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2008 Legislature

1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 514.011, F.S.; defining the term "homeowners'
4 association"; amending s. 514.0115, F.S.; providing for
5 the regulation and exemption from regulation for
6 homeowners' association swimming pools; amending s.
7 515.25, F.S.; conforming a cross-reference; amending s.
8 718.112, F.S.; providing requirements for the location of
9 annual unit owner meetings; revising terms of service for
10 board members; prohibiting certain persons from serving on
11 the board; requiring the association to provide a
12 certification form to unit owners for specified purposes;
13 authorizing an association consisting of a specified
14 maximum number of units to provide for different voting
15 and election procedures in its bylaws by affirmative vote
16 of a majority of the association's voting interests;
17 revising requirements related to the annual budget;
18 requiring proxy questions relating to reserves to contain
19 a specified statement; providing for the removal of board
20 members under certain circumstances; requiring that
21 directors who are delinquent in certain payments owed in
22 excess of certain periods of time be suspended from office
23 or deemed to have abandoned their offices; requiring that
24 directors charged with certain offenses involving an
25 association's funds or property be suspended from office
26 pending resolution of the charge; providing for the
27 reinstatement of such officers or directors under certain
28 circumstances; requiring each newly elected director to

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29 | certify to the secretary of the association that he or she
30 | has read the association's declarations of covenants and
31 | restrictions, articles of incorporation, bylaws, and
32 | current written policies and will work to uphold such
33 | documents and policies to the best of his or her ability;
34 | providing that a failure to timely file the statement
35 | automatically disqualifies the director from service on
36 | the association's board of directors; requiring the
37 | secretary of the association to retain a director's
38 | certification for inspection by the members for a
39 | specified period of years after a director's election;
40 | amending s. 720.303, F.S.; revising provisions relating to
41 | homeowners' association board meetings, inspection and
42 | copying of records, and reserve accounts of budgets;
43 | prohibiting a salary or compensation for certain
44 | association personnel; providing exceptions; amending s.
45 | 720.305, F.S.; authorizing fines assessed against members
46 | which exceed a certain amount to become a lien against a
47 | parcel; amending s. 720.306, F.S.; providing requirements
48 | for secret ballots; requiring newly elected members of a
49 | board of directors to make certain certifications in
50 | writing to the association; providing for disqualification
51 | for failure to make such certifications; requiring an
52 | association to retain certifications for a specified time;
53 | amending s. 720.401, F.S.; requiring that the disclosure
54 | summary to prospective parcel owners include additional
55 | provisions; amending s. 34.01, F.S.; correcting a cross-
56 | reference to conform; amending s. 720.302, F.S.;

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57 | correcting a cross-reference to conform; establishing
58 | legislative intent; repealing s. 720.311, F.S., relating
59 | to a procedure for dispute resolution in homeowners'
60 | associations; providing that dispute resolution cases
61 | pending on the date of repeal will continue under the
62 | repealed provisions; creating part IV of ch. 720, F.S.;
63 | creating s. 720.501, F.S.; providing a short title;
64 | creating s. 720.502, F.S.; creating legislative findings;
65 | creating s. 720.503, F.S.; setting applicability of
66 | provisions for mediation and arbitration applicable to
67 | disputes in homeowners' associations; creating exceptions;
68 | proving applicability; tolling applicable statutes of
69 | limitations; creating s. 720.504, F.S.; requiring that the
70 | notice of dispute be delivered before referral to
71 | mediation; creating s. 720.505, F.S.; creating a statutory
72 | notice form for referral to mediation; requiring delivery
73 | by certified mail or personal delivery; setting deadlines;
74 | requiring parties to share costs; requiring the selection
75 | of a mediator and times to meet; providing penalties for
76 | failure to mediate; creating s. 720.506, F.S.; creating an
77 | opt-out provision; creating s. 720.507, F.S.; creating a
78 | statutory notice form for referral to arbitration;
79 | requiring delivery by certified mail or personal delivery;
80 | setting deadlines; requiring parties to share costs;
81 | requiring the selection of an arbitrator and times to
82 | meet; providing penalties for failure to arbitrate;
83 | creating s. 720.508, F.S.; providing for rules of
84 | procedure; providing for confidentiality; creating s.

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85 | 720.509, F.S.; setting qualifications for mediators and
86 | arbitrators; creating s. 720.510, F.S.; providing for
87 | enforcement of mediation agreements and arbitration
88 | awards; providing that any three or more condominium
89 | associations may form a self-insurance fund for certain
90 | purposes under certain conditions; requiring that the
91 | contract for participating in the fund disclose certain
92 | information and contain certain provisions; requiring
93 | that a disclosure be provided to an association before
94 | execution of such contract; requiring that such disclosure
95 | contain certain information; providing for the charging of
96 | contributions for participation in the fund; requiring
97 | that the majority of the governing board of the fund be
98 | participants in the fund; providing powers of the
99 | governing board; authorizing the fund to enter into
100 | certain contracts; requiring that the fund use a general
101 | lines agent meeting certain criteria when soliciting
102 | participation in the fund; prohibiting the fund from
103 | taking certain actions when selecting such agent;
104 | requiring that the fund be independently audited at
105 | specified intervals; authorizing the fund to accumulate
106 | funds or distribute excess funds to participants on a
107 | pro rata basis; providing for a deductible for
108 | participants in the fund; exempting such self-insurance
109 | funds from certain requirements, regulations, fees, taxes,
110 | and assessments; providing an effective date.

111 |
112 | Be It Enacted by the Legislature of the State of Florida:

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113
 114 Section 1. Section 514.011, Florida Statutes, is amended
 115 to read:

116 514.011 Definitions.--As used in this chapter, the term:

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

118 (2) "Homeowners' association" has the same meaning as in
 119 s. 720.301.

120 (3)~~(5)~~ "Portable pool" means a pool or spa, and related
 121 equipment systems of any kind, which is designed or intended to
 122 be movable from location to location.

123 (4)~~(3)~~ "Private pool" means a facility used only by an
 124 individual, family, or living unit members and their guests
 125 which does not serve any type of cooperative housing or joint
 126 tenancy of five or more living units.

127 (5)~~(4)~~ "Public bathing place" means a body of water,
 128 natural or modified by humans, for swimming, diving, and
 129 recreational bathing, together with adjacent shoreline or land
 130 area, buildings, equipment, and appurtenances pertaining
 131 thereto, used by consent of the owner or owners and held out to
 132 the public by any person or public body, irrespective of whether
 133 a fee is charged for the use thereof. The bathing water areas of
 134 public bathing places include, but are not limited to, lakes,
 135 ponds, rivers, streams, artificial impoundments, and waters
 136 along the coastal and intracoastal beaches and shores of the
 137 state.

138 (6)~~(2)~~ "Public swimming pool" or "public pool" means a
 139 watertight structure of concrete, masonry, or other approved
 140 materials, which is located either indoors or outdoors, used for

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141 bathing or swimming by humans, and filled with a filtered and
 142 disinfected water supply, together with buildings,
 143 appurtenances, and equipment used in connection therewith. A
 144 public swimming pool or public pool shall mean a conventional
 145 pool, spa-type pool, wading pool, special purpose pool, or water
 146 recreation attraction, to which admission may be gained with or
 147 without payment of a fee and includes, but is not limited to,
 148 pools operated by or serving camps, churches, cities, counties,
 149 day care centers, group home facilities for eight or more
 150 clients, health spas, institutions, parks, state agencies,
 151 schools, subdivisions, or the cooperative living-type projects
 152 of five or more living units, such as apartments,
 153 boardinghouses, hotels, mobile home parks, motels, recreational
 154 vehicle parks, and townhouses.

155 Section 2. Subsection (2) of section 514.0115, Florida
 156 Statutes, is amended to read:

157 514.0115 Exemptions from supervision or regulation;
 158 variances.--

159 (2) (a) Pools serving no more than 32 condominium or
 160 cooperative units or 32 parcels governed by a homeowners'
 161 association which are not operated as a public lodging
 162 establishment are ~~shall be~~ exempt from supervision under this
 163 chapter, except for water quality.

164 (b) Pools serving condominium or cooperative associations
 165 of more than 32 units or a homeowners' association of more than
 166 32 parcels and whose recorded documents prohibit the rental or
 167 sublease of the units for ~~periods of~~ less than 60 days are
 168 exempt from supervision under this chapter, except that the

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169 condominium or cooperative owner or association or homeowners'
 170 association must file an application ~~applications~~ with the
 171 department and obtain construction plan ~~plans~~ approval and
 172 receive an initial operating permit. The department shall
 173 inspect the swimming pools ~~at such places~~ annually, at the fee
 174 set forth in s. 514.033(3), or upon request by a unit owner, to
 175 determine compliance with department rules relating to water
 176 quality and lifesaving equipment. The department may not require
 177 compliance with rules relating to swimming pool lifeguard
 178 standards.

179 Section 3. Subsection (9) of section 515.25, Florida
 180 Statutes, is amended to read:

181 515.25 Definitions.--As used in this chapter, the term:

182 (9) "Public swimming pool" means a swimming pool, as
 183 defined in s. 515.011 ~~514.011(2)~~, which is operated, with or
 184 without charge, for the use of the general public; however, the
 185 term does not include a swimming pool located on the grounds of
 186 a private residence.

