

1                   A bill to be entitled  
2           An act relating to homeowners' associations; amending ss.  
3           34.01 and 720.302, F.S.; conforming cross-references to  
4           changes made by the act; repealing s. 720.311, F.S., which  
5           provides for alternative dispute resolution of disputes  
6           between parcel owners and homeowners' associations;  
7           creating part IV within ch. 720, F.S.; providing for  
8           dispute resolution regarding disputes between parcel  
9           owners and homeowners' associations; providing legislative  
10          findings; requiring that a dispute between a homeowners'  
11          association and a parcel owner be subject to presuit  
12          mediation before it may be filed in court; providing that  
13          any such dispute not resolved by mediation is subject to  
14          arbitration before it may be filed in court; providing  
15          exceptions; identifying and limiting the scope of  
16          mediation and arbitration to specified categories of  
17          disputes; prohibiting such disputes from including the  
18          collection of any assessment, fine, or other financial  
19          obligation, or any action to enforce a prior mediation  
20          settlement agreement between the parties or a final order  
21          of an arbitrator or court; authorizing the filing of a  
22          motion for temporary injunctive relief without first  
23          complying with the requirement of mediation or arbitration  
24          for any dispute for which emergency relief is required;  
25          providing that election disputes and recall disputes are  
26          not eligible for presuit mediation; providing procedures  
27          for recall and election disputes; requiring that a  
28          petitioner remit a filing fee; providing for the recovery

29 | of fees, including attorney's fees, by the prevailing  
30 | party at an arbitration proceeding; authorizing the  
31 | Division of Florida Land Sales, Condominiums, and Mobile  
32 | Homes in the Department of Business and Professional  
33 | Regulation to adopt rules to administer mediation and  
34 | arbitration provisions; providing that the service of a  
35 | notice of presuit mediation or arbitration tolls the  
36 | applicable statute of limitations; providing that such  
37 | mediation and arbitration proceedings be conducted  
38 | according to the Florida Rules of Civil Procedure;  
39 | providing that such proceedings have the same level of  
40 | privilege and confidentiality as court-ordered mediation;  
41 | providing that an arbitrator or judge may not consider any  
42 | information or evidence arising from the presuit mediation  
43 | proceeding except in a proceeding to impose sanctions for  
44 | failure to attend a presuit mediation session or to  
45 | enforce a mediated settlement agreement; providing that  
46 | counsel for the parties or a corporate representative  
47 | designated by the association are the only nonparties to a  
48 | dispute who may attend mediation or arbitration; providing  
49 | that a mediation attended by a quorum of the board of an  
50 | association is not a board meeting for purposes of notice  
51 | and participation as prescribed by state law; requiring  
52 | that a mediator be certified as a circuit court civil  
53 | mediator pursuant to the requirements established by the  
54 | Florida Supreme Court; requiring that an arbitrator meet  
55 | the qualifications and training requirements provided by  
56 | state law; providing that settlement agreements resulting

57 | from a presuit mediation or arbitration proceeding do not  
58 | have precedential value in proceedings involving parties  
59 | other than those participating in the mediation or  
60 | arbitration; authorizing certain corporations to use the  
61 | mediation procedures prescribed in the act; providing that  
62 | presuit mediation and arbitration procedures do not apply  
63 | to a dispute that has been previously arbitrated between  
64 | the same parties; authorizing parties to a dispute to  
65 | recover any costs and attorney's fees incurred in  
66 | connection with such arbitration or mediation proceedings;  
67 | providing procedures for the enforcement of an arbitration  
68 | or mediation award; requiring that the division maintain a  
69 | list of certified mediators and county and circuit court  
70 | arbitrators in each county who are willing to mediate or  
71 | arbitrate homeowners' association disputes; requiring that  
72 | an aggrieved party serve a written notice of presuit  
73 | mediation upon the respondent; providing a template for  
74 | such written notice; requiring that such written notice  
75 | substantially follow the template in form and content;  
76 | specifying a procedure for service of such notice;  
77 | requiring that the parties share the costs of mediation  
78 | equally; authorizing a mediator to require advance payment  
79 | of his or her fees; requiring a respondent to sign the  
80 | notice and clearly indicate his or her availability for  
81 | mediation, as well as which of the available mediators is  
82 | acceptable; specifying procedures regarding the scheduling  
83 | of mediation; requiring that the mediator notify the  
84 | parties of the date, time, and place of mediation within a

85 | specified period; authorizing the petitioner to file a  
86 | lawsuit against the respondent under certain  
87 | circumstances; providing that certain actions or omissions  
88 | by either party constitute failure or refusal to  
89 | participate in mediation, entitling the other party to  
90 | proceed to arbitration or to file suit in court;  
91 | prohibiting a party that fails or refuses to participate  
92 | in mediation from recovering attorney's fees and costs in  
93 | subsequent litigation; providing that an impasse occurs if  
94 | a mediation session cannot be scheduled within a specified  
95 | period; providing an exception; providing procedures for  
96 | presuit arbitration; requiring that an aggrieved party  
97 | serve a written notice of presuit arbitration upon the  
98 | respondent; providing a template for such written notice;  
99 | requiring that such written notice substantially follow  
100 | the template in form and content; specifying a procedure  
101 | for service of such notice; requiring that the parties  
102 | share the costs of arbitration equally; authorizing an  
103 | arbitrator to require advance payment of his or her fees;  
104 | requiring a respondent to sign the notice and clearly  
105 | indicate his or her availability for arbitration, as well  
106 | as which of the available arbitrators is acceptable;  
107 | specifying procedures regarding the scheduling of  
108 | arbitration; requiring that the arbitrator notify the  
109 | parties of the date, time, and place of arbitration within  
110 | a specified period; prohibiting an arbitrator from  
111 | considering any unsuccessful mediation except to impose  
112 | sanctions for failure to appear at a mediation conference;

