  
12 extension of a guarantee is limited to extending the ending  
13 date or event; therefore, the developer does not have the  
14 option of changing the level of assessments guaranteed.

15 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar  
16 amount of the guarantee shall be an exact dollar amount for  
17 each parcel identified in the declaration. Regardless of the  
18 stated dollar amount of the guarantee, assessments charged to  
19 a member shall not exceed the maximum obligation of the member  
20 based on the total amount of the adopted budget and the  
21 member's proportionate share of the expenses as described in  
22 the governing documents.

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

26 (a) If at any time during the guarantee period the  
27 funds collected from member assessments at the guaranteed  
28 level and other revenues collected by the association are not  
29 sufficient to provide payment, on a timely basis, of all  
30 assessments, including the full funding of the reserves unless  
31 properly waived, the guarantor shall advance sufficient cash

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1 to the association at the time such payments are due.

2 (b) Expenses incurred in the production of  
3 nonassessment revenues, not in excess of the nonassessment  
4 revenues, shall not be included in the assessments. If the  
5 expenses attributable to nonassessment revenues exceed  
6 nonassessment revenues, only the excess expenses must be  
7 funded by the guarantor. Interest earned on the investment of  
8 association funds may be used to pay the income tax expense  
9 incurred as a result of the investment; such expense shall not  
10 be charged to the guarantor; and the net investment income  
11 shall be retained by the association. Each such  
12 nonassessment-revenue-generating activity shall be considered  
13 separately. Any portion of the parcel assessment which is  
14 budgeted for designated capital contributions of the  
15 association shall not be used to pay operating expenses.

16 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The  
17 guarantor's total financial obligation to the association at  
18 the end of the guarantee period shall be determined on the  
19 accrual basis using the following formula: the guarantor shall  
20 pay any deficits that exceed the guaranteed amount, less the  
21 total regular periodic assessments earned by the association  
22 from the members other than the guarantor during the guarantee  
23 period regardless of whether the actual level charged was less  
24 than the maximum guaranteed amount.

25 (6) EXPENSES.--Expenses incurred in the production of  
26 nonassessment revenues, not in excess of the nonassessment  
27 revenues, shall not be included in the operating expenses. If  
28 the expenses attributable to nonassessment revenues exceed  
29 nonassessment revenues, only the excess expenses must be  
30 funded by the guarantor. Interest earned on the investment of  
31 association funds may be used to pay the income tax expense

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1 incurred as a result of the investment; such expense shall not  
 2 be charged to the guarantor; and the net investment income  
 3 shall be retained by the association. Each such  
 4 nonassessment-revenue-generating activity shall be considered  
 5 separately. Any portion of the parcel assessment which is  
 6 budgeted for designated capital contributions of the  
 7 association shall not be used to pay operating expenses.

8           Section 16. Section 720.311, Florida Statutes, is  
 9 amended to read:

10           720.311 Dispute resolution.--

11           (1) The Legislature finds that alternative dispute  
 12 resolution has made progress in reducing court dockets and  
 13 trials and in offering a more efficient, cost-effective option  
 14 to litigation. The filing of any petition for ~~mediation or~~  
 15 arbitration or the serving of a demand for presuit mediation  
 16 as provided for in this section shall toll the applicable  
 17 statute of limitations. Any recall dispute filed with the  
 18 department pursuant to s. 720.303(10) shall be conducted by  
 19 the department in accordance with the provisions of ss.  
 20 718.112(2)(j) and 718.1255 and the rules adopted by the  
 21 division. In addition, the department shall conduct mandatory  
 22 binding arbitration of election disputes between a member and  
 23 an association pursuant to s. 718.1255 and rules adopted by  
 24 the division. Neither election disputes nor recall disputes  
 25 are eligible for presuit mediation; these disputes shall be  
 26 arbitrated by the department. At the conclusion of the  
 27 proceeding, the department shall charge the parties a fee in  
 28 an amount adequate to cover all costs and expenses incurred by  
 29 the department in conducting the proceeding. Initially, the  
 30 petitioner shall remit a filing fee of at least \$200 to the  
 31 department. The fees paid to the department shall become a

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1 recoverable cost in the arbitration proceeding, and the  
 2 prevailing party in an arbitration proceeding shall recover  
 3 its reasonable costs and attorney's fees in an amount found  
 4 reasonable by the arbitrator. The department shall adopt rules  
 5 to effectuate the purposes of this section.