187 Section 4. Paragraph (d) of subsection (2) of section
 188 718.112, Florida Statutes, is amended to read:

189 718.112 Bylaws.--

190 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the
 191 following and, if they do not do so, shall be deemed to include
 192 the following:

193 (d) Unit owner meetings.--

194 1. There shall be an annual meeting of the unit owners
 195 held at the location provided in the association bylaws and, if
 196 the bylaws are silent as to the location, the meeting shall be

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197 held within 45 miles of the condominium property. However, such
 198 distance requirement does not apply to an association governing
 199 a timeshare condominium. Unless the bylaws provide otherwise, a
 200 vacancy on the board caused by the expiration of a director's
 201 term shall be filled by electing a new board member, and the
 202 election shall be by secret ballot; however, if the number of
 203 vacancies equals or exceeds the number of candidates, no
 204 election is required. ~~If there is no provision in the bylaws for~~
 205 ~~terms of the members of the board,~~ The terms of all members of
 206 the board shall expire ~~upon the election of their successors~~ at
 207 the annual meeting and such board members may stand for
 208 reelection unless otherwise permitted by the bylaws. In the
 209 event that the bylaws permit staggered terms of no more than 2
 210 years and upon approval of a majority of the total voting
 211 interests, the association board members may serve 2-year
 212 staggered terms. If no person is interested in or demonstrates
 213 an intention to run for the position of a board member whose
 214 term has expired according to the provisions of this
 215 subparagraph, such board member whose term has expired shall be
 216 automatically reappointed to the board of administration and
 217 need not stand for reelection. In a condominium association of
 218 more than 10 units, coowners of a unit may not serve as members
 219 of the board of directors at the same time. Any unit owner
 220 desiring to be a candidate for board membership shall comply
 221 with subparagraph 3. A person who has been suspended or removed
 222 by the division under this chapter, or who is delinquent in the
 223 payment of any fee or assessment as provided in paragraph (n),
 224 is not eligible for board membership. A person who has been

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225 convicted of any felony in this state or ~~by any court of record~~
 226 in ~~a~~ the United States District or Territorial Court, or who has
 227 been convicted of any offense in another jurisdiction that would
 228 be considered a felony if committed in this state, ~~and who has~~
 229 ~~not had his or her right to vote restored pursuant to law in the~~
 230 ~~jurisdiction of his or her residence~~ is not eligible for board
 231 membership unless such felon's civil rights have been restored
 232 for a period of no less than 5 years as of the date on which
 233 such person seeks election to the board. The validity of an
 234 action by the board is not affected if it is later determined
 235 that a member of the board is ineligible for board membership
 236 due to having been convicted of a felony.

237 2. The bylaws shall provide the method of calling meetings
 238 of unit owners, including annual meetings. Written notice, which
 239 notice must include an agenda, shall be mailed, hand delivered,
 240 or electronically transmitted to each unit owner at least 14
 241 days prior to the annual meeting and shall be posted in a
 242 conspicuous place on the condominium property at least 14
 243 continuous days preceding the annual meeting. Upon notice to the
 244 unit owners, the board shall by duly adopted rule designate a
 245 specific location on the condominium property or association
 246 property upon which all notices of unit owner meetings shall be
 247 posted; however, if there is no condominium property or
 248 association property upon which notices can be posted, this
 249 requirement does not apply. In lieu of or in addition to the
 250 physical posting of notice of any meeting of the unit owners on
 251 the condominium property, the association may, by reasonable
 252 rule, adopt a procedure for conspicuously posting and repeatedly

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253 broadcasting the notice and the agenda on a closed-circuit cable
254 television system serving the condominium association. However,
255 if broadcast notice is used in lieu of a notice posted
256 physically on the condominium property, the notice and agenda
257 must be broadcast at least four times every broadcast hour of
258 each day that a posted notice is otherwise required under this
259 section. When broadcast notice is provided, the notice and
260 agenda must be broadcast in a manner and for a sufficient
261 continuous length of time so as to allow an average reader to
262 observe the notice and read and comprehend the entire content of
263 the notice and the agenda. Unless a unit owner waives in writing
264 the right to receive notice of the annual meeting, such notice
265 shall be hand delivered, mailed, or electronically transmitted
266 to each unit owner. Notice for meetings and notice for all other
267 purposes shall be mailed to each unit owner at the address last
268 furnished to the association by the unit owner, or hand
269 delivered to each unit owner. However, if a unit is owned by
270 more than one person, the association shall provide notice, for
271 meetings and all other purposes, to that one address which the
272 developer initially identifies for that purpose and thereafter
273 as one or more of the owners of the unit shall so advise the
274 association in writing, or if no address is given or the owners
275 of the unit do not agree, to the address provided on the deed of
276 record. An officer of the association, or the manager or other
277 person providing notice of the association meeting, shall
278 provide an affidavit or United States Postal Service certificate
279 of mailing, to be included in the official records of the

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280 association affirming that the notice was mailed or hand
281 delivered, in accordance with this provision.

282 3. The members of the board shall be elected by written
283 ballot or voting machine. Proxies shall in no event be used in
284 electing the board, either in general elections or elections to
285 fill vacancies caused by recall, resignation, or otherwise,
286 unless otherwise provided in this chapter. Not less than 60 days
287 before a scheduled election, the association shall mail,
288 deliver, or electronically transmit, whether by separate
289 association mailing or included in another association mailing,
290 delivery, or transmission, including regularly published
291 newsletters, to each unit owner entitled to a vote, a first
292 notice of the date of the election. Any unit owner or other
293 eligible person desiring to be a candidate for the board must
294 give written notice to the association not less than 40 days
295 before a scheduled election. Together with the written notice
296 and agenda as set forth in subparagraph 2., the association
297 shall mail, deliver, or electronically transmit a second notice
298 of the election to all unit owners entitled to vote therein,
299 together with a ballot which shall list all candidates. Upon
300 request of a candidate, the association shall include an
301 information sheet, no larger than 8 1/2 inches by 11 inches,
302 which must be furnished by the candidate not less than 35 days
303 before the election, to be included with the mailing, delivery,
304 or transmission of the ballot, with the costs of mailing,
305 delivery, or electronic transmission and copying to be borne by
306 the association. The association is not liable for the contents
307 of the information sheets prepared by the candidates. In order

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308 | to reduce costs, the association may print or duplicate the
309 | information sheets on both sides of the paper. The division
310 | shall by rule establish voting procedures consistent with the
311 | provisions contained herein, including rules establishing
312 | procedures for giving notice by electronic transmission and
313 | rules providing for the secrecy of ballots. Elections shall be
314 | decided by a plurality of those ballots cast. There shall be no
315 | quorum requirement; however, at least 20 percent of the eligible
316 | voters must cast a ballot in order to have a valid election of
317 | members of the board. No unit owner shall permit any other
318 | person to vote his or her ballot, and any such ballots
319 | improperly cast shall be deemed invalid, provided any unit owner
320 | who violates this provision may be fined by the association in
321 | accordance with s. 718.303. A unit owner who needs assistance in
322 | casting the ballot for the reasons stated in s. 101.051 may
323 | obtain assistance in casting the ballot. The regular election
324 | shall occur on the date of the annual meeting. The provisions of
325 | this subparagraph shall not apply to timeshare condominium
326 | associations. Notwithstanding the provisions of this
327 | subparagraph, an election is not required unless more candidates
328 | file notices of intent to run or are nominated than board
329 | vacancies exist.

330 | 4. Any approval by unit owners called for by this chapter
331 | or the applicable declaration or bylaws, including, but not
332 | limited to, the approval requirement in s. 718.111(8), shall be
333 | made at a duly noticed meeting of unit owners and shall be
334 | subject to all requirements of this chapter or the applicable
335 | condominium documents relating to unit owner decisionmaking,

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336 except that unit owners may take action by written agreement,
337 without meetings, on matters for which action by written
338 agreement without meetings is expressly allowed by the
339 applicable bylaws or declaration or any statute that provides
340 for such action.

341 5. Unit owners may waive notice of specific meetings if
342 allowed by the applicable bylaws or declaration or any statute.
343 If authorized by the bylaws, notice of meetings of the board of
344 administration, unit owner meetings, except unit owner meetings
345 called to recall board members under paragraph (j), and
346 committee meetings may be given by electronic transmission to
347 unit owners who consent to receive notice by electronic
348 transmission.

349 6. Unit owners shall have the right to participate in
350 meetings of unit owners with reference to all designated agenda
351 items. However, the association may adopt reasonable rules
352 governing the frequency, duration, and manner of unit owner
353 participation.

354 7. Any unit owner may tape record or videotape a meeting
355 of the unit owners subject to reasonable rules adopted by the
356 division.

357 8. Unless otherwise provided in the bylaws, any vacancy
358 occurring on the board before the expiration of a term may be
359 filled by the affirmative vote of the majority of the remaining
360 directors, even if the remaining directors constitute less than
361 a quorum, or by the sole remaining director. In the alternative,
362 a board may hold an election to fill the vacancy, in which case
363 the election procedures must conform to the requirements of

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364 subparagraph 3. unless the association governs 10 units or less
365 and has opted out of the statutory election process, in which
366 case the bylaws of the association control. Unless otherwise
367 provided in the bylaws, a board member appointed or elected
368 under this section shall fill the vacancy for the unexpired term
369 of the seat being filled. Filling vacancies created by recall is
370 governed by paragraph (j) and rules adopted by the division.

371 9. Within 30 days after being elected to the board of
372 directors, a new director shall certify in writing to the
373 secretary of the association that he or she has read the
374 association's declarations of covenants and restrictions,
375 articles of incorporation, bylaws, and current written policies,
376 he or she will work to uphold such documents and policies to the
377 best of his or her ability, and he or she will faithfully
378 discharge his or her fiduciary responsibility to the
379 association's members. Failure to timely file the statement
380 automatically disqualifies the director from service on the
381 association's board of directors. The secretary shall cause the
382 association to retain a director's certification for inspection
383 by the members for 5 years after a director's election. Failure
384 to have such certification on file does not affect the validity
385 of any appropriate action.

