

1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 34.01, F.S.; conforming a cross-reference; amending s.
4 514.011, F.S.; providing definitions; amending s.
5 514.0115, F.S.; providing specified supervision and
6 regulation exemptions for homeowners' association swimming
7 pools; amending s. 515.25, F.S.; conforming a cross-
8 reference; creating s. 515.295, F.S.; providing
9 definitions; requiring residential pools and spas built
10 after a specified date to have certain features; amending
11 s. 720.302, F.S.; conforming a cross-reference; providing
12 legislative intent; amending s. 720.303, F.S.; revising
13 provisions relating to homeowners' association board
14 meetings, inspection and copying of records, and reserve
15 accounts of budgets; prohibiting salary or compensation of
16 certain association personnel for certain duties;
17 providing exceptions; amending s. 720.305, F.S.; revising
18 a lien restriction; amending s. 720.306, F.S.; providing
19 absentee ballot voting requirements; requiring newly
20 elected members of a board of directors to make certain
21 certifications in writing to the association; providing
22 for disqualification for failure to make such
23 certifications; requiring an association to retain such
24 certifications for a certain time; repealing s. 720.311,
25 F.S., relating to dispute resolution; providing that
26 dispute resolution proceedings that are pending as of the
27 date of repeal shall continue under the repealed
28 provisions; amending s. 720.401, F.S.; revising certain

29 prospective parcel owner disclosure summary requirements;
30 creating part IV of ch. 720, F.S.; creating s. 720.501,
31 F.S.; providing a short title; creating s. 720.502, F.S.;
32 providing legislative findings; creating s. 720.503, F.S.;
33 providing applicability; providing for mediation and
34 arbitration of homeowners' association disputes; providing
35 exceptions; authorizing the filing of a motion for
36 temporary injunctive relief; providing for the tolling of
37 applicable statutes of limitations; creating s. 720.504,
38 F.S.; providing notification requirements; creating s.
39 720.505, F.S.; providing a statutory notice form for
40 referral to mediation; providing requirements for the
41 service of such notice; requiring parties to share costs
42 of presuit mediation equally; providing response
43 requirements; providing scheduling requirements; providing
44 for impasse under certain conditions; prohibiting certain
45 parties from recovering attorney's fees and costs in
46 subsequent litigation proceedings; creating s. 720.506,
47 F.S.; authorizing certain persons to opt out of presuit
48 mediation; providing requirements for a person to opt out
49 of such mediation; creating s. 720.507, F.S.; providing a
50 statutory notice form for referral to arbitration;
51 providing requirements for the service of such notice;
52 requiring parties to share costs of arbitration equally;
53 providing scheduling requirements; providing for impasse
54 under certain conditions; prohibiting certain parties from
55 recovering attorney's fees and costs in subsequent
56 litigation proceedings; creating s. 720.508, F.S.;

57 providing rules of procedure for presuit mediation and
 58 presuit arbitration proceedings; providing for
 59 confidentiality; creating s. 720.509, F.S.; providing
 60 qualifications for mediators and arbitrators; creating s.
 61 720.510, F.S.; providing for enforcement of mediation
 62 settlement agreements and arbitration awards; requiring
 63 the department to apply for and implement a federal grant
 64 for enforcing swimming pool safety standards; requiring
 65 the Department of Health, the Department of Community
 66 Affairs, and the Florida Building Commission to assess
 67 state statutes and the Florida Building Code to determine
 68 if changes are needed to comply with federal standards
 69 pertaining to swimming pool and spa safety; requiring the
 70 Department of Health to present the assessment to the
 71 Legislature by a specified date; providing effective
 72 dates.

73

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

75

76 Section 1. Paragraph (d) of subsection (1) of section
 77 34.01, Florida Statutes, is amended to read:

78 34.01 Jurisdiction of county court.--

79 (1) County courts shall have original jurisdiction:

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

83 Section 2. Section 514.011, Florida Statutes, is amended
 84 to read:

85 514.011 Definitions.--As used in this chapter, the term:

86 (1) "Department" means the Department of Health.

87 (2) "Homeowners' association" means a homeowners'
 88 association as defined in s. 720.301.

89 (3)~~(5)~~ "Portable pool" means a pool or spa, and related
 90 equipment systems of any kind, which is designed or intended to
 91 be movable from location to location.

92 (4)~~(3)~~ "Private pool" means a facility used only by an
 93 individual, family, or living unit members and their guests
 94 which does not serve any type of cooperative housing or joint
 95 tenancy of five or more living units.

96 (5)~~(4)~~ "Public bathing place" means a body of water,
 97 natural or modified by humans, for swimming, diving, and
 98 recreational bathing, together with adjacent shoreline or land
 99 area, buildings, equipment, and appurtenances pertaining
 100 thereto, used by consent of the owner or owners and held out to
 101 the public by any person or public body, irrespective of whether
 102 a fee is charged for the use thereof. The bathing water areas of
 103 public bathing places include, but are not limited to, lakes,
 104 ponds, rivers, streams, artificial impoundments, and waters
 105 along the coastal and intracoastal beaches and shores of the
 106 state.

107 (6)~~(2)~~ "Public swimming pool" or "public pool" means a
 108 watertight structure of concrete, masonry, or other approved
 109 materials which is located either indoors or outdoors, used for
 110 bathing or swimming by humans, and filled with a filtered and
 111 disinfected water supply, together with buildings,
 112 appurtenances, and equipment used in connection therewith. A

113 public swimming pool or public pool shall mean a conventional
 114 pool, spa-type pool, wading pool, special purpose pool, or water
 115 recreation attraction, to which admission may be gained with or
 116 without payment of a fee and includes, but is not limited to,
 117 pools operated by or serving camps, churches, cities, counties,
 118 day care centers, group home facilities for eight or more
 119 clients, health spas, institutions, parks, state agencies,
 120 schools, subdivisions, or the cooperative living-type projects
 121 of five or more living units, such as apartments,
 122 boardinghouses, hotels, mobile home parks, motels, recreational
 123 vehicle parks, and townhouses.

124 Section 3. Subsection (2) of section 514.0115, Florida
 125 Statutes, is amended to read:

126 514.0115 Exemptions from supervision or regulation;
 127 variances.--

128 (2) (a) Pools serving no more than 32 condominium or
 129 cooperative units or 32 parcels governed by a homeowners'
 130 association which are not operated as a public lodging
 131 establishment shall be exempt from supervision under this
 132 chapter, except for water quality.

133 (b) Pools serving condominium or cooperative associations
 134 of more than 32 units or homeowners' associations of more than
 135 32 parcels and whose recorded documents prohibit the rental or
 136 sublease of the units for periods of less than 60 days are
 137 exempt from supervision under this chapter, except that the
 138 homeowners' association or condominium or cooperative owner or
 139 association must file applications with the department and
 140 obtain construction plans approval and receive an initial

141 operating permit. The department shall inspect the swimming
 142 pools at such places annually, at the fee set forth in s.
 143 514.033(3), or upon request by a unit owner, to determine
 144 compliance with department rules relating to water quality and
 145 lifesaving equipment. The department may not require compliance
 146 with rules relating to swimming pool lifeguard standards.

147 Section 4. Subsection (9) of section 515.25, Florida
 148 Statutes, is amended to read:

149 515.25 Definitions.--As used in this chapter, the term:

150 (9) "Public swimming pool" means a swimming pool, as
 151 defined in s. 514.011~~(6)(2)~~, which is operated, with or without
 152 charge, for the use of the general public; however, the term
 153 does not include a swimming pool located on the grounds of a
 154 private residence.

155 Section 5. Effective January 1, 2009, section 515.295,
 156 Florida Statutes, is created to read:

157 515.295 Residential swimming pool and spa drain-cover
 158 safety.--

159 (1) For purposes of this section, the term:

160 (a) "ASME/ANSI" as applied to a safety standard means a
 161 standard that is accredited by the American National Standards
 162 Institute and published by the American Society of Mechanical
 163 Engineers.

164 (b) "Main drain" means a submerged suction outlet
 165 typically located at the bottom of a swimming pool or spa to
 166 conduct water to a recirculating pump.

167 (c) "Safety vacuum release system" means a vacuum release
 168 system capable of providing vacuum release at a suction outlet

169 caused by a high vacuum occurrence due to a suction outlet flow
170 blockage.

171 (d) "Unblockable drain" means a drain of any size and
172 shape which a human body cannot sufficiently block to create a
173 suction-entrapment hazard.