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113 requiring an arbitrator to enter an order of dismissal if  
114 the parties do not agree to continue arbitration;  
115 authorizing the petitioner to file a lawsuit against the  
116 respondent under certain circumstances; authorizing an  
117 arbitrator to subpoena witnesses or the production of  
118 records at the request of any party; providing for the  
119 service of such subpoenas; requiring that an arbitrator  
120 issue a decision in writing; providing that such decision  
121 is final with respect to those disputes for which the  
122 parties have agreed to be bound; authorizing a party to  
123 file a motion for a trial de novo in a court of competent  
124 jurisdiction within a specified period; requiring that a  
125 prevailing party in an arbitration proceeding be awarded  
126 the costs of arbitration and reasonable attorney's fees in  
127 an amount determined by the arbitrator; requiring that the  
128 party filing a motion for a trial de novo be assessed the  
129 other party's arbitration costs, court costs, and other  
130 reasonable costs if the judgment upon a trial de novo is  
131 not more favorable than the arbitration decision;  
132 requiring that the party filing a complaint for a trial de  
133 novo be awarded reasonable court costs and attorney's fees  
134 if the judgment is more favorable upon a trial de novo;  
135 providing an effective date.

136  
137 Be It Enacted by the Legislature of the State of Florida:

138  
139 Section 1. Paragraph (d) of subsection (1) of section  
140 34.01, Florida Statutes, is amended to read:

141 34.01 Jurisdiction of county court.--

142 (1) County courts shall have original jurisdiction:

143 (d) Of disputes occurring in the homeowners' associations  
 144 as described in part IV of chapter 720 ~~s. 720.311(2)(a)~~, which  
 145 shall be concurrent with jurisdiction of the circuit courts.

146 Section 2. Subsection (2) of section 720.302, Florida  
 147 Statutes, is amended to read:

148 720.302 Purposes, scope, and application.--

149 (2) The Legislature recognizes that it is not in the best  
 150 interest of homeowners' associations or the individual  
 151 association members thereof to create or impose a bureau or  
 152 other agency of state government to regulate the affairs of  
 153 homeowners' associations. However, in accordance with part IV of  
 154 chapter 720 ~~s. 720.311~~, the Legislature finds that homeowners'  
 155 associations and their individual members will benefit from an  
 156 expedited alternative process for resolution of election and  
 157 recall disputes and presuit mediation of other disputes  
 158 involving covenant enforcement and authorizes the department to  
 159 hear, administer, and determine these disputes as more fully set  
 160 forth in this chapter. Further, the Legislature recognizes that  
 161 certain contract rights have been created for the benefit of  
 162 homeowners' associations and members thereof before the  
 163 effective date of this act and that ss. 720.301-720.407 are not  
 164 intended to impair such contract rights, including, but not  
 165 limited to, the rights of the developer to complete the  
 166 community as initially contemplated.

167 Section 3. Section 720.311, Florida Statutes, is repealed.

168 Section 4. Part IV of chapter 720, Florida Statutes,  
169 consisting of sections 720.501, 720.502, 720.503, and 720.504,  
170 is created to read:

171 720.501 Legislative findings.--The Legislature finds that  
172 alternative dispute resolution has made progress in reducing  
173 court dockets and trials and in offering a more efficient, cost-  
174 effective option to litigation.

175 720.502 Applicability.--

176 (1) Before a dispute between a homeowners' association and  
177 a parcel owner may be filed in court, the dispute is subject to  
178 presuit mediation pursuant to s. 720.503. Any dispute that is  
179 not resolved by the presuit mediation is subject to presuit  
180 arbitration pursuant to this part, unless a party fails to  
181 participate in presuit mediation as provided in s. 720.504 or  
182 all of the parties agree to waive presuit arbitration at any  
183 time before the arbitrator's final written decision.

184 (2) Unless otherwise provided in this part, the mandatory  
185 mediation and arbitration provisions of this part are limited to  
186 disputes between a homeowners' association and a parcel owner  
187 regarding the use of or changes to the parcel or the common  
188 areas and other covenant enforcement disputes, disputes  
189 regarding amendments to the association documents, disputes  
190 regarding meetings of the board and committees appointed by the  
191 board, membership meetings not including election meetings, and  
192 access to the official records of the association.

193 (3) Disputes involving the collection of any assessment,  
194 fine, or other financial obligation, including attorney's fees  
195 and costs, or any action to enforce a prior mediation settlement

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196 agreement between the parties or a final order of an arbitrator  
197 or court are not subject to presuit mediation or arbitration  
198 under this part.

