

By the Committee on Regulated Industries; and Senator Jones

590-1973-07

1 A bill to be entitled

2 An act relating to community associations;

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

4 revival of certain covenants that have lapsed;

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

6 governments from limiting the access of certain

7 persons to beaches adjacent to or adjoining

8 condominium property; amending s. 718.110,

9 F.S.; revising provisions relating to the

10 amendment of declarations; providing

11 legislative findings and a finding of

12 compelling state interest; providing criteria

13 for consent to an amendment; requiring notice

14 regarding proposed amendments to mortgagees;

15 providing criteria for notification; providing

16 for voiding certain amendments; amending s.

17 718.114, F.S.; providing that certain

18 leaseholds, memberships, or other possessory or

19 use interests shall be considered a material

20 alteration or substantial addition to certain

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

22 providing retroactive application of provisions

23 relating to mixed-use condominiums; amending s.

24 719.103, F.S.; providing a definition; amending

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

26 or regulations that apply only to improvements

27 that are or may be subjected to an equity club

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

29 revising governing provisions relating to

30 corporations that operate residential

31 homeowners' associations; amending s. 720.303,

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

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

1 | determined by the court; amending s. 720.306,
2 | F.S.; providing that certain mergers or
3 | consolidations of an association shall not be
4 | considered a material or adverse alteration of
5 | the proportionate voting interest appurtenant
6 | to a parcel; amending s. 720.307, F.S.;
7 | requiring developers to deliver financial
8 | records to the board in any transition of
9 | association control to members; requiring
10 | certain information to be included in the
11 | records and for the records to be prepared in a
12 | specified manner; amending s. 720.308, F.S.;
13 | providing circumstances under which a guarantee
14 | of common expenses shall be effective;
15 | providing for approval of the guarantee by
16 | association members; providing for a guarantee
17 | period and extension thereof; requiring the
18 | stated dollar amount of the guarantee to be an
19 | exact dollar amount for each parcel identified
20 | in the declaration; providing payments required
21 | from the guarantor to be determined in a
22 | certain manner; providing a formula to
23 | determine the guarantor's total financial
24 | obligation to the association; providing that
25 | certain expenses incurred in the production of
26 | certain revenues shall not be included in the
27 | operating expenses; amending s. 720.311, F.S.;
28 | revising provisions relating to dispute
29 | resolution; providing that the filing of any
30 | petition for arbitration or the serving of an
31 | offer for presuit mediation shall toll the

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

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Section 712.11, Florida Statutes, is
31 created to read:

1 712.11 Covenant revitalization.--A homeowners'
2 association not otherwise subject to chapter 720 may use the
3 procedures set forth in ss. 720.403-720.407 to revive
4 covenants that have lapsed under the terms of this chapter.

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

7 718.106 Condominium parcels; appurtenances; possession
8 and enjoyment.--

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

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

15 718.110 Amendment of declaration; correction of error
16 or omission in declaration by circuit court.--

17 (11) The Legislature finds that the procurement of
18 mortgagee consent to amendments that do not affect the rights
19 or interests of mortgagees is an unreasonable and substantial
20 logistical and financial burden on the unit owners and that
21 there is a compelling state interest in enabling the members
22 of a condominium association to approve amendments to the
23 condominium documents through legal means. Accordingly, and
24 notwithstanding any provision to the contrary contained in
25 this section:

26 (a) As to any mortgage recorded on or after October 1,
27 2007, any provision in the declaration, articles of
28 incorporation, or bylaws that requires ~~recorded after April 1,~~
29 ~~1992, may not require~~ the consent or joinder of some or all
30 mortgagees of units or any other portion of the condominium
31 property to or in amendments to the declaration, articles of

1 incorporation, or bylaws or for any other matter shall be
2 enforceable only as to the following matters: unless the
3 requirement is limited to amendments materially affecting the
4 rights or interests of the mortgagees, or as otherwise
5 required by the Federal National Mortgage Association or the
6 Federal Home Loan Mortgage Corporation, and unless the
7 requirement provides that such consent may not be unreasonably
8 withheld. It shall be presumed that, except as to

9 1. Those matters described in subsections (4) and
10 (8).

11 2. Amendments to the declaration, articles of
12 incorporation, or bylaws that adversely affect the priority of
13 the mortgagee's lien or the mortgagee's rights to foreclose
14 its lien or that otherwise materially affect the rights and
15 interests of the mortgagees.

16 (b) As to mortgages recorded before October 1, 2007,
17 any existing provisions in the declaration, articles of
18 incorporation, or bylaws requiring mortgagee consent shall be
19 enforceable.

20 (c) In securing consent or joinder, the association
21 shall be entitled to rely upon the public records to identify
22 the holders of outstanding mortgages. The association may use
23 the address provided in the original recorded mortgage
24 document, unless there is a different address for the holder
25 of the mortgage in a recorded assignment or modification of
26 the mortgage, which recorded assignment or modification must
27 reference the official records book and page on which the
28 original mortgage was recorded. Once the association has
29 identified the recorded mortgages of record, the association
30 shall, in writing, request of each unit owner whose unit is
31 encumbered by a mortgage of record any information the owner

1 has in his or her possession regarding the name and address of
2 the person to whom mortgage payments are currently being made.
3 Notice shall be sent to such person if the address provided in
4 the original recorded mortgage document is different from the
5 name and address of the mortgagee or assignee of the mortgage
6 as shown by the public record. The association shall be deemed
7 to have complied with this requirement by making the written
8 request of the unit owners required under this paragraph. Any
9 notices required to be sent to the mortgagees under this
10 paragraph shall be sent to all available addresses provided to
11 the association.

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

17 (e) For those amendments requiring mortgagee consent
18 on or after October 1, 2007, do not materially affect the
19 rights or interests of mortgagees. in the event mortgagee
20 consent is provided other than by properly recorded joinder,
21 such consent shall be evidenced by affidavit of the
22 association recorded in the public records of the county where
23 the declaration is recorded. Any amendment adopted without the
24 required consent of a mortgagee shall be voidable only by a
25 mortgagee who was entitled to notice and an opportunity to
26 consent. An action to void an amendment shall be subject to
27 the statute of limitations beginning 5 years after the date of
28 discovery as to the amendments described in subparagraphs
29 (a)1. and 2. and 5 years after the date of recordation of the
30 certificate of amendment for all other amendments. This
31

1 provision shall apply to all mortgages, regardless of the date
2 of recordation of the mortgage.

