

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27      date of repeal shall continue under the repealed  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. Effective July 1, 2009, paragraph (d) of  
 77 subsection (1) of section 34.01, Florida Statutes, is amended to  
 78 read:

79 34.01 Jurisdiction of county court.--

80 (1) County courts shall have original jurisdiction:

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

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

86 514.011 Definitions.--As used in this chapter, the term:

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

88 (2) "Homeowners' association" means a homeowners'

89 association as defined in s. 720.301.

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

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

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

108 (6)~~(2)~~ "Public swimming pool" or "public pool" means a  
109 watertight structure of concrete, masonry, or other approved  
110 materials which is located either indoors or outdoors, used for  
111 bathing or swimming by humans, and filled with a filtered and

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

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

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

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

134 (b) Pools serving condominium or cooperative associations  
 135 of more than 32 units or homeowners' associations of more than  
 136 32 parcels and whose recorded documents prohibit the rental or  
 137 sublease of the units for periods of less than 60 days are  
 138 exempt from supervision under this chapter, except that the  
 139 homeowners' association or condominium or cooperative owner or

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

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

150 515.25 Definitions.--As used in this chapter, the term:

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

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

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

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

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

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

168        (c) "Safety vacuum release system" means a vacuum release  
169 system capable of providing vacuum release at a suction outlet  
170 caused by a high vacuum occurrence due to a suction outlet flow  
171 blockage.

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

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

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

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

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

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

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

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

193        (f) Any other system determined by the department to be  
194 equally effective as, or better than, the systems described in  
195 this subsection at preventing or eliminating the risk of injury

196 or death associated with swimming pool and spa drainage systems.

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

201 Section 6. Effective July 1, 2009, subsection (2) of  
 202 section 720.302, Florida Statutes, is amended to read:

203 720.302 Purposes, scope, and application.--

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



224 contemplated.

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

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

233 (2) BOARD MEETINGS.--

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

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

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

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

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

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

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

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

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

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

305 (6) BUDGETS.--

306 (b) In addition to annual operating expenses, the budget  
307 may include reserve accounts for capital expenditures and

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

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

336 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE  
337 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING  
338 INTERESTS OF THE ASSOCIATION ATTAINED BY VOTE OF THE MEMBERS AT  
339 A MEETING OR BY WRITTEN CONSENT EXECUTED BY A MAJORITY OF THE  
340 VOTING INTERESTS.

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

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

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

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

390 (g) Funding formulas for reserves authorized by this  
391 section shall be based on either a separate analysis of each of

392 the required assets or a pooled analysis of two or more of the  
393 required assets.

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

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

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

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

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

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

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

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

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

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

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



448 documents; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

557 Section 10. Effective July 1, 2009, section 720.311,  
558 Florida Statutes is repealed. Dispute resolution proceedings  
559 that have begun, subject to the provisions of 720.311, Florida

560 Statutes, and are still pending as of the date of this repeal  
 561 shall continue under that section.

562 Section 11. Paragraph (a) of subsection (1) of section  
 563 720.401, Florida Statutes, is amended to read:

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

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

571  
 572 DISCLOSURE SUMMARY  
 573 FOR  
 574 (NAME OF COMMUNITY)  
 575

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

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

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

587 4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE

588 RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL  
 589 ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

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

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

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

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

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

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

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

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DATE: PURCHASER:  
PURCHASER:

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

Section 12. Effective July 1, 2009, part IV of chapter 720, Florida Statutes, to be entitled "Dispute Resolution" consisting of sections 720.501, 720.502, 720.503, 720.504, 720.505, 720.506, 720.507, 720.508, 720.509, and 720.510, is created to read:

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

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

720.503 Applicability.--

(1) Unless otherwise provided in this part, before a dispute described in this part between a homeowners' association and a parcel owner or owners, or a dispute between parcel owners within the same homeowners association, may be filed in court, the dispute is subject to presuit mediation pursuant to s. 720.505 or presuit arbitration pursuant to s. 720.507, at the

644 option of the aggrieved party who initiates the first formal  
645 action of alternative dispute resolution under this part. The  
646 parties may mutually agree to participate in both presuit  
647 mediation and by presuit arbitration prior to suit being filed  
648 by either party.

