

By the Committees on Judiciary; Regulated Industries; and
Senator Jones

590-2505-07

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; providing an exception;

9 amending s. 718.110, F.S.; revising provisions

10 relating to the amendment of declarations;

11 providing 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,

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 adopt an ordinance or
10 regulation that prohibits condominium unit owners or their
11 guests, licensees, or invitees from pedestrian access to a
12 public beach contiguous to a condominium property, except
13 where necessary to protect public health, safety, or natural
14 resources. This subsection does not prohibit a governmental
15 entity from enacting regulations governing activities taking
16 place on the beach.

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

19 718.110 Amendment of declaration; correction of error
20 or omission in declaration by circuit court.--

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

30 (a) As to any mortgage recorded on or after October 1,
31 2007, any provision in the declaration, articles of

1 ~~incorporation, or bylaws that requires recorded after April 1,~~
2 ~~1992, may not require the consent or joinder of some or all~~
3 ~~mortgagees of units or any other portion of the condominium~~
4 ~~property to or in amendments to the declaration, articles of~~
5 ~~incorporation, or bylaws or for any other matter shall be~~
6 ~~enforceable only as to the following matters: unless the~~
7 ~~requirement is limited to amendments materially affecting the~~
8 ~~rights or interests of the mortgagees, or as otherwise~~
9 ~~required by the Federal National Mortgage Association or the~~
10 ~~Federal Home Loan Mortgage Corporation, and unless the~~
11 ~~requirement provides that such consent may not be unreasonably~~
12 ~~withheld. It shall be presumed that, except as to~~
13 1. Those matters described in subsections (4) and
14 (8).
15 2. Amendments to the declaration, articles of
16 incorporation, or bylaws that adversely affect the priority of
17 the mortgagee's lien or the mortgagee's rights to foreclose
18 its lien or that otherwise materially affect the rights and
19 interests of the mortgagees.
20 (b) As to mortgages recorded before October 1, 2007,
21 any existing provisions in the declaration, articles of
22 incorporation, or bylaws requiring mortgagee consent shall be
23 enforceable.
24 (c) In securing consent or joinder, the association
25 shall be entitled to rely upon the public records to identify
26 the holders of outstanding mortgages. The association may use
27 the address provided in the original recorded mortgage
28 document, unless there is a different address for the holder
29 of the mortgage in a recorded assignment or modification of
30 the mortgage, which recorded assignment or modification must
31 reference the official records book and page on which the

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

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

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

1 discovery as to the amendments described in subparagraphs
2 (a)1. and 2. and 5 years after the date of recordation of the
3 certificate of amendment for all other amendments. This
4 provision shall apply to all mortgages, regardless of the date
5 of recordation of the mortgage.

6 (f) Notwithstanding the provisions of this section,
7 any amendment or amendments to conform a declaration of
8 condominium to the insurance coverage provisions in s.
9 718.111(11) may be made as provided in that section.

10 Section 4. Section 718.114, Florida Statutes, is
11 amended to read:

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

1 | 718.113. The declaration may provide that the rental,
2 | membership fees, operations, replacements, and other expenses
3 | are common expenses and may impose covenants and restrictions
4 | concerning their use and may contain other provisions not
5 | inconsistent with this chapter. A condominium association may
6 | conduct bingo games as provided in s. 849.0931.

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

9 | 718.404 Mixed-use condominiums.--When a condominium
10 | consists of both residential and commercial units, the
11 | following provisions shall apply:

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

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

23 | Section 6. Subsections (18) through (27) of section
24 | 719.103, Florida Statutes, are renumbered as subsections (19)
25 | through (28), respectively, and a new subsection (18) is added
26 | to that section to read:

27 | 719.103 Definitions.--As used in this chapter:

28 | (18) "Equity facilities club" means a club comprised
29 | of recreational facilities in which proprietary membership
30 | interests are sold to individuals, which membership interests
31 | entitle the individuals to use certain physical facilities

1 owned by the equity club. Such physical facilities do not
2 include a residential unit or accommodation. For purposes of
3 this definition, the term "accommodation" shall include, but
4 is not limited to, any apartment, residential cooperative
5 unit, residential condominium unit, cabin, lodge, hotel or
6 motel room, or other accommodation designed for overnight
7 occupancy for one or more individuals.