174 (2) All residential swimming pools and spas constructed on
175 or after January 1, 2009, must have more than one drain, one or
176 more unblockable drains, or no main drain.

177 (3) All residential swimming pools and spas constructed on
178 or after January 1, 2009, must be equipped with one or more of
179 the following devices and systems designed to prevent entrapment
180 by the pool or spa drain:

181 (a) A safety vacuum release system that ceases operation
182 of the pump, reverses the circulation flow, or otherwise
183 provides a vacuum release at a suction outlet when a blockage is
184 detected. Such system must have been tested by an independent
185 third party and found to conform to ASME/ANSI standard
186 A112.19.17 or ASTM standard F2387.

187 (b) A suction-limiting vent system that has a tamper-
188 resistant atmospheric opening.

189 (c) A gravity drainage system that uses a collector tank.

190 (d) An automatic pump shut-off system.

191 (e) A device or system that disables the drain.

192 (f) Any other system determined by the department to be
193 equally effective as, or better than, the systems described in
194 this subsection at preventing or eliminating the risk of injury
195 or death associated with swimming pool and spa drainage systems.

196 (4) Any device or system described in subsection (3) must
 197 meet the requirements of any ASME/ANSI or ASTM performance
 198 standard, if there is such a standard for such a device or
 199 system, or any applicable consumer product safety standard.

200 Section 6. Subsection (2) of section 720.302, Florida
 201 Statutes, is amended to read:

202 720.302 Purposes, scope, and application.--

203 (2) The Legislature recognizes that it is not in the best
 204 interest of homeowners' associations or the individual
 205 association members thereof to create or impose a bureau or
 206 other agency of state government to regulate the affairs of
 207 homeowners' associations. However, in accordance with part IV of
 208 this chapter ~~s. 720.311~~, the Legislature finds that homeowners'
 209 associations and their individual members will benefit from an
 210 expedited alternative process for resolution of ~~election and~~
 211 ~~recall disputes and presuit mediation of other~~ disputes
 212 involving covenant enforcement in homeowner's associations and
 213 deed restricted communities using the procedures provided in
 214 part IV of ~~and authorizes the department to hear, administer,~~
 215 ~~and determine these disputes as more fully set forth in this~~
 216 chapter. Further, the Legislature recognizes that certain
 217 contract rights have been created for the benefit of homeowners'
 218 associations and members thereof as well as deed-restricted
 219 communities before the effective date of this act and that this
 220 chapter is ~~ss. 720.301-720.407~~ are not intended to impair such
 221 contract rights, including, but not limited to, the rights of
 222 the developer to complete the community as initially
 223 contemplated.

224 Section 7. Paragraph (b) of subsection (2), paragraphs (a)
 225 and (c) of subsection (5), and paragraphs (b), (c), (d), (f),
 226 and (g) of subsection (6) of section 720.303, Florida Statutes,
 227 are amended, and subsection (12) is added to that section, to
 228 read:

229 720.303 Association powers and duties; meetings of board;
 230 official records; budgets; financial reporting; association
 231 funds; recalls.--

232 (2) BOARD MEETINGS.--

233 (b) Members have the right to attend all meetings of the
 234 board and to speak on any matter placed on the agenda by
 235 petition of the voting interests for at least 3 minutes. The
 236 association may adopt written reasonable rules expanding the
 237 right of members to speak and governing the frequency, duration,
 238 and other manner of member statements, which rules must be
 239 consistent with this paragraph and may include a sign-up sheet
 240 for members wishing to speak. Notwithstanding any other law, the
 241 requirement that board meetings and committee meetings be open
 242 to the members is inapplicable to meetings between the board or
 243 a committee to discuss proposed or pending litigation with ~~and~~
 244 the association's attorney, and with respect to meetings of the
 245 board held for the purpose of discussing personnel matters.

246 (5) INSPECTION AND COPYING OF RECORDS.--The official
 247 records shall be maintained within the state and must be open to
 248 inspection and available for photocopying by members or their
 249 authorized agents at reasonable times and places within 10
 250 business days after receipt of a written request for access.
 251 This subsection may be complied with by having a copy of the

252 official records available for inspection or copying in the
253 community. If the association has a photocopy machine available
254 where the records are maintained, it must provide parcel owners
255 with copies on request during the inspection if the entire
256 request is limited to no more than 25 pages.

257 (a) The failure of an association to provide access to the
258 records within 10 business days after receipt of a written
259 request submitted by certified mail, return receipt requested,
260 creates a rebuttable presumption that the association willfully
261 failed to comply with this subsection.

262 (c) The association may adopt reasonable written rules
263 governing the frequency, time, location, notice, records to be
264 inspected, and manner of inspections, but may not impose a
265 requirement that a parcel owner demonstrate any proper purpose
266 for the inspection, state any reason for the inspection, or
267 limit a parcel owner's right to inspect records to less than one
268 8-hour business day per month. The association may impose fees
269 to cover the costs of providing copies of the official records,
270 including, without limitation, the costs of copying. The
271 association may charge up to 50 cents per page for copies made
272 on the association's photocopier. If the association does not
273 have a photocopy machine available where the records are kept,
274 or if the records requested to be copied exceed 25 pages in
275 length, the association may have copies made by an outside
276 vendor or association management company personnel and may
277 charge the actual cost of copying, including any reasonable
278 costs involving personnel fees and charges at an hourly rate for
279 employee time to cover administrative costs to the association.

280 The association shall maintain an adequate number of copies of
281 the recorded governing documents, to ensure their availability
282 to members and prospective members. Notwithstanding the
283 provisions of this paragraph, the following records shall not be
284 accessible to members or parcel owners:

285 1. Any record protected by the lawyer-client privilege as
286 described in s. 90.502 and any record protected by the work-
287 product privilege, including, but not limited to, any record
288 prepared by an association attorney or prepared at the
289 attorney's express direction which reflects a mental impression,
290 conclusion, litigation strategy, or legal theory of the attorney
291 or the association and was prepared exclusively for civil or
292 criminal litigation or for adversarial administrative
293 proceedings or which was prepared in anticipation of imminent
294 civil or criminal litigation or imminent adversarial
295 administrative proceedings until the conclusion of the
296 litigation or adversarial administrative proceedings.

297 2. Information obtained by an association in connection
298 with the approval of the lease, sale, or other transfer of a
299 parcel.

300 3. Disciplinary, health, insurance, and personnel records
301 of the association's employees.

302 4. Medical records of parcel owners or community
303 residents.

304 (6) BUDGETS.--

305 (b) In addition to annual operating expenses, the budget
306 may include reserve accounts for capital expenditures and
307 deferred maintenance for which the association is responsible.

308 To the extent that such reserve accounts are not created or
309 established pursuant to paragraph (d), funding of such reserves
310 shall be limited to the extent that the governing documents ~~do~~
311 not limit increases in assessments, including reserves. If the
312 budget of the association includes reserve accounts created or
313 established pursuant to paragraph (d), such reserves shall be
314 determined, maintained, and waived in the manner provided in
315 this subsection. Once an association provides for reserve
316 accounts created or established pursuant to paragraph (d) in the
317 budget, the association shall thereafter determine, maintain,
318 and waive reserves in compliance with this subsection. Nothing
319 in this section precludes termination of a reserve account
320 established pursuant to this paragraph upon approval of a
321 majority of the voting interests of the association. Upon such
322 approval, the terminating reserve account shall be removed from
323 the budget.

324 (c)1. If the budget of the association does not provide
325 for reserve accounts created or established pursuant to
326 paragraph (d) ~~governed by this subsection~~ and the association is
327 responsible for the repair and maintenance of capital
328 improvements that may result in a special assessment if reserves
329 are not provided, each financial report for the preceding fiscal
330 year required by subsection (7) shall contain the following
331 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
332 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
333 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
334 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
335 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE

336 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
337 INTERESTS OF THE ASSOCIATION ATTAINED BY VOTE OF THE MEMBERS AT
338 A MEETING OR BY WRITTEN CONSENT EXECUTED BY A MAJORITY OF THE
339 VOTING INTERESTS.

340 2. If the budget of the association does provide for
341 funding of accounts for deferred expenditures, including, but
342 not limited to, funds for capital expenditures and deferred
343 maintenance, but such accounts are not created or established
344 pursuant to paragraph (d), each financial report for the
345 preceding fiscal year required by subsection (7) shall also
346 contain the following statement in conspicuous type: THE BUDGET
347 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED
348 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
349 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
350 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
351 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF
352 SECTION 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT
353 SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN
354 THAT STATUTE, NOR ARE RESERVES CALCULATED IN ACCORDANCE WITH
355 THAT STATUTE.