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

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



672       (4) In any dispute subject to presuit mediation or presuit  
673 arbitration under this part for which emergency relief is  
674 required, a motion for temporary injunctive relief may be filed  
675 with the court without first complying with the presuit  
676 mediation or presuit arbitration requirements of this part.  
677 After any issues regarding emergency or temporary relief are  
678 resolved, the court may refer the parties to a mediation program  
679 administered by the courts or require mediation or arbitration  
680 under this part.

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

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

698       (1) The notice of violation shall be delivered to the  
699 alleged violator by certified mail, return receipt requested, or

700 hand delivered. The person making delivery shall file with their  
701 notice of mediation either the proof of receipt of mailing or an  
702 affidavit stating the date and time of the delivery of the  
703 notice of violation. If the notice is delivered by certified  
704 mail, return receipt requested and the alleged violator fails or  
705 refuses to accept delivery, notice shall be considered properly  
706 delivered for purposes of this section on the date of the first  
707 attempted delivery.

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

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

723 (4) A copy of the notice and the text of the provision in  
724 the governing documents or the rules and regulations of the  
725 association that has allegedly been violated, along with proof  
726 of service of the notice of violation and a copy of any written  
727 responses received from the alleged violator, shall be included

728 as an exhibit to any demand for mediation or arbitration under  
 729 this part.

730 720.505 Presuit mediation.--

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

740

741 STATUTORY NOTICE OF PRESUIT MEDIATION

742

743 The alleged aggrieved party, \_\_\_\_\_,  
 744 hereby demands that \_\_\_\_\_, as the  
 745 responding party, engage in mandatory presuit  
 746 mediation in connection with a dispute(s) with you,  
 747 which by statute are of a type that are subject to  
 748 presuit mediation:

749

750 Attached is a copy of the prior notice of violation  
 751 which details the specific nature of the dispute(s) to  
 752 be mediated and the authority supporting a finding of  
 753 a violation as to each dispute, including, but not  
 754 limited to, the applicable provisions of the governing  
 755 documents of the association believed to apply to the

756 dispute between the parties, and a copy of the notice  
757 you received or refused and copies of any written  
758 response(s) received from you about this dispute.

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

775  
776 The process of mediation involves a supervised  
777 negotiation process in which a trained, neutral third-  
778 party mediator meets with both parties and assists  
779 them in exploring possible opportunities for resolving  
780 part or all of the dispute. By agreeing to participate  
781 in presuit mediation, you are not bound in any way to  
782 change your position. Furthermore, the mediator has no  
783 authority to make any decisions in this matter or to

784 determine who is right or wrong and merely acts as a  
785 facilitator to ensure that each party understands the  
786 position of the other party and that all options for  
787 reasonable settlement are fully explored.

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

803  
804 The aggrieved party has selected from a list of  
805 eligible qualified mediators at least five certified  
806 mediators who the aggrieved party believes to be  
807 neutral and qualified to mediate the dispute. You have  
808 the right to select any one of these mediators. The  
809 fact that one party may be familiar with one or more  
810 of the listed mediators does not mean that the  
811 mediator cannot act as a neutral and impartial

812 facilitator. The names of the mediators that the  
813 aggrieved party hereby submits to you from whom you  
814 may choose one, and their current addresses, telephone  
815 numbers and hourly rates, are as follows:

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

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

840 selected mediator's estimated fees and to forward this  
841 amount or such other reasonable advance deposits as  
842 the mediator requires for this purpose upon the  
843 selection of the mediator. Any funds deposited will be  
844 returned to you if these funds are in excess of your  
845 share of the mediator fees incurred.