3 (f) Notwithstanding the provisions of this section,
4 any amendment or amendments to conform a declaration of
5 condominium to the insurance coverage provisions in s.
6 718.111(11) may be made as provided in that section.

7 Section 4. Section 718.114, Florida Statutes, is
8 amended to read:

9 718.114 Association powers.--An association has the
10 power to enter into agreements, to acquire leaseholds,
11 memberships, and other possessory or use interests in lands or
12 facilities such as country clubs, golf courses, marinas, and
13 other recreational facilities. It has this power whether or
14 not the lands or facilities are contiguous to the lands of the
15 condominium, if they are intended to provide enjoyment,
16 recreation, or other use or benefit to the unit owners. All of
17 these leaseholds, memberships, and other possessory or use
18 interests existing or created at the time of recording the
19 declaration must be stated and fully described in the
20 declaration. Subsequent to the recording of the declaration,
21 agreements acquiring these leaseholds, memberships, or other
22 possessory or use interests not entered into within 12 months
23 following the recording of the declaration shall be considered
24 a material alteration or substantial addition to the real
25 property that is association property, and the association may
26 not acquire or enter into agreements acquiring these
27 leaseholds, memberships, or other possessory or use interests
28 except as authorized by the declaration as provided in s.
29 718.113. The declaration may provide that the rental,
30 membership fees, operations, replacements, and other expenses
31 are common expenses and may impose covenants and restrictions

1 concerning their use and may contain other provisions not
2 inconsistent with this chapter. A condominium association may
3 conduct bingo games as provided in s. 849.0931.

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

6 718.404 Mixed-use condominiums.--When a condominium
7 consists of both residential and commercial units, the
8 following provisions shall apply:

9 (1) The condominium documents shall not provide that
10 the owner of any commercial unit shall have the authority to
11 veto amendments to the declaration, articles of incorporation,
12 bylaws, or rules or regulations of the association. This
13 subsection shall apply retroactively as a remedial measure.

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

20 Section 6. Subsections (18) through (27) of section
21 719.103, Florida Statutes, are renumbered as subsections (19)
22 through (28), respectively, and a new subsection (18) is added
23 to that section to read:

24 719.103 Definitions.--As used in this chapter:

25 (18) "Equity facilities club" means a club comprised
26 of recreational facilities in which proprietary membership
27 interests are sold to individuals, which membership interests
28 entitle the individuals to use certain physical facilities
29 owned by the equity club. Such physical facilities do not
30 include a residential unit or accommodation. For purposes of
31 this definition, the term "accommodation" shall include, but

1 is not limited to, any apartment, residential cooperative
2 unit, residential condominium unit, cabin, lodge, hotel or
3 motel room, or other accommodation designed for overnight
4 occupancy for one or more individuals.

5 Section 7. Section 719.507, Florida Statutes, is
6 amended to read:

7 719.507 Zoning and building laws, ordinances, and
8 regulations.--All laws, ordinances, and regulations concerning
9 buildings or zoning shall be construed and applied with
10 reference to the nature and use of such property, without
11 regard to the form of ownership. No law, ordinance, or
12 regulation shall establish any requirement concerning the use,
13 location, placement, or construction of buildings or other
14 improvements which are, or may thereafter be, subjected to the
15 cooperative or equity facilities club form of ownership,
16 unless such requirement shall be equally applicable to all
17 buildings and improvements of the same kind not then, or
18 thereafter to be, subjected to the cooperative or equity
19 facilities club form of ownership. This section does not apply
20 if the owner in fee of any land enters into and records a
21 covenant that existing improvements or improvements to be
22 constructed shall not be converted to the cooperative form of
23 residential ownership prior to 5 years after the later of the
24 date of the covenant or completion date of the improvements.
25 Such covenant shall be entered into with the governing body of
26 the municipality in which the land is located or, if the land
27 is not located in a municipality, with the governing body of
28 the county in which the land is located.

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

31 720.302 Purposes, scope, and application.--

1 (4) This chapter does not apply to any association
2 that is subject to regulation under chapter 718, chapter 719,
3 or chapter 721+ or to any nonmandatory association formed
4 under chapter 723, except to the extent that a provision of
5 chapter 718, chapter 719, or chapter 721 is expressly
6 incorporated into this chapter for the purpose of regulating
7 homeowners' associations.

8 (5) Unless expressly stated to the contrary,
9 corporations ~~not for profit~~ that operate residential
10 homeowners' associations in this state shall be governed by
11 and subject to chapter 607, if the association was
12 incorporated under that chapter, or to chapter 617, if the
13 association was incorporated under that chapter, and this
14 chapter. This subsection is intended to clarify existing law.

15 Section 9. Subsections (2), (6), and (7) of section
16 720.303, Florida Statutes, are amended, and paragraph (d) is
17 added to subsection (5) of that section, to read:

18 720.303 Association powers and duties; meetings of
19 board; official records; budgets; financial reporting;
20 association funds; recalls.--

21 (2) BOARD MEETINGS.--

22 (a) A meeting of the board of directors of an
23 association occurs whenever a quorum of the board gathers to
24 conduct association business. All meetings of the board must
25 be open to all members except for meetings between the board
26 and its attorney with respect to proposed or pending
27 litigation where the contents of the discussion would
28 otherwise be governed by the attorney-client privilege. The
29 provisions of this subsection shall also apply to the meetings
30 of any committee or other similar body when a final decision
31 will be made regarding the expenditure of association funds

1 and to meetings of any body vested with the power to approve
2 or disapprove architectural decisions with respect to a
3 specific parcel of residential property owned by a member of
4 the community.

5 (b) Members have the right to attend all meetings of
6 the board and to speak on any matter placed on the agenda by
7 petition of the voting interests for at least 3 minutes. The
8 association may adopt written reasonable rules expanding the
9 right of members to speak and governing the frequency,
10 duration, and other manner of member statements, which rules
11 must be consistent with this paragraph and may include a
12 sign-up sheet for members wishing to speak. Notwithstanding
13 any other law, the requirement that board meetings and
14 committee meetings be open to the members is inapplicable to
15 meetings between the board or a committee and the
16 association's attorney, with respect to meetings of the board
17 held for the purpose of discussing personnel matters.