356 (d) An association shall be deemed to have provided for
357 reserve accounts when reserve accounts have been initially
358 established by the developer or when the membership of the
359 association affirmatively elects to provide for reserves. If
360 reserve accounts are not initially provided for by the
361 developer, the membership of the association may elect to do so
362 upon the affirmative approval of not less than a majority of the
363 total voting interests of the association. Such approval may be

364 attained by vote of the members at a duly called meeting of the
365 membership or upon a written consent executed by not less than a
366 majority of the total voting interests in the community. The
367 approval action of the membership shall state that reserve
368 accounts shall be provided for in the budget and shall designate
369 the components for which the reserve accounts are to be
370 established. Upon approval by the membership, the board of
371 directors shall provide for the required reserve accounts for
372 inclusion in the budget in the next fiscal year following the
373 approval and in each year thereafter. Once established as
374 provided in this subsection, the reserve accounts shall be
375 funded or maintained or shall have their funding waived in the
376 manner provided in paragraph (f).

377 (f) After one or more ~~Once a reserve account or~~ reserve
378 accounts are established, the membership of the association,
379 upon a majority vote at a meeting at which a quorum is present,
380 may provide for no reserves or less reserves than required by
381 this section. If a meeting of the unit owners has been called to
382 determine whether to waive or reduce the funding of reserves and
383 no such result is achieved or a quorum is not present, the
384 reserves as included in the budget shall go into effect. After
385 the turnover, the developer may vote its voting interest to
386 waive or reduce the funding of reserves. Any vote taken pursuant
387 to this subsection to waive or reduce reserves shall be
388 applicable only to one budget year.

389 (g) Funding formulas for reserves authorized by this
390 section shall be based on either a separate analysis of each of
391 the required assets or a pooled analysis of two or more of the

392 required assets.

393 1. If the association maintains separate reserve accounts
 394 for each of the required assets, the amount of the contribution
 395 to each reserve account shall be the sum of the following two
 396 calculations:

397 a. The total amount necessary, if any, to bring a negative
 398 component balance to zero.

399 b. The total estimated deferred maintenance expense or
 400 estimated replacement cost of the reserve component less the
 401 estimated balance of the reserve component as of the beginning
 402 of the period for which the budget will be in effect. The
 403 remainder, if greater than zero, shall be divided by the
 404 estimated remaining useful life of the component.

405
 406 The formula may be adjusted each year for changes in estimates
 407 and deferred maintenance performed during the year and may
 408 include factors such as inflation and earnings on invested
 409 funds.

410 2. If the association maintains a pooled account of two or
 411 more of the required reserve assets, the amount of the
 412 contribution to the pooled reserve account as disclosed on the
 413 proposed budget shall not be less than that required to ensure
 414 that the balance on hand at the beginning of the period for
 415 which the budget will go into effect plus the projected annual
 416 cash inflows over the remaining estimated useful life of all of
 417 the assets that make up the reserve pool are equal to or greater
 418 than the projected annual cash outflows over the remaining
 419 estimated useful lives of all of the assets that make up the

420 reserve pool, based on the current reserve analysis. The
 421 projected annual cash inflows may include estimated earnings
 422 from investment of principal and accounts receivable minus the
 423 allowance for doubtful accounts. The reserve funding formula
 424 shall not include any type of balloon payments.

425 (12) COMPENSATION PROHIBITED.--A director, officer, or
 426 committee member of the association may not receive directly or
 427 indirectly any salary or compensation from the association for
 428 performance of duties as a director, officer, or committee
 429 member and such person may not in any other way benefit
 430 financially from service to the association. This subsection
 431 shall not be construed to preclude:

432 (a) Participation by such person in a financial benefit
 433 accruing to all or a significant number of members as a result
 434 of actions lawfully taken by the board or a committee of which
 435 he or she is a member, including, but not limited to, routine
 436 maintenance, repair, or replacement of community assets;

437 (b) Reimbursement for out-of-pocket expenses incurred by
 438 such person on behalf of the association, subject to approval of
 439 such reimbursement in accordance with procedures established by
 440 the association's governing documents or, in the absence of such
 441 procedures, in accordance with an approval process established
 442 by the board;

443 (c) Any recovery of insurance proceeds derived from a
 444 policy of insurance maintained by the association for the
 445 benefit of its members;

446 (d) Any fee or compensation authorized in the governing
 447 documents; or

448 (e) Any fee or compensation authorized in advance by a
449 vote of a majority of the voting interests voting in person or
450 by proxy at the meeting of the members.

451 Section 8. Subsection (2) of section 720.305, Florida
452 Statutes, are amended to read:

453 720.305 Obligations of members; remedies at law or in
454 equity; levy of fines and suspension of use rights; failure to
455 fill sufficient number of vacancies on board of directors to
456 constitute a quorum; appointment of receiver upon petition of
457 any member.--

458 (2) If the governing documents so provide, an association
459 may suspend, for a reasonable period of time, the rights of a
460 member or a member's tenants, guests, or invitees, or both, to
461 use common areas and facilities and may levy reasonable fines,
462 not to exceed \$100 per violation, against any member or any
463 tenant, guest, or invitee. A fine may be levied on the basis of
464 each day of a continuing violation, with a single notice and
465 opportunity for hearing, except that no such fine shall exceed
466 \$1,000 in the aggregate unless otherwise provided in the
467 governing documents. A fine of less than \$1,000 shall not become
468 a lien against a parcel. In any action to recover a fine, the
469 prevailing party is entitled to collect its reasonable
470 attorney's fees and costs from the nonprevailing party as
471 determined by the court.

472 (a) A fine or suspension may not be imposed without notice
473 of at least 14 days to the person sought to be fined or
474 suspended and an opportunity for a hearing before a committee of
475 at least three members appointed by the board who are not

476 officers, directors, or employees of the association, or the
 477 spouse, parent, child, brother, or sister of an officer,
 478 director, or employee. If the committee, by majority vote, does
 479 not approve a proposed fine or suspension, it may not be
 480 imposed.

481 (b) The requirements of this subsection do not apply to
 482 the imposition of suspensions or fines upon any member because
 483 of the failure of the member to pay assessments or other charges
 484 when due if such action is authorized by the governing
 485 documents.

486 (c) Suspension of common-area-use rights shall not impair
 487 the right of an owner or tenant of a parcel to have vehicular
 488 and pedestrian ingress to and egress from the parcel, including,
 489 but not limited to, the right to park.

490 Section 9. Subsections (8) and (9) of section 720.306,
 491 Florida Statutes, are amended to read:

492 720.306 Meetings of members; voting and election
 493 procedures; amendments.--

494 (8) PROXY VOTING.--The members have the right, unless
 495 otherwise provided in this subsection or in the governing
 496 documents, to vote in person or by proxy.

497 (a) To be valid, a proxy must be dated, must state the
 498 date, time, and place of the meeting for which it was given, and
 499 must be signed by the authorized person who executed the proxy.
 500 A proxy is effective only for the specific meeting for which it
 501 was originally given, as the meeting may lawfully be adjourned
 502 and reconvened from time to time, and automatically expires 90
 503 days after the date of the meeting for which it was originally

504 given. A proxy is revocable at any time at the pleasure of the
505 person who executes it. If the proxy form expressly so provides,
506 any proxy holder may appoint, in writing, a substitute to act in
507 his or her place.

508 (b) If the governing documents permit voting by secret
509 ballot by owners who are not in attendance at a meeting of the
510 members for the election of directors, such ballots shall be
511 placed in an inner envelope with no identifying markings and
512 mailed or delivered to the association in an outer envelope
513 bearing identifying information reflecting the name of the
514 owner, the lot or parcel for which the vote is being cast, and
515 the signature of the lot or parcel owner casting that ballot.
516 After the eligibility of the member to vote and confirmation
517 that no other ballot has been submitted for that lot or parcel
518 has been determined, the inner envelope shall be removed from
519 the outer envelope bearing the identification information and
520 placed with the ballots which were personally cast and shall be
521 opened when the ballots are counted. In the event that more than
522 one ballot is submitted for a lot or parcel, the ballots for
523 that lot or parcel shall be disqualified. Any vote by ballot
524 received after the closing of the balloting by a vote of the
525 membership shall not be considered.