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

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

868 days after the notice of presuit mediation was first  
869 served unless all parties mutually agree otherwise.  
870 in the event that you fail to respond within 20 days  
871 after the date of this notice, fail to provide the  
872 mediator with dates and times in which you are  
873 available for the mediation conference, fail to agree  
874 to at least one of the mediators that the aggrieved  
875 party has listed, fail to pay or prepay to the  
876 mediator one-half of the costs involved, or fail to  
877 appear and participate at the scheduled mediation, the  
878 aggrieved party will be authorized to proceed with the  
879 filing of a lawsuit against you without further  
880 notice. In any subsequent court action, the aggrieved  
881 party may seek an award of reasonable attorney's fees  
882 and costs incurred in attempting to obtain mediation.

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

892  
893  
894 Signature of aggrieved party

895



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\_\_\_\_\_  
Printed name of aggrieved party

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

AGREEMENT TO MEDIATE

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

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

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

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

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

924           Signature of responding party #1

925           \_\_\_\_\_

926           Telephone contact information

927           \_\_\_\_\_

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

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

952 date that the response is served. Once the parties have agreed  
953 on a mediator, the mediator may schedule or reschedule the  
954 mediation for a date and time mutually convenient to the parties  
955 within 90 days after the date of service of the statutory  
956 notice. After such 90-day period, the mediator may reschedule  
957 the mediation only upon the mutual written agreement of all the  
958 parties.

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

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

976 (d) The mediator who has been selected and agreed to  
977 mediate must schedule the mediation conference at a mutually  
978 convenient time and place within that 90-day period. However, if  
979 the responding party does not provide a list of available dates

980 and times, the mediator is authorized to schedule a mediation  
981 conference without taking the responding party's schedule and  
982 convenience into consideration. Within 10 days after the  
983 designation of the mediator, the mediator shall coordinate with  
984 the parties and notify the parties in writing of the date, time,  
985 and place of the mediation conference.

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

995 (f) If the responding party fails to respond within 30  
996 days after the date of service of the statutory notice of  
997 presuit mediation, fails to agree either to at least one of the  
998 mediators listed by the aggrieved party in the notice, fails to  
999 pay or prepay to the mediator one-half of the costs of the  
1000 mediator, or fails to appear and participate at the scheduled  
1001 mediation, the aggrieved party shall be authorized to proceed  
1002 with the filing of a lawsuit without further notice.

1003 (g)1. Failure of any party to respond to the statutory  
1004 notice of presuit mediation within 20 days, failure to agree  
1005 upon a mediator, failure to provide a listing of dates and times  
1006 in which the responding party is available to participate in the  
1007 mediation within 90 days after the date the responding party was

1008 served with the statutory notice of presuit mediation, failure  
 1009 to make payment of fees and costs within the time established by  
 1010 the mediator, or failure to appear for a scheduled mediation  
 1011 session without the approval of the mediator, shall, in each  
 1012 instance, constitute a failure or refusal to participate in the  
 1013 mediation process and shall operate as an impasse in the presuit  
 1014 mediation by such party, entitling the other party to file a  
 1015 lawsuit in court and to seek an award of the costs and  
 1016 attorney's fees associated with the mediation.

1017 2. Persons who fail or refuse to participate in the entire  
 1018 mediation process may not recover attorney's fees and costs in  
 1019 subsequent litigation relating to the same dispute between the  
 1020 same parties. If any presuit mediation session cannot be  
 1021 scheduled and conducted within 90 days after the offer to  
 1022 participate in mediation was filed, through no fault of either  
 1023 party, then an impasse shall be deemed to have occurred unless  
 1024 the parties mutually agree in writing to extend this deadline.  
 1025 In the event of such impasse, each party will be responsible for  
 1026 its own costs and attorney's fees and one-half of any mediator  
 1027 fees and filing fees, and either party may file a lawsuit in  
 1028 court regarding the dispute.