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

21 1. Notices of all board meetings must be posted in a
22 conspicuous place in the community at least 48 hours in
23 advance of a meeting, except in an emergency. In the
24 alternative, if notice is not posted in a conspicuous place in
25 the community, notice of each board meeting must be mailed or
26 delivered to each member at least 7 days before the meeting,
27 except in an emergency. Notwithstanding this general notice
28 requirement, for communities with more than 100 members, the
29 bylaws may provide for a reasonable alternative to posting or
30 mailing of notice for each board meeting, including
31 publication of notice, provision of a schedule of board

1 meetings, or the conspicuous posting and repeated broadcasting
2 of the notice on a closed-circuit cable television system
3 serving the homeowners' association. However, if broadcast
4 notice is used in lieu of a notice posted physically in the
5 community, the notice must be broadcast at least four times
6 every broadcast hour of each day that a posted notice is
7 otherwise required. When broadcast notice is provided, the
8 notice and agenda must be broadcast in a manner and for a
9 sufficient continuous length of time so as to allow an average
10 reader to observe the notice and read and comprehend the
11 entire content of the notice and the agenda. The bylaws or
12 amended bylaws may provide for giving notice by electronic
13 transmission in a manner authorized by law for meetings of the
14 board of directors, committee meetings requiring notice under
15 this section, and annual and special meetings of the members;
16 however, a member must consent in writing to receiving notice
17 by electronic transmission.

18 2. An assessment may not be levied at a board meeting
19 unless the notice of the meeting includes a statement that
20 assessments will be considered and the nature of the
21 assessments. Written notice of any meeting at which special
22 assessments will be considered or at which amendments to rules
23 regarding parcel use will be considered must be mailed,
24 delivered, or electronically transmitted to the members and
25 parcel owners and posted conspicuously on the property or
26 broadcast on closed-circuit cable television not less than 14
27 days before the meeting.

28 3. Directors may not vote by proxy or by secret ballot
29 at board meetings, except that secret ballots may be used in
30 the election of officers. This subsection also applies to the
31 meetings of any committee or other similar body, when a final

1 decision will be made regarding the expenditure of association
2 funds, and to any body vested with the power to approve or
3 disapprove architectural decisions with respect to a specific
4 parcel of residential property owned by a member of the
5 community.

6 (d) If 20 percent of the total voting interests
7 petition the board to address an item of business, the board
8 shall at its next regular board meeting or at a special
9 meeting of the board, but not later than 60 days after the
10 receipt of the petition, take the petitioned item up on an
11 agenda. The board shall give all members notice of the meeting
12 at which the petitioned item shall be addressed in accordance
13 with the 14-day notice requirement pursuant to subparagraph
14 (c)2. Each member shall have the right to speak for at least 3
15 minutes on each matter placed on the agenda by petition,
16 provided that the member signs the sign-up sheet, if one is
17 provided, or submits a written request to speak prior to the
18 meeting. Other than addressing the petitioned item at the
19 meeting, the board is not obligated to take any other action
20 requested by the petition.

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

1 (d) The association or its authorized agent is not
2 required to provide a prospective purchaser or lienholder with
3 information about the residential subdivision or the
4 association other than information or documents required by
5 this chapter to be made available or disclosed. The
6 association or its authorized agent may charge a reasonable
7 fee to the prospective purchaser or lienholder or the current
8 parcel owner or member for providing good faith responses to
9 requests for information by or on behalf of a prospective
10 purchaser or lienholder, other than that required by law, if
11 the fee does not exceed \$150 plus the reasonable cost of
12 photocopying and any attorney's fees incurred by the
13 association in connection with the response.

14 (6) BUDGETS.--

15 (a) The association shall prepare an annual budget
16 that sets out the annual operating expenses. The budget must
17 reflect the estimated revenues and expenses for that year and
18 the estimated surplus or deficit as of the end of the current
19 year. The budget must set out separately all fees or charges
20 paid for by the association for recreational amenities,
21 whether owned by the association, the developer, or another
22 person. The association shall provide each member with a copy
23 of the annual budget or a written notice that a copy of the
24 budget is available upon request at no charge to the member.
25 The copy must be provided to the member within the time limits
26 set forth in subsection (5).

27 (b) In addition to annual operating expenses, the
28 budget may include reserve accounts for capital expenditures
29 and deferred maintenance for which the association is
30 responsible to the extent that the governing documents do not
31 limit increases in assessments, including reserves. If the

1 budget of the association includes reserve accounts, such
2 reserves shall be determined, maintained, and waived in the
3 manner provided in this subsection. Once an association
4 provides for reserve accounts in the budget, the association
5 shall thereafter determine, maintain, and waive reserves in
6 compliance with this subsection.

7 (c) If the budget of the association does not provide
8 for reserve accounts governed by this subsection and the
9 association is responsible for the repair and maintenance of
10 capital improvements that may result in a special assessment
11 if reserves are not provided, each financial report for the
12 preceding fiscal year required by subsection (7) shall contain
13 the following statement in conspicuous type: THE BUDGET OF THE
14 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL
15 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
16 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
17 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
18 FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A
19 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

20 (d) An association shall be deemed to have provided
21 for reserve accounts when reserve accounts have been initially
22 established by the developer or when the membership of the
23 association affirmatively elects to provide for reserves. If
24 reserve accounts are not initially provided for by the
25 developer, the membership of the association may elect to do
26 so upon the affirmative approval of not less than a majority
27 of the total voting interests of the association. Such
28 approval may be attained by vote of the members at a duly
29 called meeting of the membership or upon a written consent
30 executed by not less than a majority of the total voting
31 interests in the community. The approval action of the

1 membership shall state that reserve accounts shall be provided
2 for in the budget and designate the components for which the
3 reserve accounts are to be established. Upon approval by the
4 membership, the board of directors shall provide for the
5 required reserve accounts for inclusion in the budget in the
6 next fiscal year following the approval and in each year
7 thereafter. Once established as provided in this subsection,
8 the reserve accounts shall be funded or maintained or shall
9 have their funding waived in the manner provided in paragraph
10 (f).

11 (e) The amount to be reserved in any account
12 established shall be computed by means of a formula that is
13 based upon estimated remaining useful life and estimated
14 replacement cost or deferred maintenance expense of each
15 reserve item. The association may adjust replacement reserve
16 assessments annually to take into account any changes in
17 estimates of cost or useful life of a reserve item.

18 (f) Once a reserve account or reserve accounts are
19 established, the membership of the association, upon a
20 majority vote at a meeting at which a quorum is present, may
21 provide for no reserves or less reserves than required by this
22 section. If a meeting of the unit owners has been called to
23 determine whether to waive or reduce the funding of reserves
24 and no such result is achieved or a quorum is not present, the
25 reserves as included in the budget shall go into effect. After
26 the turnover, the developer may vote its voting interest to
27 wave or reduce the funding of reserves. Any vote taken
28 pursuant to this subsection to waive or reduce reserves shall
29 be applicable only to one budget year.

