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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/14/2009	.	
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The Committee on Regulated Industries (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.—

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

(d) *Unit owner meetings.*—



12 1. There shall be an annual meeting of the unit owners held
13 at the location provided in the association bylaws and, if the
14 bylaws are silent as to the location, the meeting shall be held
15 within 45 miles of the condominium property. However, such
16 distance requirement does not apply to an association governing
17 a timeshare condominium. Unless the bylaws provide otherwise, a
18 vacancy on the board caused by the expiration of a director's
19 term shall be filled by electing a new board member, and the
20 election shall be by secret ballot; however, if the number of
21 vacancies equals or exceeds the number of candidates, no
22 election is required. The terms of all members of the board
23 shall expire at the annual meeting and such board members may
24 stand for reelection unless otherwise permitted by the bylaws.
25 In the event that the bylaws permit staggered terms of no more
26 than 2 years and upon approval of a majority of the total voting
27 interests, the association board members may serve 2-year
28 staggered terms. If no person is interested in or demonstrates
29 an intention to run for the position of a board member whose
30 term has expired according to the provisions of this
31 subparagraph, such board member whose term has expired shall be
32 automatically reappointed to the board of administration and
33 need not stand for reelection. In a condominium association of
34 more than 10 units, coowners of a unit may not serve as members
35 of the board of directors at the same time. Any unit owner
36 desiring to be a candidate for board membership shall comply
37 with subparagraph 3. A person who has been suspended or removed
38 by the division under this chapter, or who is delinquent in the
39 payment of any fee or assessment as provided in paragraph (n),
40 is not eligible for board membership. A person who has been



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41 convicted of any felony in this state or in a United States
42 District or Territorial Court, or who has been convicted of any
43 offense in another jurisdiction that would be considered a
44 felony if committed in this state, is not eligible for board
45 membership unless such felon's civil rights have been restored
46 for a period of no less than 5 years as of the date on which
47 such person seeks election to the board. The validity of an
48 action by the board is not affected if it is later determined
49 that a member of the board is ineligible for board membership
50 due to having been convicted of a felony.

51 2. The bylaws shall provide the method of calling meetings
52 of unit owners, including annual meetings. Written notice, which
53 notice must include an agenda, shall be mailed, hand delivered,
54 or electronically transmitted to each unit owner at least 14
55 days prior to the annual meeting and shall be posted in a
56 conspicuous place on the condominium property at least 14
57 continuous days preceding the annual meeting. Upon notice to the
58 unit owners, the board shall by duly adopted rule designate a
59 specific location on the condominium property or association
60 property upon which all notices of unit owner meetings shall be
61 posted; however, if there is no condominium property or
62 association property upon which notices can be posted, this
63 requirement does not apply. In lieu of or in addition to the
64 physical posting of notice of any meeting of the unit owners on
65 the condominium property, the association may, by reasonable
66 rule, adopt a procedure for conspicuously posting and repeatedly
67 broadcasting the notice and the agenda on a closed-circuit cable
68 television system serving the condominium association. However,
69 if broadcast notice is used in lieu of a notice posted



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70 physically on the condominium property, the notice and agenda
71 must be broadcast at least four times every broadcast hour of
72 each day that a posted notice is otherwise required under this
73 section. When broadcast notice is provided, the notice and
74 agenda must be broadcast in a manner and for a sufficient
75 continuous length of time so as to allow an average reader to
76 observe the notice and read and comprehend the entire content of
77 the notice and the agenda. Unless a unit owner waives in writing
78 the right to receive notice of the annual meeting, such notice
79 shall be hand delivered, mailed, or electronically transmitted
80 to each unit owner. Notice for meetings and notice for all other
81 purposes shall be mailed to each unit owner at the address last
82 furnished to the association by the unit owner, or hand
83 delivered to each unit owner. However, if a unit is owned by
84 more than one person, the association shall provide notice, for
85 meetings and all other purposes, to that one address which the
86 developer initially identifies for that purpose and thereafter
87 as one or more of the owners of the unit shall so advise the
88 association in writing, or if no address is given or the owners
89 of the unit do not agree, to the address provided on the deed of
90 record. An officer of the association, or the manager or other
91 person providing notice of the association meeting, shall
92 provide an affidavit or United States Postal Service certificate
93 of mailing, to be included in the official records of the
94 association affirming that the notice was mailed or hand
95 delivered, in accordance with this provision.