1029 720.506 Opt out of presuit mediation.--A party served with  
 1030 a notice of presuit mediation under s. 720.505, may opt out of  
 1031 presuit mediation and demand that the dispute proceed under  
 1032 nonbinding arbitration in the following manner provided in this  
 1033 section:

1034 (1) In lieu of a response to the notice of presuit  
 1035 mediation as required under s. 720.505, the responding party may

1036 serve upon the aggrieved party in the same manner as the  
 1037 response to a notice for presuit mediation under s. 720.505, a  
 1038 notice of opting out of mediation and demand that the dispute  
 1039 instead proceed to presuit arbitration under s. 720.507.

1040 (2) Where a party elects to opt out of presuit mediation  
 1041 in favor of nonbinding arbitration, the aggrieved party shall  
 1042 not be required to comply with the requirements of s. 720.505.

1043 (3) Except as otherwise provided in this part, the choice  
 1044 of which presuit alternative dispute resolution procedure is  
 1045 utilized shall be at the election of the aggrieved party who  
 1046 first initiated such proceeding after complying with the  
 1047 provisions of s. 720.504.

1048 720.507 Presuit arbitration.--

1049 (1) Disputes between an association and a parcel owner or  
 1050 owners and disputes between parcel owners are subject to a  
 1051 demand for presuit arbitration pursuant to s. 720.507, before  
 1052 the dispute may be filed in court. A party who elects to utilize  
 1053 the presuit arbitration procedure under this part shall serve on  
 1054 the responding party a written notice of presuit arbitration in  
 1055 substantially the following form:

1057 STATUTORY NOTICE OF PRESUIT ARBITRATION

1059 The alleged aggrieved party, \_\_\_\_\_,  
 1060 hereby demands that \_\_\_\_\_, as the  
 1061 responding party, engage in mandatory presuit  
 1062 arbitration in connection with the following  
 1063 dispute(s) with you, which by statute are of a type

1064 that are subject to presuit arbitration:

1065  
1066 (List specific nature of the dispute or disputes to be  
1067 arbitrated and the authority supporting a finding of a  
1068 violation as to each dispute, including, but not  
1069 limited to, all applicable provisions of the governing  
1070 documents believed to apply to the dispute between the  
1071 parties.)

1072  
1073 Pursuant to part IV of chapter 720, Florida Statutes,  
1074 this demand to resolve the dispute through presuit  
1075 arbitration is required before a lawsuit can be filed  
1076 concerning the dispute. Pursuant to Florida Statutes,  
1077 the parties are required to engage in presuit  
1078 arbitration with a neutral third-party arbitrator in  
1079 order to attempt to resolve this dispute without court  
1080 action, and the aggrieved party demands that you  
1081 participate in this process. If you fail to  
1082 participate in the arbitration process, a lawsuit may  
1083 be brought against you in court without further  
1084 warning.

1085  
1086 The process of arbitration involves a neutral third  
1087 person who considers the law and facts presented by  
1088 the parties and renders a written decision called an  
1089 "arbitration award." Pursuant to s. 720.507, Florida  
1090 Statutes, the arbitration award shall be final unless  
1091 a lawsuit is filed in a court of competent

1092 jurisdiction for the judicial circuit in which the  
1093 parcel(s) governed by the homeowners' association  
1094 is/are located within 30 days after the date that the  
1095 arbitration award.

1096  
1097 If a settlement agreement is reached before the  
1098 arbitration award, it shall be reduced to writing and  
1099 become a binding and enforceable contract of the  
1100 parties. A resolution of one or more disputes in this  
1101 fashion avoids the need to arbitrate these issues or  
1102 to litigate these issues in court and shall be the  
1103 same as a settlement agreement reached between the  
1104 parties under s. 720.505, Florida Statutes. The  
1105 failure of a party to participate in the arbitration  
1106 process may result in the arbitrator issuing an  
1107 arbitration award by default in the arbitration. If  
1108 you have failed or refused to participate in the  
1109 entire arbitration process, you will not be entitled  
1110 to recover attorney's fees, even if you prevail in a  
1111 subsequent court proceeding involving the same dispute  
1112 between the same parties.

