

1 A bill to be entitled
 2 An act relating to Home Court Advantage Pilot Program;
 3 providing legislative intent; providing definitions;
 4 requesting the chief judges of the Thirteenth and Sixth
 5 Judicial Circuits to adopt certain rules and procedures
 6 for the establishment of the pilot program in Hillsborough
 7 County and Pinellas County, respectively, for the purpose
 8 of resolving disputes relating to deed restrictions or
 9 covenants in deed-restricted communities; requiring a
 10 report; providing for jurisdiction, filing and complaint
 11 procedures, appeals, qualifications, compensation and
 12 terms of service, and code of ethics; providing for
 13 nonseverability; providing an effective date.

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

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 17 Section 1. Legislative intent.--It is the intent of the
 18 Legislature to establish the Home Court Advantage Pilot Program
 19 as a pilot program in Hillsborough and Pinellas Counties for a
 20 period of 1 year. The purpose of the Home Court Advantage Pilot
 21 Program is to establish an inexpensive, expedient, simplified
 22 court procedure as an independent venue for ownership or
 23 management entities in deed-restricted communities to resolve
 24 disputes relating to deed restrictions or covenants informally
 25 without the restrictions and procedures required for formal
 26 actions in circuit court. The Home Court Advantage Pilot Program
 27 shall be implemented and administered by the chief judge of the
 28 Thirteenth Judicial Circuit in Hillsborough County and the chief

29 judge of the Sixth Judicial Circuit in Pinellas County, subject
 30 to the supervision of the Supreme Court.

31 Section 2. Definitions.--

32 (1) "Community association" has the same meaning as
 33 provided in s. 468.431(1), Florida Statutes.

34 (2) "Community association manager" has the same meaning
 35 as provided in s. 468.431(3), Florida Statutes.

36 (3) "Complainant" means a party filing a complaint in home
 37 court.

38 (4) "Complaint" means an allegation by:

39 (a) A homeowners' association, condominium unit owners'
 40 association, cooperative association, community development
 41 district, or civic association that a property owner in a deed-
 42 restricted community is violating one or more restrictions that
 43 apply to the property; or

44 (b) A homeowner, condominium unit owner, member of a
 45 cooperative, resident of a community development district, or
 46 property owner in any deed-restricted community in which the
 47 respective association or district is selectively enforcing a
 48 deed restriction or covenant or is improperly or unlawfully
 49 seeking to enforce a deed restriction or covenant.

50 (5) "Deed-restricted community" means a residential
 51 community, condominium, cooperative, or community development
 52 district in which the properties in the community are subject to
 53 limitations or restrictions on or covenants restricting the use,
 54 design, or operation of properties in the community.

55 (6) "Defendant" means a party against whom a complaint is
 56 filed in home court.

57 Section 3. Objectives.--The chief judges of the Thirteenth
58 and Sixth Judicial Circuits may adopt rules and procedures for
59 the establishment and operation of the Home Court Advantage
60 Pilot Program in Hillsborough County and Pinellas County,
61 respectively. The chief judges shall report to the Supreme Court
62 at the end of the program an analysis of the operation and
63 results of the program. The Chief Justice of the Supreme Court
64 shall review the reports and make determinations and
65 recommendations to the Legislature by February 1, 2009, on the
66 feasibility of establishing a statewide program and provide
67 copies of the reports to the Speaker of the House of
68 Representatives, the President of the Senate, and the minority
69 leader of each house of the Legislature.

70 Section 4. Jurisdiction; limitations.--

71 (1) Home court magistrates may be empowered to accept
72 complaints about and decide the reasonableness of any
73 restriction imposed pursuant to a deed to real property or fine
74 imposed for a failure to comply with a deed restriction and may
75 be empowered to issue orders, impose fines, and authorize the
76 imposition of a lien on real property in the same manner as a
77 circuit court judge under the laws, rules, and procedures
78 presently existing or as subsequently amended, except that home
79 court magistrates may not:

80 (a) Hold a party in contempt of court but may file a
81 motion for order of contempt with the appropriate state circuit
82 court judge; or

83 (b) Hear a case involving any dispute other than a deed
84 restriction.