30 (g) Funding formulas for reserves authorized by this
31 section shall be based on either a separate analysis of each

1 of the required assets or a pooled analysis of two or more of
2 the required assets.

3 1. If the association maintains separate reserve
4 accounts for each of the required assets, the amount of the
5 contribution to each reserve account shall be the sum of the
6 following two calculations:

7 a. The total amount necessary, if any, to bring a
8 negative component balance to zero.

9 b. The total estimated deferred maintenance expense or
10 estimated replacement cost of the reserve component less the
11 estimated balance of the reserve component as of the beginning
12 of the period for which the budget will be in effect. The
13 remainder, if greater than zero, shall be divided by the
14 estimated remaining useful life of the component.

15
16 The formula may be adjusted each year for changes in estimates
17 and deferred maintenance performed during the year and may
18 include factors such as inflation and earnings on invested
19 funds.

20 2. If the association maintains a pooled account of
21 two or more of the required reserve assets, the amount of the
22 contribution to the pooled reserve account as disclosed on the
23 proposed budget shall not be less than that required to ensure
24 that the balance on hand at the beginning of the period for
25 which the budget will go into effect plus the projected annual
26 cash inflows over the remaining estimated useful life of all
27 of the assets that make up the reserve pool are equal to or
28 greater than the projected annual cash outflows over the
29 remaining estimated useful lives of all of the assets that
30 make up the reserve pool, based on the current reserve
31 analysis. The projected annual cash inflows may include

1 estimated earnings from investment of principal. The reserve
2 funding formula shall not include any type of balloon
3 payments.

4 (h) Reserve funds and any interest accruing thereon
5 shall remain in the reserve account or accounts and shall be
6 used only for authorized reserve expenditures unless their use
7 for other purposes is approved in advance by a majority vote
8 at a meeting at which a quorum is present. Prior to turnover
9 of control of an association by a developer to parcel owners,
10 the developer-controlled association shall not vote to use
11 reserves for purposes other than those for which they were
12 intended without the approval of a majority of all
13 nondeveloper voting interests voting in person or by limited
14 proxy at a duly called meeting of the association.

15 (7) FINANCIAL REPORTING.--Within 90 days after the end
16 of the fiscal year, or annually on the date provided in the
17 bylaws, the association shall prepare and complete, or
18 contract with a third party for the preparation and completion
19 of, a financial report for the preceding fiscal year. Within
20 21 days after the final financial report is completed by the
21 association or received from the third party, but not later
22 than 120 days after the end of the fiscal year or other date
23 as provided in the bylaws, the association shall ~~prepare an~~
24 annual financial report within 60 days after the close of the
25 fiscal year. The association shall, within the time limits set
26 forth in subsection (5), provide each member with a copy of
27 the annual financial report or a written notice that a copy of
28 the financial report is available upon request at no charge to
29 the member. Financial reports shall be prepared as follows:

30 (a) An association that meets the criteria of this
31 paragraph shall prepare or cause to be prepared a complete set

1 of financial statements in accordance with generally accepted
2 accounting principles as adopted by the Board of Accountancy.

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

5 1. An association with total annual revenues of
6 \$100,000 or more, but less than \$200,000, shall prepare
7 compiled financial statements.

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

11 3. An association with total annual revenues of
12 \$400,000 or more shall prepare audited financial statements.

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

16 2. An association in a community of fewer than 50
17 parcels, regardless of the association's annual revenues, may
18 prepare a report of cash receipts and expenditures in lieu of
19 financial statements required by paragraph (a) unless the
20 governing documents provide otherwise.

21 3. A report of cash receipts and disbursement must
22 disclose the amount of receipts by accounts and receipt
23 classifications and the amount of expenses by accounts and
24 expense classifications, including, but not limited to, the
25 following, as applicable: costs for security, professional,
26 and management fees and expenses; taxes; costs for recreation
27 facilities; expenses for refuse collection and utility
28 services; expenses for lawn care; costs for building
29 maintenance and repair; insurance costs; administration and
30 salary expenses; and reserves if maintained by the
31 association.

1 (c) If 20 percent of the parcel owners petition the
2 board for a level of financial reporting higher than that
3 required by this section, the association shall duly notice
4 and hold a meeting of members within 30 days of receipt of the
5 petition for the purpose of voting on raising the level of
6 reporting for that fiscal year. Upon approval of a majority of
7 the total voting interests of the parcel owners, the
8 association shall prepare or cause to be prepared, shall amend
9 the budget or adopt a special assessment to pay for the
10 financial report regardless of any provision to the contrary
11 in the governing documents, and shall provide within 90 days
12 of the meeting or the end of the fiscal year, whichever occurs
13 later:

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

17 2. Reviewed or audited financial statements, if the
18 association is otherwise required to prepare compiled
19 financial statements; or

20 3. Audited financial statements if the association is
21 otherwise required to prepare reviewed financial statements.

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

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

27 2. A report of cash receipts and expenditures or a
28 compiled financial statement in lieu of a reviewed or audited
29 financial statement; or
30
31

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

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

7 Section 11. Section 720.3035, Florida Statutes, is
8 created to read:

9 720.3035 Architectural control covenants; parcel owner
10 improvements; rights and privileges.--

11 (1) The authority of an association or any
12 architectural, construction improvement, or other such similar
13 committee of an association to review and approve plans and
14 specifications for the location, size, type, or appearance of
15 any structure or other improvement on a parcel, or to enforce
16 standards for the external appearance of any structure or
17 improvement located on a parcel, shall be permitted only to
18 the extent that the authority is specifically stated or
19 reasonably inferred as to such location, size, type, or
20 appearance in the declaration of covenants or other published
21 guidelines and standards authorized by the declaration of
22 covenants.

23 (2) If the declaration of covenants or other published
24 guidelines and standards authorized by the declaration of
25 covenants provides options for the use of material, the size
26 of the structure or improvement, the design of the structure
27 or improvement, or the location of the structure or
28 improvement on the parcel, neither the association nor any
29 architectural, construction improvement, or other such similar
30 committee of the association shall restrict the right of a
31 parcel owner to select from the options provided in the

1 declaration of covenants or other published guidelines and
2 standards authorized by the declaration of covenants.