1113  
1114 The aggrieved party has selected at least five  
1115 arbitrators who the aggrieved party believes to be  
1116 neutral and qualified to arbitrate the dispute. You  
1117 have the right to select any one of the arbitrators.  
1118 The fact that one party may be familiar with one or  
1119 more of the listed arbitrators does not mean that the



1120 arbitrator cannot act as a neutral and impartial  
1121 arbitrator. Any arbitrator who cannot act in this  
1122 capacity is required ethically to decline to accept  
1123 engagement. The names of the five arbitrators that the  
1124 aggrieved party has chosen from which you may select  
1125 one, and their current addresses, telephone numbers,  
1126 and hourly rates, are as follows:

1127  
1128 (List the names, addresses, telephone numbers, and  
1129 hourly rates of at least five arbitrators.)

1130  
1131 You may contact the offices of these arbitrators to  
1132 confirm that the listed arbitrators will be neutral  
1133 and will not show any favoritism toward either party.

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

1148 reasonable advance deposits as the arbitrator who is  
1149 selected requires for this purpose. Any funds  
1150 deposited will be returned to you if these funds are  
1151 in excess of your share of the fees incurred.

1152  
1153 Please sign the agreement to arbitrate below and  
1154 clearly indicate the name of the arbitrator who is  
1155 acceptable to you from the names listed by the  
1156 aggrieved party.

1157  
1158 You must respond in writing to this statutory notice  
1159 within 20 days after the date that the notice of  
1160 presuit arbitration was either personally served on  
1161 you or 20 days after the postmarked date that this  
1162 notice of presuit arbitration was sent to you by  
1163 certified mail. You must also provide a list of at  
1164 least three dates and times in which you are available  
1165 to participate in the arbitration that are within 90  
1166 days after either the date you were personally served  
1167 or 90 days after the postmarked date of the certified  
1168 mailing of this statutory notice of presuit  
1169 arbitration. A copy of this notice and your response  
1170 will be provided by the aggrieved party to the  
1171 arbitrator selected and the arbitrator will schedule a  
1172 mutually convenient time and place for the arbitration  
1173 conference to be held. If you do not provide a list of  
1174 available dates and times, the arbitrator is  
1175 authorized to schedule an arbitration conference

1176 without taking your schedule and convenience into  
1177 consideration. The arbitration conference must be held  
1178 on the scheduled date, or any rescheduled date  
1179 approved by the arbitrator. In no event shall the  
1180 arbitration conference be later than 90 days after  
1181 notice of the presuit arbitration was first served,  
1182 unless all parties mutually agree in writing  
1183 otherwise. If the arbitration is not completed within  
1184 the required time limits, the arbitrator shall issue  
1185 an arbitration award, unless the hearing is extended  
1186 by mutual written agreement of the parties and  
1187 approved by the arbitrator. In the event that you fail  
1188 to respond within 20 days after the date you were  
1189 served with a copy of this notice, fail to provide the  
1190 arbitrator with dates and times in which you are  
1191 available for the arbitration conference, fail to  
1192 agree either to one of the arbitrators that the  
1193 aggrieved party has named, fail to pay or prepay to  
1194 the arbitrator one-half of the costs involved as  
1195 required, or fail to appear and participate at the  
1196 scheduled arbitration conference, the aggrieved party  
1197 may request the arbitrator to issue an arbitration  
1198 award. In the subsequent court action, the aggrieved  
1199 party shall be entitled to recover an award of  
1200 reasonable attorney's fees and costs, including any  
1201 fees paid to the arbitrator, incurred in obtaining an  
1202 arbitration award pursuant to s. 720.507, Florida  
1203 Statutes.