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85 (2) This section does not prohibit a circuit court judge
86 from exercising concurrent jurisdiction with a home court
87 magistrate.

88 Section 5. Filing and complaint procedures.--

89 (1) Any party may file, on its own behalf or through an
90 attorney appointed by a party as attorney in fact, a complaint
91 in home court alleging a violation of a deed restriction or
92 covenant and seeking enforcement of the restriction or covenant
93 or alleging unlawful enforcement of a deed restriction or
94 covenant and seeking an injunction against such unlawful
95 enforcement. A property owner in a deed-restricted community for
96 which there is a community association may appoint the community
97 association as his or her attorney in fact, pursuant to the
98 provisions of s. 709.08, Florida Statutes, for the purposes of
99 filing an action against another property owner in the deed-
100 restricted community, or a member or officer of a homeowners'
101 association of the community if there is one, seeking
102 enforcement of a restriction or covenant or alleging unlawful
103 enforcement of a restriction or covenant. The complainant shall
104 pay a \$75 filing fee to the home court. The complaint shall
105 contain a completed checklist specifying:

106 (a) What restriction or covenant is being violated.

107 (b) When the violation occurred or began and if the
108 violation is continuing.

109 (c) Whether the party in violation of the restriction or
110 covenant was provided notice of the violation and, if so:

111 1. When the notice was provided.

112 2. If the notice was in writing.

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113 (d) Whether the party in violation was provided an
114 opportunity to comply with the restriction or covenant or cure
115 the violation.

116 (e) Whether the attempt to enforce the restriction or
117 covenant was selectively enforced or improper.

118 (f) Whether there were any special considerations relating
119 to the failure to comply with the restriction or covenant.

120 (g) The remedy being sought against the party in
121 violation.

122 (2) Upon filing proof of service of the complaint, a home
123 court magistrate shall issue an order requiring the complainant
124 and the defendant to appear for a final hearing within 60 days
125 after receipt of service of the complaint. The defendant shall
126 provide to the complainant a copy of the defendant's response to
127 the notice to comply at least 10 days prior to the final
128 hearing.

129 (3) (a) Within 30 days after the home court magistrate
130 issues an order requiring the final hearing, the parties shall
131 be required to attend mediation conducted pursuant to the rules
132 of practice and procedure adopted by the Supreme Court pursuant
133 to s. 44.102, Florida Statutes.

134 (b) The parties to the mediation shall provide copies of
135 the documents referenced in the checklist in subsection (1).

136 (c) Upon the showing of good cause, the home court
137 magistrate may continue the hearing to require the parties to
138 produce additional information and documentation. The parties
139 shall provide any additional information or documentation

140 required by the home court magistrate within 15 days after the
141 home court magistrate's request.

142 (d) The home court magistrate shall make findings of
143 reasonableness of the restriction or covenant and any fines to
144 be imposed under the restriction. The home court magistrate
145 shall rule on the validity of the restriction and the fine
146 imposed by the community association.

147 (e) The purpose of the hearing shall be the issuance of an
148 order by the home court magistrate imposing a fine on the party
149 in violation, compelling the party in violation to comply with
150 the restriction, and enjoining the party in violation from
151 continuing the violation. The party in violation shall have 30
152 days to comply with the order unless good cause is shown to the
153 home court magistrate why a longer period should be allowed.

154 (f) The maximum fine the home court magistrate may impose
155 is the fine alleged by the party bringing the complaint. The
156 home court magistrate may reduce the fine. The fine shall be
157 paid to and retained by the home court program. If the action
158 for compliance is for dues or special assessments, the amount of
159 the dues or special assessments shall be paid to the community
160 association, minus 10 percent of such amount to be retained by
161 the home court program for purposes of administering the
162 program.