8 Section 7. Section 719.507, Florida Statutes, is
9 amended to read:

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

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

3 720.302 Purposes, scope, and application.--

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

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

18 Section 9. Subsections (2), (6), and (7) of section
19 720.303, Florida Statutes, are amended, and paragraph (d) is
20 added to subsection (5) of that section, to read:

21 720.303 Association powers and duties; meetings of
22 board; official records; budgets; financial reporting;
23 association funds; recalls.--

24 (2) BOARD MEETINGS.--

25 (a) A meeting of the board of directors of an
26 association occurs whenever a quorum of the board gathers to
27 conduct association business. All meetings of the board must
28 be open to all members except for meetings between the board
29 and its attorney with respect to proposed or pending
30 litigation where the contents of the discussion would
31 otherwise be governed by the attorney-client privilege. The

1 provisions of this subsection shall also apply to the meetings
2 of any committee or other similar body when a final decision
3 will be made regarding the expenditure of association funds
4 and to meetings of any body vested with the power to approve
5 or disapprove architectural decisions with respect to a
6 specific parcel of residential property owned by a member of
7 the community.

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

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

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

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

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

31 |

1 3. Directors may not vote by proxy or by secret ballot
2 at board meetings, except that secret ballots may be used in
3 the election of officers. This subsection also applies to the
4 meetings of any committee or other similar body, when a final
5 decision will be made regarding the expenditure of association
6 funds, and to any body vested with the power to approve or
7 disapprove architectural decisions with respect to a specific
8 parcel of residential property owned by a member of the
9 community.

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

25 (5) INSPECTION AND COPYING OF RECORDS.--The official
26 records shall be maintained within the state and must be open
27 to inspection and available for photocopying by members or
28 their authorized agents at reasonable times and places within
29 10 business days after receipt of a written request for
30 access. This subsection may be complied with by having a copy
31 of the official records available for inspection or copying in

1 | the community. If the association has a photocopy machine
2 | available where the records are maintained, it must provide
3 | parcel owners with copies on request during the inspection if
4 | the entire request is limited to no more than 25 pages.

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

18 | (6) BUDGETS.--

19 | (a) The association shall prepare an annual budget
20 | that sets out the annual operating expenses. The budget must
21 | reflect the estimated revenues and expenses for that year and
22 | the estimated surplus or deficit as of the end of the current
23 | year. The budget must set out separately all fees or charges
24 | paid for by the association for recreational amenities,
25 | whether owned by the association, the developer, or another
26 | person. The association shall provide each member with a copy
27 | of the annual budget or a written notice that a copy of the
28 | budget is available upon request at no charge to the member.
29 | The copy must be provided to the member within the time limits
30 | set forth in subsection (5).
31 |

1 (b) In addition to annual operating expenses, the
2 budget may include reserve accounts for capital expenditures
3 and deferred maintenance for which the association is
4 responsible to the extent that the governing documents do not
5 limit increases in assessments, including reserves. If the
6 budget of the association includes reserve accounts, such
7 reserves shall be determined, maintained, and waived in the
8 manner provided in this subsection. Once an association
9 provides for reserve accounts in the budget, the association
10 shall thereafter determine, maintain, and waive reserves in
11 compliance with this subsection.

