

1 A bill to be entitled
2 An act relating to the Home Court Advantage Pilot Program;
3 creating part IV of chapter 720, F.S.; creating s.
4 720.501, F.S.; providing legislative intent; creating s.
5 720.502, F.S.; providing definitions; creating s. 720.503,
6 F.S.; requiring the adoption of certain rules and
7 procedures by the Division of Florida Land Sales,
8 Condominiums, and Mobile Homes for the establishment of a
9 pilot nonbinding arbitration program in Hillsborough
10 County and Pinellas County; requiring the division to
11 submit a report to the President of the Senate, the
12 Speaker of the House of Representatives, and the minority
13 leader of each house of the Legislature regarding the
14 pilot program; creating s. 720.504, F.S.; providing for
15 jurisdiction; authorizing the filing of a dispute;
16 authorizing a parcel owner or homeowners' association to
17 commence a proceeding; creating s 720.505, F.S.; providing
18 procedures for the filing of a complaint; requiring a
19 filing fee; creating s. 720.506, F.S.; providing
20 qualifications for arbitrators; providing duties and
21 responsibilities of arbitrators during arbitration
22 proceedings; providing compensation for arbitrators;
23 creating s. 720.507, F.S.; providing proceedings for
24 appeal; providing a code of ethics for arbitrators;
25 authorizing the award of costs and attorney's fees;
26 providing for an additional award to a prevailing member
27 representing the member's responsibility for the pro rata

28 | cost of the homeowners' association's costs of the
29 | arbitration; providing an effective date.
30 |

31 | Be It Enacted by the Legislature of the State of Florida:
32 |

33 | Section 1. Part IV of chapter 720, Florida Statutes,
34 | consisting of sections 720.501, 720.502, 720.503, 720.504,
35 | 720.505, 720.506, and 720.507, is created and entitled "Home
36 | Court Advantage Pilot Program."

37 | Section 2. Section 720.501, Florida statutes, is created
38 | to read:

39 | 720.501 Legislative intent.--It is the intent of the
40 | Legislature to establish the Home Court Advantage Pilot Program
41 | as a pilot program in Hillsborough and Pinellas Counties for a
42 | period of 2 years, commencing with petitions filed on or after
43 | January 1, 2008, and before December 31, 2009. The purpose of
44 | the Home Court Advantage Pilot Program is to establish an
45 | inexpensive, expedient, and simplified court procedure as an
46 | independent venue in which certain community associations and
47 | parcel owners can informally resolve disputes relating to
48 | covenants and restrictions without having to resort to
49 | potentially time-consuming and expensive court litigation. The
50 | Home Court Advantage Pilot Program shall consist of a mandatory,
51 | nonbinding arbitration process as described in this part, and
52 | the Home Court Advantage Pilot Program shall be implemented and
53 | administered by the Department of Business and Professional
54 | Regulation in cooperation with the chief judge of the Thirteenth
55 | Judicial Circuit in Hillsborough County and the chief judge of

56 the Sixth Judicial Circuit in Pinellas County.

57 Section 3. Section 720.502, Florida Statutes, is created
58 to read:

59 720.502 Definitions.--As used in this part, the term:

60 (1) "Homeowners' association" or "association" means a
61 homeowners' association within the meaning of this part and
62 includes only those community associations operating residential
63 communities partially or totally situated in Pinellas County or
64 in Hillsborough County.

65 (2) "Community" means the real property that is subject to
66 a declaration of covenants that is recorded in the county where
67 the property is located.

68 (3) "Dispute" means a disagreement between a homeowners'
69 association and a parcel owner concerning the validity or
70 enforcement of restrictions contained in the governing documents
71 of the community, including any declaration of restrictions and
72 covenants, deed restrictions, the articles of incorporation, and
73 bylaws of the association, or any rules governing the community,
74 which dispute arises in the Thirteenth Judicial Circuit or the
75 Sixth Judicial Circuit. The term also includes the failure of
76 the association or parcel owner to comply with the requirements
77 of this chapter, as applicable.

78 (4) "Parcel owner" means the record owner of legal title
79 to a parcel governed by an association.

80 (5) "Petitioner" means the party filing a petition
81 pursuant to the provisions of this part.

82 (6) "Respondent" means the party responding to a petition
83 filed pursuant to the provisions of this part.

84 (7) "Developer" means the entity creating the community
 85 operated by the homeowners' association or any entity that
 86 offers residential parcels for sale or lease in the ordinary
 87 course of its business within that community.

88 Section 4. Section 720.503, Florida Statutes, is created
 89 to read:

90 720.503 Rules of procedure; report required.--

91 (1) The rules and procedures for the operation of the Home
 92 Court Advantage Pilot Program in Hillsborough County and
 93 Pinellas County shall be those rules adopted by the Division of
 94 Florida Land Sales, Condominiums, and Mobile Homes pursuant to
 95 s. 718.1255 and such additional rules and procedures as shall be
 96 provided by this part.

