

By Senator Justice

16-02873-08

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

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

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

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

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

142
143 Be It Enacted by the Legislature of the State of Florida:
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145 Section 1. Paragraph (d) of subsection (1) of section
146 34.01, Florida Statutes, is amended to read:

147 34.01 Jurisdiction of county court.--

148 (1) County courts shall have original jurisdiction:

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

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

154 720.302 Purposes, scope, and application.--

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

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

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174 Section 4. Part IV of chapter 720, Florida Statutes,
175 consisting of sections 720.501, 720.502, 720.503, and 720.504, is
176 created to read:

177 720.501 Legislative findings.--The Legislature finds that
178 alternative dispute resolution has made progress in reducing
179 court dockets and trials and in offering a more efficient, cost-
180 effective option to litigation.

181 720.502 Applicability.--

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

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

199 (3) Disputes involving the collection of any assessment,
200 fine, or other financial obligation, including attorney's fees
201 and costs, or any action to enforce a prior mediation settlement
202 agreement between the parties or a final order of an arbitrator

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203 or court are not subject to presuit mediation or arbitration
204 under this part.

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

213 (5) Any recall dispute filed with the department pursuant
214 to s. 720.303(10) shall be conducted by the department in
215 accordance with the provisions of ss. 718.112(2) (j) and 718.1255,
216 and the rules adopted by the division. In addition, the
217 department shall conduct mandatory arbitration of election
218 disputes between a member and an association pursuant to s.
219 718.1255 and rules adopted by the division. Election disputes and
220 recall disputes are not eligible for presuit mediation; these
221 disputes shall be arbitrated by the department. At the conclusion
222 of the proceeding, the department shall charge the parties a fee
223 in an amount adequate to cover all costs and expenses incurred by
224 the department in conducting the proceeding. The petitioner shall
225 remit an initial filing fee of at least \$200 to the department.
226 The fees paid to the department are a recoverable cost in the
227 arbitration proceeding, and the prevailing party in an
228 arbitration proceeding shall recover its reasonable costs and
229 attorney's fees in an amount found reasonable by the arbitrator.
230 The division may adopt rules under ss. 120.536(1) and 120.54 to
231 administer this section.

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

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

257 (8) The presuit mediation procedures provided in this part
258 may be used by a Florida corporation responsible for the
259 operation of a community in which the voting members are parcel
260 owners or their representatives, in which membership in the

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261 corporation is not a mandatory condition of parcel ownership, or
262 which is not authorized to impose an assessment that may become a
263 lien on the parcel.

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

267 (10) The parties may seek to recover any costs and
268 attorney's fees incurred in connection with arbitration and
269 mediation proceedings under this part as part of the costs and
270 fees that may be recovered by the prevailing party in any
271 subsequent litigation.

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

286 (12) To facilitate the mediation and arbitration of
287 homeowners' association disputes, the division shall maintain a
288 list of certified mediators and county and circuit court

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289 arbitrators in each county who are willing to mediate or
 290 arbitrate homeowners' association disputes.

291 720.503 Mandatory presuit mediation.--

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

298
 299 STATUTORY NOTICE OF PRESUIT MEDIATION

300 The alleged aggrieved party, _____, hereby
 301 demands that _____, as the responding party,
 302 engage in mandatory presuit mediation in connection with the
 303 following disputes, which by statute are of a type that are
 304 subject to presuit mediation:

305
 306 (List specific nature of the dispute or disputes to be
 307 mediated and the authority supporting a finding of a
 308 violation as to each dispute.)

309
 310 Pursuant to part IV of chapter 720, Florida Statutes, this
 311 demand to resolve the dispute through presuit mediation is
 312 required before a lawsuit can be filed concerning the
 313 dispute. Pursuant to the statute, the parties are required
 314 to engage in presuit mediation with a neutral third-party
 315 mediator in order to attempt to resolve this dispute without
 316 court action, and the aggrieved party demands that you
 317 likewise agree to this process. If you fail to participate

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318 in the mediation process, suit may be brought against you
319 without further warning.