96 3. The members of the board shall be elected by written
97 ballot or voting machine. Proxies shall in no event be used in
98 electing the board, either in general elections or elections to



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99 fill vacancies caused by recall, resignation, or otherwise,
100 unless otherwise provided in this chapter. Not less than 60 days
101 before a scheduled election, the association shall mail,
102 deliver, or electronically transmit, whether by separate
103 association mailing or included in another association mailing,
104 delivery, or transmission, including regularly published
105 newsletters, to each unit owner entitled to a vote, a first
106 notice of the date of the election along with a certification
107 form provided by the division attesting that he or she has read
108 and understands, to the best of his or her ability, the
109 governing documents of the association and the provisions of
110 this chapter and any applicable rules. Any unit owner or other
111 eligible person desiring to be a candidate for the board must
112 give written notice to the association not less than 40 days
113 before a scheduled election. Together with the written notice
114 and agenda as set forth in subparagraph 2., the association
115 shall mail, deliver, or electronically transmit a second notice
116 of the election to all unit owners entitled to vote therein,
117 together with a ballot which shall list all candidates. Upon
118 request of a candidate, the association shall include an
119 information sheet, no larger than 8 1/2 inches by 11 inches,
120 which must be furnished by the candidate not less than 35 days
121 before the election, along with the signed certification form
122 provided for in this subparagraph, to be included with the
123 mailing, delivery, or transmission of the ballot, with the costs
124 of mailing, delivery, or electronic transmission and copying to
125 be borne by the association. The association is not liable for
126 the contents of the information sheets prepared by the
127 candidates. In order to reduce costs, the association may print



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128 or duplicate the information sheets on both sides of the paper.
129 The division shall by rule establish voting procedures
130 consistent with the provisions contained herein, including rules
131 establishing procedures for giving notice by electronic
132 transmission and rules providing for the secrecy of ballots.
133 Elections shall be decided by a plurality of those ballots cast.
134 There shall be no quorum requirement; however, at least 20
135 percent of the eligible voters must cast a ballot in order to
136 have a valid election of members of the board. No unit owner
137 shall permit any other person to vote his or her ballot, and any
138 such ballots improperly cast shall be deemed invalid, provided
139 any unit owner who violates this provision may be fined by the
140 association in accordance with s. 718.303. A unit owner who
141 needs assistance in casting the ballot for the reasons stated in
142 s. 101.051 may obtain assistance in casting the ballot. The
143 regular election shall occur on the date of the annual meeting.
144 The provisions of this subparagraph shall not apply to timeshare
145 condominium associations. Notwithstanding the provisions of this
146 subparagraph, an election is not required unless more candidates
147 file notices of intent to run or are nominated than board
148 vacancies exist.

149 4. Any approval by unit owners called for by this chapter
150 or the applicable declaration or bylaws, including, but not
151 limited to, the approval requirement in s. 718.111(8), shall be
152 made at a duly noticed meeting of unit owners and shall be
153 subject to all requirements of this chapter or the applicable
154 condominium documents relating to unit owner decisionmaking,
155 except that unit owners may take action by written agreement,
156 without meetings, on matters for which action by written



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157 agreement without meetings is expressly allowed by the
158 applicable bylaws or declaration or any statute that provides
159 for such action.

160 5. Unit owners may waive notice of specific meetings if
161 allowed by the applicable bylaws or declaration or any statute.
162 If authorized by the bylaws, notice of meetings of the board of
163 administration, unit owner meetings, except unit owner meetings
164 called to recall board members under paragraph (j), and
165 committee meetings may be given by electronic transmission to
166 unit owners who consent to receive notice by electronic
167 transmission.