386
387 Notwithstanding subparagraphs (b)2. and (d)3., an association of
388 10 or fewer units may, by the affirmative vote of a majority of
389 the total voting interests, provide for different voting and
390 election procedures in its bylaws, which vote may be by a proxy
391 specifically delineating the different voting and election

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392 procedures. The different voting and election procedures may
 393 provide for elections to be conducted by limited or general
 394 proxy.

395 Section 5. Paragraph (b) of subsection (2), paragraphs (a)
 396 and (c) of subsection (5), paragraphs (b), (c), (d), (f), and
 397 (g) of subsection (6) of section 720.303, Florida Statutes, are
 398 amended, and subsection (12) is added to that section, to read:

399 720.303 Association powers and duties; meetings of board;
 400 official records; budgets; financial reporting; association
 401 funds; recalls.--

402 (2) BOARD MEETINGS.--

403 (b) Members have the right to attend all meetings of the
 404 board and to speak on any matter placed on the agenda by
 405 petition of the voting interests for at least 3 minutes. The
 406 association may adopt written reasonable rules expanding the
 407 right of members to speak and governing the frequency, duration,
 408 and other manner of member statements, which rules must be
 409 consistent with this paragraph and may include a sign-up sheet
 410 for members wishing to speak. Notwithstanding any other law, ~~the~~
 411 ~~requirement that board meetings and committee meetings be open~~
 412 ~~to the members is inapplicable to meetings between the board or~~
 413 ~~a committee~~ to discuss proposed or pending litigation with and
 414 the association's attorney, or with respect to meetings of the
 415 board held for the purpose of discussing personnel matters are
 416 not required to be open to the members.

417 (5) INSPECTION AND COPYING OF RECORDS.--The official
 418 records shall be maintained within the state and must be open to
 419 inspection and available for photocopying by members or their

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420 authorized agents at reasonable times and places within 10
421 business days after receipt of a written request for access.
422 This subsection may be complied with by having a copy of the
423 official records available for inspection or copying in the
424 community. If the association has a photocopy machine available
425 where the records are maintained, it must provide parcel owners
426 with copies on request during the inspection if the entire
427 request is limited to no more than 25 pages.

428 (a) The failure of an association to provide access to the
429 records within 10 business days after receipt of a written
430 request submitted by certified mail, return receipt requested,
431 creates a rebuttable presumption that the association willfully
432 failed to comply with this subsection.

433 (c) The association may adopt reasonable written rules
434 governing the frequency, time, location, notice, records to be
435 inspected, and manner of inspections, but may not require ~~impose~~
436 ~~a requirement that~~ a parcel owner to demonstrate any proper
437 purpose for the inspection, state any reason for the inspection,
438 or limit a parcel owner's right to inspect records to less than
439 one 8-hour business day per month. The association may impose
440 fees to cover the costs of providing copies of the official
441 records, including, without limitation, the costs of copying.
442 The association may charge up to 50 cents per page for copies
443 made on the association's photocopier. If the association does
444 not have a photocopy machine available where the records are
445 kept, or if the records requested to be copied exceed 25 pages
446 in length, the association may have copies made by an outside
447 vendor or association management company personnel and may

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448 charge the actual cost of copying, including any reasonable
 449 costs involving personnel fees and charges at an hourly rate for
 450 employee time to cover administrative costs to the association.

451 The association shall maintain an adequate number of copies of
 452 the recorded governing documents, to ensure their availability
 453 to members and prospective members. Notwithstanding the
 454 provisions of this paragraph, the following records are ~~shall~~
 455 not ~~be~~ accessible to members or parcel owners:

456 1. Any record protected by the lawyer-client privilege as
 457 described in s. 90.502 and any record protected by the work-
 458 product privilege, including, but not limited to, any record
 459 prepared by an association attorney or prepared at the
 460 attorney's express direction which reflects a mental impression,
 461 conclusion, litigation strategy, or legal theory of the attorney
 462 or the association and which was prepared exclusively for civil
 463 or criminal litigation or for adversarial administrative
 464 proceedings or which was prepared in anticipation of imminent
 465 civil or criminal litigation or imminent adversarial
 466 administrative proceedings until the conclusion of the
 467 litigation or ~~adversarial~~ administrative proceedings.

468 2. Information obtained by an association in connection
 469 with the approval of the lease, sale, or other transfer of a
 470 parcel.

471 3. Disciplinary, health, insurance, and personnel records
 472 of the association's employees.

473 4. Medical records of parcel owners or community
 474 residents.

475 (6) BUDGETS.--

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476 (b) In addition to annual operating expenses, the budget
477 may include reserve accounts for capital expenditures and
478 deferred maintenance for which the association is responsible.
479 If reserve accounts are not established pursuant to paragraph
480 (d), funding of such reserves shall be limited to the extent
481 that the governing documents ~~do not~~ limit increases in
482 assessments, including reserves. If the budget of the
483 association includes reserve accounts established pursuant to
484 paragraph (d), such reserves shall be determined, maintained,
485 and waived in the manner provided in this subsection. Once an
486 association provides for reserve accounts pursuant to paragraph
487 (d) in the budget, the association shall thereafter determine,
488 maintain, and waive reserves in compliance with this subsection.
489 The provisions of this section do not preclude the termination
490 of a reserve account established pursuant to this paragraph upon
491 approval of a majority of the voting interests of the
492 association. Upon such approval, the terminating reserve account
493 shall be removed from the budget.

494 (c)1. If the budget of the association does not provide
495 for reserve accounts pursuant to paragraph (d) ~~governed by this~~
496 ~~subsection~~ and the association is responsible for the repair and
497 maintenance of capital improvements that may result in a special
498 assessment if reserves are not provided, each financial report
499 for the preceding fiscal year required by subsection (7) shall
500 contain the following statement in conspicuous type: THE BUDGET
501 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR
502 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
503 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE

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504 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
 505 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN~~ A
 506 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY
 507 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

508 2. If the budget of the association does provide for
 509 funding accounts for deferred expenditures, including, but not
 510 limited to, funds for capital expenditures and deferred
 511 maintenance, but such accounts are not created or established
 512 pursuant to paragraph (d), each financial report for the
 513 preceding fiscal year required under subsection (7) must also
 514 contain the following statement in conspicuous type: THE BUDGET
 515 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED
 516 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
 517 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
 518 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
 519 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),
 520 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
 521 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
 522 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

523 (d) An association shall be deemed to have provided for
 524 reserve accounts if ~~when~~ reserve accounts have been initially
 525 established by the developer or if ~~when~~ the membership of the
 526 association affirmatively elects to provide for reserves. If
 527 reserve accounts are not initially provided for by the
 528 developer, the membership of the association may elect to do so
 529 upon the affirmative approval of ~~not less than~~ a majority of the
 530 total voting interests of the association. Such approval may be
 531 obtained ~~attained~~ by vote of the members at a duly called

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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532 meeting of the membership or by the ~~upon a~~ written consent of
533 ~~executed by not less than~~ a majority of the total voting
534 interests in the community. The approval action of the
535 membership shall state that reserve accounts shall be provided
536 for in the budget and shall designate the components for which
537 the reserve accounts are to be established. Upon approval by the
538 membership, the board of directors shall include ~~provide for~~ the
539 required reserve accounts ~~for inclusion~~ in the budget in the
540 next fiscal year following the approval and ~~in~~ each year
541 thereafter. Once established as provided in this subsection, the
542 reserve accounts shall be funded or maintained or shall have
543 their funding waived in the manner provided in paragraph (f).

544 (f) After one or more ~~Once a reserve account or~~ reserve
545 accounts are established, the membership of the association,
546 upon a majority vote at a meeting at which a quorum is present,
547 may provide for no reserves or less reserves than required by
548 this section. If a meeting of the unit owners has been called to
549 determine whether to waive or reduce the funding of reserves and
550 no such result is achieved or a quorum is not present, the
551 reserves as included in the budget shall go into effect. After
552 the turnover, the developer may vote its voting interest to
553 waive or reduce the funding of reserves. Any vote taken pursuant
554 to this subsection to waive or reduce reserves is ~~shall be~~
555 applicable only to one budget year.

556 (g) Funding formulas for reserves authorized by this
557 section shall be based on either a separate analysis of each of
558 the required assets or a pooled analysis of two or more of the
559 required assets.

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560 1. If the association maintains separate reserve accounts
 561 for each of the required assets, the amount of the contribution
 562 to each reserve account is ~~shall be~~ the sum of the following two
 563 calculations:

564 a. The total amount necessary, if any, to bring a negative
 565 component balance to zero.

566 b. The total estimated deferred maintenance expense or
 567 estimated replacement cost of the reserve component less the
 568 estimated balance of the reserve component as of the beginning
 569 of the period ~~for which~~ the budget will be in effect. The
 570 remainder, if greater than zero, shall be divided by the
 571 estimated remaining useful life of the component.

572
 573 The formula may be adjusted each year for changes in estimates
 574 and deferred maintenance performed during the year and may
 575 include factors such as inflation and earnings on invested
 576 funds.

577 2. If the association maintains a pooled account of two or
 578 more of the required reserve assets, the amount of the
 579 contribution to the pooled reserve account as disclosed on the
 580 proposed budget may ~~shall~~ not be less than that required to
 581 ensure that the balance on hand at the beginning of the period
 582 ~~for which~~ the budget will go into effect plus the projected
 583 annual cash inflows over the remaining estimated useful life of
 584 all of the assets that make up the reserve pool are equal to or
 585 greater than the projected annual cash outflows over the
 586 remaining estimated useful lives of all ~~of~~ the assets that make
 587 up the reserve pool, based on the current reserve analysis. The

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588 projected annual cash inflows may include estimated earnings
 589 from investment of principal and accounts receivable minus the
 590 allowance for doubtful accounts. The reserve funding formula may
 591 ~~shall~~ not include any type of balloon payments.