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

332
333 If an agreement is reached, it shall be reduced to writing
334 and becomes a binding and enforceable commitment of the
335 parties. A resolution of one or more disputes in this
336 fashion avoids the need to litigate these issues in court.
337 The failure to reach an agreement, or the failure of a party
338 to participate in the process, results in the mediator
339 declaring an impasse in the mediation, after which the
340 aggrieved party may proceed to court on all outstanding
341 unsettled disputes. If you have failed or refused to
342 participate in the entire mediation process, you will not be
343 entitled to recover attorney's fees, even if you prevail.

344
345 The aggrieved party has selected and hereby lists three
346 certified mediators who we believe to be neutral and

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

358
359 (List the names, addresses, telephone numbers, and hourly
360 rates of the mediators. Other pertinent information about
361 the background of the mediators may be included as an
362 attachment.)

363
364 You may contact the offices of these mediators to confirm
365 that the listed mediators will be neutral and will not show
366 any favoritism toward either party. The Florida Supreme
367 Court can provide you a list of certified mediators.

368
369 Unless otherwise agreed by the parties, part IV of chapter
370 720, Florida Statutes, requires that the parties share the
371 costs of presuit mediation equally, including the fee
372 charged by the mediator. An average mediation may require 3
373 to 4 hours of the mediator's time, including some
374 preparation time, and the parties would need to share
375 equally the mediator's fees as well as their own attorney's

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376 fees if they choose to employ an attorney in connection with
377 the mediation. However, use of an attorney is not required
378 and is at the option of each party. The mediators may
379 require the advance payment of some or all of the
380 anticipated fees. The aggrieved party hereby agrees to pay
381 or prepay one-half of the mediator's estimated fees and to
382 forward this amount or such other reasonable advance
383 deposits as the mediator requires for this purpose. Any
384 funds deposited will be returned to you if these are in
385 excess of your share of the fees incurred.

386
387 To begin your participation in presuit mediation to try to
388 resolve the dispute and avoid further legal action, please
389 sign below and clearly indicate which mediator is acceptable
390 to you.

391
392 YOU MUST RESPOND TO THIS STATUTORY NOTICE OF PRESUIT
393 MEDIATION WITHIN 30 DAYS.

394
395 YOU MUST ALSO PROVIDE A LISTING OF AT LEAST THREE DATES AND
396 TIMES AT WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE
397 MEDIATION AND THAT ARE WITHIN 90 DAYS AFTER THE DATE OF THE
398 MAILING OF THIS STATUTORY NOTICE OF PRESUIT MEDIATION. WE
399 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY CONVENIENT
400 TIME AND PLACE FOR THE MEDIATION CONFERENCE TO BE HELD. IF
401 YOU DO NOT PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE
402 MEDIATOR IS AUTHORIZED TO SCHEDULE A MEDIATION CONFERENCE
403 WITHOUT TAKING YOUR SCHEDULE AND CONVENIENCE INTO
404 CONSIDERATION. THE MEDIATION CONFERENCE MUST BE HELD WITHIN

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405 60 DAYS AFTER THE SCHEDULED DATE, UNLESS EXTENDED BY MUTUAL
406 WRITTEN AGREEMENT. IF YOU FAIL TO RESPOND WITHIN 20 DAYS
407 FOLLOWING THE DATE OF THIS NOTICE, IF YOU FAIL TO PROVIDE
408 THE MEDIATOR WITH DATES AND TIMES AT WHICH YOU ARE AVAILABLE
409 FOR THE MEDIATION CONFERENCE, OR IF YOU FAIL TO AGREE TO AT
410 LEAST ONE OF THE MEDIATORS THAT WE HAVE SUGGESTED, FAIL TO
411 SUGGEST ALTERNATIVE MEDIATORS, OR FAIL TO PAY OR PREPAY TO
412 THE MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR IF YOU FAIL
413 TO APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE
414 AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE
415 FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER NOTICE. IN
416 THE SUBSEQUENT COURT ACTION, THE AGGRIEVED PARTY MAY SEEK AN
417 AWARD OF ATTORNEY'S FEES OR COSTS INCURRED IN ATTEMPTING TO
418 OBTAIN MEDIATION.

419
420 THEREFORE, PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION.
421 BY LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED MAIL,
422 RETURN RECEIPT REQUESTED, AND BY FIRST-CLASS MAIL TO THE
423 ADDRESS SHOWN ON THIS DEMAND.