168 6. Unit owners shall have the right to participate in
169 meetings of unit owners with reference to all designated agenda
170 items. However, the association may adopt reasonable rules
171 governing the frequency, duration, and manner of unit owner
172 participation.

173 7. Any unit owner may tape record or videotape a meeting of
174 the unit owners subject to reasonable rules adopted by the
175 division.

176 8. Unless otherwise provided in the bylaws, any vacancy
177 occurring on the board before the expiration of a term may be
178 filled by the affirmative vote of the majority of the remaining
179 directors, even if the remaining directors constitute less than
180 a quorum, or by the sole remaining director. In the alternative,
181 a board may hold an election to fill the vacancy, in which case
182 the election procedures must conform to the requirements of
183 subparagraph 3. unless the association governs 10 units or less
184 and has opted out of the statutory election process, in which
185 case the bylaws of the association control. Unless otherwise



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186 provided in the bylaws, a board member appointed or elected
187 under this section shall fill the vacancy for the unexpired term
188 of the seat being filled. Filling vacancies created by recall is
189 governed by paragraph (j) and rules adopted by the division.

190 9. Within 30 days after being elected to the board of
191 directors, a new director shall certify in writing to the
192 secretary of the association that he or she has read the
193 association's declarations of covenants and restrictions,
194 articles of incorporation, bylaws, and current written policies,
195 that he or she will work to uphold such documents and policies
196 to the best of his or her ability, and that he or she will
197 faithfully discharge his or her fiduciary responsibility to the
198 association's members. Failure to timely file the statement
199 automatically disqualifies the director from service on the
200 association's board of directors. The secretary shall cause the
201 association to retain a director's certification for inspection
202 by the members for 5 years after a director's election. Failure
203 to have such certification on file does not affect the validity
204 of any appropriate action.

205
206 Notwithstanding subparagraphs (b)2. and (d)3., an association of
207 10 or fewer units may, by the affirmative vote of a majority of
208 the total voting interests, provide for different voting and
209 election procedures in its bylaws, which vote may be by a proxy
210 specifically delineating the different voting and election
211 procedures. The different voting and election procedures may
212 provide for elections to be conducted by limited or general
213 proxy.

214 Section 2. Paragraph (b) of subsection (2), paragraphs (a)



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215 and (c) of subsection (5), paragraphs (b), (c), (d), (f), and
216 (g) of subsection (6), and paragraph (d) of subsection (10) of
217 section 720.303, Florida Statutes, are amended, and subsection
218 (12) is added to that section, to read:

219 720.303 Association powers and duties; meetings of board;
220 official records; budgets; financial reporting; association
221 funds; recalls.—

222 (2) BOARD MEETINGS.—

223 (b) Members have the right to attend all meetings of the
224 board and to speak on any matter placed on the agenda by
225 petition of the voting interests for at least 3 minutes. The
226 association may adopt written reasonable rules expanding the
227 right of members to speak and governing the frequency, duration,
228 and other manner of member statements, which rules must be
229 consistent with this paragraph and may include a sign-up sheet
230 for members wishing to speak. Notwithstanding any other law, ~~the~~
231 ~~requirement that board meetings and committee meetings be open~~
232 ~~to the members is inapplicable to meetings between the board or~~
233 ~~a committee and the association's attorney to discuss proposed~~
234 ~~or pending litigation, or with respect to meetings of the board~~
235 held for the purpose of discussing personnel matters are not
236 required to be open to the members.

237 (5) INSPECTION AND COPYING OF RECORDS.—The official records
238 shall be maintained within the state and must be open to
239 inspection and available for photocopying by members or their
240 authorized agents at reasonable times and places within 10
241 business days after receipt of a written request for access.
242 This subsection may be complied with by having a copy of the
243 official records available for inspection or copying in the



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244 community. If the association has a photocopy machine available
245 where the records are maintained, it must provide parcel owners
246 with copies on request during the inspection if the entire
247 request is limited to no more than 25 pages.