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Please give this matter your immediate attention. By law, your response must be postmarked and mailed by certified, first-class mail, return receipt requested, to the address shown on this notice of presuit arbitration.

\_\_\_\_\_  
Signature of aggrieved party

\_\_\_\_\_  
Printed name of aggrieved party

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

AGREEMENT TO ARBITRATE

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

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

1232 The undersigned hereby represents that he or she is  
 1233 available and able to attend and participate in the  
 1234 presuit arbitration conference at the following dates  
 1235 and times:

1236  
 1237 (List all available dates and times, of which there  
 1238 must be at least three, within 90 days after the date  
 1239 on which you were served, either by process server or  
 1240 by certified mail, with the notice of presuit  
 1241 arbitration.)

1242  
 1243 I/We further agree to pay or prepay one-half of the  
 1244 arbitrator's fees and to forward such advance deposits  
 1245 as the arbitrator may require for this purpose.

1246  
 1247 \_\_\_\_\_  
 1248 Signature of responding party #1

1249 \_\_\_\_\_  
 1250 Telephone contact information

1251 \_\_\_\_\_  
 1252 Signature and telephone contact information of  
 1253 responding party #2, if applicable. If the property is  
 1254 owned by more than one person, all owners must sign,  
 1255 or a person may sign who is acting under authority of  
 1256 a valid power of attorney granted by an owner.

1257  
 1258 (2) (a) Service of the statutory notice of presuit  
 1259 arbitration shall be effected either by personal service, as

1260 provided in chapter 48, or by certified mail, return receipt  
1261 requested, in a letter in substantial conformity with the form  
1262 provided in subsection (1), with an additional copy being sent  
1263 by regular first-class mail, to the address of the responding  
1264 party as it last appears on the books and records of the  
1265 association, or if not available, the last address as it appears  
1266 on the official records of the county property appraiser for the  
1267 county in which the property is situated that is subject to the  
1268 association documents. The responding party has 20 days after  
1269 the postmarked date of the certified mailing of the statutory  
1270 notice of presuit arbitration or 20 days after the date the  
1271 responding party is personally served with the statutory notice  
1272 of presuit arbitration by to serve a written response to the  
1273 aggrieved party. The response shall be served by certified mail,  
1274 return receipt requested, with an additional copy being sent by  
1275 regular first-class mail, to the address shown on the statutory  
1276 notice of presuit arbitration. The postmarked date on the  
1277 envelope of the response shall constitute the date the response  
1278 was served.

1279 (b) The parties shall share the costs of presuit  
1280 arbitration equally, including the fee charged by the  
1281 arbitrator, if any, unless the parties agree otherwise, and the  
1282 arbitrator may require advance payment of his or her reasonable  
1283 fees and costs. Each party shall be responsible for all of their  
1284 own attorney's fees if a party chooses to be represented by an  
1285 attorney for the arbitration proceedings.

1286 (c)1. The party responding to the aggrieved party must  
1287 sign the agreement to arbitrate included in the notice of

1288 presuit arbitration and clearly indicate the name of the  
1289 arbitrator who is acceptable of those arbitrators listed by the  
1290 aggrieved party. The responding party must provide a list of at  
1291 least three dates and times in which the responding party is  
1292 available to participate in the arbitration conference within 90  
1293 days after the date the responding party was served with the  
1294 statutory notice of presuit arbitration.

1295 2. The arbitrator must schedule the arbitration conference  
1296 at a mutually convenient time and place, but if the responding  
1297 party does not provide a list of available dates and times, the  
1298 arbitrator is authorized to schedule an arbitration conference  
1299 without taking the responding party's schedule and convenience  
1300 into consideration. Within 10 days after the designation of the  
1301 arbitrator, the arbitrator shall notify the parties in writing  
1302 of the date, time, and place of the arbitration conference.