526 (9) ELECTIONS; BOARD MEMBER CERTIFICATION.--

527 (a) Elections of directors must be conducted in accordance
528 with the procedures set forth in the governing documents of the
529 association. All members of the association shall be eligible to
530 serve on the board of directors, and a member may nominate
531 himself or herself as a candidate for the board at a meeting

532 where the election is to be held or, in the case of an election
533 process that allows voting by absentee ballot, in advance of the
534 balloting. Except as otherwise provided in the governing
535 documents, boards of directors must be elected by a plurality of
536 the votes cast by eligible voters. Any election dispute between
537 a member and an association must be submitted to mandatory
538 binding arbitration with the division. Such proceedings shall be
539 conducted in the manner provided by s. 718.1255 and the
540 procedural rules adopted by the division.

541 (b) Within 30 days after being elected to the board of
542 directors, a new director shall certify in writing to the
543 secretary of the association that he or she has read the
544 association's declarations of covenants and restrictions,
545 articles of incorporation, bylaws, and current written policies
546 and that he or she will work to uphold each to the best of his
547 or her ability and will faithfully discharge his or her
548 fiduciary responsibility to the association's members. Failure
549 to timely file such statement shall automatically disqualify the
550 director from service on the association's board of directors.
551 The secretary shall cause the association to retain a director's
552 certification for inspection by the membership of the
553 association for a period of 5 years after a director's election.
554 Failure to have such certification on file shall not affect the
555 validity of any appropriate action.

556 Section 10. Section 720.311, Florida Statutes is repealed.
557 Dispute resolution proceedings that have begun, subject to the
558 provisions of 720.311, Florida Statutes, and are still pending
559 as of the date of this repeal shall continue under that section.

560 Section 11. Paragraph (a) of subsection (1) of section
 561 720.401, Florida Statutes, is amended to read:

562 720.401 Prospective purchasers subject to association
 563 membership requirement; disclosure required; covenants;
 564 assessments; contract cancellation.--

565 (1) (a) A prospective parcel owner in a community must be
 566 presented a disclosure summary before executing the contract for
 567 sale. The disclosure summary must be in a form substantially
 568 similar to the following form:

569
 570 DISCLOSURE SUMMARY
 571 FOR
 572 (NAME OF COMMUNITY)
 573

574 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL
 575 BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

576 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
 577 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS
 578 COMMUNITY.

579 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
 580 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF
 581 APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____. YOU WILL
 582 ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE
 583 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.
 584 IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____.

585 4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE
 586 RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL
 587 ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

588 5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS
 589 LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A
 590 LIEN ON YOUR PROPERTY.

591 6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES
 592 FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN
 593 OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF
 594 APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____.

595 7. IF THE ASSOCIATION IS STILL UNDER THE CONTROL OF THE
 596 DEVELOPER, THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE
 597 RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION
 598 MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

599 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE
 600 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
 601 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
 602 DOCUMENTS BEFORE PURCHASING PROPERTY.

603 9. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND
 604 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE
 605 PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED
 606 FROM THE DEVELOPER.

607 10. THERE MAY BE AN OBLIGATION TO PAY ASSESSMENTS (TAXES
 608 AND/OR FEES) TO A COMMUNITY DEVELOPMENT DISTRICT FOR THE PURPOSE
 609 OF RETIRING BOND OBLIGATIONS USED TO CONSTRUCT INFRASTRUCTURE
 610 AND/OR OTHER IMPROVEMENTS.

611 11. YOU ARE JOINTLY AND SEVERALLY LIABLE WITH THE PREVIOUS
 612 OWNER OF YOUR PROPERTY FOR ALL UNPAID ASSESSMENTS THAT BECAME
 613 DUE UP TO THE TIME OF TRANSFER OF TITLE.

614

615 DATE:

PURCHASER:

PURCHASER:

616
 617 The disclosure must be supplied by the developer, or by the
 618 parcel owner if the sale is by an owner that is not the
 619 developer. Any contract or agreement for sale shall refer to and
 620 incorporate the disclosure summary and shall include, in
 621 prominent language, a statement that the potential buyer should
 622 not execute the contract or agreement until they have received
 623 and read the disclosure summary required by this section.

624 Section 12. Part IV of chapter 720, Florida Statutes, to
 625 be entitled "Dispute Resolution" consisting of sections 720.501,
 626 720.502, 720.503, 720.504, 720.505, 720.506, 720.507, 720.508,
 627 720.509, and 720.510, is created to read:

628 720.501 Short title.--This part may be cited as the "Home
 629 Court Advantage Dispute Resolution Act."

630 720.502 Legislative findings.--The Legislature finds that
 631 alternative dispute resolution has made progress in reducing
 632 court dockets and trials and in offering a more efficient, cost-
 633 effective option to litigation.

634 720.503 Applicability.--

635 (1) Unless otherwise provided in this part, before a
 636 dispute described in this part between a homeowners' association
 637 and a parcel owner or owners, or a dispute between parcel owners
 638 within the same homeowners association, may be filed in court,
 639 the dispute is subject to presuit mediation pursuant to s.
 640 720.505 or presuit arbitration pursuant to s. 720.507, at the
 641 option of the aggrieved party who initiates the first formal
 642 action of alternative dispute resolution under this part. The
 643 parties may mutually agree to participate in both presuit

644 mediation and by presuit arbitration prior to suit being filed
645 by either party.

646 (2) Unless otherwise provided in this part, the mediation
647 and arbitration provisions of this part are limited to disputes
648 between an association and a parcel owner or owners, or between
649 parcel owners, regarding the use of or changes to the parcel or
650 the common areas under the governing documents or other disputes
651 involving violations of the recorded declaration of covenants or
652 other governing documents; disputes arising concerning
653 enforcement of the governing documents or any amendments
654 thereto; and disputes involving access to the official records
655 of the association. A dispute concerning title to any parcel or
656 common area; interpretation or enforcement of any warranty; the
657 levy of a fee or assessment; the collection of an assessment
658 levied against a party; the eviction or other removal of a
659 tenant from a parcel; alleged breaches of fiduciary duty by one
660 or more directors; or any action to collect mortgage
661 indebtedness or to foreclosure a mortgage shall not be subject
662 to the provisions of this part.

663 (3) All disputes arising after the effective date of this
664 part involving the election of the board of directors for an
665 association or the recall of any member of the board or officer
666 of the association shall not be eligible for presuit mediation
667 under s. 720.505, but shall be subject to the provisions
668 concerning presuit arbitration under s. 720.507.

669 (4) In any dispute subject to presuit mediation or presuit
670 arbitration under this part for which emergency relief is
671 required, a motion for temporary injunctive relief may be filed

672 with the court without first complying with the presuit
673 mediation or presuit arbitration requirements of this part.
674 After any issues regarding emergency or temporary relief are
675 resolved, the court may refer the parties to a mediation program
676 administered by the courts or require mediation or arbitration
677 under this part.

678 (5) The mailing of a statutory notice of presuit mediation
679 or presuit arbitration as provided in this part shall toll the
680 applicable statute of limitations during the pendency of the
681 mediation or arbitration and for a period of 30 days following
682 the conclusion of either proceeding. The 30-day period shall
683 start upon the filing of the mediator's notice of impasse or the
684 arbitrator's written arbitration award. If the parties mutually
685 agree to participate in both presuit mediation and presuit
686 arbitration under this part, then the tolling of the applicable
687 statute of limitations for each such alternative dispute
688 resolution proceeding shall be consecutive.

689 720.504 Notice of violation.--Prior to giving the
690 statutory notice to proceed under presuit medication or presuit
691 arbitration under this part, the aggrieved association or parcel
692 owner shall first provide written notice of the alleged
693 violation to the alleged violator in the manner provided by this
694 section.

695 (1) The notice of violation shall be delivered to the
696 alleged violator by certified mail, return receipt requested, or
697 hand delivered. The person making delivery shall file with their
698 notice of mediation either the proof of receipt of mailing or an
699 affidavit stating the date and time of the delivery of the

700 notice of violation. If the notice is delivered by certified
 701 mail, return receipt requested and the alleged violator fails or
 702 refuses to accept delivery, notice shall be considered properly
 703 delivered for purposes of this section on the date of the first
 704 attempted delivery.