3 (3) Unless otherwise specifically stated in the
4 declaration of covenants or other published guidelines and
5 standards authorized by the declaration of covenants, each
6 parcel shall be deemed to have only one front for purposes of
7 determining the required front setback even if the parcel is
8 bounded by a roadway or other easement on more than one side.
9 When the declaration of covenants or other published
10 guidelines and standards authorized by the declaration of
11 covenants do not provide for specific setback limitations, the
12 applicable county or municipal setback limitations shall
13 apply, and neither the association nor any architectural,
14 construction improvement, or other such similar committee of
15 the association shall enforce or attempt to enforce any
16 setback limitation that is inconsistent with the applicable
17 county or municipal standard or standards.

18 (4) Each parcel owner shall be entitled to the rights
19 and privileges set forth in the declaration of covenants or
20 other published guidelines and standards authorized by the
21 declaration of covenants concerning the architectural use of
22 the parcel, and the construction of permitted structures and
23 improvements on the parcel and such rights and privileges
24 shall not be unreasonably infringed upon or impaired by the
25 association or any architectural, construction improvement, or
26 other such similar committee of the association. If the
27 association or any architectural, construction improvement, or
28 other such similar committee of the association should
29 unreasonably, knowingly, and willfully infringe upon or impair
30 the rights and privileges set forth in the declaration of
31 covenants or other published guidelines and standards

1 authorized by the declaration of covenants, the adversely
2 affected parcel owner shall be entitled to recover damages
3 caused by such infringement or impairment, including any costs
4 and reasonable attorney's fees incurred in preserving or
5 restoring the rights and privileges of the parcel owner set
6 forth in the declaration of covenants or other published
7 guidelines and standards authorized by the declaration of
8 covenants.

9 (5) Neither the association nor any architectural,
10 construction improvement, or other such similar committee of
11 the association shall enforce any policy or restriction that
12 is inconsistent with the rights and privileges of a parcel
13 owner set forth in the declaration of covenants or other
14 published guidelines and standards authorized by the
15 declaration of covenants, whether uniformly applied or not.
16 Neither the association nor any architectural, construction
17 improvement, or other such similar committee of the
18 association may rely upon a policy or restriction that is
19 inconsistent with the declaration of covenants or other
20 published guidelines and standards authorized by the
21 declaration of covenants, whether uniformly applied or not, in
22 defense of any action taken in the name of or on behalf of the
23 association against a parcel owner.

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

26 720.305 Obligations of members; remedies at law or in
27 equity; levy of fines and suspension of use rights; failure to
28 fill sufficient number of vacancies on board of directors to
29 constitute a quorum; appointment of receiver upon petition of
30 any member.--

1 (1) Each member and the member's tenants, guests, and
2 invitees, and each association, are governed by, and must
3 comply with, this chapter, the governing documents of the
4 community, and the rules of the association. Actions at law or
5 in equity, or both, to redress alleged failure or refusal to
6 comply with these provisions may be brought by the association
7 or by any member against:

8 (a) The association;

9 (b) A member;

10 (c) Any director or officer of an association who
11 willfully and knowingly fails to comply with these provisions;
12 and

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

15
16 The prevailing party in any such litigation is entitled to
17 recover reasonable attorney's fees and costs. A member
18 prevailing in an action between the association and the member
19 under this section, in addition to recovering his or her
20 reasonable attorney's fees, may recover additional amounts as
21 determined by the court to be necessary to reimburse the
22 member for his or her share of assessments levied by the
23 association to fund its expenses of the litigation. This
24 relief does not exclude other remedies provided by law. This
25 section does not deprive any person of any other available
26 right or remedy.

27 Section 13. Paragraph (c) of subsection (1) of section
28 720.306, Florida Statutes, is amended to read:

29 720.306 Meetings of members; voting and election
30 procedures; amendments.--

31 (1) QUORUM; AMENDMENTS.--

1 (c) Unless otherwise provided in the governing
2 documents as originally recorded or permitted by this chapter
3 or chapter 617, an amendment may not materially and adversely
4 alter the proportionate voting interest appurtenant to a
5 parcel or increase the proportion or percentage by which a
6 parcel shares in the common expenses of the association unless
7 the record parcel owner and all record owners of liens on the
8 parcels join in the execution of the amendment. For purposes
9 of this section, a change in quorum requirements is not an
10 alteration of voting interests. The merger or consolidation of
11 one or more associations under a plan of merger or
12 consolidation under chapter 607 or chapter 617 shall not be
13 considered a material or adverse alteration of the
14 proportionate voting interest appurtenant to a parcel.

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

17 720.307 Transition of association control in a
18 community.--With respect to homeowners' associations:

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

24 (t) The financial records, including financial
25 statements of the association, and source documents from the
26 incorporation of the association through the date of turnover.
27 The records shall be audited by an independent certified
28 public accountant for the period from the incorporation of the
29 association or from the period covered by the last audit, if
30 an audit has been performed for each fiscal year since
31 incorporation. All financial statements shall be prepared in

1 accordance with generally accepted accounting principles and
2 shall be audited in accordance with generally accepted
3 auditing standards, as prescribed by the Board of Accountancy,
4 pursuant to chapter 473. The certified public accountant
5 performing the audit shall examine to the extent necessary
6 supporting documents and records, including the cash
7 disbursements and related paid invoices to determine if
8 expenditures were for association purposes and the billings,
9 cash receipts, and related records of the association to
10 determine that the developer was charged and paid the proper
11 amounts of assessments. This paragraph applies to associations
12 with a date of incorporation after December 31, 2007.

13 Section 15. Section 720.308, Florida Statutes, is
14 amended to read:

15 720.308 Assessments and charges.--

16 (1) ASSESSMENTS.--For any community created after
17 October 1, 1995, the governing documents must describe the
18 manner in which expenses are shared and specify the member's
19 proportional share thereof. Assessments levied pursuant to the
20 annual budget or special assessment must be in the member's
21 proportional share of expenses as described in the governing
22 document, which share may be different among classes of
23 parcels based upon the state of development thereof, levels of
24 services received by the applicable members, or other relevant
25 factors. While the developer is in control of the homeowners'
26 association, it may be excused from payment of its share of
27 the operating expenses and assessments related to its parcels
28 for any period of time for which the developer has, in the
29 declaration, obligated itself to pay any operating expenses
30 incurred that exceed the assessments receivable from other
31 members and other income of the association. This section does

1 not apply to an association, no matter when created, if the
2 association is created in a community that is included in an
3 effective development-of-regional-impact development order as
4 of the effective date of this act, together with any approved
5 modifications thereto.