592 (12) COMPENSATION PROHIBITED.--A director, officer, or
 593 committee member of the association may not receive directly or
 594 indirectly any salary or compensation from the association for
 595 the performance of duties as a director, officer, or committee
 596 member and may not in any other way benefit financially from
 597 service to the association. This subsection does not preclude:

598 (a) Participation by such person in a financial benefit
 599 accruing to all or a significant number of members as a result
 600 of actions lawfully taken by the board or a committee of which
 601 he or she is a member, including, but not limited to, routine
 602 maintenance, repair, or replacement of community assets.

603 (b) Reimbursement for out-of-pocket expenses incurred by
 604 such person on behalf of the association, subject to approval in
 605 accordance with procedures established by the association's
 606 governing documents or, in the absence of such procedures, in
 607 accordance with an approval process established by the board.

608 (c) Any recovery of insurance proceeds derived from a
 609 policy of insurance maintained by the association for the
 610 benefit of its members.

611 (d) Any fee or compensation authorized in the governing
 612 documents.

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

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616 Section 6. Subsection (2) of section 720.305, Florida
 617 Statutes, are amended to read:

618 720.305 Obligations of members; remedies at law or in
 619 equity; levy of fines and suspension of use rights; failure to
 620 fill sufficient number of vacancies on board of directors to
 621 constitute a quorum; appointment of receiver upon petition of
 622 any member.--

623 (2) If the governing documents so provide, an association
 624 may suspend, for a reasonable period of time, the rights of a
 625 member or a member's tenants, guests, or invitees, or both, to
 626 use common areas and facilities and may levy reasonable fines of
 627 up to, ~~not to exceed~~ \$100 per violation, against any member or
 628 any tenant, guest, or invitee. A fine may be levied on the basis
 629 of each day of a continuing violation, with a single notice and
 630 opportunity for hearing, except that no ~~such~~ fine may ~~shall~~
 631 exceed \$1,000 in the aggregate unless otherwise provided in the
 632 governing documents. A fine of less than \$1,000 may ~~shall~~ not
 633 become a lien against a parcel. In any action to recover a fine,
 634 the prevailing party is entitled to collect its reasonable
 635 attorney's fees and costs from the nonprevailing party as
 636 determined by the court.

637 (a) A fine or suspension may not be imposed without ~~notice~~
 638 ~~of~~ at least 14 days notice to the person sought to be fined or
 639 suspended and an opportunity for a hearing before a committee of
 640 at least three members appointed by the board who are not
 641 officers, directors, or employees of the association, or the
 642 spouse, parent, child, brother, or sister of an officer,
 643 director, or employee. If the committee, by majority vote, does

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644 not approve a proposed fine or suspension, it may not be
 645 imposed.

646 (b) The requirements of this subsection do not apply to
 647 the imposition of suspensions or fines upon any member because
 648 of the failure of the member to pay assessments or other charges
 649 when due if such action is authorized by the governing
 650 documents.

651 (c) Suspension of common-area-use rights do ~~shall~~ not
 652 impair the right of an owner or tenant of a parcel to have
 653 vehicular and pedestrian ingress to and egress from the parcel,
 654 including, but not limited to, the right to park.

655 Section 7. Subsections (8) and (9) of section 720.306,
 656 Florida Statutes, are amended to read:

657 720.306 Meetings of members; voting and election
 658 procedures; amendments.--

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

662 (a) To be valid, a proxy must be dated, must state the
 663 date, time, and place of the meeting for which it was given, and
 664 must be signed by the authorized person who executed the proxy.
 665 A proxy is effective only for the specific meeting for which it
 666 was originally given, as the meeting may lawfully be adjourned
 667 and reconvened from time to time, and automatically expires 90
 668 days after the date of the meeting for which it was originally
 669 given. A proxy is revocable at any time at the pleasure of the
 670 person who executes it. If the proxy form expressly so provides,

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671 any proxy holder may appoint, in writing, a substitute to act in
672 his or her place.

673 (b) If the governing documents permit voting by secret
674 ballot by members who are not in attendance at a meeting of the
675 members for the election of directors, such ballots shall be
676 placed in an inner envelope with no identifying markings and
677 mailed or delivered to the association in an outer envelope
678 bearing identifying information reflecting the name of the
679 member, the lot or parcel for which the vote is being cast, and
680 the signature of the lot or parcel owner casting that ballot.
681 After the eligibility of the member to vote and confirmation
682 that no other ballot has been submitted for that lot or parcel,
683 the inner envelope shall be removed from the outer envelope
684 bearing the identification information, placed with the ballots
685 which were personally cast, and opened when the ballots are
686 counted. If more than one ballot is submitted for a lot or
687 parcel, the ballots for that lot or parcel shall be
688 disqualified. Any vote by ballot received after the closing of
689 the balloting may not be considered.

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

691 (a) Elections of directors must be conducted in accordance
692 with the procedures set forth in the governing documents of the
693 association. All members of the association ~~are~~ shall be
694 eligible to serve on the board of directors, and a member may
695 nominate himself or herself as a candidate for the board at a
696 meeting where the election is to be held or, if the election
697 process allows voting by absentee ballot, in advance of the
698 balloting. Except as otherwise provided in the governing

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699 documents, boards of directors must be elected by a plurality of
700 the votes cast by eligible voters. Any election dispute between
701 a member and an association must be submitted to mandatory
702 binding arbitration with the division. Such proceedings shall be
703 conducted in the manner provided by s. 718.1255 and the
704 procedural rules adopted by the division.

705 (b) Within 30 days after being elected to the board of
706 directors, a new director shall certify in writing to the
707 secretary of the association that he or she has read the
708 association's declarations of covenants and restrictions,
709 articles of incorporation, bylaws, and current written policies
710 and that he or she will work to uphold each to the best of his
711 or her ability and will faithfully discharge his or her
712 fiduciary responsibility to the association's members. Failure
713 to timely file such statement shall automatically disqualify the
714 director from service on the association's board of directors.
715 The secretary shall cause the association to retain a director's
716 certification for inspection by the members for 5 years after a
717 director's election. Failure to have such certification on file
718 does not affect the validity of any appropriate action.

719 Section 8. Paragraph (a) of subsection (1) of section
720 720.401, Florida Statutes, is amended to read:

721 720.401 Prospective purchasers subject to association
722 membership requirement; disclosure required; covenants;
723 assessments; contract cancellation.--

724 (1) (a) A prospective parcel owner in a community must be
725 presented a disclosure summary before executing the contract for

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726 sale. The disclosure summary must be in a form substantially
727 similar to the following form:

728
729 DISCLOSURE SUMMARY
730 FOR
731 (NAME OF COMMUNITY)
732

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

735 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
736 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS
737 COMMUNITY.

738 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
739 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF
740 APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____. YOU WILL
741 ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE
742 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.
743 IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER _____.

744 4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE
745 RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL
746 ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

747 5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS
748 LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION MAY ~~COULD~~ RESULT
749 IN A LIEN ON YOUR PROPERTY.

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

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782 ~~have~~ received and read the disclosure summary required by this
 783 section.

784 Section 9. Effective July 1, 2009, Paragraph (d) of
 785 subsection (1) of section 34.01, Florida Statutes, is amended to
 786 read:

787 34.01 Jurisdiction of county court.--

788 (1) County courts shall have original jurisdiction:

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

792 Section 10. Effective July 1, 2009, Subsection (2) of
 793 section 720.302, Florida Statutes, is amended to read:

794 720.302 Purposes, scope, and application.--

795 (2) The Legislature recognizes that it is not in the best
 796 interest of homeowners' associations or the individual
 797 association members thereof to create or impose a bureau or
 798 other agency of state government to regulate the affairs of
 799 homeowners' associations. However, in accordance with part IV of
 800 chapter 720 ~~s. 720.311~~, the Legislature finds that homeowners'
 801 associations and their individual members will benefit from an
 802 expedited alternative process for resolution of ~~election and~~
 803 ~~recall disputes and presuit mediation of other~~ disputes
 804 involving covenant enforcement in homeowner's associations and
 805 deed restricted communities using the procedures provided in
 806 part IV of ~~and authorizes the department to hear, administer,~~
 807 ~~and determine these disputes as more fully set forth in this~~
 808 chapter. Further, the Legislature recognizes that certain
 809 contract rights have been created for the benefit of homeowners'

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810 associations and members thereof as well as deed-restricted
 811 communities before the effective date of this act and that part
 812 IV of chapter 720 is ss. ~~720.301-720.407~~ are not intended to
 813 impair such contract rights, including, but not limited to, the
 814 rights of the developer to complete the community as initially
 815 contemplated.

816 Section 11. Effective July 1, 2009, Section 720.311,
 817 Florida Statutes, is repealed.

818 Section 12. Effective July 1, 2009, Part IV of chapter
 819 720, Florida Statutes, to be entitled "Dispute Resolution"
 820 consisting of sections 720.501, 720.502, 720.503, 720.504,
 821 720.505, 720.506, 720.507, 720.508, 720.509, and 720.510, is
 822 created to read:

823 720.501 Short title.--This part may be cited as the "Home
 824 Court Advantage Dispute Resolution Act."

825 720.502 Legislative findings.--The Legislature finds that
 826 alternative dispute resolution has made progress in reducing
 827 court dockets and trials and in offering a more efficient, cost-
 828 effective option to litigation.

829 720.503 Applicability of this part.--

830 (1) Unless otherwise provided in this part, before a
 831 dispute described herein between a homeowners' association and a
 832 parcel owner or owners, or a dispute between parcel owners
 833 within the same homeowners' association, may be filed in court
 834 the dispute is subject to presuit mediation pursuant to s.
 835 720.505 or presuit arbitration pursuant to s. 720.507, at the
 836 option of the aggrieved party who initiates the first formal
 837 action of alternative dispute resolution under this part. The

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838 parties may mutually agree to participate in both presuit
839 mediation and presuit arbitration prior to suit being filed by
840 either party.