705 (2) The notice of violation shall state with specificity
 706 the nature of the alleged violation, including the date, time,
 707 and location of each violation and the action requested to abate
 708 or otherwise correct the violation. The notice shall also
 709 include the text of any provision in the governing documents,
 710 including the rules and regulations, of the association that
 711 have allegedly been violated.

712 (3) Unless the parties otherwise agree in writing to a
 713 longer time period for abatement, the party receiving the notice
 714 of violation shall have 10 days from the date of receipt of
 715 notice to correct the violation. If the alleged violation has
 716 not been abated within or otherwise corrected within the 10-day
 717 period, the party alleging the violation may proceed under this
 718 part at any time thereafter within the applicable statute of
 719 limitations.

720 (4) A copy of the notice and the text of the provision in
 721 the governing documents or the rules and regulations of the
 722 association that has allegedly been violated, along with proof
 723 of service of the notice of violation and a copy of any written
 724 responses received from the alleged violator, shall be included
 725 as an exhibit to any demand for mediation or arbitration under
 726 this part.

727 720.505 Presuit mediation.--

728 (1) Disputes between an association and a parcel owner or
 729 owners and between parcel owners must be submitted to presuit
 730 mediation before the dispute may be filed in court, or at the
 731 election of the party initiating the presuit procedures such
 732 dispute may be submitted to presuit arbitration pursuant to s.
 733 720.507, before the dispute may be filed in court. An aggrieved
 734 party who elects to utilize the presuit mediation procedure
 735 under this section shall serve on the responding party a written
 736 notice of presuit mediation in substantially the following form:

737
 738 STATUTORY NOTICE OF PRESUIT MEDIATION

739
 740 The alleged aggrieved party, _____,
 741 hereby demands that _____, as the
 742 responding party, engage in mandatory presuit
 743 mediation in connection with a dispute(s) with you,
 744 which by statute are of a type that are subject to
 745 presuit mediation:

746
 747 Attached is a copy of the prior notice of violation
 748 which details the specific nature of the dispute(s) to
 749 be mediated and the authority supporting a finding of
 750 a violation as to each dispute, including, but not
 751 limited to, the applicable provisions of the governing
 752 documents of the association believed to apply to the
 753 dispute between the parties, and a copy of the notice
 754 you received or refused and copies of any written
 755 response(s) received from you about this dispute.

756
757 Pursuant to part IV of chapter 720, Florida Statutes,
758 this demand to resolve the dispute through presuit
759 mediation is required before a lawsuit can be filed
760 concerning the dispute. Pursuant to Florida Statutes,
761 the parties are required to engage in presuit
762 mediation with a neutral third-party mediator in order
763 to attempt to resolve this dispute without court
764 action, and the aggrieved party demands that you
765 participate in this process. Unless you respond to
766 this notice by filing with the aggrieved party a
767 notice of opting out and demand for arbitration under
768 s. 720.506, Florida Statutes, your failure to
769 participate in the mediation process may result in a
770 lawsuit being filed in court against you without
771 further notice.

772
773 The process of mediation involves a supervised
774 negotiation process in which a trained, neutral third-
775 party mediator meets with both parties and assists
776 them in exploring possible opportunities for resolving
777 part or all of the dispute. By agreeing to participate
778 in presuit mediation, you are not bound in any way to
779 change your position. Furthermore, the mediator has no
780 authority to make any decisions in this matter or to
781 determine who is right or wrong and merely acts as a
782 facilitator to ensure that each party understands the
783 position of the other party and that all options for

784 reasonable settlement are fully explored.

785
786 If an agreement is reached, it shall be reduced to
787 writing and become a binding and enforceable contract
788 between the parties. A resolution of one or more
789 disputes in this fashion avoids the need to litigate
790 these issues in court. The failure to reach an
791 agreement, or the failure of a party to participate in
792 the process, results in the mediator declaring an
793 impasse in the mediation, after which the aggrieved
794 party may proceed to file a law suit on all
795 outstanding, unsettled disputes. If you have failed or
796 refused to participate in the entire mediation
797 process, you will not be entitled to recover
798 attorney's fees if you prevail in a subsequent court
799 proceeding involving the same dispute.

800
801 The aggrieved party has selected from a list of
802 eligible qualified mediators at least five certified
803 mediators who the aggrieved party believes to be
804 neutral and qualified to mediate the dispute. You have
805 the right to select any one of these mediators. The
806 fact that one party may be familiar with one or more
807 of the listed mediators does not mean that the
808 mediator cannot act as a neutral and impartial
809 facilitator. The names of the mediators that the
810 aggrieved party hereby submits to you from whom you
811 may choose one, and their current addresses, telephone

812 numbers and hourly rates, are as follows:

813
814 (List the names, addresses, telephone numbers, and
815 hourly rates of the mediators. Other pertinent
816 information about the background of the mediators may
817 be included as an attachment.)

818
819 You may contact the offices of these mediators to
820 confirm that each of the above listed mediators will
821 be neutral and will not show any favoritism toward
822 either party. Unless otherwise agreed to by the
823 parties, part IV of chapter 720, Florida Statutes,
824 requires that the parties share the costs of presuit
825 mediation equally, including the fee charged by the
826 mediator. An average mediation may require 3 to 4
827 hours of the mediator's time, including some
828 preparation time, and the parties would need to
829 equally share the mediator's fees as well as be
830 responsible for all of their own attorney's fees if
831 they choose to employ an attorney in connection with
832 the mediation. However, use of an attorney is not
833 required and is at the option of each party. The
834 mediators may require the advance payment of some or
835 all of the anticipated fees. The aggrieved party
836 hereby agrees to pay or prepay one-half of the
837 selected mediator's estimated fees and to forward this
838 amount or such other reasonable advance deposits as
839 the mediator requires for this purpose upon the

840 selection of the mediator. Any funds deposited will be
841 returned to you if these funds are in excess of your
842 share of the mediator fees incurred.

843
844 To begin your participation in presuit mediation to
845 try to resolve the dispute with you and avoid further
846 legal action, please sign below and clearly indicate
847 which mediator is acceptable to you from the five
848 mediators listed by the aggrieved party above.

849
850 You must respond in writing to this statutory notice
851 of presuit mediation within 20 days. In your response
852 you must provide a listing of at least three dates and
853 times in which you are available to participate in the
854 mediation that are within 90 days after the postmarked
855 date of the mailing of this notice of presuit
856 mediation or within 90 days after the date you were
857 served with a copy of this notice. The aggrieved party
858 will then ask the mediator to schedule a mutually
859 convenient time and place for the mediation conference
860 to be held. If you do not provide a list of available
861 dates and times, the mediator is authorized to
862 schedule a mediation conference without taking your
863 schedule and convenience into consideration. In no
864 event shall the mediation conference be later than 90
865 days after the notice of presuit mediation was first
866 served unless all parties mutually agree otherwise.
867 in the event that you fail to respond within 20 days

868 after the date of this notice, fail to provide the
 869 mediator with dates and times in which you are
 870 available for the mediation conference, fail to agree
 871 to at least one of the mediators that the aggrieved
 872 party has listed, fail to pay or prepay to the
 873 mediator one-half of the costs involved, or fail to
 874 appear and participate at the scheduled mediation, the
 875 aggrieved party will be authorized to proceed with the
 876 filing of a lawsuit against you without further
 877 notice. In any subsequent court action, the aggrieved
 878 party may seek an award of reasonable attorney's fees
 879 and costs incurred in attempting to obtain mediation.

880
 881 Please give this matter your immediate attention. By
 882 law, your response must be mailed by certified, first-
 883 class mail, return receipt requested, to the aggrieved
 884 party listed above at the address shown on this notice
 885 and postmarked no more than 20 days after the date of
 886 the postmarked date for this notice or within 20 days
 887 after the date upon which you were served with a copy
 888 of this notice.

889
 890 _____
 891 Signature of aggrieved party

892
 893 _____
 894 Printed name of aggrieved party

895

896 Responding party: your signature below indicates your
 897 acceptance of the agreement to mediate.

898

899 AGREEMENT TO MEDIATE

900

901 The undersigned hereby agrees to participate in
 902 presuit mediation and agrees to attend a mediation
 903 conducted by the following mediator(s) listed below as
 904 acceptable to mediate this dispute:

905

906 (List one acceptable mediator from those listed by the
 907 aggrieved party.)

908

909 The undersigned hereby represents that he or she can
 910 attend and participate in the presuit mediation at the
 911 following dates and times:

912

913 (List at least three available dates and times within
 914 the 90-day time limit described above.)