248 (a) The failure of an association to provide access to the
249 records within 10 business days after receipt of a written
250 request submitted by certified mail, return receipt requested,
251 creates a rebuttable presumption that the association willfully
252 failed to comply with this subsection.

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



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273 to members and prospective members. Notwithstanding the
274 provisions of this paragraph, the following records are ~~shall~~
275 not ~~be~~ accessible to members or parcel owners:

276 1. Any record protected by the lawyer-client privilege as
277 described in s. 90.502 and any record protected by the work-
278 product privilege, including, but not limited to, any record
279 prepared by an association attorney or prepared at the
280 attorney's express direction which reflects a mental impression,
281 conclusion, litigation strategy, or legal theory of the attorney
282 or the association and which was prepared exclusively for civil
283 or criminal litigation or for adversarial administrative
284 proceedings or which was prepared in anticipation of imminent
285 civil or criminal litigation or imminent adversarial
286 administrative proceedings until the conclusion of the
287 litigation or ~~adversarial~~ administrative proceedings.

288 2. Information obtained by an association in connection
289 with the approval of the lease, sale, or other transfer of a
290 parcel.

291 3. Disciplinary, health, insurance, and personnel records,
292 including payroll records, of the association's employees.

293 4. Medical records of parcel owners or community residents.

294 (6) BUDGETS.—

295 (b) In addition to annual operating expenses, the budget
296 may include reserve accounts for capital expenditures and
297 deferred maintenance for which the association is responsible.
298 If reserve accounts are not established pursuant to paragraph
299 (d), funding of such reserves shall be limited to the extent
300 that the governing documents ~~do not~~ limit increases in
301 assessments, including reserves. If the budget of the



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302 association includes reserve accounts established pursuant to
303 paragraph (d), such reserves shall be determined, maintained,
304 and waived in the manner provided in this subsection. Once an
305 association provides for reserve accounts pursuant to paragraph
306 (d) in the budget, the association shall thereafter determine,
307 maintain, and waive reserves in compliance with this subsection.
308 The provisions of this section do not preclude the termination
309 of a reserve account established pursuant to this paragraph upon
310 approval of a majority of the voting interests of the
311 association. Upon such approval, the terminating reserve account
312 shall be removed from the budget.

313 (c)1. If the budget of the association does not provide for
314 reserve accounts pursuant to paragraph (d) ~~governed by this~~
315 ~~subsection~~ and the association is responsible for the repair and
316 maintenance of capital improvements that may result in a special
317 assessment if reserves are not provided, each financial report
318 for the preceding fiscal year required by subsection (7) shall
319 contain the following statement in conspicuous type: THE BUDGET
320 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR
321 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
322 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
323 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
324 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN~~ A
325 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY
326 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

327 2. If the budget of the association does provide for
328 funding accounts for deferred expenditures, including, but not
329 limited to, funds for capital expenditures and deferred
330 maintenance, but such accounts are not created or established



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331 pursuant to paragraph (d), each financial report for the
332 preceding fiscal year required under subsection (7) must also
333 contain the following statement in conspicuous type: THE BUDGET
334 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED
335 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
336 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
337 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
338 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),
339 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
340 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
341 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

342 (d) An association shall be deemed to have provided for
343 reserve accounts if ~~when~~ reserve accounts have been initially
344 established by the developer or if ~~when~~ the membership of the
345 association affirmatively elects to provide for reserves. If
346 reserve accounts are not initially provided for by the
347 developer, the membership of the association may elect to do so
348 upon the affirmative approval of ~~not less than~~ a majority of the
349 total voting interests of the association. Such approval may be
350 obtained ~~attained~~ by vote of the members at a duly called
351 meeting of the membership or by the ~~upon a~~ written consent of
352 ~~executed by not less than~~ a majority of the total voting
353 interests in the community. The approval action of the
354 membership shall state that reserve accounts shall be provided
355 for in the budget and shall designate the components for which
356 the reserve accounts are to be established. Upon approval by the
357 membership, the board of directors shall include ~~provide for~~ the
358 required reserve accounts ~~for inclusion~~ in the budget in the
359 next fiscal year following the approval and ~~in~~ each year



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360 thereafter. Once established as provided in this subsection, the
361 reserve accounts shall be funded or maintained or shall have
362 their funding waived in the manner provided in paragraph (f).