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

1316 arbitrator one-half of the costs involved, or fails to appear  
1317 and participate at the scheduled arbitration, the aggrieved  
1318 party is authorized to proceed with a request that the  
1319 arbitrator issue an arbitration award.

1320 (d)1. Failure of any party to respond to the statutory  
1321 notice of presuit arbitration within 20 days, failure to either  
1322 select one of the five arbitrators listed by the aggrieved  
1323 party, failure to provide a listing of dates and times in which  
1324 the responding party is available to participate in the  
1325 arbitration conference within 90 days after the date of the  
1326 responding party being served with the statutory notice of  
1327 presuit arbitration, failure to make payment of fees and costs  
1328 as required within the time established by the arbitrator, or  
1329 the failure to appear for an arbitration conference without the  
1330 approval of the arbitrator, shall entitle the other party to  
1331 request the arbitrator to enter an arbitration award, including  
1332 an award of the reasonable costs and attorney's fees associated  
1333 with the arbitration.

1334 2. Persons who fail or refuse to participate in the entire  
1335 arbitration process may not recover attorney's fees and costs in  
1336 any subsequent litigation proceeding relating to the same  
1337 dispute involving the same parties.

1338 (3) (a) In an arbitration proceeding, the arbitrator may  
1339 not consider any unsuccessful mediation of the dispute.

1340 (b) An arbitrator in a proceeding initiated pursuant to  
1341 the provisions of this part may shorten the time for discovery  
1342 or otherwise limit discovery in a manner consistent with the  
1343 policy goals of this part to reduce the time and expense of



1344 litigating homeowners' association disputes initiated pursuant  
1345 to this chapter and promoting an expeditious alternative dispute  
1346 resolution procedure for parties to such actions.

1347 (4) At the request of any party to the arbitration, the  
1348 arbitrator may issue subpoenas for the attendance of witnesses  
1349 and the production of books, records, documents, and other  
1350 evidence, and any party on whose behalf a subpoena is issued may  
1351 apply to the court for orders compelling such attendance and  
1352 production. Subpoenas shall be served and are enforceable in the  
1353 manner provided by the Florida Rules of Civil Procedure.

1354 Discovery may, at the discretion of the arbitrator, be permitted  
1355 in the manner provided by the Florida Rules of Civil Procedure.

1356 (5) The final arbitration award shall be sent to the  
1357 parties in writing no later than 30 days after the date of the  
1358 arbitration hearing, absent extraordinary circumstances  
1359 necessitating a later filing the reasons for which shall be  
1360 stated in the final award if filed more than 30 days after the  
1361 date of the final session of the arbitration conference. An  
1362 agreed arbitration award is final in those disputes in which the  
1363 parties have mutually agreed to be bound. An arbitration award  
1364 decided by the arbitrator is final unless a lawsuit seeking a  
1365 trial de novo is filed in a court of competent jurisdiction  
1366 within 30 days after the date of the arbitration award. The  
1367 right to file for a trial de novo entitles the parties to file a  
1368 complaint in the appropriate trial court for a judicial  
1369 resolution of the dispute. The prevailing party in an  
1370 arbitration proceeding shall be awarded the costs of the  
1371 arbitration and reasonable attorney's fees in an amount

1372 determined by the arbitrator.

1373 (6) The party filing a motion for a trial de novo shall be  
1374 assessed the other party's arbitration costs, court costs, and  
1375 other reasonable costs, including attorney's fees, investigation  
1376 expenses, and expenses for expert or other testimony or evidence  
1377 incurred after the arbitration hearing if the judgment upon the  
1378 trial de novo is not more favorable than the final arbitration  
1379 award.