915

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

919

920 _____
 921 Signature of responding party #1

922 _____
 923 Telephone contact information

924 _____
925 Signature and telephone contact information of
926 responding party #2, if applicable. If the property is
927 owned by more than one person, all parcel owners or
928 unit owners who are subject of the dispute must sign
929 or have a person acting under authority of a power of
930 attorney sign.

931
932 (2) (a) Service of the notice of presuit mediation shall be
933 effected either by personal service, as provided in chapter 48,
934 or by certified mail, return receipt requested, in a letter in
935 substantial conformity with the form provided in subsection (1),
936 with an additional copy being sent by regular first-class mail,
937 to the address of the responding party as it last appears on the
938 books and records of the association or if not available, then
939 as it last appears in the official records of the county
940 property appraiser where the parcel in dispute is located. The
941 responding party has either 20 days after the postmarked date of
942 the mailing of the statutory notice or 20 days after the date
943 the responding party is served with a copy of the notice to
944 serve a written response to the aggrieved party. The response
945 shall be served by certified mail, return receipt requested,
946 with an additional copy being sent by regular first-class mail,
947 to the address shown on the statutory notice. The date of the
948 postmark on the envelope for the response shall constitute the
949 date that the response is served. Once the parties have agreed
950 on a mediator, the mediator may schedule or reschedule the
951 mediation for a date and time mutually convenient to the parties

952 within 90 days after the date of service of the statutory
953 notice. After such 90-day period, the mediator may reschedule
954 the mediation only upon the mutual written agreement of all the
955 parties.

956 (b) The parties shall share the costs of presuit mediation
957 equally, including the fee charged by the mediator, if any,
958 unless the parties agree otherwise, and the mediator may require
959 advance payment of his or her reasonable fees and costs. Each
960 party shall be responsible for their own attorney's fees, if a
961 party chooses to be represented by an attorney at the mediation.

962 (c) The party responding to the aggrieved party may either
963 provide a notice of opting out pursuant to s. 720.506, and
964 demand arbitration, or the responding party shall sign the
965 agreement to mediate included in the notice of presuit mediation
966 and clearly indicate the name of the mediator who is acceptable
967 from the five names provided by the aggrieved party. The
968 responding party must provide in their response a list of dates
969 and times in which the responding party is available to
970 participate in the mediation within 90 days after the date the
971 responding party was served, either by process server or by
972 certified mail, with the statutory notice of presuit mediation.

973 (d) The mediator who has been selected and agreed to
974 mediate must schedule the mediation conference at a mutually
975 convenient time and place within that 90-day period. However, if
976 the responding party does not provide a list of available dates
977 and times, the mediator is authorized to schedule a mediation
978 conference without taking the responding party's schedule and
979 convenience into consideration. Within 10 days after the

980 designation of the mediator, the mediator shall coordinate with
981 the parties and notify the parties in writing of the date, time,
982 and place of the mediation conference.

983 (e) The mediation conference must be held on the scheduled
984 date and may be rescheduled if a rescheduled date is approved by
985 the mediator. However, in no event shall the mediation be held
986 later than 90 days after the notice of presuit mediation was
987 first served, unless all parties mutually agree in writing
988 otherwise. If the presuit mediation is not completed within the
989 required time limits the mediator shall declare an impasse
990 unless the mediation date is extended by mutual written
991 agreement by all parties and approved by the mediator.

992 (f) If the responding party fails to respond within 30
993 days after the date of service of the statutory notice of
994 presuit mediation, fails to agree either to at least one of the
995 mediators listed by the aggrieved party in the notice, fails to
996 pay or prepay to the mediator one-half of the costs of the
997 mediator, or fails to appear and participate at the scheduled
998 mediation, the aggrieved party shall be authorized to proceed
999 with the filing of a lawsuit without further notice.

1000 (g)1. Failure of any party to respond to the statutory
1001 notice of presuit mediation within 20 days, failure to agree
1002 upon a mediator, failure to provide a listing of dates and times
1003 in which the responding party is available to participate in the
1004 mediation within 90 days after the date the responding party was
1005 served with the statutory notice of presuit mediation, failure
1006 to make payment of fees and costs within the time established by
1007 the mediator, or failure to appear for a scheduled mediation

1008 session without the approval of the mediator, shall, in each
 1009 instance, constitute a failure or refusal to participate in the
 1010 mediation process and shall operate as an impasse in the presuit
 1011 mediation by such party, entitling the other party to file a
 1012 lawsuit in court and to seek an award of the costs and
 1013 attorney's fees associated with the mediation.

1014 2. Persons who fail or refuse to participate in the entire
 1015 mediation process may not recover attorney's fees and costs in
 1016 subsequent litigation relating to the same dispute between the
 1017 same parties. If any presuit mediation session cannot be
 1018 scheduled and conducted within 90 days after the offer to
 1019 participate in mediation was filed, through no fault of either
 1020 party, then an impasse shall be deemed to have occurred unless
 1021 the parties mutually agree in writing to extend this deadline.
 1022 In the event of such impasse, each party will be responsible for
 1023 its own costs and attorney's fees and one-half of any mediator
 1024 fees and filing fees, and either party may file a lawsuit in
 1025 court regarding the dispute.

1026 720.506 Opt out of presuit mediation.--A party served with
 1027 a notice of presuit mediation under s. 720.505, may opt out of
 1028 presuit mediation and demand that the dispute proceed under
 1029 nonbinding arbitration in the following manner provided in this
 1030 section:

1031 (1) In lieu of a response to the notice of presuit
 1032 mediation as required under s. 720.505, the responding party may
 1033 serve upon the aggrieved party in the same manner as the
 1034 response to a notice for presuit mediation under s. 720.505, a
 1035 notice of opting out of mediation and demand that the dispute

1036 instead proceed to presuit arbitration under s. 720.507.

1037 (2) Where a party elects to opt out of presuit mediation
 1038 in favor of nonbinding arbitration, the aggrieved party shall
 1039 not be required to comply with the requirements of s. 720.505.

1040 (3) Except as otherwise provided in this part, the choice
 1041 of which presuit alternative dispute resolution procedure is
 1042 utilized shall be at the election of the aggrieved party who
 1043 first initiated such proceeding after complying with the
 1044 provisions of s. 720.504.

1045 720.507 Presuit arbitration.--

1046 (1) Disputes between an association and a parcel owner or
 1047 owners and disputes between parcel owners are subject to a
 1048 demand for presuit arbitration pursuant to s. 720.507, before
 1049 the dispute may be filed in court. A party who elects to utilize
 1050 the presuit arbitration procedure under this part shall serve on
 1051 the responding party a written notice of presuit arbitration in
 1052 substantially the following form:

1054 STATUTORY NOTICE OF PRESUIT ARBITRATION

1056 The alleged aggrieved party, _____,
 1057 hereby demands that _____, as the
 1058 responding party, engage in mandatory presuit
 1059 arbitration in connection with the following
 1060 dispute(s) with you, which by statute are of a type
 1061 that are subject to presuit arbitration:

1063 (List specific nature of the dispute or disputes to be

1064 arbitrated and the authority supporting a finding of a
1065 violation as to each dispute, including, but not
1066 limited to, all applicable provisions of the governing
1067 documents believed to apply to the dispute between the
1068 parties.)

1069
1070 Pursuant to part IV of chapter 720, Florida Statutes,
1071 this demand to resolve the dispute through presuit
1072 arbitration is required before a lawsuit can be filed
1073 concerning the dispute. Pursuant to Florida Statutes,
1074 the parties are required to engage in presuit
1075 arbitration with a neutral third-party arbitrator in
1076 order to attempt to resolve this dispute without court
1077 action, and the aggrieved party demands that you
1078 participate in this process. If you fail to
1079 participate in the arbitration process, a lawsuit may
1080 be brought against you in court without further
1081 warning.

1082
1083 The process of arbitration involves a neutral third
1084 person who considers the law and facts presented by
1085 the parties and renders a written decision called an
1086 "arbitration award." Pursuant to s. 720.507, Florida
1087 Statutes, the arbitration award shall be final unless
1088 a lawsuit is filed in a court of competent
1089 jurisdiction for the judicial circuit in which the
1090 parcel(s) governed by the homeowners' association
1091 is/are located within 30 days after the date that the

1092 arbitration award.