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

25 (d) An association shall be deemed to have provided
26 for reserve accounts when reserve accounts have been initially
27 established by the developer or when the membership of the
28 association affirmatively elects to provide for reserves. If
29 reserve accounts are not initially provided for by the
30 developer, the membership of the association may elect to do
31 so upon the affirmative approval of not less than a majority

1 of the total voting interests of the association. Such
2 approval may be attained by vote of the members at a duly
3 called meeting of the membership or upon a written consent
4 executed by not less than a majority of the total voting
5 interests in the community. The approval action of the
6 membership shall state that reserve accounts shall be provided
7 for in the budget and designate the components for which the
8 reserve accounts are to be established. Upon approval by the
9 membership, the board of directors shall provide for the
10 required reserve accounts for inclusion in the budget in the
11 next fiscal year following the approval and in each year
12 thereafter. Once established as provided in this subsection,
13 the reserve accounts shall be funded or maintained or shall
14 have their funding waived in the manner provided in paragraph
15 (f).

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

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

1 waive or reduce the funding of reserves. Any vote taken
2 pursuant to this subsection to waive or reduce reserves shall
3 be applicable only to one budget year.

4 (g) Funding formulas for reserves authorized by this
5 section shall be based on either a separate analysis of each
6 of the required assets or a pooled analysis of two or more of
7 the required assets.

8 1. If the association maintains separate reserve
9 accounts for each of the required assets, the amount of the
10 contribution to each reserve account shall be the sum of the
11 following two calculations:

12 a. The total amount necessary, if any, to bring a
13 negative component balance to zero.

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

20
21 The formula may be adjusted each year for changes in estimates
22 and deferred maintenance performed during the year and may
23 include factors such as inflation and earnings on invested
24 funds.

25 2. If the association maintains a pooled account of
26 two or more of the required reserve assets, the amount of the
27 contribution to the pooled reserve account as disclosed on the
28 proposed budget shall not be less than that required to ensure
29 that the balance on hand at the beginning of the period for
30 which the budget will go into effect plus the projected annual
31 cash inflows over the remaining estimated useful life of all

1 of the assets that make up the reserve pool are equal to or
2 greater than the projected annual cash outflows over the
3 remaining estimated useful lives of all of the assets that
4 make up the reserve pool, based on the current reserve
5 analysis. The projected annual cash inflows may include
6 estimated earnings from investment of principal. The reserve
7 funding formula shall not include any type of balloon
8 payments.

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

20 (7) FINANCIAL REPORTING.--Within 90 days after the end
21 of the fiscal year, or annually on the date provided in the
22 bylaws, the association shall prepare and complete, or
23 contract with a third party for the preparation and completion
24 of, a financial report for the preceding fiscal year. Within
25 21 days after the final financial report is completed by the
26 association or received from the third party, but not later
27 than 120 days after the end of the fiscal year or other date
28 as provided in the bylaws, the association shall ~~prepare an~~
29 ~~annual financial report within 60 days after the close of the~~
30 ~~fiscal year. The association shall, within the time limits set~~
31 forth in subsection (5), provide each member with a copy of

1 | the annual financial report or a written notice that a copy of
2 | the financial report is available upon request at no charge to
3 | the member. Financial reports shall be prepared as follows:

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

8 | The financial statements shall be based upon the association's
9 | total annual revenues, as follows:

10 | 1. An association with total annual revenues of
11 | \$100,000 or more, but less than \$200,000, shall prepare
12 | compiled financial statements.

13 | 2. An association with total annual revenues of at
14 | least \$200,000, but less than \$400,000, shall prepare reviewed
15 | financial statements.

16 | 3. An association with total annual revenues of
17 | \$400,000 or more shall prepare audited financial statements.

18 | (b)1. An association with total annual revenues of
19 | less than \$100,000 shall prepare a report of cash receipts and
20 | expenditures.

21 | 2. An association in a community of fewer than 50
22 | parcels, regardless of the association's annual revenues, may
23 | prepare a report of cash receipts and expenditures in lieu of
24 | financial statements required by paragraph (a) unless the
25 | governing documents provide otherwise.