6 (2)(a) Disputes between an association and a parcel  
 7 owner regarding use of or changes to the parcel or the common  
 8 areas and other covenant enforcement disputes, disputes  
 9 regarding amendments to the association documents, disputes  
 10 regarding meetings of the board and committees appointed by  
 11 the board, membership meetings not including election  
 12 meetings, and access to the official records of the  
 13 association shall be the subject of a demand filed with the  
 14 department for presuit mandatory mediation served by an  
 15 aggrieved party before the dispute is filed in court. Presuit  
 16 mediation proceedings must be conducted in accordance with the  
 17 applicable Florida Rules of Civil Procedure, and these  
 18 proceedings are privileged and confidential to the same extent  
 19 as court-ordered mediation. Disputes subject to presuit  
 20 mediation under this section shall not include the collection  
 21 of any assessment, fine, or other financial obligation,  
 22 including attorney's fees and costs, claimed to be due or any  
 23 action to enforce a prior mediation settlement agreement  
 24 between the parties. Also, in any dispute subject to presuit  
 25 mediation under this section where emergency relief is  
 26 required, a motion for temporary injunctive relief may be  
 27 filed with the court without first complying with the presuit  
 28 mediation requirements of this section. After any issues  
 29 regarding emergency or temporary relief are resolved, the  
 30 court may either refer the parties to a mediation program  
 31 administered by the courts or require mediation under this

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1 section. An arbitrator or judge may not consider any  
 2 information or evidence arising from the presuit mediation  
 3 proceeding except in a proceeding to impose sanctions for  
 4 failure to attend a presuit mediation session or to enforce a  
 5 mediated settlement agreement. Persons who are not parties to  
 6 the dispute may not attend the presuit mediation conference  
 7 without the consent of all parties, except for counsel for the  
 8 parties and a corporate representative designated by the  
 9 association. When mediation is attended by a quorum of the  
 10 board, such mediation is not a board meeting for purposes of  
 11 notice and participation set forth in s. 720.303. An aggrieved  
 12 party shall serve on the responding party a written demand to  
 13 participate in presuit mediation in substantially the  
 14 following form:

15           STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

16  
 17 The alleged aggrieved party, \_\_\_\_\_, hereby demands  
 18 that \_\_\_\_\_, as the responding party, engage in  
 19 mandatory presuit mediation in connection with the following  
 20 disputes, which by statute are of a type that are subject to  
 21 presuit mediation:

22  
 23 (List specific nature of the dispute or disputes to be  
 24 mediated and the authority supporting a finding of a violation  
 25 as to each dispute.)

26  
 27 Pursuant to section 720.311, Florida Statutes, this demand to  
 28 resolve the dispute through presuit mediation is required  
 29 before a lawsuit can be filed concerning the dispute. Pursuant  
 30 to the statute, the parties are required to engage in presuit  
 31 mediation with a neutral third-party mediator in order to

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1 attempt to resolve this dispute without court action, and the  
 2 aggrieved party demands that you likewise agree to this  
 3 process. If you fail to participate in the mediation process,  
 4 suit may be brought against you without further warning.

5  
 6 The process of mediation involves a supervised negotiation  
 7 process in which a trained, neutral third-party mediator meets  
 8 with both parties and assists them in exploring possible  
 9 opportunities for resolving part or all of the dispute. By  
 10 agreeing to participate in presuit mediation, you are not  
 11 bound in any way to change your position. Furthermore, the  
 12 mediator has no authority to make any decisions in this matter  
 13 or to determine who is right or wrong and merely acts as a  
 14 facilitator to ensure that each party understands the position  
 15 of the other party and that all options for reasonable  
 16 settlement are fully explored.