1380 720.508 Rules of procedure.--

1381 (1) Presuit mediation and presuit arbitration proceedings  
1382 under this part must be conducted in accordance with the  
1383 applicable Florida Rules of Civil Procedure and rules governing  
1384 mediations and arbitrations under chapter 44, except this part  
1385 shall be controlling to the extent of any conflict with other  
1386 applicable rules or statutes. The arbitrator can shorten any  
1387 applicable time period and otherwise limit the scope of  
1388 discovery on request of the parties or within the discretion of  
1389 the arbitrator exercised consistent with the purpose and  
1390 objective of reducing the expense and expeditiously concluding  
1391 proceedings under this part.

1392 (2) Presuit mediation proceedings under s. 720.505 are  
1393 privileged and confidential to the same extent as court-ordered  
1394 mediation under chapter 44. An arbitrator or judge may not  
1395 consider any information or evidence arising from the presuit  
1396 mediation proceeding except in a proceeding to impose sanctions  
1397 for failure to attend a presuit mediation session or to enforce  
1398 a mediated settlement agreement.

1399 (3) Persons who are not parties to the dispute may not

1400 attend the presuit mediation conference without consent of all  
1401 parties, with the exception of counsel for the parties and a  
1402 corporate representative designated by the association. Presuit  
1403 mediations under this part are not a board meeting for purposes  
1404 of notice and participation set forth in this chapter.

1405 (4) Attendance at a mediation conference by the board of  
1406 directors shall not require notice or participation by nonboard  
1407 members as otherwise required by this chapter for meetings of  
1408 the board.

1409 (5) Settlement agreements resulting from a mediation or  
1410 arbitration proceeding do not have precedential value in  
1411 proceedings involving parties other than those participating in  
1412 the mediation or arbitration.

1413 (6) Arbitration awards by an arbitrator shall have  
1414 precedential value in other proceedings involving the same  
1415 association or with respect to the same parcel owner.

1416 720.509 Mediators and arbitrators; qualifications and  
1417 registration.--A person is authorized to conduct mediation or  
1418 arbitration under this part if he or she has been certified as a  
1419 circuit court civil mediator pursuant to the requirements  
1420 adopted pursuant to s. 44.106, is a member in good standing with  
1421 The Florida Bar, and otherwise meets all other requirements  
1422 imposed by chapter 44.

1423 720.510 Enforcement of mediation settlement agreement or  
1424 arbitration award.--

1425 (1) A mediation settlement agreement may be enforced  
1426 through the county or circuit court, as applicable, and any  
1427 costs and attorney's fees incurred in the enforcement of a

1428 settlement agreement reached at mediation shall be awarded to  
 1429 the prevailing party in any enforcement action.

1430 (2) Any party to an arbitration proceeding may enforce an  
 1431 arbitration award by filing a petition in a court of competent  
 1432 jurisdiction in which the homeowners' association is located.  
 1433 The prevailing party in such proceeding shall be awarded  
 1434 reasonable attorney's fees and costs incurred in such  
 1435 proceeding.

1436 (3) If a complaint is filed seeking a trial de novo, the  
 1437 arbitration award shall be stayed and a petition to enforce the  
 1438 award may not be granted. Such award, however, shall be  
 1439 admissible in the court proceeding seeking a trial de novo.

1440 Section 13. The Department of Health shall apply for and  
 1441 implement, if awarded, a federal grant for swimming pool and spa  
 1442 safety standards education and enforcement under the State  
 1443 Swimming Pool Safety Grant Program as established in 15 U.S.C.  
 1444 s. 8004. To ensure the state's eligibility for the grant award,  
 1445 the Department of Health, in coordination with the Department of  
 1446 Community Affairs and the Florida Building Commission, shall  
 1447 assess the Florida Statutes and the Florida Building Code to  
 1448 determine if additional changes are necessary to ensure  
 1449 compliance with federal standards regarding swimming pool and  
 1450 spa safety. The Department of Health shall provide the  
 1451 assessment to the Legislature by January 1, 2009.

1452 Section 14. Except as otherwise expressly provided in this  
 1453 act, this act shall take effect July 1, 2008.