6 (2) GUARANTEES OF COMMON EXPENSES.--

7 (a) Establishment of a guarantee.--If a guarantee of
8 the assessments of parcel owners is not included in the
9 purchase contracts or declaration, any agreement establishing
10 a guarantee shall only be effective upon the approval of a
11 majority of the voting interests of the members other than the
12 developer. Approval shall be expressed at a meeting of the
13 members voting in person or by limited proxy or by agreement
14 in writing without a meeting if provided in the bylaws. Such
15 guarantee must meet the requirements of this section.

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

19 1. The ending date or event shall be the same for all
20 of the members of an association, including members in
21 different phases of the development.

22 2. The guarantee may provide for different intervals
23 of time during a guarantee period with different dollar
24 amounts for each such interval.

25 3. The guarantee may provide that after the initial
26 stated period, the developer has an option to extend the
27 guarantee for one or more additional stated periods. The
28 extension of a guarantee is limited to extending the ending
29 date or event; therefore, the developer does not have the
30 option of changing the level of assessments guaranteed.

31

1 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
2 amount of the guarantee shall be an exact dollar amount for
3 each parcel identified in the declaration. Regardless of the
4 stated dollar amount of the guarantee, assessments charged to
5 a member shall not exceed the maximum obligation of the member
6 based on the total amount of the adopted budget and the
7 member's proportionate share of the expenses as described in
8 the governing documents.

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

12 (a) If at any time during the guarantee period the
13 funds collected from member assessments at the guaranteed
14 level and other revenues collected by the association are not
15 sufficient to provide payment, on a timely basis, of all
16 assessments, including the full funding of the reserves unless
17 properly waived, the guarantor shall advance sufficient cash
18 to the association at the time such payments are due.

19 (b) Expenses incurred in the production of
20 nonassessment revenues, not in excess of the nonassessment
21 revenues, shall not be included in the assessments. If the
22 expenses attributable to nonassessment revenues exceed
23 nonassessment revenues, only the excess expenses must be
24 funded by the guarantor. Interest earned on the investment of
25 association funds may be used to pay the income tax expense
26 incurred as a result of the investment; such expense shall not
27 be charged to the guarantor; and the net investment income
28 shall be retained by the association. Each such
29 nonassessment-revenue-generating activity shall be considered
30 separately. Any portion of the parcel assessment which is
31

1 budgeted for designated capital contributions of the
2 association shall not be used to pay operating expenses.

3 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
4 guarantor's total financial obligation to the association at
5 the end of the guarantee period shall be determined on the
6 accrual basis using the following formula: the guarantor shall
7 pay any deficits that exceed the guaranteed amount, less the
8 total regular periodic assessments earned by the association
9 from the members other than the guarantor during the guarantee
10 period regardless of whether the actual level charged was less
11 than the maximum guaranteed amount.

12 (6) EXPENSES.--Expenses incurred in the production of
13 nonassessment revenues, not in excess of the nonassessment
14 revenues, shall not be included in the operating expenses. If
15 the expenses attributable to nonassessment revenues exceed
16 nonassessment revenues, only the excess expenses must be
17 funded by the guarantor. Interest earned on the investment of
18 association funds may be used to pay the income tax expense
19 incurred as a result of the investment; such expense shall not
20 be charged to the guarantor; and the net investment income
21 shall be retained by the association. Each such
22 nonassessment-revenue-generating activity shall be considered
23 separately. Any portion of the parcel assessment which is
24 budgeted for designated capital contributions of the
25 association shall not be used to pay operating expenses.

26 Section 16. Section 720.311, Florida Statutes, is
27 amended to read:

28 720.311 Dispute resolution.--

29 (1) The Legislature finds that alternative dispute
30 resolution has made progress in reducing court dockets and
31 trials and in offering a more efficient, cost-effective option

1 to litigation. The filing of any petition for ~~mediation or~~
2 arbitration or the serving of a demand for presuit mediation
3 as provided for in this section shall toll the applicable
4 statute of limitations. Any recall dispute filed with the
5 department pursuant to s. 720.303(10) shall be conducted by
6 the department in accordance with the provisions of ss.
7 718.112(2)(j) and 718.1255 and the rules adopted by the
8 division. In addition, the department shall conduct mandatory
9 binding arbitration of election disputes between a member and
10 an association pursuant to s. 718.1255 and rules adopted by
11 the division. Neither election disputes nor recall disputes
12 are eligible for presuit mediation; these disputes shall be
13 arbitrated by the department. At the conclusion of the
14 proceeding, the department shall charge the parties a fee in
15 an amount adequate to cover all costs and expenses incurred by
16 the department in conducting the proceeding. Initially, the
17 petitioner shall remit a filing fee of at least \$200 to the
18 department. The fees paid to the department shall become a
19 recoverable cost in the arbitration proceeding, and the
20 prevailing party in an arbitration proceeding shall recover
21 its reasonable costs and attorney's fees in an amount found
22 reasonable by the arbitrator. The department shall adopt rules
23 to effectuate the purposes of this section.

24 (2)(a) Disputes between an association and a parcel
25 owner regarding use of or changes to the parcel or the common
26 areas and other covenant enforcement disputes, disputes
27 regarding amendments to the association documents, disputes
28 regarding meetings of the board and committees appointed by
29 the board, membership meetings not including election
30 meetings, and access to the official records of the
31 association shall be the subject of a demand filed with the

1 ~~department~~ for presuit ~~mandatory~~ mediation served by an
2 aggrieved party before the dispute is filed in court. Presuit
3 mediation proceedings must be conducted in accordance with the
4 applicable Florida Rules of Civil Procedure, and these
5 proceedings are privileged and confidential to the same extent
6 as court-ordered mediation. Disputes subject to presuit
7 mediation under this section shall not include the collection
8 of any assessment, fine, or other financial obligation,
9 including attorney's fees and costs, claimed to be due or any
10 action to enforce a prior mediation settlement agreement
11 between the parties. Also, in any dispute subject to presuit
12 mediation under this section where emergency relief is
13 required, a motion for temporary injunctive relief may be
14 filed with the court without first complying with the presuit
15 mediation requirements of this section. After any issues
16 regarding emergency or temporary relief are resolved, the
17 court may either refer the parties to a mediation program
18 administered by the courts or require mediation under this
19 section. An arbitrator or judge may not consider any
20 information or evidence arising from the presuit mediation
21 proceeding except in a proceeding to impose sanctions for
22 failure to attend a presuit mediation session or to enforce a
23 mediated settlement agreement. Persons who are not parties to
24 the dispute may not attend the presuit mediation conference
25 without the consent of all parties, except for counsel for the
26 parties and a corporate representative designated by the
27 association. When mediation is attended by a quorum of the
28 board, such mediation is not a board meeting for purposes of
29 notice and participation set forth in s. 720.303. An aggrieved
30 party shall serve on the responding party a written demand to
31