17  
 18 If an agreement is reached, it shall be reduced to writing and  
 19 becomes a binding and enforceable commitment of the parties. A  
 20 resolution of one or more disputes in this fashion avoids the  
 21 need to litigate these issues in court. The failure to reach  
 22 an agreement, or the failure of a party to participate in the  
 23 process, results in the mediator declaring an impasse in the  
 24 mediation, after which the aggrieved party may proceed to  
 25 court on all outstanding, unsettled disputes. If you have  
 26 failed or refused to participate in the entire mediation  
 27 process, you will not be entitled to recover attorney's fees,  
 28 even if you prevail.

29  
 30 The aggrieved party has selected and hereby lists five  
 31 certified mediators who we believe to be neutral and qualified

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1 to mediate the dispute. You have the right to select any one  
 2 of these mediators. The fact that one party may be familiar  
 3 with one or more of the listed mediators does not mean that  
 4 the mediator cannot act as a neutral and impartial  
 5 facilitator. Any mediator who cannot act in this capacity is  
 6 required ethically to decline to accept engagement. The  
 7 mediators that we suggest, and their current hourly rates, are  
 8 as follows:

9  
 10 (List the names, addresses, telephone numbers, and hourly  
 11 rates of the mediators. Other pertinent information about the  
 12 background of the mediators may be included as an attachment.)

13  
 14 You may contact the offices of these mediators to confirm that  
 15 the listed mediators will be neutral and will not show any  
 16 favoritism toward either party. The names of certified  
 17 mediators may be found through the office of the clerk of the  
 18 circuit court for this circuit.

19  
 20 Unless otherwise agreed by the parties, section 720.311(2)(b),  
 21 Florida Statutes, requires that the parties share the costs or  
 22 presuit mediation equally, including the fee charged by the  
 23 mediator. An average mediation may require three to four hours  
 24 of the mediator's time, including some preparation time, and  
 25 the parties would need to share equally the mediator's fees as  
 26 well as their own attorney's fees if they choose to employ an  
 27 attorney in connection with the mediation. However, use of an  
 28 attorney is not required and is at the option of each party.  
 29 The mediators may require the advance payment of some or all  
 30 of the anticipated fees. The aggrieved party hereby agrees to  
 31 pay or prepay one-half of the mediator's estimated fees and to

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1 forward this amount or such other reasonable advance deposits  
 2 as the mediator requires for this purpose. Any funds deposited  
 3 will be returned to you if these are in excess of your share  
 4 of the fees incurred.

5  
 6 To begin your participation in presuit mediation to try to  
 7 resolve the dispute and avoid further legal action, please  
 8 sign below and clearly indicate which mediator is acceptable  
 9 to you. We will then ask the mediator to schedule a mutually  
 10 convenient time and place for the mediation conference to be  
 11 held. The mediation conference must be held within ninety (90)  
 12 days of this date, unless extended by mutual written  
 13 agreement. In the event that you fail to respond within 20  
 14 days from the date of this letter, or if you fail to agree to  
 15 at least one of the mediators that we have suggested or to pay  
 16 or prepay to the mediator one-half of the costs involved, the  
 17 aggrieved party will be authorized to proceed with the filing  
 18 of a lawsuit against you without further notice and may seek  
 19 an award of attorney's fees or costs incurred in attempting to  
 20 obtain mediation.

21  
 22 Therefore, please give this matter your immediate attention.  
 23 By law, your response must be mailed by certified mail, return  
 24 receipt requested, and by first-class mail to the address  
 25 shown on this demand.

26  
 27 \_\_\_\_\_  
 28 \_\_\_\_\_

29  
 30 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO  
 31 THAT CHOICE.



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31

AGREEMENT TO MEDIATE

The undersigned hereby agrees to participate in presuit mediation and agrees to attend a mediation conducted by the following mediator or mediators who are listed above as someone who would be acceptable to mediate this dispute:

(List acceptable mediator or mediators.)