363 (f) After one or more ~~Once a reserve account or~~ reserve
364 accounts are established, the membership of the association,
365 upon a majority vote at a meeting at which a quorum is present,
366 may provide for no reserves or less reserves than required by
367 this section. If a meeting of the unit owners has been called to
368 determine whether to waive or reduce the funding of reserves and
369 no such result is achieved or a quorum is not present, the
370 reserves as included in the budget shall go into effect. After
371 the turnover, the developer may vote its voting interest to
372 waive or reduce the funding of reserves. Any vote taken pursuant
373 to this subsection to waive or reduce reserves is ~~shall be~~
374 applicable only to one budget year.

375 (g) Funding formulas for reserves authorized by this
376 section shall be based on either a separate analysis of each of
377 the required assets or a pooled analysis of two or more of the
378 required assets.

379 1. If the association maintains separate reserve accounts
380 for each of the required assets, the amount of the contribution
381 to each reserve account is ~~shall be~~ the sum of the following two
382 calculations:

383 a. The total amount necessary, if any, to bring a negative
384 component balance to zero.

385 b. The total estimated deferred maintenance expense or
386 estimated replacement cost of the reserve component less the
387 estimated balance of the reserve component as of the beginning
388 of the period ~~for which~~ the budget will be in effect. The



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389 remainder, if greater than zero, shall be divided by the
390 estimated remaining useful life of the component.

391
392 The formula may be adjusted each year for changes in
393 estimates and deferred maintenance performed during the year and
394 may include factors such as inflation and earnings on invested
395 funds.

396 2. If the association maintains a pooled account of two or
397 more of the required reserve assets, the amount of the
398 contribution to the pooled reserve account as disclosed on the
399 proposed budget may ~~shall~~ not be less than that required to
400 ensure that the balance on hand at the beginning of the period
401 ~~for which~~ the budget will go into effect plus the projected
402 annual cash inflows over the remaining estimated useful life of
403 all of the assets that make up the reserve pool are equal to or
404 greater than the projected annual cash outflows over the
405 remaining estimated useful lives of all ~~of~~ the assets that make
406 up the reserve pool, based on the current reserve analysis. The
407 projected annual cash inflows may include estimated earnings
408 from investment of principal and accounts receivable minus the
409 allowance for doubtful accounts. The reserve funding formula may
410 ~~shall~~ not include any type of balloon payments.

411 (10) RECALL OF DIRECTORS.—

412 (d) If the board determines not to certify the written
413 agreement or written ballots to recall a director or directors
414 of the board or does not certify the recall by a vote at a
415 meeting, the board shall, within 5 full business days after the
416 meeting, initiate ~~file with the department a petition for~~
417 binding arbitration pursuant to the applicable procedures in s.



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418 720.507 ~~ss. 718.112(2)(j) and 718.1255~~ and the rules adopted
419 ~~thereunder~~. For the purposes of this section, the members who
420 voted at the meeting or who executed the agreement in writing
421 shall constitute one party under the petition for arbitration.
422 If the arbitrator certifies the recall as to any director or
423 directors of the board, the recall will be effective upon
424 mailing of the final order of arbitration to the association.
425 The director or directors so recalled shall deliver to the board
426 any and all records of the association in their possession
427 within 5 full business days after the effective date of the
428 recall.

429 (12) COMPENSATION PROHIBITED.—A director, officer, or
430 committee member of the association may not receive directly or
431 indirectly any salary or compensation from the association for
432 the performance of duties as a director, officer, or committee
433 member and may not in any other way benefit financially from
434 service to the association. This subsection does not preclude:

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

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

445 (c) Any recovery of insurance proceeds derived from a
446 policy of insurance maintained by the association for the



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447 benefit of its members.