1093
1094 If a settlement agreement is reached before the
1095 arbitration award, it shall be reduced to writing and
1096 become a binding and enforceable contract of the
1097 parties. A resolution of one or more disputes in this
1098 fashion avoids the need to arbitrate these issues or
1099 to litigate these issues in court and shall be the
1100 same as a settlement agreement reached between the
1101 parties under s. 720.505, Florida Statutes. The
1102 failure of a party to participate in the arbitration
1103 process may result in the arbitrator issuing an
1104 arbitration award by default in the arbitration. If
1105 you have failed or refused to participate in the
1106 entire arbitration process, you will not be entitled
1107 to recover attorney's fees, even if you prevail in a
1108 subsequent court proceeding involving the same dispute
1109 between the same parties.

1110
1111 The aggrieved party has selected at least five
1112 arbitrators who the aggrieved party believes to be
1113 neutral and qualified to arbitrate the dispute. You
1114 have the right to select any one of the arbitrators.
1115 The fact that one party may be familiar with one or
1116 more of the listed arbitrators does not mean that the
1117 arbitrator cannot act as a neutral and impartial
1118 arbitrator. Any arbitrator who cannot act in this
1119 capacity is required ethically to decline to accept

1120 engagement. The names of the five arbitrators that the
1121 aggrieved party has chosen from which you may select
1122 one, and their current addresses, telephone numbers,
1123 and hourly rates, are as follows:

1124
1125 (List the names, addresses, telephone numbers, and
1126 hourly rates of at least five arbitrators.)

1127
1128 You may contact the offices of these arbitrators to
1129 confirm that the listed arbitrators will be neutral
1130 and will not show any favoritism toward either party.

1131
1132 Unless otherwise agreed to by the parties, part IV of
1133 chapter 720, Florida Statutes, requires that the
1134 parties share the costs of presuit arbitration
1135 equally, including the fee charged by the arbitrator.
1136 the parties shall be responsible for their own
1137 attorney's fees if they choose to employ an attorney
1138 in connection with the arbitration. However, use of an
1139 attorney to represent you for the arbitration is not
1140 required. The arbitrator selected may require the
1141 advance payment of some or all of the anticipated
1142 fees. The aggrieved party hereby agrees to pay or
1143 prepay one-half of the selected arbitrator's estimated
1144 fees and to forward this amount or such other
1145 reasonable advance deposits as the arbitrator who is
1146 selected requires for this purpose. Any funds
1147 deposited will be returned to you if these funds are

1148 in excess of your share of the fees incurred.
1149
1150 Please sign the agreement to arbitrate below and
1151 clearly indicate the name of the arbitrator who is
1152 acceptable to you from the names listed by the
1153 aggrieved party.
1154
1155 You must respond in writing to this statutory notice
1156 within 20 days after the date that the notice of
1157 presuit arbitration was either personally served on
1158 you or 20 days after the postmarked date that this
1159 notice of presuit arbitration was sent to you by
1160 certified mail. You must also provide a list of at
1161 least three dates and times in which you are available
1162 to participate in the arbitration that are within 90
1163 days after either the date you were personally served
1164 or 90 days after the postmarked date of the certified
1165 mailing of this statutory notice of presuit
1166 arbitration. A copy of this notice and your response
1167 will be provided by the aggrieved party to the
1168 arbitrator selected and the arbitrator will schedule a
1169 mutually convenient time and place for the arbitration
1170 conference to be held. If you do not provide a list of
1171 available dates and times, the arbitrator is
1172 authorized to schedule an arbitration conference
1173 without taking your schedule and convenience into
1174 consideration. The arbitration conference must be held
1175 on the scheduled date, or any rescheduled date

1176 approved by the arbitrator. In no event shall the
1177 arbitration conference be later than 90 days after
1178 notice of the presuit arbitration was first served,
1179 unless all parties mutually agree in writing
1180 otherwise. If the arbitration is not completed within
1181 the required time limits, the arbitrator shall issue
1182 an arbitration award, unless the hearing is extended
1183 by mutual written agreement of the parties and
1184 approved by the arbitrator. In the event that you fail
1185 to respond within 20 days after the date you were
1186 served with a copy of this notice, fail to provide the
1187 arbitrator with dates and times in which you are
1188 available for the arbitration conference, fail to
1189 agree either to one of the arbitrators that the
1190 aggrieved party has named, fail to pay or prepay to
1191 the arbitrator one-half of the costs involved as
1192 required, or fail to appear and participate at the
1193 scheduled arbitration conference, the aggrieved party
1194 may request the arbitrator to issue an arbitration
1195 award. In the subsequent court action, the aggrieved
1196 party shall be entitled to recover an award of
1197 reasonable attorney's fees and costs, including any
1198 fees paid to the arbitrator, incurred in obtaining an
1199 arbitration award pursuant to s. 720.507, Florida
1200 Statutes.

1201
1202 Please give this matter your immediate attention. By
1203 law, your response must be postmarked and mailed by

1204 certified, first-class mail, return receipt requested,
 1205 to the address shown on this notice of presuit
 1206 arbitration.

1207
 1208 _____
 1209 Signature of aggrieved party

1210
 1211 _____
 1212 Printed name of aggrieved party

1213
 1214 Responding party: your signature below indicates your
 1215 acceptance of the agreement to arbitrate.

1216
 1217 AGREEMENT TO ARBITRATE

1218
 1219 The undersigned hereby agrees to participate in
 1220 presuit arbitration and agrees to attend an
 1221 arbitration conducted by the following arbitrator
 1222 listed below as someone who would be acceptable to
 1223 arbitrate this dispute:

1224
 1225 (In your response either select the name of one
 1226 arbitrator that is acceptable to you from those
 1227 arbitrators listed by the aggrieved party.)

1228
 1229 The undersigned hereby represents that he or she is
 1230 available and able to attend and participate in the
 1231 presuit arbitration conference at the following dates

1232 and times:

1233

1234 (List all available dates and times, of which there

1235 must be at least three, within 90 days after the date

1236 on which you were served, either by process server or

1237 by certified mail, with the notice of presuit

1238 arbitration.)

1239

1240 I/We further agree to pay or prepay one-half of the

1241 arbitrator's fees and to forward such advance deposits

1242 as the arbitrator may require for this purpose.

1243

1244 _____

1245 Signature of responding party #1

1246 _____

1247 Telephone contact information

1248 _____

1249 Signature and telephone contact information of

1250 responding party #2, if applicable. If the property is

1251 owned by more than one person, all owners must sign,

1252 or a person may sign who is acting under authority of

1253 a valid power of attorney granted by an owner.

1254

1255 (2) (a) Service of the statutory notice of presuit

1256 arbitration shall be effected either by personal service, as

1257 provided in chapter 48, or by certified mail, return receipt

1258 requested, in a letter in substantial conformity with the form

1259 provided in subsection (1), with an additional copy being sent

1260 by regular first-class mail, to the address of the responding
1261 party as it last appears on the books and records of the
1262 association, or if not available, the last address as it appears
1263 on the official records of the county property appraiser for the
1264 county in which the property is situated that is subject to the
1265 association documents. The responding party has 20 days after
1266 the postmarked date of the certified mailing of the statutory
1267 notice of presuit arbitration or 20 days after the date the
1268 responding party is personally served with the statutory notice
1269 of presuit arbitration by to serve a written response to the
1270 aggrieved party. The response shall be served by certified mail,
1271 return receipt requested, with an additional copy being sent by
1272 regular first-class mail, to the address shown on the statutory
1273 notice of presuit arbitration. The postmarked date on the
1274 envelope of the response shall constitute the date the response
1275 was served.

1276 (b) The parties shall share the costs of presuit
1277 arbitration equally, including the fee charged by the
1278 arbitrator, if any, unless the parties agree otherwise, and the
1279 arbitrator may require advance payment of his or her reasonable
1280 fees and costs. Each party shall be responsible for all of their
1281 own attorney's fees if a party chooses to be represented by an
1282 attorney for the arbitration proceedings.

1283 (c)1. The party responding to the aggrieved party must
1284 sign the agreement to arbitrate included in the notice of
1285 presuit arbitration and clearly indicate the name of the
1286 arbitrator who is acceptable of those arbitrators listed by the
1287 aggrieved party. The responding party must provide a list of at

1288 least three dates and times in which the responding party is
1289 available to participate in the arbitration conference within 90
1290 days after the date the responding party was served with the
1291 statutory notice of presuit arbitration.