424 _____
425 _____
426 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO
427 THE ABOVE-LISTED PARAMENTERS OF MEDIATION.

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

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434
435 The undersigned hereby represents that he or she is
436 available to attend and participate in the presuit mediation
437 at the following dates and times:
438 (List available dates and times.)
439

440 I/we further agree to pay or prepay one-half of the
441 mediator's fees and to forward such advance deposits as the
442 mediator may require for this purpose.
443

444 Signature of responding party #1
445

446 Telephone contact information
447

448 Signature and telephone contact information of responding
449 party #2 (if applicable) (if property is owned by more than
450 one person, all owners must sign).
451

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

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463 foregoing, once the parties have agreed on a mediator, the
464 mediator may reschedule the mediation for a date and time
465 mutually convenient to the parties.

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

470 (c) The party responding to the responding party must sign
471 and clearly indicate which mediator is acceptable, and must
472 provide a listing of dates and times within 90 days after the
473 date of the mailing of the statutory notice of presuit mediation
474 in which the responding party is available to participate in the
475 mediation. The mediator must schedule the mediation conference at
476 a mutually convenient time and place, but if the responding party
477 does not provide a list of available dates and times, the
478 mediator is authorized to schedule a mediation conference without
479 taking the responding party's schedule and convenience into
480 consideration. Within 21 days after the designation of the
481 mediator, the mediator shall notify the parties in writing of the
482 date, time, and place of the mediation conference. The mediation
483 conference must be held within 60 days after the scheduled date,
484 unless extended by mutual written agreement. If the responding
485 party fails to respond within 20 days following the date of the
486 statutory notice of presuit mediation, fails to agree to at least
487 one of the mediators that have been suggested by the aggrieved
488 party, fails to suggest alternative mediators, fails to pay or
489 prepay to the mediator one-half of the costs involved, or fails
490 to appear and participate at the scheduled mediation, the
491 aggrieved party may proceed with the filing of a lawsuit against

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492 the respondent without further notice. In the subsequent court
493 action, the aggrieved party may seek an award of attorney's fees
494 or costs incurred in attempting to obtain mediation.

495 (d) The failure of any party to respond to the statutory
496 notice of presuit mediation within 30 days, to agree upon a
497 mediator, to provide a listing of dates and times within 90 days
498 after the date of the mailing of the statutory notice of presuit
499 mediation in which the responding party is available to
500 participate in the mediation, to make payment of fees and costs
501 within the time established by the mediator, or to appear for a
502 scheduled mediation session without the approval of the mediator
503 constitutes failure or refusal to participate in the mediation
504 process and operates as an impasse in the presuit mediation by
505 such party, entitling the other party to proceed to arbitration
506 under s. 720.504 or to file the dispute in court and to seek an
507 award of the costs and fees associated with the mediation.
508 Additionally, notwithstanding the provisions of any other law or
509 document, persons who fail or refuse to participate in the entire
510 mediation process may not recover attorney's fees and costs in
511 subsequent arbitration or litigation relating to the dispute. If
512 any presuit mediation session cannot be scheduled and conducted
513 within 90 days after the offer to participate in mediation was
514 filed, an impasse shall be deemed to have occurred unless both
515 parties agree to extend the deadline.

516 720.504 Mandatory presuit arbitration.--

517 (1) Disputes between an association and a parcel owner must
518 be the subject of a presuit arbitration before the dispute can be
519 filed in court. An aggrieved party shall serve on the responding

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520 party a written notice of presuit arbitration in substantially
521 the following form:

522
523 STATUTORY NOTICE OF PRESUIT ARBITRATION

524 The alleged aggrieved party, _____, hereby
525 demands that _____, as the responding party,
526 engage in mandatory presuit arbitration in connection with
527 the following disputes, which by statute are subject to
528 presuit arbitration:

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

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

544
545 The process of arbitration involves a neutral third person,
546 called an arbitrator, who considers the facts and arguments
547 presented by the parties and renders a decision. PURSUANT TO
548 SECTION 720.504, F.S., THE DECISION OF THE ARBITRATOR SHALL