841 (2) Unless otherwise provided in this part, the mediation
842 and arbitration provisions of this part are limited to disputes
843 between an association and a parcel owner or owners or between
844 parcel owners regarding the use of or changes to the parcel or
845 the common areas under the governing documents and other
846 disputes involving violations of the recorded declaration of
847 covenants or other governing documents, disputes arising
848 concerning enforcement of the governing documents or any
849 amendments thereto, and disputes involving access to the
850 official records of the association. A dispute concerning title
851 to any parcel or common area, interpretation or enforcement of
852 any warranty, the levy of a fee or assessment, the collection of
853 an assessment levied against a party, the eviction or other
854 removal of a tenant from a parcel, alleged breaches of fiduciary
855 duty by one or more directors, or any action to collect mortgage
856 indebtedness or to foreclosure a mortgage shall not be subject
857 to the provisions of this part.

858 (3) All disputes arising after the effective date of this
859 part involving the election of the board of directors for an
860 association or the recall of any member of the board or officer
861 of the association shall not be eligible for presuit mediation
862 under s. 720.505, but shall be subject to the provisions
863 concerning presuit arbitration under s. 720.507.

864 (4) In any dispute subject to presuit mediation or presuit
865 arbitration under this part for which emergency relief is

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866 required, a motion for temporary injunctive relief may be filed
 867 with the court without first complying with the presuit
 868 mediation or presuit arbitration requirements of this part.
 869 After any issues regarding emergency or temporary relief are
 870 resolved, the court may refer the parties to a mediation program
 871 administered by the courts or require mediation or arbitration
 872 under this part.

873 (5) The mailing of a statutory notice of presuit mediation
 874 or presuit arbitration as provided in this part shall toll the
 875 applicable statute of limitations during the pendency of the
 876 mediation or arbitration and for a period of 30 days following
 877 the conclusion of either proceeding. The 30-day period shall
 878 start upon the filing of the mediator's notice of impasse or the
 879 arbitrator's written arbitration award. If the parties mutually
 880 agree to participate in both presuit mediation and presuit
 881 arbitration under this part, the tolling of the applicable
 882 statute of limitations for each such alternative dispute
 883 resolution proceeding shall be consecutive.

884 720.504 Notice of dispute.--Prior to giving the statutory
 885 notice to proceed under presuit medication or presuit
 886 arbitration under this part, the aggrieved association or parcel
 887 owner shall first provide written notice of the dispute to the
 888 responding party in the manner provided by this section.

889 (1) The notice of dispute shall be delivered to the
 890 responding party by certified mail, return receipt requested, or
 891 the notice of dispute may be hand delivered and the person
 892 making delivery shall file with their notice of mediation either
 893 the proof of receipt of mailing or an affidavit stating the date

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894 and time of the delivery of the notice of dispute. If the notice
895 is delivered by certified mail, return receipt requested, and
896 the responding party fails or refuses to accept delivery, notice
897 shall be considered properly delivered for purposes of this
898 section on the date of the first attempted delivery.

899 (2) The notice of dispute shall state with specificity the
900 nature of the dispute, including the date, time, and location of
901 each event that is the subject of the dispute and the action
902 requested to resolve the dispute. The notice shall also include
903 the text of any provision in the governing documents, including
904 the rules and regulations, of the association which form the
905 basis of the dispute.

906 (3) Unless the parties otherwise agree in writing to a
907 longer time period, the party receiving the notice of dispute
908 shall have 10 days following the date of receipt of notice to
909 resolve the dispute. If the alleged dispute has not been
910 resolved within the 10-day period, the aggrieved party may
911 proceed under this part at any time thereafter within the
912 applicable statute of limitations.

913 (4) A copy of the notice and the text of the provision in
914 the governing documents or the rules and regulations of the
915 association which are the basis of the dispute, along with proof
916 of service of the notice of dispute and a copy of any written
917 responses received from the responding party, shall be included
918 as an exhibit to any demand for mediation or arbitration under
919 this part.

920 720.505 Presuit mediation.--

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921 (1) Disputes between an association and a parcel owner or
 922 owners and between parcel owners must be submitted to presuit
 923 mediation before the dispute may be filed in court or, at the
 924 election of the party initiating the presuit procedures, such
 925 dispute may be submitted to presuit arbitration pursuant to s.
 926 720.507 before the dispute may be filed in court. An aggrieved
 927 party who elects to use the presuit mediation procedure under
 928 this section shall serve on the responding party a written
 929 notice of presuit mediation in substantially the following form:

930
 931 STATUTORY NOTICE OF PRESUIT MEDIATION
 932 THE ALLEGED AGGRIEVED PARTY, _____,
 933 HEREBY DEMANDS THAT _____, AS THE
 934 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
 935 MEDIATION IN CONNECTION WITH A DISPUTE(S) WITH YOU,
 936 WHICH BY STATUTE ARE OF A TYPE THAT ARE SUBJECT TO
 937 PRESUIT MEDIATION:

938
 939 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION
 940 WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO
 941 BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF
 942 A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
 943 LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING
 944 DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE
 945 DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE
 946 YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN
 947 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

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949 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
950 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
951 MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
952 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
953 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
954 MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER
955 TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
956 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
957 PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO
958 THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A
959 NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER
960 S. 720.506, FLORIDA STATUTES, YOUR FAILURE TO
961 PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A
962 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT
963 FURTHER NOTICE.

964
965 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED
966 NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-
967 PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS
968 THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING
969 PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE
970 IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO
971 CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO
972 AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO
973 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A
974 FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE
975 POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR
976 REASONABLE SETTLEMENT ARE FULLY EXPLORED.

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977
978 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO
979 WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT
980 BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE
981 DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE
982 THESE ISSUES IN COURT. THE FAILURE TO REACH AN
983 AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN
984 THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN
985 IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED
986 PARTY MAY PROCEED TO FILE A LAW SUIT ON ALL
987 OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR
988 REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION
989 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER
990 ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT
991 PROCEEDING INVOLVING THE SAME DISPUTE.
992
993 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF
994 ELIGIBLE QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED
995 MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
996 NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE
997 THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE
998 FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE
999 OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE
1000 MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL
1001 FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE
1002 AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU
1003 MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE
1004 NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

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1005
 1006 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND
 1007 HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT
 1008 INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY
 1009 BE INCLUDED AS AN ATTACHMENT.)
 1010
 1011 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO
 1012 CONFIRM THAT EACH OF THE ABOVE LISTED MEDIATORS WILL
 1013 BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD
 1014 EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE
 1015 PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES,
 1016 REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT
 1017 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE
 1018 MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4
 1019 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME
 1020 PREPARATION TIME, AND THE PARTIES WOULD NEED TO
 1021 EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE
 1022 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF
 1023 THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH
 1024 THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT
 1025 REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE
 1026 MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
 1027 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY
 1028 HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE
 1029 SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS
 1030 AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS
 1031 THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE
 1032 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE

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1033 RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR
 1034 SHARE OF THE MEDIATOR FEES INCURRED.
 1035
 1036 TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO
 1037 TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER
 1038 LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE
 1039 WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE
 1040 MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.
 1041
 1042 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
 1043 OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE
 1044 YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND
 1045 TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE
 1046 MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED
 1047 DATE OF THE MAILING OF THIS NOTICE OF PRESUIT
 1048 MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE
 1049 SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY
 1050 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY
 1051 CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE
 1052 TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE
 1053 DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO
 1054 SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR
 1055 SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO
 1056 EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90
 1057 DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST
 1058 SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN
 1059 THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS
 1060 AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE

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1061 MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE
 1062 AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE
 1063 TO AT LEAST ONE OF THE MEDIATORS THAT THE AGGRIEVED
 1064 PARTY HAS LISTED, FAIL TO PAY OR PREPAY TO THE
 1065 MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL TO
 1066 APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE
 1067 AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE
 1068 FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER
 1069 NOTICE. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED
 1070 PARTY MAY SEEK AN AWARD OF REASONABLE ATTORNEY'S FEES
 1071 AND COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.

1072
 1073 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY
 1074 LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-
 1075 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED
 1076 PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE
 1077 AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF
 1078 THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS
 1079 AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY
 1080 OF THIS NOTICE.

1081
 1082 _____
 1083 SIGNATURE OF AGGRIEVED PARTY

1084
 1085 _____
 1086 PRINTED NAME OF AGGRIEVED PARTY

1087

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1088 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR
 1089 ACCEPTANCE OF THE AGREEMENT TO MEDIATE.

1090
 1091 AGREEMENT TO MEDIATE

1092
 1093 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN
 1094 PRESUIT MEDIATION AND AGREES TO ATTEND A MEDIATION
 1095 CONDUCTED BY THE FOLLOWING MEDIATOR(S) LISTED BELOW AS
 1096 ACCEPTABLE TO MEDIATE THIS DISPUTE:

1097
 1098 (LIST ONE ACCEPTABLE MEDIATOR FROM THOSE LISTED BY THE
 1099 AGGRIEVED PARTY.)

1100
 1101 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE CAN
 1102 ATTEND AND PARTICIPATE IN THE PRESUIT MEDIATION AT THE
 1103 FOLLOWING DATES AND TIMES:

1104
 1105 (LIST AT LEAST THREE AVAILABLE DATES AND TIMES WITHIN
 1106 THE 90-DAY TIME LIMIT DESCRIBED ABOVE.)

1107
 1108 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
 1109 MEDIATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS
 1110 AS THE MEDIATOR MAY REQUIRE FOR THIS PURPOSE.