199 (4) In any dispute subject to presuit mediation or  
200 arbitration under this part for which emergency relief is  
201 required, a motion for temporary injunctive relief may be filed  
202 with the court without first complying with the presuit  
203 mediation and arbitration requirements of this part. After any  
204 issues regarding emergency or temporary relief are resolved, the  
205 court may refer the parties to a mediation program administered  
206 by the courts or require mediation or arbitration under this  
207 part.

208 (5) Any recall dispute filed with the department pursuant  
209 to s. 720.303(10) shall be conducted by the department in  
210 accordance with the provisions of ss. 718.112(2)(j) and  
211 718.1255, and the rules adopted by the division. In addition,  
212 the department shall conduct mandatory arbitration of election  
213 disputes between a member and an association pursuant to s.  
214 718.1255 and rules adopted by the division. Election disputes  
215 and recall disputes are not eligible for presuit mediation;  
216 these disputes shall be arbitrated by the department. At the  
217 conclusion of the proceeding, the department shall charge the  
218 parties a fee in an amount adequate to cover all costs and  
219 expenses incurred by the department in conducting the  
220 proceeding. The petitioner shall remit an initial filing fee of  
221 at least \$200 to the department. The fees paid to the department  
222 are a recoverable cost in the arbitration proceeding, and the  
223 prevailing party in an arbitration proceeding shall recover its



224 reasonable costs and attorney's fees in an amount found  
225 reasonable by the arbitrator. The division may adopt rules under  
226 ss. 120.536(1) and 120.54 to administer this section.

227 (6) The service of a notice of presuit mediation or  
228 arbitration tolls the applicable statute of limitations.

229 (7) Presuit mediation and arbitration proceedings shall be  
230 conducted in accordance with the applicable Florida Rules of  
231 Civil Procedure. Such proceedings have the same level of  
232 privilege and confidentiality as court-ordered mediation. An  
233 arbitrator or judge may not consider any information or evidence  
234 arising from the presuit mediation proceeding except in a  
235 proceeding to impose sanctions for failure to attend a presuit  
236 mediation session or to enforce a mediated settlement agreement.  
237 Persons who are not parties to the dispute may not attend the  
238 presuit mediation conference without the consent of all parties,  
239 with the exceptions of counsel for the parties and a corporate  
240 representative designated by the association. When mediation is  
241 attended by a quorum of the board, such mediation is not a board  
242 meeting for purposes of notice and participation set forth in  
243 this chapter. A mediator is authorized to conduct mediation or  
244 arbitration under this section only if he or she has been  
245 certified as a circuit court civil mediator pursuant to the  
246 requirements established by the Florida Supreme Court. An  
247 arbitrator must meet the qualifications and training  
248 requirements adopted pursuant to s. 44.106. Settlement  
249 agreements resulting from a mediation or arbitration proceeding  
250 do not have precedential value in proceedings involving parties  
251 other than those participating in the mediation or arbitration.

252       (8) The presuit mediation procedures provided in this part  
253 may be used by a Florida corporation responsible for the  
254 operation of a community in which the voting members are parcel  
255 owners or their representatives, in which membership in the  
256 corporation is not a mandatory condition of parcel ownership, or  
257 which is not authorized to impose an assessment that may become  
258 a lien on the parcel.

259       (9) The presuit mediation and arbitration procedures  
260 provided in this part do not apply to a dispute that has been  
261 previously arbitrated between the same parties.

262       (10) The parties may seek to recover any costs and  
263 attorney's fees incurred in connection with arbitration and  
264 mediation proceedings under this part as part of the costs and  
265 fees that may be recovered by the prevailing party in any  
266 subsequent litigation.

267       (11) Any party to an arbitration proceeding may enforce an  
268 arbitration award by filing a petition in a court of competent  
269 jurisdiction in which the homeowners' association is located. A  
270 petition may not be granted unless the time for appeal by the  
271 filing of a motion for a trial de novo has expired. If a motion  
272 for a trial de novo has been filed, a petition may not be  
273 granted with respect to an arbitration award that has been  
274 stayed. If the petition for enforcement is granted, the  
275 petitioner shall be awarded reasonable attorney's fees and costs  
276 incurred in enforcing the arbitration award. A mediation  
277 settlement may also be enforced through the county or circuit  
278 court, as applicable, and any costs and fees incurred in the

279 enforcement of a settlement agreement reached at mediation must  
 280 be awarded to the prevailing party in any enforcement action.

281 (12) To facilitate the mediation and arbitration of  
 282 homeowners' association disputes, the division shall maintain a  
 283 list of certified mediators and county and circuit court  
 284 arbitrators in each county who are willing to mediate or  
 285 arbitrate homeowners' association disputes.