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549 BE FINAL IF A COMPLAINT IS NOT FILED IN A COURT OF COMPETENT
550 JURISDICTION IN WHICH THE HOMEOWNERS' ASSOCIATION IS LOCATED
551 WITHIN 30 DAYS AFTER THE DATE THAT THE DECISION IS RENDERED.
552

553 If a settlement agreement is reached before the arbitration
554 decision, it shall be reduced to writing and become a
555 binding and enforceable commitment of the parties. A
556 resolution of one or more disputes in this fashion avoids
557 the need to arbitrate these issues or to litigate these
558 issues in court. The failure of a party to participate in
559 the process results in the arbitrator declaring an impasse
560 in the arbitration, after which the aggrieved party may
561 proceed to court on all outstanding, unsettled disputes. If
562 a party has failed or refused to participate in the entire
563 arbitration process, that party will not be entitled to
564 recover attorney's fees, even if the party prevails.
565

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

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577 arbitrators that we suggest, and their current hourly rates,
578 are as follows:

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

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

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

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

611
612 YOU MUST RESPOND TO THIS STATUTORY NOTICE OF PRESUIT
613 ARBITRATION WITHIN 30 DAYS.

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

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635 AUTHORIZED TO PROCEED WITH THE FILING OF A LAWSUIT AGAINST
636 YOU WITHOUT FURTHER NOTICE. IN THE SUBSEQUENT COURT ACTION,
637 THE AGGRIEVED PARTY MAY SEEK AN AWARD OF ATTORNEY'S FEES OR
638 COSTS INCURRED IN ATTEMPTING TO OBTAIN ARBITRATION.

639
640 THEREFORE, PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION.
641 BY LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED MAIL,
642 RETURN RECEIPT REQUESTED, AND BY FIRST-CLASS MAIL TO THE
643 ADDRESS SHOWN ON THIS DEMAND.

644 _____
645 _____
646 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO
647 THE ABOVE-LISTED PARAMETERS OF ARBITRATION.

648 AGREEMENT TO ARBITRATE
649 The undersigned hereby agrees to participate in presuit
650 arbitration and agrees to attend an arbitration conducted by
651 the following arbitrator or arbitrators who are listed above
652 as someone who would be acceptable to arbitrate this
653 dispute:

654
655 (List acceptable arbitrator or arbitrators.)

656
657 The undersigned hereby represents that he or she is
658 available to attend and participate in the presuit
659 arbitration at the following dates and times:

660
661 (List available dates and times.)
662

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

666 _____
667 Signature of responding party #1

668 _____
669 Telephone contact information

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

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

689 (b) The parties shall share the costs of presuit
690 arbitration equally, including the fee charged by the arbitrator,
691 if any, unless the parties agree otherwise, and the arbitrator

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692 may require advance payment of his or her reasonable fees and
693 costs.

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

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720 (d) The failure of any party to respond to the statutory
721 notice of presuit arbitration within 30 days, to agree upon an
722 arbitrator, to provide a listing of dates and times that are
723 within 90 days after the date of the mailing of the statutory
724 notice of presuit arbitration at which the responding party is
725 available to participate in the arbitration, to make payment of
726 fees and costs within the time established by the arbitrator, or
727 to appear for an arbitration session without the approval of the
728 arbitrator constitutes failure or refusal to participate in the
729 arbitration process and operates as an impasse in the presuit
730 arbitration by such party, entitling the other party to proceed
731 to file the dispute in court and to seek an award of the costs
732 and fees associated with the arbitration. Additionally,
733 notwithstanding the provisions of any other law or document,
734 persons who fail or refuse to participate in the entire
735 arbitration process may not recover attorney's fees and costs in
736 subsequent litigation relating to the dispute. If any presuit
737 arbitration session cannot be scheduled and conducted within 90
738 days after the offer to participate in arbitration was filed, an
739 impasse shall be deemed to have occurred unless both parties
740 agree to extend this deadline.

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

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

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

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

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

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778 | trial de novo is not more favorable than the arbitration
779 | decision. If the judgment is more favorable, the party filing a
780 | complaint for a trial de novo shall be awarded reasonable court
781 | costs and attorney's fees.

782 | Section 4. This act shall take effect July 1, 2008.