1111
 1112 _____
 1113 SIGNATURE OF RESPONDING PARTY #1

1114 _____
 1115 TELEPHONE CONTACT INFORMATION

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1116 _____
 1117 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF
 1118 RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS
 1119 OWNED BY MORE THAN ONE PERSON, ALL PARCEL OWNERS OR
 1120 UNIT OWNERS WHO ARE SUBJECT OF THE DISPUTE MUST SIGN
 1121 OR HAVE A PERSON ACTING UNDER AUTHORITY OF A POWER OF
 1122 ATTORNEY SIGN.

1123
 1124 (2) (a) Service of the notice of presuit mediation shall be
 1125 effected either by personal service, as provided in chapter 48,
 1126 or by certified mail, return receipt requested, in a letter in
 1127 substantial conformity with the form provided in subsection (1),
 1128 with an additional copy being sent by regular first-class mail,
 1129 to the address of the responding party as it last appears on the
 1130 books and records of the association or if not available, then
 1131 as it last appears in the official records of the county
 1132 property appraiser where the parcel in dispute is located. The
 1133 responding party has either 20 days after the postmarked date of
 1134 the mailing of the statutory notice or 20 days after the date
 1135 the responding party is served with a copy of the notice to
 1136 serve a written response to the aggrieved party. The response
 1137 shall be served by certified mail, return receipt requested,
 1138 with an additional copy being sent by regular first-class mail,
 1139 to the address shown on the statutory notice. The date of the
 1140 postmark on the envelope for the response shall constitute the
 1141 date that the response is served. Once the parties have agreed
 1142 on a mediator, the mediator may schedule or reschedule the
 1143 mediation for a date and time mutually convenient to the parties

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1144 within 90 days after the date of service of the statutory
1145 notice. After such 90-day period, the mediator may reschedule
1146 the mediation only upon the mutual written agreement of all the
1147 parties.

1148 (b) The parties shall share the costs of presuit mediation
1149 equally, including the fee charged by the mediator, if any,
1150 unless the parties agree otherwise, and the mediator may require
1151 advance payment of his or her reasonable fees and costs. Each
1152 party shall be responsible for their own attorney's fees if a
1153 party chooses to be represented by an attorney at the mediation.

1154 (c) The party responding to the aggrieved party may either
1155 provide a notice of opting out under s. 720.506, and demand
1156 arbitration, or the responding party shall sign the agreement to
1157 mediate included in the notice of presuit mediation and clearly
1158 indicate the name of the mediator who is acceptable from the
1159 five names provided by the aggrieved party, and the responding
1160 party must provide in their response a list of dates and times
1161 in which the responding party is available to participate in the
1162 mediation within 90 days after the date the responding party was
1163 served, either by process server or by certified mail, with the
1164 statutory notice of presuit mediation.

1165 (d) The mediator who has been selected and agreed to
1166 mediate must schedule the mediation conference at a mutually
1167 convenient time and place within that 90-day period, but if the
1168 responding party does not provide a list of available dates and
1169 times, the mediator is authorized to schedule a mediation
1170 conference without taking the responding party's schedule and
1171 convenience into consideration. Within 10 days after the

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1172 designation of the mediator, the mediator shall coordinate with
 1173 the parties and notify the parties in writing of the date, time,
 1174 and place of the mediation conference.

1175 (e) The mediation conference must be held on the scheduled
 1176 date and may be rescheduled if a rescheduled date is approved by
 1177 the mediator. However, in no event shall the mediation be held
 1178 later than 90 days after the notice of presuit mediation was
 1179 first served, unless all parties mutually agree in writing
 1180 otherwise. If the presuit mediation is not completed within the
 1181 required time limits, the mediator shall declare an impasse
 1182 unless the mediation date is extended by mutual written
 1183 agreement by all parties and approved by the mediator.

1184 (f) If the responding party fails to respond within 30
 1185 days after the date of service of the statutory notice of
 1186 presuit mediation, fails to agree to at least one of the
 1187 mediators listed by the aggrieved party in the notice, fails to
 1188 pay or prepay to the mediator one-half of the costs of the
 1189 mediator, or fails to appear and participate at the scheduled
 1190 mediation, the aggrieved party shall be authorized to proceed
 1191 with the filing of a lawsuit without further notice.

1192 (g)1. The failure of any party to respond to the statutory
 1193 notice of presuit mediation within 20 days, the failure to agree
 1194 upon a mediator, the failure to provide a listing of dates and
 1195 times in which the responding party is available to participate
 1196 in the mediation within 90 days after the date the responding
 1197 party was served with the statutory notice of presuit mediation,
 1198 the failure to make payment of fees and costs within the time
 1199 established by the mediator, or the failure to appear for a

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1200 scheduled mediation session without the approval of the
 1201 mediator, shall in each instance constitute a failure or refusal
 1202 to participate in the mediation process and shall operate as an
 1203 impasse in the presuit mediation by such party, entitling the
 1204 other party to file a lawsuit in court and to seek an award of
 1205 the costs and attorney's fees associated with the mediation.

1206 2. Persons who fail or refuse to participate in the entire
 1207 mediation process may not recover attorney's fees and costs in
 1208 subsequent litigation relating to the same dispute between the
 1209 same parties. If any presuit mediation session cannot be
 1210 scheduled and conducted within 90 days after the offer to
 1211 participate in mediation was filed, through no fault of either
 1212 party, then an impasse shall be deemed to have occurred unless
 1213 the parties mutually agree in writing to extend this deadline.
 1214 In the event of such impasse, each party will be responsible for
 1215 its own costs and attorney's fees and one-half of any mediator
 1216 fees and filing fees, and either party may file a lawsuit in
 1217 court regarding the dispute.

1218 720.506 Opt-out of presuit mediation.--A party served with
 1219 a notice of presuit mediation under s. 720.505, may opt out of
 1220 presuit mediation and demand that the dispute proceed under
 1221 nonbinding arbitration in the following manner provided in this
 1222 section:

1223 (1) In lieu of a response to the notice of presuit
 1224 mediation as required under s. 720.505, the responding party may
 1225 serve upon the aggrieved party in the same manner as the
 1226 response to a notice for presuit mediation under s. 720.505, a

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1227 notice of opting out of mediation and demand that the dispute
 1228 instead proceed to presuit arbitration under s. 720.507.

1229 (2) The aggrieved party shall be relieved from having to
 1230 satisfy the requirements of s. 720.504 as a condition precedent
 1231 to filing the demand for presuit arbitration.

1232 (3) Except as otherwise provided in this part, the choice
 1233 of which presuit alternative dispute resolution procedure is
 1234 used shall be at the election of the aggrieved party who first
 1235 initiated such proceeding after complying with the provisions of
 1236 s. 720.504.

1237 720.507 Presuit arbitration.--

1238 (1) Disputes between an association and a parcel owner or
 1239 owners and disputes between parcel owners are subject to a
 1240 demand for presuit arbitration pursuant to s. 720.507, before
 1241 the dispute may be filed in court. A party who elects to use the
 1242 presuit arbitration procedure under this part shall serve on the
 1243 responding party a written notice of presuit arbitration in
 1244 substantially the following form:

1245
 1246 STATUTORY NOTICE OF PRESUIT ARBITRATION

1247
 1248 THE ALLEGED AGGRIEVED PARTY, _____,
 1249 HEREBY DEMANDS THAT _____, AS THE
 1250 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
 1251 ARBITRATION IN CONNECTION WITH THE FOLLOWING
 1252 DISPUTE(S) WITH YOU, WHICH BY STATUTE ARE OF A TYPE
 1253 THAT ARE SUBJECT TO PRESUIT ARBITRATION:

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1255 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE
 1256 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A
 1257 VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
 1258 LIMITED TO, ALL APPLICABLE PROVISIONS OF THE GOVERNING
 1259 DOCUMENTS BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE
 1260 PARTIES.)

1261
 1262 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
 1263 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
 1264 ARBITRATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
 1265 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
 1266 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
 1267 ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN
 1268 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
 1269 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
 1270 PARTICIPATE IN THIS PROCESS. IF YOU FAIL TO
 1271 PARTICIPATE IN THE ARBITRATION PROCESS, A LAWSUIT MAY
 1272 BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER
 1273 WARNING.

1274
 1275 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD
 1276 PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY
 1277 THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN
 1278 "ARBITRATION AWARD." PURSUANT TO S. 720.507, FLORIDA
 1279 STATUTES, THE ARBITRATION AWARD SHALL BE FINAL UNLESS
 1280 A LAWSUIT IS FILED IN A COURT OF COMPETENT
 1281 JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE
 1282 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION

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1283 IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE THAT THE
 1284 ARBITRATION AWARD.
 1285
 1286 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE
 1287 ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND
 1288 BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE
 1289 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS
 1290 FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR
 1291 TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE
 1292 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE
 1293 PARTIES UNDER S. 720.505, FLORIDA STATUTES. THE
 1294 FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION
 1295 PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN
 1296 ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF
 1297 YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE
 1298 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED
 1299 TO RECOVER ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A
 1300 SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE
 1301 BETWEEN THE SAME PARTIES.
 1302
 1303 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE
 1304 ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
 1305 NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU
 1306 HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS.
 1307 THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR
 1308 MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE
 1309 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL
 1310 ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS

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1311 CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT
 1312 ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE
 1313 AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT
 1314 ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS,
 1315 AND HOURLY RATES, ARE AS FOLLOWS:

1316
 1317 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND
 1318 HOURLY RATES OF AT LEAST FIVE ARBITRATORS.

1319
 1320 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO
 1321 CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL
 1322 AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.