1292 2. The arbitrator must schedule the arbitration conference
1293 at a mutually convenient time and place, but if the responding
1294 party does not provide a list of available dates and times, the
1295 arbitrator is authorized to schedule an arbitration conference
1296 without taking the responding party's schedule and convenience
1297 into consideration. Within 10 days after the designation of the
1298 arbitrator, the arbitrator shall notify the parties in writing
1299 of the date, time, and place of the arbitration conference.

1300 3. The arbitration conference must be held on the
1301 scheduled date and may be rescheduled if approved by the
1302 arbitrator. However, in no event shall the arbitration hearing
1303 be later than 90 days following the notice of presuit
1304 arbitration was first served, unless all parties mutually agree
1305 in writing otherwise. If the arbitration hearing is not
1306 completed within the required time limits, the arbitrator may
1307 issue an arbitration award unless the time for the hearing is
1308 extended as provided herein. If the responding party fails to
1309 respond within 20 days after the date of statutory notice of
1310 presuit arbitration, fails to agree to at least one of the
1311 arbitrators that have been listed by the aggrieved party in the
1312 presuit notice of arbitration, fails to pay or prepay to the
1313 arbitrator one-half of the costs involved, or fails to appear
1314 and participate at the scheduled arbitration, the aggrieved
1315 party is authorized to proceed with a request that the

1316 arbitrator issue an arbitration award.

1317 (d)1. Failure of any party to respond to the statutory
1318 notice of presuit arbitration within 20 days, failure to either
1319 select one of the five arbitrators listed by the aggrieved
1320 party, failure to provide a listing of dates and times in which
1321 the responding party is available to participate in the
1322 arbitration conference within 90 days after the date of the
1323 responding party being served with the statutory notice of
1324 presuit arbitration, failure to make payment of fees and costs
1325 as required within the time established by the arbitrator, or
1326 the failure to appear for an arbitration conference without the
1327 approval of the arbitrator, shall entitle the other party to
1328 request the arbitrator to enter an arbitration award, including
1329 an award of the reasonable costs and attorney's fees associated
1330 with the arbitration.

1331 2. Persons who fail or refuse to participate in the entire
1332 arbitration process may not recover attorney's fees and costs in
1333 any subsequent litigation proceeding relating to the same
1334 dispute involving the same parties.

1335 (3) (a) In an arbitration proceeding, the arbitrator may
1336 not consider any unsuccessful mediation of the dispute.

1337 (b) An arbitrator in a proceeding initiated pursuant to
1338 the provisions of this part may shorten the time for discovery
1339 or otherwise limit discovery in a manner consistent with the
1340 policy goals of this part to reduce the time and expense of
1341 litigating homeowners' association disputes initiated pursuant
1342 to this chapter and promoting an expeditious alternative dispute
1343 resolution procedure for parties to such actions.

1344 (4) At the request of any party to the arbitration, the
1345 arbitrator may issue subpoenas for the attendance of witnesses
1346 and the production of books, records, documents, and other
1347 evidence, and any party on whose behalf a subpoena is issued may
1348 apply to the court for orders compelling such attendance and
1349 production. Subpoenas shall be served and are enforceable in the
1350 manner provided by the Florida Rules of Civil Procedure.

1351 Discovery may, at the discretion of the arbitrator, be permitted
1352 in the manner provided by the Florida Rules of Civil Procedure.

1353 (5) The final arbitration award shall be sent to the
1354 parties in writing no later than 30 days after the date of the
1355 arbitration hearing, absent extraordinary circumstances
1356 necessitating a later filing the reasons for which shall be
1357 stated in the final award if filed more than 30 days after the
1358 date of the final session of the arbitration conference. An
1359 agreed arbitration award is final in those disputes in which the
1360 parties have mutually agreed to be bound. An arbitration award
1361 decided by the arbitrator is final unless a lawsuit seeking a
1362 trial de novo is filed in a court of competent jurisdiction
1363 within 30 days after the date of the arbitration award. The
1364 right to file for a trial de novo entitles the parties to file a
1365 complaint in the appropriate trial court for a judicial
1366 resolution of the dispute. The prevailing party in an
1367 arbitration proceeding shall be awarded the costs of the
1368 arbitration and reasonable attorney's fees in an amount
1369 determined by the arbitrator.

1370 (6) The party filing a motion for a trial de novo shall be
1371 assessed the other party's arbitration costs, court costs, and

1372 other reasonable costs, including attorney's fees, investigation
1373 expenses, and expenses for expert or other testimony or evidence
1374 incurred after the arbitration hearing if the judgment upon the
1375 trial de novo is not more favorable than the final arbitration
1376 award.

1377 720.508 Rules of procedure.--

1378 (1) Presuit mediation and presuit arbitration proceedings
1379 under this part must be conducted in accordance with the
1380 applicable Florida Rules of Civil Procedure and rules governing
1381 mediations and arbitrations under chapter 44, except this part
1382 shall be controlling to the extent of any conflict with other
1383 applicable rules or statutes. The arbitrator can shorten any
1384 applicable time period and otherwise limit the scope of
1385 discovery on request of the parties or within the discretion of
1386 the arbitrator exercised consistent with the purpose and
1387 objective of reducing the expense and expeditiously concluding
1388 proceedings under this part.

1389 (2) Presuit mediation proceedings under s. 720.505 are
1390 privileged and confidential to the same extent as court-ordered
1391 mediation under chapter 44. An arbitrator or judge may not
1392 consider any information or evidence arising from the presuit
1393 mediation proceeding except in a proceeding to impose sanctions
1394 for failure to attend a presuit mediation session or to enforce
1395 a mediated settlement agreement.

1396 (3) Persons who are not parties to the dispute may not
1397 attend the presuit mediation conference without consent of all
1398 parties, with the exception of counsel for the parties and a
1399 corporate representative designated by the association. Presuit

1400 mediations under this part are not a board meeting for purposes
 1401 of notice and participation set forth in this chapter.

1402 (4) Attendance at a mediation conference by the board of
 1403 directors shall not require notice or participation by nonboard
 1404 members as otherwise required by this chapter for meetings of
 1405 the board.

1406 (5) Settlement agreements resulting from a mediation or
 1407 arbitration proceeding do not have precedential value in
 1408 proceedings involving parties other than those participating in
 1409 the mediation or arbitration.

1410 (6) Arbitration awards by an arbitrator shall have
 1411 precedential value in other proceedings involving the same
 1412 association or with respect to the same parcel owner.

1413 720.509 Mediators and arbitrators; qualifications and
 1414 registration.--A person is authorized to conduct mediation or
 1415 arbitration under this part if he or she has been certified as a
 1416 circuit court civil mediator pursuant to the requirements
 1417 adopted pursuant to s. 44.106, is a member in good standing with
 1418 The Florida Bar, and otherwise meets all other requirements
 1419 imposed by chapter 44.

1420 720.510 Enforcement of mediation settlement agreement or
 1421 arbitration award.--

1422 (1) A mediation settlement agreement may be enforced
 1423 through the county or circuit court, as applicable, and any
 1424 costs and attorney's fees incurred in the enforcement of a
 1425 settlement agreement reached at mediation shall be awarded to
 1426 the prevailing party in any enforcement action.

1427 (2) Any party to an arbitration proceeding may enforce an

1428 arbitration award by filing a petition in a court of competent
1429 jurisdiction in which the homeowners' association is located.
1430 The prevailing party in such proceeding shall be awarded
1431 reasonable attorney's fees and costs incurred in such
1432 proceeding.

1433 (3) If a complaint is filed seeking a trial de novo, the
1434 arbitration award shall be stayed and a petition to enforce the
1435 award may not be granted. Such award, however, shall be
1436 admissible in the court proceeding seeking a trial de novo.

1437 Section 13. The Department of Health shall apply for and
1438 implement, if awarded, a federal grant for swimming pool and spa
1439 safety standards education and enforcement under the State
1440 Swimming Pool Safety Grant Program as established in 15 U.S.C.
1441 s. 8004. To ensure the state's eligibility for the grant award,
1442 the Department of Health, in coordination with the Department of
1443 Community Affairs and the Florida Building Commission, shall
1444 assess the Florida Statutes and the Florida Building Code to
1445 determine if additional changes are necessary to ensure
1446 compliance with federal standards regarding swimming pool and
1447 spa safety. The Department of Health shall provide the
1448 assessment to the Legislature by January 1, 2009.

1449 Section 14. Except as otherwise expressly provided in this
1450 act, this act shall take effect July 1, 2008.