163 (4) If the party in violation does not comply with the
164 home court magistrate's order within 30 days after the order is
165 issued and, prior to the expiration of the 30-day period, good
166 cause has not been shown to the home court magistrate for
167 extending the period, or within the period of an extension of

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168 the 30-day period if good cause has been shown to the home court
169 magistrate for extending the period and the home court
170 magistrate grants an extension, and the violation of the deed
171 restriction or covenant is monetary, notwithstanding the
172 limitations of chapter 713, Florida Statutes, s. 720.305,
173 Florida Statutes, or any other provision of law restricting the
174 perfecting of a lien on real property, the complainant may file
175 a lien to be placed upon the property for all amounts included
176 in the home court magistrate's order plus filing fees and costs
177 for bringing the action.

178 (5) (a) Upon application to the home court by a party to
179 the mediation or the mediator, a home court magistrate, in the
180 course of his or her jurisdiction, may issue subpoenas for the
181 attendance of necessary and material witnesses and for the
182 production of books, records, documents, and other evidence and
183 may administer oaths. Subpoenas shall be served and enforced in
184 the manner provided by law for the service and enforcement of
185 subpoenas in a civil action. A party or mediator applying to the
186 home court for issuance of a subpoena shall provide to the court
187 a separate envelope for each person the party or mediator
188 requests the home court magistrate to subpoena. The envelope
189 shall be addressed to the person and have the postage paid for
190 certified, return receipt requested, mail. The home court
191 magistrate shall mail the subpoena to the person subject to the
192 subpoena.

193 (b) Upon application of a party to the mediation and for
194 use as evidence, the mediator, in the course of his or her
195 jurisdiction, may permit a deposition to be taken of a witness

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196 who cannot be subpoenaed or is unable to attend the mediation in
 197 the manner and upon the terms designated by the mediator. All
 198 provisions of law compelling a person under subpoena to testify
 199 apply to the deposition.

200 (6) This section does not limit the rights of the parties
 201 to seek injunctive relief in circuit court to compel compliance.

202 Section 6. Appeals.--An order of a home court magistrate
 203 may be appealed, under the rules of court, to the circuit court.
 204 The appeal shall be based upon the record of the hearing before
 205 the home court magistrate and shall not be a hearing de novo.
 206 The appellant is responsible for producing the record of the
 207 hearing beyond that which normally results from the home court
 208 hearing process.

209 Section 7. Qualifications.--An applicant for the position
 210 of home court magistrate shall be a member in good standing of
 211 The Florida Bar with at least 5 years of experience in
 212 litigation actions involving enforcement of deed restrictions or
 213 covenants or be a community association manager licensed under
 214 s. 468.433, Florida Statutes.

215 Section 8. Compensation; terms of service.--A home court
 216 magistrate is an independent contractor and shall serve without
 217 compensation and at the pleasure of the chief judge of the
 218 judicial circuit in which he or she is to hear cases.

219 Section 9. Code of ethics.--A home court magistrate is
 220 subject to the Code of Ethics for Arbitrators in Commercial
 221 Disputes published by the American Arbitration Association or
 222 the standards and procedures for professional conduct and
 223 discipline for mediators and arbitrators established by the

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224 Supreme Court pursuant to s. 44.106, Florida Statutes. A home
225 court magistrate is not subject to the Judicial Code of Ethics,
226 except a home court magistrate shall avoid practices or
227 occupations that would constitute a conflict of interest or give
228 the appearance of impropriety. Whether serving full time or part
229 time, a home court magistrate is prohibited from representing
230 clients or practicing before any other home court or from
231 representing any client appealing the decision of any other home
232 court magistrate. A home court magistrate appointed under
233 section 1 has judicial immunity in the same manner and to the
234 same extent as judges.

235 Section 10. Nonseverability.--If the provisions of section
236 4 authorizing home court magistrates to impose sanctions are
237 found to be unconstitutional by the Supreme Court, the home
238 court magistrates shall have no further jurisdiction over civil
239 infractions.

240 Section 11. This act shall take effect July 1, 2007.