286 720.503 Mandatory presuit mediation.--

287 (1) Disputes between an association and a parcel owner  
 288 must be the subject of a demand for presuit mediation before the  
 289 dispute may be filed in court or submitted to arbitration  
 290 pursuant to s. 720.504. An aggrieved party shall serve on the  
 291 responding party a written notice of presuit mediation in  
 292 substantially the following form:

293  
 294 STATUTORY NOTICE OF PRESUIT MEDIATION

295 The alleged aggrieved party, \_\_\_\_\_, hereby  
 296 demands that \_\_\_\_\_, as the responding party,  
 297 engage in mandatory presuit mediation in connection with  
 298 the following disputes, which by statute are of a type that  
 299 are subject to presuit mediation:

300  
 301 (List specific nature of the dispute or disputes to be  
 302 mediated and the authority supporting a finding of a  
 303 violation as to each dispute.)

304  
 305 Pursuant to part IV of chapter 720, Florida Statutes, this  
 306 demand to resolve the dispute through presuit mediation is

307 required before a lawsuit can be filed concerning the  
308 dispute. Pursuant to the statute, the parties are required  
309 to engage in presuit mediation with a neutral third-party  
310 mediator in order to attempt to resolve this dispute  
311 without court action, and the aggrieved party demands that  
312 you likewise agree to this process. If you fail to  
313 participate in the mediation process, suit may be brought  
314 against you without further warning.

315  
316 The process of mediation involves a supervised negotiation  
317 process in which a trained, neutral third-party mediator  
318 meets with both parties and assists them in exploring  
319 possible opportunities for resolving part or all of the  
320 dispute. By agreeing to participate in presuit mediation,  
321 you are not bound in any way to change your position.  
322 Furthermore, the mediator has no authority to make any  
323 decisions in this matter or to determine who is right or  
324 wrong and merely acts as a facilitator to ensure that each  
325 party understands the position of the other party and that  
326 all options for reasonable settlement are fully explored.

327  
328 If an agreement is reached, it shall be reduced to writing  
329 and becomes a binding and enforceable commitment of the  
330 parties. A resolution of one or more disputes in this  
331 fashion avoids the need to litigate these issues in court.  
332 The failure to reach an agreement, or the failure of a  
333 party to participate in the process, results in the  
334 mediator declaring an impasse in the mediation, after which

335 the aggrieved party may proceed to court on all outstanding  
336 unsettled disputes. If you have failed or refused to  
337 participate in the entire mediation process, you will not  
338 be entitled to recover attorney's fees, even if you  
339 prevail.

340  
341 The aggrieved party has selected and hereby lists three  
342 certified mediators who we believe to be neutral and  
343 qualified to mediate the dispute. You have the right to  
344 select any one of these mediators. You have the right to  
345 respond with a selection of one or more alternative  
346 mediators of your choice if the aggrieved party's selected  
347 mediators are not acceptable to you. The fact that one  
348 party may be familiar with one or more of the listed  
349 mediators does not mean that the mediator cannot act as a  
350 neutral and impartial facilitator. Any mediator who cannot  
351 act in this capacity is required ethically to decline to  
352 accept engagement. The mediators that we suggest, and their  
353 current hourly rates, are as follows:

354  
355 (List the names, addresses, telephone numbers, and hourly  
356 rates of the mediators. Other pertinent information about  
357 the background of the mediators may be included as an  
358 attachment.)

359  
360 You may contact the offices of these mediators to confirm  
361 that the listed mediators will be neutral and will not show

362 any favoritism toward either party. The Florida Supreme  
363 Court can provide you a list of certified mediators.

364  
365 Unless otherwise agreed by the parties, part IV of chapter  
366 720, Florida Statutes, requires that the parties share the  
367 costs of presuit mediation equally, including the fee  
368 charged by the mediator. An average mediation may require 3  
369 to 4 hours of the mediator's time, including some  
370 preparation time, and the parties would need to share  
371 equally the mediator's fees as well as their own attorney's  
372 fees if they choose to employ an attorney in connection  
373 with the mediation. However, use of an attorney is not  
374 required and is at the option of each party. The mediators  
375 may require the advance payment of some or all of the  
376 anticipated fees. The aggrieved party hereby agrees to pay  
377 or prepay one-half of the mediator's estimated fees and to  
378 forward this amount or such other reasonable advance  
379 deposits as the mediator requires for this purpose. Any  
380 funds deposited will be returned to you if these are in  
381 excess of your share of the fees incurred.

382  
383 To begin your participation in presuit mediation to try to  
384 resolve the dispute and avoid further legal action, please  
385 sign below and clearly indicate which mediator is  
386 acceptable to you.

387  
388 YOU MUST RESPOND TO THIS STATUTORY NOTICE OF PRESUIT  
389 MEDIATION WITHIN 30 DAYS.