1 participate in presuit mediation in substantially the
2 following form:

3
4 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

5
6 The alleged aggrieved party, _____,
7 hereby demands that _____, as the
8 responding party, engage in mandatory presuit
9 mediation in connection with the following
10 disputes, which by statute are of a type that
11 are subject to presuit mediation:

12
13 (List specific nature of the dispute or
14 disputes to be mediated and the authority
15 supporting a finding of a violation as to each
16 dispute.)

17
18 Pursuant to section 720.311, Florida Statutes,
19 this demand to resolve the dispute through
20 presuit mediation is required before a lawsuit
21 can be filed concerning the dispute. Pursuant
22 to the statute, the parties are required to
23 engage in presuit mediation with a neutral
24 third-party mediator in order to attempt to
25 resolve this dispute without court action, and
26 the aggrieved party demands that you likewise
27 agree to this process. If you fail to
28 participate in the mediation process, suit may
29 be brought against you without further warning.

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

15
16 If an agreement is reached, it shall be reduced
17 to writing and becomes a binding and
18 enforceable commitment of the parties. A
19 resolution of one or more disputes in this
20 fashion avoids the need to litigate these
21 issues in court. The failure to reach an
22 agreement, or the failure of a party to
23 participate in the process, results in the
24 mediator declaring an impasse in the mediation,
25 after which the aggrieved party may proceed to
26 court on all outstanding, unsettled disputes.

27 If you have failed or refused to participate in
28 the entire mediation process, you will not be
29 entitled to recover attorney's fees, even if
30 you prevail.

31

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

14
15 (List the names, addresses, telephone numbers,
16 and hourly rates of the mediators. Other
17 pertinent information about the background of
18 the mediators may be included as an
19 attachment.)

20
21 You may contact the offices of these mediators
22 to confirm that the listed mediators will be
23 neutral and will not show any favoritism toward
24 either party. The Florida Supreme Court can
25 provide you a list of certified mediators.

26
27 Unless otherwise agreed by the parties, section
28 720.311(2)(b), Florida Statutes, requires that
29 the parties share the costs of presuit
30 mediation equally, including the fee charged by
31 the mediator. An average mediation may require

1 three to four hours of the mediator's time,
2 including some preparation time, and the
3 parties would need to share equally the
4 mediator's fees as well as their own attorney's
5 fees if they choose to employ an attorney in
6 connection with the mediation. However, use of
7 an attorney is not required and is at the
8 option of each party. The mediators may require
9 the advance payment of some or all of the
10 anticipated fees. The aggrieved party hereby
11 agrees to pay or prepay one-half of the
12 mediator's estimated fees and to forward this
13 amount or such other reasonable advance
14 deposits as the mediator requires for this
15 purpose. Any funds deposited will be returned
16 to you if these are in excess of your share of
17 the fees incurred.

18
19 To begin your participation in presuit
20 mediation to try to resolve the dispute and
21 avoid further legal action, please sign below
22 and clearly indicate which mediator is
23 acceptable to you. We will then ask the
24 mediator to schedule a mutually convenient time
25 and place for the mediation conference to be
26 held. The mediation conference must be held
27 within ninety (90) days of this date, unless
28 extended by mutual written agreement. In the
29 event that you fail to respond within 20 days
30 from the date of this letter, or if you fail to
31 agree to at least one of the mediators that we

1 have suggested or to pay or prepay to the
2 mediator one-half of the costs involved, the
3 aggrieved party will be authorized to proceed
4 with the filing of a lawsuit against you
5 without further notice and may seek an award of
6 attorney's fees or costs incurred in attempting
7 to obtain mediation.

8
9 Therefore, please give this matter your
10 immediate attention. By law, your response must
11 be mailed by certified mail, return receipt
12 requested, and by first-class mail to the
13 address shown on this demand.

14
15 _____
16 _____

17
18 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR
19 AGREEMENT TO THAT CHOICE.

20
21 AGREEMENT TO MEDIATE

22
23 The undersigned hereby agrees to participate in
24 presuit mediation and agrees to attend a
25 mediation conducted by the following mediator
26 or mediators who are listed above as someone
27 who would be acceptable to mediate this
28 dispute:

29
30 (List acceptable mediator or mediators.)
31

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

5
6 _____

7 Signature of responding party #1

8
9 _____

10 Telephone contact information

11
12 _____

13 Signature and telephone contact information of
14 responding party #2 (if applicable)(if property
15 is owned by more than one person, all owners
16 must sign).

17

18 (b) Service of the statutory demand to participate in
19 presuit mediation shall be effected by sending a letter in
20 substantial conformity with the above form by certified mail,
21 return receipt requested, with an additional copy being sent
22 by regular first-class mail, to the address of the responding
23 party as it last appears on the books and records of the
24 association. The responding party has 20 days from the date of
25 the mailing of the statutory demand to serve a response to the
26 aggrieved party in writing. The response shall be served by
27 certified mail, return receipt requested, with an additional
28 copy being sent by regular first-class mail, to the address
29 shown on the statutory demand. Notwithstanding the foregoing,
30 once the parties have agreed on a mediator, the mediator may
31 reschedule the mediation for a date and time mutually