448 (d) Any fee or compensation authorized in the governing
449 documents.

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

453 Section 3. Subsection (2) of section 720.305, Florida
454 Statutes, is amended to read:

455 720.305 Obligations of members; remedies at law or in
456 equity; levy of fines and suspension of use rights.—

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

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



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

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

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

489 Section 4. Subsections (8) and (9) of section 720.306,
490 Florida Statutes, are amended to read:

491 720.306 Meetings of members; voting and election
492 procedures; amendments.—

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

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



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

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

524 (9) ELECTIONS; BOARD MEMBER CERTIFICATION.—

525 (a) Elections of directors must be conducted in accordance
526 with the procedures set forth in the governing documents of the
527 association. All members of the association ~~are~~ shall be
528 eligible to serve on the board of directors, and a member may
529 nominate himself or herself as a candidate for the board at a
530 meeting where the election is to be held or, if the election
531 process allows voting by absentee ballot, in advance of the
532 balloting. Except as otherwise provided in the governing
533 documents, boards of directors must be elected by a plurality of



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534 the votes cast by eligible voters. Any election dispute between
535 a member and an association must be submitted to mandatory
536 binding arbitration with the division. Such proceedings shall be
537 conducted in the manner provided by s. 720.507 ~~s. 718.1255~~ and
538 ~~the procedural rules adopted by the division.~~

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

553 Section 5. Paragraph (a) of subsection (1) of section
554 720.401, Florida Statutes, is amended to read:

555 720.401 Prospective purchasers subject to association
556 membership requirement; disclosure required; covenants;
557 assessments; contract cancellation.-

558 (1) (a) A prospective parcel owner in a community must be
559 presented a disclosure summary before executing the contract for
560 sale. The disclosure summary must be in a form substantially
561 similar to the following form:
562



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DISCLOSURE SUMMARY
FOR
(NAME OF COMMUNITY)

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

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

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

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

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

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

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



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592 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE
593 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
594 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
595 DOCUMENTS BEFORE PURCHASING PROPERTY.

596 9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND
597 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE
598 PROPERTY IS LOCATED, OR, IF ARE NOT RECORDED, ~~AND~~ CAN BE
599 OBTAINED FROM THE DEVELOPER.

600 10. THERE MAY BE AN OBLIGATION TO PAY ASSESSMENTS (TAXES OR
601 FEES) TO A RESIDENTIAL COMMUNITY DEVELOPMENT DISTRICT FOR THE
602 PURPOSE OF RETIRING BOND OBLIGATIONS USED TO CONSTRUCT
603 INFRASTRUCTURE OR OTHER IMPROVEMENTS.

604 11. YOU ARE JOINTLY AND SEVERALLY LIABLE WITH THE PREVIOUS
605 OWNER OF YOUR PROPERTY FOR ALL UNPAID ASSESSMENTS THAT CAME DUE
606 UP TO THE TIME OF TRANSFER OF TITLE.

607
608 DATE: PURCHASER:

609 PURCHASER:

610
611 The disclosure must be supplied by the developer, or by the
612 parcel owner if the sale is by an owner that is not the
613 developer. Any contract or agreement for sale shall refer to and
614 incorporate the disclosure summary and shall include, in
615 prominent language, a statement that the potential buyer should
616 not execute the contract or agreement until he or she has ~~they~~
617 ~~have~~ received and read the disclosure summary required by this
618 section.