390  
391 YOU MUST ALSO PROVIDE A LISTING OF AT LEAST THREE DATES AND  
392 TIMES AT WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE  
393 MEDIATION AND THAT ARE WITHIN 90 DAYS AFTER THE DATE OF THE  
394 MAILING OF THIS STATUTORY NOTICE OF PRESUIT MEDIATION. WE  
395 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY  
396 CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE TO  
397 BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE DATES  
398 AND TIMES, THE MEDIATOR IS AUTHORIZED TO SCHEDULE A  
399 MEDIATION CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND  
400 CONVENIENCE INTO CONSIDERATION. THE MEDIATION CONFERENCE  
401 MUST BE HELD WITHIN 60 DAYS AFTER THE SCHEDULED DATE,  
402 UNLESS EXTENDED BY MUTUAL WRITTEN AGREEMENT. IF YOU FAIL TO  
403 RESPOND WITHIN 20 DAYS FOLLOWING THE DATE OF THIS NOTICE,  
404 IF YOU FAIL TO PROVIDE THE MEDIATOR WITH DATES AND TIMES AT  
405 WHICH YOU ARE AVAILABLE FOR THE MEDIATION CONFERENCE, OR IF  
406 YOU FAIL TO AGREE TO AT LEAST ONE OF THE MEDIATORS THAT WE  
407 HAVE SUGGESTED, FAIL TO SUGGEST ALTERNATIVE MEDIATORS, OR  
408 FAIL TO PAY OR PREPAY TO THE MEDIATOR ONE-HALF OF THE COSTS  
409 INVOLVED, OR IF YOU FAIL TO APPEAR AND PARTICIPATE AT THE  
410 SCHEDULED MEDIATION, THE AGGRIEVED PARTY WILL BE AUTHORIZED  
411 TO PROCEED WITH THE FILING OF A LAWSUIT AGAINST YOU WITHOUT  
412 FURTHER NOTICE. IN THE SUBSEQUENT COURT ACTION, THE  
413 AGGRIEVED PARTY MAY SEEK AN AWARD OF ATTORNEY'S FEES OR  
414 COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.  
415  
416 THEREFORE, PLEASE GIVE THIS MATTER YOUR IMMEDIATE  
417 ATTENTION. BY LAW, YOUR RESPONSE MUST BE MAILED BY

418 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND BY FIRST-  
 419 CLASS MAIL TO THE ADDRESS SHOWN ON THIS DEMAND.

420 \_\_\_\_\_

421 \_\_\_\_\_

422 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT  
 423 TO THE ABOVE-LISTED PARAMETERS OF MEDIATION.

424 AGREEMENT TO MEDIATE

425 The undersigned hereby agrees to participate in presuit  
 426 mediation and agrees to attend a mediation conducted by the  
 427 following mediator or mediators who is/are listed above as  
 428 someone who would be acceptable to mediate this dispute:  
 429 (List acceptable mediator or mediators.)

430

431 The undersigned hereby represents that he or she is  
 432 available to attend and participate in the presuit  
 433 mediation at the following dates and times:  
 434 (List available dates and times.)

435

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

439 \_\_\_\_\_

440 Signature of responding party #1

441 \_\_\_\_\_

442 Telephone contact information

443 \_\_\_\_\_



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

447  
448 (2) (a) The statutory notice of presuit mediation shall be  
449 served by sending a letter in substantial conformity with the  
450 above form by certified mail, return receipt requested, with an  
451 additional copy being sent by regular first-class mail, to the  
452 address of the responding party as it last appears on the books  
453 and records of the association. The responding party has 20 days  
454 following the date of the mailing of the statutory notice to  
455 serve a response to the aggrieved party in writing. The response  
456 shall be served by certified mail, return receipt requested,  
457 with an additional copy being sent by regular first-class mail,  
458 to the address shown on the statutory notice. Notwithstanding  
459 the foregoing, once the parties have agreed on a mediator, the  
460 mediator may reschedule the mediation for a date and time  
461 mutually convenient to the parties.

462 (b) The parties shall share the costs of presuit mediation  
463 equally, including the fee charged by the mediator, if any,  
464 unless the parties agree otherwise, and the mediator may require  
465 advance payment of his or her reasonable fees and costs.

466 (c) The party responding to the responding party must sign  
467 and clearly indicate which mediator is acceptable, and must  
468 provide a listing of dates and times within 90 days after the  
469 date of the mailing of the statutory notice of presuit mediation  
470 in which the responding party is available to participate in the  
471 mediation. The mediator must schedule the mediation conference

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472 at a mutually convenient time and place, but if the responding  
473 party does not provide a list of available dates and times, the  
474 mediator is authorized to schedule a mediation conference  
475 without taking the responding party's schedule and convenience  
476 into consideration. Within 21 days after the designation of the  
477 mediator, the mediator shall notify the parties in writing of  
478 the date, time, and place of the mediation conference. The  
479 mediation conference must be held within 60 days after the  
480 scheduled date, unless extended by mutual written agreement. If  
481 the responding party fails to respond within 20 days following  
482 the date of the statutory notice of presuit mediation, fails to  
483 agree to at least one of the mediators that have been suggested  
484 by the aggrieved party, fails to suggest alternative mediators,  
485 fails to pay or prepay to the mediator one-half of the costs  
486 involved, or fails to appear and participate at the scheduled  
487 mediation, the aggrieved party may proceed with the filing of a  
488 lawsuit against the respondent without further notice. In the  
489 subsequent court action, the aggrieved party may seek an award  
490 of attorney's fees or costs incurred in attempting to obtain  
491 mediation.