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

\_\_\_\_\_  
Signature of responding party #1

\_\_\_\_\_  
Telephone contact information

\_\_\_\_\_  
Signature and telephone contact information of responding party #2 (if applicable)(if property is owned by more than one person, all owners must sign)

(b) Service of the statutory demand to participate in presuit mediation shall be effected by sending a letter in substantial conformity with the above form by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the

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1 association. The responding party has 20 days from the date of  
2 the mailing of the statutory demand to serve a response to the  
3 aggrieved party in writing. The response shall be served by  
4 certified mail, return receipt requested, with an additional  
5 copy being sent by regular first-class mail, to the address  
6 shown on the statutory demand. Notwithstanding the foregoing,  
7 once the parties have agreed on a mediator, the mediator may  
8 reschedule the mediation for a date and time mutually  
9 convenient to the parties. ~~The department shall conduct the~~  
10 ~~proceedings through the use of department mediators or refer~~  
11 ~~the disputes to private mediators who have been duly certified~~  
12 ~~by the department as provided in paragraph (c).~~ The parties  
13 shall share the costs of presuit mediation equally, including  
14 the fee charged by the mediator, if any, unless the parties  
15 agree otherwise, and the mediator may require advance payment  
16 of its reasonable fees and costs. The failure of any party to  
17 respond to a demand or response, to agree upon a mediator, to  
18 make payment of fees and costs within the time established by  
19 the mediator, or to appear for a scheduled mediation session  
20 without the approval of the mediator, shall constitute the  
21 failure or refusal to participate in the mediation process and  
22 shall operate as an impasse in the presuit mediation by such  
23 party, entitling the other party to proceed in court and to  
24 seek an award of the costs and fees associated with the  
25 mediation. Additionally, notwithstanding the provisions of any  
26 other law or document, persons who fail or refuse to  
27 participate in the entire mediation process may not recover  
28 attorney's fees and costs in subsequent litigation relating to  
29 the dispute. If any presuit mediation session cannot be  
30 scheduled and conducted within 90 days after the offer to  
31 participate in mediation was filed, an impasse shall be deemed

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1 to have occurred unless both parties agree to extend this  
2 deadline. ~~If a department mediator is used, the department may~~  
3 ~~charge such fee as is necessary to pay expenses of the~~  
4 ~~mediation, including, but not limited to, the salary and~~  
5 ~~benefits of the mediator and any travel expenses incurred. The~~  
6 ~~petitioner shall initially file with the department upon~~  
7 ~~filing the disputes, a filing fee of \$200, which shall be used~~  
8 ~~to defray the costs of the mediation. At the conclusion of the~~  
9 ~~mediation, the department shall charge to the parties, to be~~  
10 ~~shared equally unless otherwise agreed by the parties, such~~  
11 ~~further fees as are necessary to fully reimburse the~~  
12 ~~department for all expenses incurred in the mediation.~~

13 (c)(b) If presuit mediation as described in paragraph  
14 (a) is not successful in resolving all issues between the  
15 parties, the parties may file the unresolved dispute in a  
16 court of competent jurisdiction or elect to enter into binding  
17 or nonbinding arbitration pursuant to the procedures set forth  
18 in s. 718.1255 and rules adopted by the division, with the  
19 arbitration proceeding to be conducted by a department  
20 arbitrator or by a private arbitrator certified by the  
21 department. If all parties do not agree to arbitration  
22 proceedings following an unsuccessful presuit mediation, any  
23 party may file the dispute in court. A final order resulting  
24 from nonbinding arbitration is final and enforceable in the  
25 courts if a complaint for trial de novo is not filed in a  
26 court of competent jurisdiction within 30 days after entry of  
27 the order. As to any issue or dispute that is not resolved at  
28 presuit mediation, and as to any issue that is settled at  
29 presuit mediation but is thereafter subject to an action  
30 seeking enforcement of the mediation settlement, the  
31 prevailing party in any subsequent arbitration or litigation

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1 proceeding shall be entitled to seek recovery of all costs and  
2 attorney's fees incurred in the presuit mediation process.