619 Section 6. Paragraph (d) of subsection (1) of section
620 34.01, Florida Statutes, is amended to read:



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621 34.01 Jurisdiction of county court.-
622 (1) County courts shall have original jurisdiction:
623 (d) Of disputes occurring in the homeowners' associations
624 as described in part IV of chapter 720 s. 720.311(2)(a), which
625 shall be concurrent with jurisdiction of the circuit courts.
626 Section 7. Subsection (2) of section 720.302, Florida
627 Statutes, is amended to read:
628 720.302 Purposes, scope, and application.-
629 (2) The Legislature recognizes that it is not in the best
630 interest of homeowners' associations or the individual
631 association members thereof to create or impose a bureau or
632 other agency of state government to regulate the affairs of
633 homeowners' associations. However, in accordance with part IV of
634 this chapter s. 720.311, the Legislature finds that homeowners'
635 associations and their individual members will benefit from an
636 expedited alternative process for resolution of ~~election and~~
637 ~~recall disputes and presuit mediation of other~~ disputes
638 involving covenant enforcement in homeowner's associations and
639 deed-restricted communities using the procedures provided in
640 part IV of ~~and authorizes the department to hear, administer,~~
641 ~~and determine these disputes as more fully set forth in this~~
642 chapter. Further, the Legislature recognizes that certain
643 contract rights have been created for the benefit of homeowners'
644 associations and members thereof as well as deed-restricted
645 communities before the effective date of this act and that part
646 IV of this chapter is ss. 720.301-720.407 are not intended to
647 impair such contract rights, including, but not limited to, the
648 rights of the developer to complete the community as initially
649 contemplated.



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650 Section 8. Section 720.311, Florida Statutes, is repealed.

651 Section 9. Part IV of chapter 720, Florida Statutes, to be
652 entitled "Dispute Resolution," consisting of sections 720.501,
653 720.502, 720.503, 720.504, 720.505, 720.506, 720.507, 720.508,
654 720.509, and 720.510, is created to read:

655 720.501 Short title.—This part may be cited as the "Home
656 Court Advantage Dispute Resolution Act."

657 720.502 Legislative findings.—The Legislature finds that
658 alternative dispute resolution has made progress in reducing
659 court dockets and trials and in offering a more efficient, cost-
660 effective option to litigation.

661 720.503 Applicability of this part.—

662 (1) Unless otherwise provided in this part, before a
663 dispute described in this part between a homeowners' association
664 and a parcel owner or owners, or a dispute between parcel owners
665 within the same homeowners' association, may be filed in court,
666 the dispute is subject to presuit mediation pursuant to s.
667 720.505 or presuit arbitration pursuant to s. 720.507, at the
668 option of the aggrieved party who initiates the first formal
669 action of alternative dispute resolution under this part. The
670 parties may mutually agree to participate in both presuit
671 mediation and presuit arbitration before the suit is filed by
672 either party.

673 (2) Unless otherwise provided in this part, the mediation
674 and arbitration provisions of this part are limited to disputes
675 between an association and a parcel owner or owners or between
676 parcel owners regarding the use of or changes to the parcel or
677 the common areas under the governing documents and other
678 disputes involving violations of the recorded declaration of



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679 covenants or other governing documents, disputes arising
680 concerning the enforcement of the governing documents or any
681 amendments thereto, and disputes involving access to the
682 official records of the association. A dispute concerning a
683 title to any parcel or common area, the interpretation or
684 enforcement of any warranty, the levy of a fee or assessment,
685 the collection of an assessment levied against a party, the
686 eviction or other removal of a tenant from a parcel, alleged
687 breaches of fiduciary duty by one or more directors, or any
688 action to collect mortgage indebtedness or to foreclose a
689 mortgage is not subject to the provisions of this part.

690 (3) All disputes arising after the effective date of this
691 part involving the election of the board of directors for an
692 association or the recall of any member of the board or officer
693 of the association are not eligible for presuit mediation under
694 s. 720.505, but are subject to binding presuit arbitration under
695 s. 720.507.

696 (4) In any dispute subject to presuit mediation or presuit
697 arbitration under this part for which emergency relief is
698 required, a motion for temporary injunctive relief may be filed
699 with the court without first complying with the presuit
700 mediation or presuit arbitration requirements of this part.
701 After any issues regarding emergency or temporary relief are
702 resolved, the court may refer the parties to a mediation program
703 administered by the courts or require mediation or arbitration
704 under this part.