492 (d) The failure of any party to respond to the statutory  
493 notice of presuit mediation within 30 days, to agree upon a  
494 mediator, to provide a listing of dates and times within 90 days  
495 after the date of the mailing of the statutory notice of presuit  
496 mediation in which the responding party is available to  
497 participate in the mediation, to make payment of fees and costs  
498 within the time established by the mediator, or to appear for a  
499 scheduled mediation session without the approval of the mediator

500 constitutes failure or refusal to participate in the mediation  
 501 process and operates as an impasse in the presuit mediation by  
 502 such party, entitling the other party to proceed to arbitration  
 503 under s. 720.504 or to file the dispute in court and to seek an  
 504 award of the costs and fees associated with the mediation.  
 505 Additionally, notwithstanding the provisions of any other law or  
 506 document, persons who fail or refuse to participate in the  
 507 entire mediation process may not recover attorney's fees and  
 508 costs in subsequent arbitration or litigation relating to the  
 509 dispute. If any presuit mediation session cannot be scheduled  
 510 and conducted within 90 days after the offer to participate in  
 511 mediation was filed, an impasse shall be deemed to have occurred  
 512 unless both parties agree to extend the deadline.

513 720.504 Mandatory presuit arbitration.--

514 (1) Disputes between an association and a parcel owner  
 515 must be the subject of a presuit arbitration before the dispute  
 516 can be filed in court. An aggrieved party shall serve on the  
 517 responding party a written notice of presuit arbitration in  
 518 substantially the following form:

519  
 520 STATUTORY NOTICE OF PRESUIT ARBITRATION

521 The alleged aggrieved party, \_\_\_\_\_, hereby  
 522 demands that \_\_\_\_\_, as the responding party,  
 523 engage in mandatory presuit arbitration in connection with  
 524 the following disputes, which by statute are of a type that  
 525 are subject to presuit arbitration:

526

527 (List specific nature of the dispute or disputes to be  
528 arbitrated and the authority supporting a finding of a  
529 violation as to each dispute.)

530  
531 Pursuant to part IV of chapter 720, Florida Statutes, this  
532 demand to resolve the dispute through presuit arbitration  
533 is required before a lawsuit can be filed concerning the  
534 dispute, and the parties are required to engage in presuit  
535 arbitration with a neutral third-party arbitrator in order  
536 to attempt to resolve this dispute without court action.  
537 The aggrieved party demands that you participate in this  
538 process. If you fail to participate in the arbitration  
539 process, suit may be brought against you without further  
540 warning.

541  
542 The process of arbitration involves a neutral third person,  
543 called an arbitrator, who considers the facts and arguments  
544 presented by the parties and renders a decision. PURSUANT  
545 TO SECTION 720.504, Florida Statutes, THE DECISION OF THE  
546 ARBITRATOR SHALL BE FINAL IF A COMPLAINT IS NOT FILED IN A  
547 COURT OF COMPETENT JURISDICTION IN WHICH THE HOMEOWNERS'  
548 ASSOCIATION IS LOCATED WITHIN 30 DAYS AFTER THE DATE THAT  
549 THE DECISION IS RENDERED.

550  
551 If a settlement agreement is reached before the arbitration  
552 decision, it shall be reduced to writing and become a  
553 binding and enforceable commitment of the parties. A  
554 resolution of one or more disputes in this fashion avoids

555 the need to arbitrate these issues or to litigate these  
556 issues in court. The failure of a party to participate in  
557 the process results in the arbitrator declaring an impasse  
558 in the arbitration, after which the aggrieved party may  
559 proceed to court on all outstanding, unsettled disputes. If  
560 a party has failed or refused to participate in the entire  
561 arbitration process, that party will not be entitled to  
562 recover attorney's fees, even if the party prevails.

563  
564 The aggrieved party has selected and hereby lists three  
565 arbitrators who we believe to be neutral and qualified to  
566 arbitrate the dispute. You have the right to select any one  
567 of these arbitrators. You have the right to respond with a  
568 selection of one or more alternative arbitrators of your  
569 choice if the aggrieved party's selected arbitrators are  
570 not acceptable to you. The fact that one party may be  
571 familiar with one or more of the listed arbitrators does  
572 not mean that the arbitrator cannot act as a neutral and  
573 impartial arbitrator. Any arbitrator who cannot act in this  
574 capacity is required ethically to decline to accept  
575 engagement. The arbitrators that we suggest, and their  
576 current hourly rates, are as follows:

577  
578 (List the names, addresses, telephone numbers, and hourly  
579 rates of the mediators. Other pertinent information about  
580 the background of the mediators may be included as an  
581 attachment.)  
582

583 You may contact the offices of these arbitrators to confirm  
584 that the listed arbitrators will be neutral and will not  
585 show any favoritism toward either party.

586  
587 Unless otherwise agreed by the parties, part IV of chapter  
588 720, Florida Statutes, requires that the parties share the  
589 costs of presuit arbitration equally, including the fee  
590 charged by the arbitrator. An average arbitration may  
591 require 3 to 4 hours of the arbitrator's time, including  
592 some preparation time, and the parties would need to share  
593 equally the arbitrator's fees as well as their own  
594 attorney's fees if they choose to employ an attorney in  
595 connection with the arbitration. However, use of an  
596 attorney is not required and is at the option of each  
597 party. The arbitrators may require the advance payment of  
598 some or all of the anticipated fees. The aggrieved party  
599 hereby agrees to pay or prepay one-half of the arbitrator's  
600 estimated fees and to forward this amount or such other  
601 reasonable advance deposits as the mediator requires for  
602 this purpose. Any funds deposited will be returned to you  
603 if they exceed your share of the fees incurred.