3 ~~(d)(c) The department shall develop a certification~~  
4 ~~and training program for private mediators and private~~  
5 ~~arbitrators which shall emphasize experience and expertise in~~  
6 ~~the area of the operation of community associations. A~~  
7 ~~mediator or arbitrator shall be certified authorized to~~  
8 ~~conduct mediation or arbitration under this section by the~~  
9 ~~department only if he or she has been certified as a circuit~~  
10 ~~court civil mediator or arbitrator, respectively, pursuant to~~  
11 ~~the requirements established attended at least 20 hours of~~  
12 ~~training in mediation or arbitration, as appropriate, and only~~  
13 ~~if the applicant has mediated or arbitrated at least 10~~  
14 ~~disputes involving community associations within 5 years prior~~  
15 ~~to the date of the application, or has mediated or arbitrated~~  
16 ~~10 disputes in any area within 5 years prior to the date of~~  
17 ~~application and has completed 20 hours of training in~~  
18 ~~community association disputes. In order to be certified by~~  
19 ~~the department, any mediator must also be certified by the~~  
20 ~~Florida Supreme Court. Settlement agreements resulting from~~  
21 ~~mediation shall not have precedential value in proceedings~~  
22 ~~involving parties other than those participating in the~~  
23 ~~mediation to support either a claim or defense in other~~  
24 ~~disputes. The department may conduct the training and~~  
25 ~~certification program within the department or may contract~~  
26 ~~with an outside vendor to perform the training or~~  
27 ~~certification. The expenses of operating the training and~~  
28 ~~certification and training program shall be paid by the moneys~~  
29 ~~and filing fees generated by the arbitration of recall and~~  
30 ~~election disputes and by the mediation of those disputes~~  
31 ~~referred to in this subsection and by the training fees.~~

Bill No. SB 902

Barcode 324514

1           ~~(e)(d)~~ The presuit mediation procedures provided by  
2 this subsection may be used by a Florida corporation  
3 responsible for the operation of a community in which the  
4 voting members are parcel owners or their representatives, in  
5 which membership in the corporation is not a mandatory  
6 condition of parcel ownership, or which is not authorized to  
7 impose an assessment that may become a lien on the parcel.

8           ~~(3) The department shall develop an education program~~  
9 ~~to assist homeowners, associations, board members, and~~  
10 ~~managers in understanding and increasing awareness of the~~  
11 ~~operation of homeowners' associations pursuant to this chapter~~  
12 ~~and in understanding the use of alternative dispute resolution~~  
13 ~~techniques in resolving disputes between parcel owners and~~  
14 ~~associations or between owners. Such education program may~~  
15 ~~include the development of pamphlets and other written~~  
16 ~~instructional guides, the holding of classes and meetings by~~  
17 ~~department employees or outside vendors, as the department~~  
18 ~~determines, and the creation and maintenance of a website~~  
19 ~~containing instructional materials. The expenses of operating~~  
20 ~~the education program shall be initially paid by the moneys~~  
21 ~~and filing fees generated by the arbitration of recall and~~  
22 ~~election disputes and by the mediation of those disputes~~  
23 ~~referred to in this subsection.~~

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

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

29 And the title is amended as follows:

30           Delete everything before the enacting clause

31

Bill No. SB 902

Barcode 324514

1 and insert:

2                                   A bill to be entitled

3           An act relating to community associations;

4           creating s. 712.11, F.S.; providing for the

5           revival of certain covenants that have lapsed;

6           amending s. 718.106, F.S.; prohibiting local

7           governments from limiting the access of certain

8           persons to beaches adjacent to or adjoining

9           condominium property; amending s. 718.110,

10          F.S.; revising provisions relating to the

11          amendment of declarations; providing

12          legislative findings and a finding of

13          compelling state interest; providing criteria

14          for consent to an amendment; requiring notice

15          regarding proposed amendments to mortgagees;

16          providing criteria for notification; providing

17          for voiding certain amendments; amending s.

18          718.114, F.S.; providing that certain

19          leaseholds, memberships, or other possessory or

20          use interests shall be considered a material

21          alteration or substantial addition to certain

22          real property; amending s. 718.404, F.S.;

23          providing retroactive application of provisions

24          relating to mixed-use condominiums; amending s.