1323
 1324 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF
 1325 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE
 1326 PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION
 1327 EQUALLY, INCLUDING THE FEE CHARGED BY THE ARBITRATOR.
 1328 THE PARTIES SHALL BE RESPONSIBLE FOR THEIR OWN
 1329 ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY
 1330 IN CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN
 1331 ATTORNEY TO REPRESENT YOU FOR THE ARBITRATION IS NOT
 1332 REQUIRED. THE ARBITRATOR SELECTED MAY REQUIRE THE
 1333 ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED
 1334 FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR
 1335 PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED
 1336 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER
 1337 REASONABLE ADVANCE DEPOSITS AS THE ARBITRATOR WHO IS
 1338 SELECTED REQUIRES FOR THIS PURPOSE. ANY FUNDS

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1339 DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE
 1340 IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.
 1341
 1342 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND
 1343 CLEARLY INDICATE THE NAME OF THE ARBITRATOR WHO IS
 1344 ACCEPTABLE TO YOU FROM THE NAMES LISTED BY THE
 1345 AGGRIEVED PARTY.
 1346
 1347 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
 1348 WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF
 1349 PRESUIT ARBITRATION WAS EITHER PERSONALLY SERVED ON
 1350 YOU OR 20 DAYS AFTER THE POSTMARKED DATE THAT THIS
 1351 NOTICE OF PRESUIT ARBITRATION WAS SENT TO YOU BY
 1352 CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT
 1353 LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE
 1354 TO PARTICIPATE IN THE ARBITRATION THAT ARE WITHIN 90
 1355 DAYS AFTER EITHER THE DATE YOU WERE PERSONALLY SERVED
 1356 OR 90 DAYS AFTER THE POSTMARKED DATE OF THE CERTIFIED
 1357 MAILING OF THIS STATUTORY NOTICE OF PRESUIT
 1358 ARBITRATION. A COPY OF THIS NOTICE AND YOUR RESPONSE
 1359 WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE
 1360 ARBITRATOR SELECTED AND THE ARBITRATOR WILL SCHEDULE A
 1361 MUTUALLY CONVENIENT TIME AND PLACE FOR THE ARBITRATION
 1362 CONFERENCE TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF
 1363 AVAILABLE DATES AND TIMES, THE ARBITRATOR IS
 1364 AUTHORIZED TO SCHEDULE AN ARBITRATION CONFERENCE
 1365 WITHOUT TAKING YOUR SCHEDULE AND CONVENIENCE INTO
 1366 CONSIDERATION. THE ARBITRATION CONFERENCE MUST BE HELD

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1367 ON THE SCHEDULED DATE, OR ANY RESCHEDULED DATE
 1368 APPROVED BY THE ARBITRATOR. IN NO EVENT SHALL THE
 1369 ARBITRATION CONFERENCE BE LATER THAN 90 DAYS AFTER
 1370 NOTICE OF THE PRESUIT ARBITRATION WAS FIRST SERVED,
 1371 UNLESS ALL PARTIES MUTUALLY AGREE IN WRITING
 1372 OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED WITHIN
 1373 THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL ISSUE
 1374 AN ARBITRATION AWARD, UNLESS THE HEARING IS EXTENDED
 1375 BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES AND
 1376 APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU FAIL
 1377 TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE
 1378 SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE
 1379 ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE
 1380 AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO
 1381 AGREE EITHER TO ONE OF THE ARBITRATORS THAT THE
 1382 AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO
 1383 THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS
 1384 REQUIRED, OR FAIL TO APPEAR AND PARTICIPATE AT THE
 1385 SCHEDULED ARBITRATION CONFERENCE, THE AGGRIEVED PARTY
 1386 MAY REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION
 1387 AWARD. IN THE SUBSEQUENT COURT ACTION, THE AGGRIEVED
 1388 PARTY SHALL BE ENTITLED TO RECOVER AN AWARD OF
 1389 REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ANY
 1390 FEES PAID TO THE ARBITRATOR, INCURRED IN OBTAINING AN
 1391 ARBITRATION AWARD PURSUANT TO S. 720.507, FLORIDA
 1392 STATUTES.

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1394 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY
 1395 LAW, YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY
 1396 CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED,
 1397 TO THE ADDRESS SHOWN ON THIS NOTICE OF PRESUIT
 1398 ARBITRATION.

1399
 1400 _____
 1401 Signature of aggrieved party

1402
 1403 _____
 1404 PRINTED NAME OF AGGRIEVED PARTY

1405
 1406 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR
 1407 ACCEPTANCE OF THE AGREEMENT TO ARTITRATE.

1408
 1409 AGREEMENT TO ARBITRATE

1410
 1411 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN
 1412 PRESUIT ARBITRATION AND AGREES TO ATTEND AN
 1413 ARBITRATION CONDUCTED BY THE FOLLOWING ARBITRATOR
 1414 LISTED BELOW AS SOMEONE WHO WOULD BE ACCEPTABLE TO
 1415 ARBITRATE THIS DISPUTE:

1416
 1417 (IN YOUR RESPONSE EITHER SELECT THE NAME OF ONE
 1418 ARBITRATOR THAT IS ACCEPTABLE TO YOU FROM THOSE
 1419 ARBITRATORS LISTED BY THE AGGRIEVED PARTY.)

1420

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1421 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS
 1422 AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE
 1423 PRESUIT ARBITRATION CONFERENCE AT THE FOLLOWING DATES
 1424 AND TIMES:

1425
 1426 (LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE
 1427 MUST BE AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE
 1428 ON WHICH YOU WERE SERVED, EITHER BY PROCESS SERVER OR
 1429 BY CERTIFIED MAIL, WITH THE NOTICE OF PRESUIT
 1430 ARBITRATION.)

1431
 1432 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
 1433 ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS
 1434 AS THE ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

1435
 1436 _____
 1437 SIGNATURE OF RESPONDING PARTY #1

1438 _____
 1439 TELEPHONE CONTACT INFORMATION

1440 _____
 1441 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF
 1442 RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS
 1443 OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,
 1444 OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF
 1445 A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

1446
 1447 (2) (a) Service of the statutory notice of presuit
 1448 arbitration shall be effected either by personal service, as

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1449 provided in chapter 48, or by certified mail, return receipt
1450 requested, in a letter in substantial conformity with the form
1451 provided in subsection (1), with an additional copy being sent
1452 by regular first-class mail, to the address of the responding
1453 party as it last appears on the books and records of the
1454 association, or if not available, the last address as it appears
1455 on the official records of the county property appraiser for the
1456 county in which the property is situated that is subject to the
1457 association documents. The responding party has 20 days after
1458 the postmarked date of the certified mailing of the statutory
1459 notice of presuit arbitration or 20 days after the date the
1460 responding party is personally served with the statutory notice
1461 of presuit arbitration by to serve a written response to the
1462 aggrieved party. The response shall be served by certified mail,
1463 return receipt requested, with an additional copy being sent by
1464 regular first-class mail, to the address shown on the statutory
1465 notice of presuit arbitration. The postmarked date on the
1466 envelope of the response shall constitute the date the response
1467 was served.

1468 (b) The parties shall share the costs of presuit
1469 arbitration equally, including the fee charged by the
1470 arbitrator, if any, unless the parties agree otherwise, and the
1471 arbitrator may require advance payment of his or her reasonable
1472 fees and costs. Each party shall be responsible for all of their
1473 own attorney's fees if a party chooses to be represented by an
1474 attorney for the arbitration proceedings.

1475 (c)1. The party responding to the aggrieved party must
1476 sign the agreement to arbitrate included in the notice of

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1477 presuit arbitration and clearly indicate the name of the
 1478 arbitrator who is acceptable of those arbitrators listed by the
 1479 aggrieved party. The responding party must provide a list of at
 1480 least three dates and times in which the responding party is
 1481 available to participate in the arbitration conference within 90
 1482 days after the date the responding party was served with the
 1483 statutory notice of presuit arbitration.

1484 2. The arbitrator must schedule the arbitration conference
 1485 at a mutually convenient time and place, but if the responding
 1486 party does not provide a list of available dates and times, the
 1487 arbitrator is authorized to schedule an arbitration conference
 1488 without taking the responding party's schedule and convenience
 1489 into consideration. Within 10 days after the designation of the
 1490 arbitrator, the arbitrator shall notify the parties in writing
 1491 of the date, time, and place of the arbitration conference.

1492 3. The arbitration conference must be held on the
 1493 scheduled date and may be rescheduled if approved by the
 1494 arbitrator. However, in no event shall the arbitration hearing
 1495 be later than 90 days after the notice of presuit arbitration
 1496 was first served, unless all parties mutually agree in writing
 1497 otherwise. If the arbitration hearing is not completed within
 1498 the required time limits, the arbitrator may issue an
 1499 arbitration award unless the time for the hearing is extended as
 1500 provided herein. If the responding party fails to respond within
 1501 20 days after the date of statutory notice of presuit
 1502 arbitration, fails to agree to at least one of the arbitrators
 1503 that have been listed by the aggrieved party in the presuit
 1504 notice of arbitration, fails to pay or prepay to the arbitrator

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1505 one-half of the costs involved, or fails to appear and
1506 participate at the scheduled arbitration, the aggrieved party is
1507 authorized to proceed with a request that the arbitrator issue
1508 an arbitration award.

1509 (d)1. The failure of any party to respond to the statutory
1510 notice of presuit arbitration within 20 days, the failure to
1511 either select one of the five arbitrators listed by the
1512 aggrieved party, the failure to provide a listing of dates and
1513 times in which the responding party is available to participate
1514 in the arbitration conference within 90 days after the date of
1515 the responding party being served with the statutory notice of
1516 presuit arbitration, the failure to make payment of fees and
1517 costs as required within the time established by the arbitrator,
1518 or the failure to appear for an arbitration conference without
1519 the approval of the arbitrator, shall entitle the other party to
1520 request the arbitrator to enter an arbitration award including
1521 an award of the reasonable costs and attorney's fees associated
1522 with the arbitration.