604  
605 To begin your participation in presuit arbitration to try  
606 to resolve the dispute and avoid further legal action,  
607 please sign below and clearly indicate which arbitrator is  
608 acceptable to you.

609

610 YOU MUST RESPOND TO THIS STATUTORY NOTICE OF PRESUIT  
611 ARBITRATION WITHIN 30 DAYS.  
612  
613 YOU MUST ALSO PROVIDE A LISTING OF AT LEAST THREE DATES AND  
614 TIMES AT WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE  
615 ARBITRATION AND THAT ARE WITHIN 90 DAYS AFTER THE DATE OF  
616 THE MAILING OF THIS STATUTORY NOTICE OF PRESUIT  
617 ARBITRATION. WE WILL THEN ASK THE ARBITRATOR TO SCHEDULE A  
618 MUTUALLY CONVENIENT TIME AND PLACE FOR THE ARBITRATION  
619 CONFERENCE TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF  
620 AVAILABLE DATES AND TIMES, THE ARBITRATOR IS AUTHORIZED TO  
621 SCHEDULE AN ARBITRATION CONFERENCE WITHOUT TAKING YOUR  
622 SCHEDULE AND CONVENIENCE INTO CONSIDERATION. THE  
623 ARBITRATION CONFERENCE MUST BE HELD WITHIN 60 DAYS AFTER  
624 THE SCHEDULED DATE, UNLESS EXTENDED BY MUTUAL WRITTEN  
625 AGREEMENT. IF YOU FAIL TO RESPOND WITHIN 20 DAYS FOLLOWING  
626 THE DATE OF THIS NOTICE, IF YOU FAIL TO PROVIDE THE  
627 ARBITRATOR WITH DATES AND TIMES AT WHICH YOU ARE AVAILABLE  
628 FOR THE ARBITRATION CONFERENCE, OR IF YOU FAIL TO AGREE TO  
629 AT LEAST ONE OF THE ARBITRATORS THAT WE HAVE SUGGESTED,  
630 FAIL TO SUGGEST ALTERNATIVE ARBITRATORS, OR FAIL TO PAY OR  
631 PREPAY TO THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED, OR  
632 IF YOU FAIL TO APPEAR AND PARTICIPATE AT THE SCHEDULED  
633 ARBITRATION, THE AGGRIEVED PARTY WILL BE AUTHORIZED TO  
634 PROCEED WITH THE FILING OF A LAWSUIT AGAINST YOU WITHOUT  
635 FURTHER NOTICE. IN THE SUBSEQUENT COURT ACTION, THE  
636 AGGRIEVED PARTY MAY SEEK AN AWARD OF ATTORNEY'S FEES OR  
637 COSTS INCURRED IN ATTEMPTING TO OBTAIN ARBITRATION.

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THEREFORE, PLEASE GIVE THIS MATTER YOUR IMMEDIATE  
ATTENTION. BY LAW, YOUR RESPONSE MUST BE MAILED BY  
CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND BY FIRST-  
CLASS MAIL TO THE ADDRESS SHOWN ON THIS DEMAND.

\_\_\_\_\_  
\_\_\_\_\_

RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT  
TO THE ABOVE-LISTED PARAMETERS OF ARBITRATION.

AGREEMENT TO ARBITRATE

The undersigned hereby agrees to participate in presuit  
arbitration and agrees to attend an arbitration conducted  
by the following arbitrator or arbitrators who are listed  
above as someone who would be acceptable to arbitrate this  
dispute:

(List acceptable arbitrator or arbitrators.)

The undersigned hereby represents that he or she is  
available to attend and participate in the presuit  
arbitration at the following dates and times:

(List available dates and times.)

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

\_\_\_\_\_



666           Signature of responding party #1

667           \_\_\_\_\_

668           Telephone contact information

669           \_\_\_\_\_

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

673

674           (2) (a) The statutory notice of presuit arbitration shall  
 675           be served by sending a letter in substantial conformity with the  
 676           above form by certified mail, return receipt requested, with an  
 677           additional copy being sent by regular first-class mail, to the  
 678           address of the responding party as it last appears on the books  
 679           and records of the association. The responding party has 20 days  
 680           following the date of the mailing of the statutory notice to  
 681           serve a response to the aggrieved party in writing. The response  
 682           shall be served by certified mail, return receipt requested,  
 683           with an additional copy being sent by regular first-class mail,  
 684           to the address shown on the statutory notice. Notwithstanding  
 685           the foregoing, once the parties have agreed on an arbitrator,  
 686           the arbitrator may reschedule the arbitration for a date and  
 687           time mutually convenient to the parties.