26 | 3. A report of cash receipts and disbursement must
27 | disclose the amount of receipts by accounts and receipt
28 | classifications and the amount of expenses by accounts and
29 | expense classifications, including, but not limited to, the
30 | following, as applicable: costs for security, professional,
31 | and management fees and expenses; taxes; costs for recreation

1 facilities; expenses for refuse collection and utility
2 services; expenses for lawn care; costs for building
3 maintenance and repair; insurance costs; administration and
4 salary expenses; and reserves if maintained by the
5 association.

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

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

22 2. Reviewed or audited financial statements, if the
23 association is otherwise required to prepare compiled
24 financial statements; or

25 3. Audited financial statements if the association is
26 otherwise required to prepare reviewed financial statements.

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

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

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

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

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

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

12 720.3035 Architectural control covenants; parcel owner
13 improvements; rights and privileges.--

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

26 (2) If the declaration of covenants or other published
27 guidelines and standards authorized by the declaration of
28 covenants provides options for the use of material, the size
29 of the structure or improvement, the design of the structure
30 or improvement, or the location of the structure or
31 improvement on the parcel, neither the association nor any

1 architectural, construction improvement, or other such similar
2 committee of the association shall restrict the right of a
3 parcel owner to select from the options provided in the
4 declaration of covenants or other published guidelines and
5 standards authorized by the declaration of covenants.

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

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

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

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

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

29 720.305 Obligations of members; remedies at law or in
30 equity; levy of fines and suspension of use rights; failure to
31 fill sufficient number of vacancies on board of directors to

1 constitute a quorum; appointment of receiver upon petition of
2 any member.--

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

10 (a) The association;

11 (b) A member;

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

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

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

29 Section 13. Paragraph (c) of subsection (1) of section
30 720.306, Florida Statutes, is amended to read:

1 720.306 Meetings of members; voting and election
2 procedures; amendments.--

3 (1) QUORUM; AMENDMENTS.--

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

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

20 720.307 Transition of association control in a
21 community.--With respect to homeowners' associations:

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

27 (t) The financial records, including financial
28 statements of the association, and source documents from the
29 incorporation of the association through the date of turnover.
30 The records shall be audited by an independent certified
31 public accountant for the period from the incorporation of the

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

16 Section 15. Section 720.308, Florida Statutes, is
17 amended to read:

18 720.308 Assessments and charges.--

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

1 | declaration, obligated itself to pay any operating expenses
2 | incurred that exceed the assessments receivable from other
3 | members and other income of the association. This section does
4 | not apply to an association, no matter when created, if the
5 | association is created in a community that is included in an
6 | effective development-of-regional-impact development order as
7 | of the effective date of this act, together with any approved
8 | modifications thereto.

9 | (2) GUARANTEES OF COMMON EXPENSES.--

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

19 | (b) Guarantee period.--The period of time for the
20 | guarantee shall be indicated by a specific beginning and
21 | ending date or event.

22 | 1. The ending date or event shall be the same for all
23 | of the members of an association, including members in
24 | different phases of the development.

25 | 2. The guarantee may provide for different intervals
26 | of time during a guarantee period with different dollar
27 | amounts for each such interval.

28 | 3. The guarantee may provide that after the initial
29 | stated period, the developer has an option to extend the
30 | guarantee for one or more additional stated periods. The
31 | extension of a guarantee is limited to extending the ending

1 date or event; therefore, the developer does not have the
2 option of changing the level of assessments guaranteed.

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

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

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

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

1 separately. Any portion of the parcel assessment which is
2 budgeted for designated capital contributions of the
3 association shall not be used to pay operating expenses.

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

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

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

29 720.311 Dispute resolution.--

30 (1) The Legislature finds that alternative dispute
31 resolution has made progress in reducing court dockets and

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

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

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

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 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 CS for SB 902

23 The committee substitute provides a local government the
24 authority to prohibit condominium unit owners or their guests,
25 licensees, or invitees access to a public beach contiguous to
26 a condominium property, as long as the prohibition is
27 necessary to protect public health, safety, or natural
28 resources.
29
30
31