97 (2) In cooperation with the chief judge of the circuit,
 98 the division shall provide for the use of courtroom facilities,
 99 case management, and recordkeeping facilities for the operation
 100 of the pilot program.

101 (3) The division shall direct a report to the President of
 102 the Senate, the Speaker of the House of Representatives, and the
 103 minority leader of each house of the Legislature within 60 days
 104 following the pilot program. The report shall evaluate the
 105 successes and the shortcomings of the pilot program, the
 106 timeframe for the average proceeding, and shall make
 107 recommendations concerning the pilot program's continuation,
 108 expansion, elimination, or modification.

109 Section 5. Section 720.504, Florida Statutes, is created
 110 to read:

111 720.504 Jurisdiction.--

112 (1) Subject to subsection (2), a dispute within the
113 jurisdiction of the Home Court Advantage Pilot Program includes
114 any dispute regarding the enforceability or validity of the
115 governing documents of the community, the reasonableness of any
116 action of the board of directors of the association involving
117 the governing documents, any dispute in which an association
118 seeks enforcement of the governing documents, and any dispute
119 alleging the failure of an association or parcel owner to comply
120 with the requirements of this chapter or the governing documents
121 of the community.

122 (2) Only disputes between an association and a parcel
123 owner are within the jurisdiction of the pilot program. Officers
124 or directors of the community association may not be parties in
125 these proceedings. Disputes involving tenants or guests of
126 parcel owners are subject to the provisions of this part if the
127 tenant is alleged to have violated the governing documents of
128 the community, except that eviction proceedings are exempt from
129 the jurisdiction of the pilot program. Disagreements relating to
130 the imposition, reasonableness, or collection of fines,
131 assessments, special assessments, or other fees owed by a parcel
132 owner, lien foreclosure actions, or disagreements regarding the
133 enforcement of a judgment are not subject to arbitration under
134 the pilot program.

135 (3) If a dispute described by this section is otherwise
136 subject to mandatory mediation or mandatory binding arbitration
137 as provided by s. 720.311 relating to homeowners' associations,
138 the dispute shall be filed pursuant to the provisions of this
139 part and is not required or permitted to be filed pursuant to

140 this chapter, as applicable.

141 (4) Regardless of whether this authority exists in the
 142 governing documents, a parcel owner may commence a proceeding
 143 under the provisions of this part against another parcel owner
 144 or against the association for any violation of the documents or
 145 controlling statute, and an association may also commence a
 146 proceeding against a parcel owner, or the owner and her or his
 147 tenant or occupant, for violations of the governing documents or
 148 statute.

149 Section 6. Section 720.505, Florida Statutes, is created
 150 to read:

151 720.505 Procedure for mandatory filing; filing fee.--

152 (1) Before filing a petition with the Division of Florida
 153 Land Sales, Condominiums, and Mobile Homes, the petitioner shall
 154 provide the intended respondent with a written demand
 155 identifying the nature of the dispute, demanding the relief
 156 sought, stating that, if the relief is not provided, the dispute
 157 will be filed in the courts of that circuit, and providing the
 158 respondent with a reasonable period of time within which to
 159 provide the relief sought. The failure to provide advance
 160 written notice shall result in the dismissal of the petition.

161 (2) Before filing a dispute with the circuit court, a
 162 dispute within the jurisdiction of the pilot program must be
 163 filed with the division. At the same time the petition is filed,
 164 the petitioner shall provide a copy of the petition and
 165 attachments to the respondent by United States certified mail.
 166 The petition must be on a form adopted by the division, or must
 167 be substantially similar to the form, and must include a copy of

168 the demand letter required by subsection (1). The petition must
169 include portions of the governing documents relied upon in the
170 petition.

171 (3) The division shall direct an order to the respondent
172 by United States certified mail which shall provide the
173 respondent 14 days in which to file an answer to the petition.
174 The answer must include any defenses that the respondent has to
175 the petition. If the respondent files a motion to dismiss the
176 petition, it must be accompanied by an answer and defenses in
177 order to promote the timely resolution of the dispute. The
178 answer may not include any claim that the respondent may have
179 against the petitioner, but may address only the dispute stated
180 in the petition.

181 (4) Any petition filed must include a filing fee in the
182 amount of \$150, payable to the division. This fee is
183 nonrefundable. The filing fees shall be used by the division to
184 defray the costs of administering the pilot program.

185 (5) When a party filing a petition demonstrates to the
186 arbitrator at the time of the filing of the petition or
187 thereafter that the party is in need of and entitled to
188 immediate emergency injunctive relief, the arbitrator may abate
189 the proceeding and allow the party to file for a temporary
190 injunction in court.