25          719.103, F.S.; providing a definition; amending

26          s. 719.507, F.S.; prohibiting laws, ordinances,

27          or regulations that apply only to improvements

28          that are or may be subjected to an equity club

29          form of ownership; amending s. 720.302, F.S.;

30          revising governing provisions relating to

31          corporations that operate residential

Bill No. SB 902

Barcode 324514

1 homeowners' associations; amending s. 720.303,  
2 F.S.; revising application to include certain  
3 meetings; requiring the association to provide  
4 certain information to prospective purchasers  
5 or lienholders; authorizing the association to  
6 charge a reasonable fee for providing certain  
7 information; requiring the budget to provide  
8 for annual operating expenses; authorizing the  
9 budget to include reserve accounts for capital  
10 expenditures and deferred maintenance;  
11 providing a formula for calculating the amount  
12 to be reserved; authorizing the association to  
13 adjust replacement reserve assessments  
14 annually; authorizing the developer to vote to  
15 waive the reserves or reduce the funding of  
16 reserves for a certain period; revising  
17 provisions relating to financial reporting;  
18 revising time periods in which the association  
19 must complete its reporting; repealing s.  
20 720.303(2), F.S., as amended, relating to board  
21 meetings, to remove conflicting versions of  
22 that subsection; creating s. 720.3035, F.S.;  
23 providing for architectural control covenants  
24 and parcel owner improvements; authorizing the  
25 review and approval of plans and  
26 specifications; providing limitations;  
27 providing rights and privileges for parcel  
28 owners as set forth in the declaration of  
29 covenants; amending s. 720.305, F.S.; providing  
30 that, where a member is entitled to collect  
31 attorney's fees against the association, the

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1 member may also recover additional amounts as  
2 determined by the court; amending s. 720.306,  
3 F.S.; providing that certain mergers or  
4 consolidations of an association shall not be  
5 considered a material or adverse alteration of  
6 the proportionate voting interest appurtenant  
7 to a parcel; amending s. 720.307, F.S.;

8 requiring developers to deliver financial  
9 records to the board in any transition of  
10 association control to members; requiring  
11 certain information to be included in the  
12 records and for the records to be prepared in a  
13 specified manner; amending s. 720.308, F.S.;

14 providing circumstances under which a guarantee  
15 of common expenses shall be effective;  
16 providing for approval of the guarantee by  
17 association members; providing for a guarantee  
18 period and extension thereof; requiring the  
19 stated dollar amount of the guarantee to be an  
20 exact dollar amount for each parcel identified  
21 in the declaration; providing payments required  
22 from the guarantor to be determined in a  
23 certain manner; providing a formula to  
24 determine the guarantor's total financial  
25 obligation to the association; providing that  
26 certain expenses incurred in the production of  
27 certain revenues shall not be included in the  
28 operating expenses; amending s. 720.311, F.S.;

29 revising provisions relating to dispute  
30 resolution; providing that the filing of any  
31 petition for arbitration or the serving of an



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1 offer for presuit mediation shall toll the  
2 applicable statute of limitations; providing  
3 that certain disputes between an association  
4 and a parcel owner shall be subject to presuit  
5 mediation; revising provisions to conform;  
6 providing that temporary injunctive relief may  
7 be sought in certain disputes subject to  
8 presuit mediation; authorizing the court to  
9 refer the parties to mediation under certain  
10 circumstances; requiring the aggrieved party to  
11 serve on the responding party a written offer  
12 to participate in presuit mediation; providing  
13 a form for such offer; providing that service  
14 of the offer is effected by the sending of such  
15 an offer in a certain manner; providing that  
16 the prevailing party in any subsequent  
17 arbitration or litigation proceedings is  
18 entitled to seek recovery of all costs and  
19 attorney's fees incurred in the presuit  
20 mediation process; requiring the mediator or  
21 arbitrator to meet certain certification  
22 requirements; removing a requirement relating  
23 to development of an education program to  
24 increase awareness of the operation of  
25 homeowners' associations and the use of  
26 alternative dispute resolution techniques;  
27 providing effective dates.

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