1 ~~convenient to the parties. The department shall conduct the~~
2 ~~proceedings through the use of department mediators or refer~~
3 ~~the disputes to private mediators who have been duly certified~~
4 ~~by the department as provided in paragraph (c). The parties~~
5 shall share the costs of presuit mediation equally, including
6 the fee charged by the mediator, if any, unless the parties
7 agree otherwise, and the mediator may require advance payment
8 of its reasonable fees and costs. The failure of any party to
9 respond to a demand or response, to agree upon a mediator, to
10 make payment of fees and costs within the time established by
11 the mediator, or to appear for a scheduled mediation session
12 without the approval of the mediator, shall constitute the
13 failure or refusal to participate in the mediation process and
14 shall operate as an impasse in the presuit mediation by such
15 party, entitling the other party to proceed in court and to
16 seek an award of the costs and fees associated with the
17 mediation. Additionally, notwithstanding the provisions of any
18 other law or document, persons who fail or refuse to
19 participate in the entire mediation process may not recover
20 attorney's fees and costs in subsequent litigation relating to
21 the dispute. If any presuit mediation session cannot be
22 scheduled and conducted within 90 days after the offer to
23 participate in mediation was filed, an impasse shall be deemed
24 to have occurred unless both parties agree to extend this
25 deadline. If a department mediator is used, the department may
26 charge such fee as is necessary to pay expenses of the
27 mediation, including, but not limited to, the salary and
28 benefits of the mediator and any travel expenses incurred. The
29 petitioner shall initially file with the department upon
30 filing the disputes, a filing fee of \$200, which shall be used
31 to defray the costs of the mediation. At the conclusion of the

1 ~~mediation, the department shall charge to the parties, to be~~
2 ~~shared equally unless otherwise agreed by the parties, such~~
3 ~~further fees as are necessary to fully reimburse the~~
4 ~~department for all expenses incurred in the mediation.~~

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

26 ~~(d)(c)~~ ~~The department shall develop a certification~~
27 ~~and training program for private mediators and private~~
28 ~~arbitrators which shall emphasize experience and expertise in~~
29 ~~the area of the operation of community associations. A~~
30 mediator or arbitrator shall be authorized to conduct
31 mediation or arbitration under this section certified by the

1 ~~department~~ only if he or she has been certified as a circuit
2 court civil mediator or arbitrator, respectively, pursuant to
3 the requirements established ~~attended at least 20 hours of~~
4 ~~training in mediation or arbitration, as appropriate, and only~~
5 ~~if the applicant has mediated or arbitrated at least 10~~
6 ~~disputes involving community associations within 5 years prior~~
7 ~~to the date of the application, or has mediated or arbitrated~~
8 ~~10 disputes in any area within 5 years prior to the date of~~
9 ~~application and has completed 20 hours of training in~~
10 ~~community association disputes. In order to be certified by~~
11 ~~the department, any mediator must also be certified by the~~
12 Florida Supreme Court. Settlement agreements resulting from
13 mediation shall not have precedential value in proceedings
14 involving parties other than those participating in the
15 mediation to support either a claim or defense in other
16 disputes. ~~The department may conduct the training and~~
17 ~~certification program within the department or may contract~~
18 ~~with an outside vendor to perform the training or~~
19 ~~certification. The expenses of operating the training and~~
20 ~~certification and training program shall be 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 and by the training fees.~~

24 (e)(d) The presuit mediation procedures provided by
25 this subsection may be used by a Florida corporation
26 responsible for the operation of a community in which the
27 voting members are parcel owners or their representatives, in
28 which membership in the corporation is not a mandatory
29 condition of parcel ownership, or which is not authorized to
30 impose an assessment that may become a lien on the parcel.

31

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

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

19
20
21
22
23
24
25
26
27
28
29
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 902

4 The CS creates s. 712.11, F.S., to provide for revival of
5 declaration of covenants that have lapsed.

6 The CS amends s 718.106, F.S., to provide for beach access for
7 condominiums.

8 The bill amends s. 718.110, F.S., to limit the enforcement of
9 any provision in the governing documents of a condominium
10 association recorded on or after October 1, 2007 that require
11 the consent or joinder of some or all mortgages, of units or
12 any other portion of the condominium property for those
13 mortgages, with certain exceptions. It also provides that
14 amendments intended to conform a declaration of condominium to
15 the insurance coverage provisions of s. 719.111(11), F.S., may
16 be made as provided in that section.

17 The CS amends s. 718.114, F.S., to restrict leaseholds,
18 memberships, or other possessory or use interest acquired
19 within 12 months after a declaration in acquired.

20 The CS amends s. 718.404(1) and (2), F.S., to provide that
21 these subsections apply retroactively as a remedial measure.

22 The CS creates s. 719.103, F.S., to define the term "equity
23 facilities club." It also amends s. 719.507, F.S., to
24 prohibit certain laws, ordinances, or regulations that are not
25 equally applicable to other forms of ownership.

26 The CS amends s. 720.302(4), F.S., to provide that ch. 720,
27 F.S., does not apply to any association regulated under chs.
28 718, 719, 721, or 723, F.S., except to the extent that those
29 chapters expressly incorporate ch. 720, F.S, for the purpose
30 of regulating homeowners' associations.

31 The CS amends s. 720.302(5), F.S., to require that
corporations operating residential homeowners' associations in
Florida are to be governed by and subject to ch. 607, F.S., or
to ch. 617, F.S.

The CS amends s. 720.303(2)(a), F.S., as amended by section 18
of ch. 2004-345, L.O.F., and section 135 of ch. 2005-2,
L.O.F., relating to open meeting requirements for homeowner's
association boards. It also repeals section 18 of ch.
2004-345, L.O.F., and section 135 of ch. 2005-2, L.O.F.

The CS amends s. 720.303(5), F.S., to provide for an
association's duty to provide a prospective purchaser or
lienholder with information about the residential subdivision
or the association, and to authorize the association to charge
a reasonable fee, including any attorney's fees incurred by
the association in connection with the response.

The CS also repeals s. 720.303(2), F.S., as amended by section
2 of chapter 2004-345, L.O.F., and section 15 of chapter
2004-353.

1 The CS creates s. 720.3035, F.S., to limit the association's
2 authority to review and approve building plans and
3 specifications, including options for the use of material, and
4 the size or design, only to the extent that it is specifically
5 stated or reasonably inferred in the declaration of covenants,
6 or other published guidelines and standards authorized by the
7 declaration of covenants. It provides for the determination
8 of setbacks. It also provides for recovery of damages by a
9 parcel owner that is adversely affected by the infringement or
10 impairment of the rights set forth in the declaration of
11 covenants, or other published guidelines and standards
12 authorized by the declaration of covenants.

13 The CS amends s. 720.305, F.S., to provide for the
14 reimbursement of assessments levied to fund the association's
15 expenses of the litigation with a member who prevails in the
16 litigation.

17 The CS amends s. 720.306(1)(c), F.S., to provide that the
18 merger or consolidation of one or more associations is not
19 considered a material or adverse alteration of the
20 proportionate voting interest appurtenant to a parcel.

21 The CS amends the homeowner's association dispute resolution
22 procedures in s. 720.311, F.S.

23
24
25
26
27
28
29
30
31