688           (b) The parties shall share the costs of presuit  
 689           arbitration equally, including the fee charged by the  
 690           arbitrator, if any, unless the parties agree otherwise, and the  
 691           arbitrator may require advance payment of his or her reasonable  
 692           fees and costs.

693        (c) The party responding to the responding party must sign  
694 and clearly indicate which arbitrator is acceptable, and must  
695 provide a listing of dates and times within 90 days after the  
696 date of the mailing of the statutory notice of presuit  
697 arbitration at which the responding party is available to  
698 participate in the arbitration. The arbitrator must schedule the  
699 arbitration conference at a mutually convenient time and place,  
700 but if the responding party does not provide a list of available  
701 dates and times, the arbitrator is authorized to schedule an  
702 arbitration conference without taking the responding party's  
703 schedule and convenience into consideration. Within 21 days  
704 after the designation of the arbitrator, the arbitrator shall  
705 notify the parties in writing of the date, time, and place of  
706 the arbitration conference. The arbitration conference must be  
707 held within 60 days after the scheduled date, unless extended by  
708 mutual written agreement. If the responding party fails to  
709 respond within 20 days following the date of statutory notice of  
710 presuit arbitration, fails to agree to at least one of the  
711 arbitrators that have been suggested by the aggrieved party,  
712 fails to suggest alternative arbitrators, fails to pay or prepay  
713 to the arbitrator one-half of the costs involved, or fails to  
714 appear and participate at the scheduled mediation, the aggrieved  
715 party may proceed with the filing of a lawsuit against the  
716 respondent without further notice. In the subsequent court  
717 action, the aggrieved party may seek an award of attorney's fees  
718 or costs incurred in attempting to obtain arbitration.

719        (d) The failure of any party to respond to the statutory  
720 notice of presuit arbitration within 30 days, to agree upon an

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721 arbitrator, to provide a listing of dates and times that are  
722 within 90 days after the date of the mailing of the statutory  
723 notice of presuit arbitration at which the responding party is  
724 available to participate in the arbitration, to make payment of  
725 fees and costs within the time established by the arbitrator, or  
726 to appear for a arbitration session without the approval of the  
727 arbitrator constitutes failure or refusal to participate in the  
728 arbitration process and operates as an impasse in the presuit  
729 arbitration by such party, entitling the other party to proceed  
730 to file the dispute in court and to seek an award of the costs  
731 and fees associated with the arbitration. Additionally,  
732 notwithstanding the provisions of any other law or document,  
733 persons who fail or refuse to participate in the entire  
734 arbitration process may not recover attorney's fees and costs in  
735 subsequent litigation relating to the dispute. If any presuit  
736 arbitration session cannot be scheduled and conducted within 90  
737 days after the offer to participate in arbitration was filed, an  
738 impasse shall be deemed to have occurred unless both parties  
739 agree to extend this deadline.

740 (3) In an arbitration proceeding, the arbitrator may not  
741 consider any unsuccessful mediation of the dispute except in a  
742 proceeding to impose sanctions for failure to appear at a  
743 mediation conference. If the parties do not agree to continue  
744 arbitration, the arbitrator shall enter an order of dismissal,  
745 and either party may institute a suit in a court of competent  
746 jurisdiction. Arbitration shall be conducted according to the  
747 Florida Rules of Civil Procedure.

748 (4) At the request of any party to the arbitration, the  
749 arbitrator shall issue subpoenas for the attendance of witnesses  
750 and the production of books, records, documents, and other  
751 evidence, and any party on whose behalf a subpoena is issued may  
752 apply to the court for orders compelling such attendance and  
753 production. Subpoenas shall be served and are enforceable in the  
754 manner provided by the Florida Rules of Civil Procedure.

755 Discovery may, at the discretion of the arbitrator, be permitted  
756 in the manner provided by the Florida Rules of Civil Procedure.

757 (5) The arbitration decision shall be presented to the  
758 parties in writing. An arbitration decision is final in those  
759 disputes for which the parties have agreed to be bound. The  
760 arbitration decision is final if a motion for a trial de novo is  
761 not filed in a court of competent jurisdiction within 30 days  
762 after the date that the arbitrator's decision is rendered. The  
763 right to file for a trial de novo entitles the parties to file a  
764 motion in the appropriate trial court for a judicial resolution  
765 of the dispute. The prevailing party in an arbitration  
766 proceeding shall be awarded the costs of the arbitration and  
767 reasonable attorney's fees in an amount determined by the  
768 arbitrator. Such an award shall include the costs and reasonable  
769 attorney's fees incurred over the course of the arbitration  
770 proceeding as well as the costs and reasonable attorney's fees  
771 incurred in preparing for and attending any scheduled mediation.

772 (6) The party filing a motion for a trial de novo shall be  
773 assessed the other party's arbitration costs, court costs, and  
774 other reasonable costs, including attorney's fees, investigation  
775 expenses, and expenses for expert or other testimony or evidence

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776 incurred after the arbitration hearing if the judgment upon the  
777 trial de novo is not more favorable than the arbitration  
778 decision. If the judgment is more favorable, the party filing a  
779 complaint for a trial de novo shall be awarded reasonable court  
780 costs and attorney's fees.

781 Section 5. This act shall take effect July 1, 2008.