1523 2. Persons who fail or refuse to participate in the entire
1524 arbitration process may not recover attorney's fees and costs in
1525 any subsequent litigation proceeding relating to the same
1526 dispute involving the same parties.

1527 (3) (a) In an arbitration proceeding, the arbitrator may
1528 not consider any unsuccessful mediation of the dispute.

1529 (b) An arbitrator in a proceeding initiated pursuant to
1530 the provisions of this part may shorten the time for discovery
1531 or otherwise limit discovery in a manner consistent with the
1532 policy goals of this part to reduce the time and expense of

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1533 litigating homeowners' association disputes initiated pursuant
 1534 to this chapter and promoting an expeditious alternative dispute
 1535 resolution procedure for parties to such actions.

1536 (4) At the request of any party to the arbitration, the
 1537 arbitrator may issue subpoenas for the attendance of witnesses
 1538 and the production of books, records, documents, and other
 1539 evidence, and any party on whose behalf a subpoena is issued may
 1540 apply to the court for orders compelling such attendance and
 1541 production. Subpoenas shall be served and are enforceable in the
 1542 manner provided by the Florida Rules of Civil Procedure.
 1543 Discovery may, at the discretion of the arbitrator, be permitted
 1544 in the manner provided by the Florida Rules of Civil Procedure.

1545 (5) The final arbitration award shall be sent to the
 1546 parties in writing no later than 30 days after the date of the
 1547 arbitration hearing, absent extraordinary circumstances
 1548 necessitating a later filing the reasons for which shall be
 1549 stated in the final award if filed more than 30 days after the
 1550 date of the final session of the arbitration conference. An
 1551 agreed arbitration award is final in those disputes in which the
 1552 parties have mutually agreed to be bound. An arbitration award
 1553 decided by the arbitrator is final unless a lawsuit seeking a
 1554 trial de novo is filed in a court of competent jurisdiction
 1555 within 30 days after the date of the arbitration award. The
 1556 right to file for a trial de novo entitles the parties to file a
 1557 complaint in the appropriate trial court for a judicial
 1558 resolution of the dispute. The prevailing party in an
 1559 arbitration proceeding shall be awarded the costs of the

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1560 arbitration and reasonable attorney's fees in an amount
 1561 determined by the arbitrator.

1562 (6) The party filing a motion for a trial de novo shall be
 1563 assessed the other party's arbitration costs, court costs, and
 1564 other reasonable costs, including attorney's fees, investigation
 1565 expenses, and expenses for expert or other testimony or evidence
 1566 incurred after the arbitration hearing if the judgment upon the
 1567 trial de novo is not more favorable than the final arbitration
 1568 award.

1569 720.508 Rules of procedure.--

1570 (1) Presuit mediation and presuit arbitration proceedings
 1571 under this part must be conducted in accordance with the
 1572 applicable Florida Rules of Civil Procedure and rules governing
 1573 mediations and arbitrations under chapter 44, except this part
 1574 shall be controlling to the extent of any conflict with other
 1575 applicable rules or statutes. The arbitrator can shorten any
 1576 applicable time period and otherwise limit the scope of
 1577 discovery on request of the parties or within the discretion of
 1578 the arbitrator exercised consistent with the purpose and
 1579 objective of reducing the expense and expeditiously concluding
 1580 proceedings under this part.

1581 (2) Presuit mediation proceedings under s. 720.505 are
 1582 privileged and confidential to the same extent as court-ordered
 1583 mediation under chapter 44. An arbitrator or judge may not
 1584 consider any information or evidence arising from the presuit
 1585 mediation proceeding except in a proceeding to impose sanctions
 1586 for failure to attend a presuit mediation session or to enforce
 1587 a mediated settlement agreement.

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1588 (3) Persons who are not parties to the dispute may not
 1589 attend the presuit mediation conference without consent of all
 1590 parties, with the exception of counsel for the parties and a
 1591 corporate representative designated by the association. Presuit
 1592 mediations under this part are not a board meeting for purposes
 1593 of notice and participation set forth in this chapter.

1594 (4) Attendance at a mediation conference by the board of
 1595 directors shall not require notice or participation by nonboard
 1596 members as otherwise required by this chapter for meetings of
 1597 the board.

1598 (5) Settlement agreements resulting from a mediation or
 1599 arbitration proceeding do not have precedential value in
 1600 proceedings involving parties other than those participating in
 1601 the mediation or arbitration.

1602 (6) Arbitration awards by an arbitrator shall have
 1603 precedential value in other proceedings involving the same
 1604 association or with respect to the same parcel owner.

1605 720.509 Mediators and arbitrators; qualifications and
 1606 registration.--A person is authorized to conduct mediation or
 1607 arbitration under this part if he or she has been certified as a
 1608 circuit court civil mediator pursuant to the requirements
 1609 adopted pursuant to s. 44.106, is a member in good standing with
 1610 The Florida Bar, and otherwise meets all other requirements
 1611 imposed by chapter 44.

1612 720.510 Enforcement of mediation agreement or arbitration
 1613 award.--

1614 (1) A mediation settlement may be enforced through the
 1615 county or circuit court, as applicable, and any costs and

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1616 attorney's fees incurred in the enforcement of a settlement
 1617 agreement reached at mediation shall be awarded to the
 1618 prevailing party in any enforcement action.

1619 (2) Any party to an arbitration proceeding may enforce an
 1620 arbitration award by filing a petition in a court of competent
 1621 jurisdiction in which the homeowners' association is located.
 1622 The prevailing party in such proceeding shall be awarded
 1623 reasonable attorney's fees and costs incurred in such
 1624 proceeding.

1625 (3) If a complaint is filed seeking a trial de novo, the
 1626 arbitration award shall be stayed and a petition to enforce the
 1627 award may not be granted. Such award, however, shall be
 1628 admissible in the court proceeding seeking a trial de novo.

1629 Section 13. (1) Notwithstanding any other provisions of
 1630 law, any three or more condominium associations may form a
 1631 self-insurance fund for the purposes of pooling and spreading
 1632 the liabilities of its participant associations arising from the
 1633 deductible provisions of the commercial lines residential
 1634 property insurance policies of the participants applicable to
 1635 hurricane losses, if:

1636 (a) Such fund is a not-for-profit corporation pursuant to
 1637 chapter 617, Florida Statutes.

1638 (b) The fund is implemented through contracts among the
 1639 participating associations, or through contracts between the
 1640 participating associations and another legal entity established
 1641 for and limited to establishing and implementing the program.

1642 (c) The liability of the fund for claims is limited to
 1643 funds available for the payment of claims.

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1644 (d) The contract provided to a participating
1645 association clearly discloses the obligations of the
1646 participants in the fund and the obligations of the fund,
1647 including the limited liability of the fund as defined in
1648 paragraph (c). The contract must specify a reasonable date
1649 for the payment of claims which provides the fund with
1650 adequate time to verify and account for all claims for a
1651 given year so that claims payments can be properly
1652 calculated after consideration of the funds available. Before
1653 execution of the contract, the association or its
1654 representative must be provided a separate disclosure form
1655 specifying the limited liability of the fund and all
1656 administrative fees and estimated expenses, and provide
1657 examples of the manner in which available funds will be
1658 allocated among claimants if claims exceed the funds
1659 available for the payment thereof. Such disclosure must be
1660 signed by a representative of the participating association
1661 before or at the time of execution of the contract.

1662 (e) The contributions charged for participating in the
1663 fund are established by the fund and calculated as a percentage
1664 of the participant's hurricane deductible dollar amount. The
1665 fund may determine the method and timing of payment of
1666 contributions.

1667 (f) All members of the governing board of the fund must
1668 be participating associations in the fund and the governing
1669 body shall have all powers necessary to establish and
1670 administer the fund as authorized by the participants in the
1671 fund. All decisions of the fund shall be based upon a vote of

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1672 the majority of the board. The board may contract with
 1673 individual professionals to administer the fund.

1674 (g) The fund uses and contracts with knowledgeable
 1675 persons or business entities to administer and service the fund,
 1676 including marketing, policy, contract administration, claims
 1677 administration, accounting services, and legal services.

1678 (h) The fund uses a properly licensed general lines
 1679 insurance agent who is a Florida resident for solicitation
 1680 of participation in the fund and does not prevent,
 1681 impede, or restrict any applicant or participant in
 1682 the fund from maintaining or selecting an agent of
 1683 choice. The fund may not favor one or more agents over
 1684 another agent. The organizational documents, the contract
 1685 and notices of disclosure must be filed with the Office of
 1686 Insurance Regulation not less than 45 days prior to
 1687 solicitation by the fund.

1688 (i) The fund is audited by an independent auditor no less
 1689 frequently than every 2 years.

1690 (2) The fund may accumulate funds or periodically
 1691 distribute excess funds to its participants on a pro rata
 1692 basis, reflecting loss experience of individual participants
 1693 and proportionate contributions paid by participants.

1694 (3) Participants in the fund must have a deductible
 1695 no greater than as provided in s. 627.701(8), Florida
 1696 Statutes. Self-insurance funds or pools established
 1697 pursuant to this section are not subject to licensure
 1698 requirements or regulation pursuant to the Florida
 1699 Insurance Code except for part IX of chapter 626,

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1700 Florida Statutes, which may be enforced by the
1701 Office of Insurance Regulation or the Department
1702 of Financial Services, as applicable, and are not
1703 subject to any fees, taxes, or assessments related to
1704 the writing or transaction of insurance in this state.

1705 Section 14. Except as otherwise expressly provided in this
1706 act, this act shall take effect July 1, 2008.