191 Section 7. Section 720.506, Florida Statutes, is created
192 to read:

193 720.506 Arbitrators.--

194 (1) The Division of Florida Land Sales, Condominiums, and
195 Mobile Homes shall maintain a list of qualified arbitrators to

196 hear the disputes described by the provisions of this part. In
197 order to be qualified, the person seeking to act as a arbitrator
198 must be a member in good standing with The Florida Bar and must
199 have practiced law in the area of association disputes for at
200 least 5 years, or must be a member in good standing of The
201 Florida Bar who has passed the examination for community
202 association manager licensure under s. 468.433. The division
203 may, by rule, adopt additional requirements for qualification.

204 (2) An arbitrator shall be compensated as provided in
205 subsection (3) and is entitled to immunity as provided by s.
206 44.107. An arbitrator serves at the pleasure of the director of
207 the division.

208 (3) An arbitrator shall be compensated at the rate of \$150
209 per hour but shall not receive more than \$600 for any single
210 case. The total fees of the arbitrator shall appear in the final
211 order and shall be divided equally between the parties to the
212 dispute. Such fees shall be paid in full within 15 days after
213 receipt of the final order and shall become delinquent
214 thereafter. The arbitrator shall be entitled to recover
215 reasonable attorney's fees and costs incurred in the collection
216 of any delinquent sums.

217 Section 8. Section 720.507, Florida Statutes, is created
218 to read:

219 720.507 Conduct of proceedings; appeals.--

220 (1) An arbitrator may hear and decide the disputes filed
221 pursuant to the provisions of this part, but she or he may not
222 hold a person in contempt. An arbitrator may issue subpoenas to
223 compel the attendance and production of persons and documents at

224 the request of any party to the proceedings. The arbitrator
225 shall, unless waived by both parties to the dispute, conduct a
226 final hearing, if one is required, within 60 days after the
227 filing of the petition, and shall, within 14 days after the
228 final hearing, issue a final order. The final order is binding
229 on the parties, if a complaint for a trial de novo is not filed
230 in a court of competent jurisdiction within 30 days after
231 rendition of the final order, and may be enforced in the courts
232 of this state as provided in subsection (2). The final order of
233 the arbitrator is admissible in any appeal of the final order.

234 (2) A final order of the arbitrator which has not been
235 timely appealed may be enforced by filing a petition for
236 enforcement in circuit court. The prevailing party in an
237 enforcement action is entitled to reasonable costs and
238 attorney's fees.

239 (3) If no timely appeal has been filed in a case in which
240 a party who was ordered by final order of the arbitrator to take
241 some action or to refrain from taking some action does not
242 comply with the final order of the arbitrator within 30 days
243 after rendition of the final order, the arbitrator retains
244 jurisdiction upon the petition or request of a party to modify
245 the final order to require the party failing to comply with all
246 of the cost of the proceeding, including reasonable attorney's
247 fees.

248 (4) The arbitrator shall conduct these proceedings,
249 including the final hearing, in accordance with the rules of
250 procedure adopted by the Division of Florida Land Sales,
251 Condominiums, and Mobile Homes pursuant to s. 718.1255(4) and

252 the procedures established by this part.

253 (5) An arbitrator may grant all relief necessary for the
254 disposition of the dispute, including, but not limited to,
255 making a finding that a provision contained in the governing
256 documents is invalid and unenforceable; an order enforcing the
257 provisions of the governing documents and statute; an order
258 requiring an association or parcel owner, tenant, or guest to
259 comply with the governing documents or statute; or an order
260 finding that the association has selectively enforced its
261 governing documents. However, an arbitrator may not reform the
262 governing documents governing the community.

263 (6) In deciding a dispute, an arbitrator shall follow and
264 apply the applicable statute as well as controlling case law.

265 (7) An arbitrator is subject to the standards of
266 professional conduct contained in the Florida Rules for Court-
267 Appointed Arbitrators. An arbitrator may not preside over a
268 dispute involving a party currently represented by the
269 arbitrator, but may preside over a dispute involving a former
270 client when both parties, upon disclosure of the prior
271 representation, consent in writing.

272 (8) An arbitrator may, in the exercise of her or his
273 discretion, award reasonable prevailing party costs and
274 attorney's fees when an arbitrator has determined that the
275 conduct of a party has been unreasonable.

276 (9) A member prevailing in an action against the
277 association under this section may also be awarded additional
278 amounts as determined by the arbitrator to be necessary to
279 reimburse the member for her or his share of assessments levied

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280 by the association to fund its expenses of the arbitration. This
281 relief shall not exclude other remedies provided by law.

282 Section 9. This act shall take effect October 1, 2007.