705 (5) The mailing of a statutory notice of presuit mediation
706 or presuit arbitration as provided in this part shall toll the
707 applicable statute of limitations during the pendency of the



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708 mediation or arbitration and for a period of 30 days following
709 the conclusion of either proceeding. The 30-day period starts
710 upon the filing of the mediator's notice of impasse or the
711 arbitrator's written arbitration award. If the parties mutually
712 agree to participate in both presuit mediation and presuit
713 arbitration under this part, the tolling of the applicable
714 statute of limitations for each such alternative dispute
715 resolution proceeding shall be consecutive.

716 720.504 Notice of dispute.—Before giving the statutory
717 notice to proceed under presuit mediation or presuit arbitration
718 under this part, the aggrieved association or parcel owner shall
719 first provide written notice of the dispute to the responding
720 party in the manner provided by this section.

721 (1) The notice of dispute shall be delivered to the
722 responding party by certified mail, return receipt requested, or
723 shall be hand delivered, and the person making delivery shall
724 file with the notice of mediation either the proof of receipt of
725 mailing or an affidavit stating the date and time of the
726 delivery of the notice of dispute. If the notice is delivered by
727 certified mail, return receipt requested, and the responding
728 party fails or refuses to accept delivery, notice shall be
729 considered properly delivered for purposes of this section on
730 the date of the first attempted delivery.

731 (2) The notice of dispute must state with specificity the
732 nature of the dispute, including the date, time, and location of
733 each event that is the subject of the dispute and the action
734 requested to resolve the dispute. The notice must also include
735 the text of any provision in the governing documents, including
736 the rules and regulations, of the association which form the



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737 basis of the dispute.

738 (3) Unless the parties otherwise agree in writing to a
739 longer time period, the party receiving the notice of dispute
740 has 10 days following the date of receipt of notice to resolve
741 the dispute. If the alleged dispute has not been resolved within
742 the 10-day period, the aggrieved party may proceed under this
743 part at any time thereafter within the applicable statute of
744 limitations.

745 (4) A copy of the notice and the text of the provision in
746 the governing documents, or the rules and regulations, of the
747 association which are the basis of the dispute, along with proof
748 of service of the notice of dispute and a copy of any written
749 responses received from the responding party, shall be included
750 as an exhibit to any demand for mediation or arbitration under
751 this part.

752 720.505 Presuit mediation.-

753 (1) Disputes between an association and a parcel owner or
754 owners and between parcel owners must be submitted to presuit
755 mediation before the dispute may be filed in court; or, at the
756 election of the party initiating the presuit procedures, such
757 dispute may be submitted to presuit arbitration pursuant to s.
758 720.507 before the dispute may be filed in court. An aggrieved
759 party who elects to use the presuit mediation procedure under
760 this section shall serve on the responding party a written
761 notice of presuit mediation in substantially the following form:

762
763 STATUTORY NOTICE OF PRESUIT MEDIATION

764
765 THE ALLEGED AGGRIEVED PARTY, _____, HEREBY



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766 DEMANDS THAT _____, AS THE RESPONDING PARTY,
767 ENGAGE IN MANDATORY PRESUIT MEDIATION IN CONNECTION WITH THE
768 FOLLOWING DISPUTES WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT
769 ARE SUBJECT TO PRESUIT MEDIATION:

770
771 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION WHICH
772 DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO BE MEDIATED AND
773 THE AUTHORITY SUPPORTING A FINDING OF A VIOLATION AS TO EACH
774 DISPUTE, INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE
775 PROVISIONS OF THE GOVERNING DOCUMENTS OF THE ASSOCIATION
776 BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE PARTIES, AND A COPY
777 OF THE NOTICE YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN
778 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

779
780 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES, THIS
781 DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT MEDIATION IS
782 REQUIRED BEFORE A LAWSUIT CAN BE FILED CONCERNING THE DISPUTE.
783 PURSUANT TO FLORIDA STATUTES, THE PARTIES ARE REQUIRED TO ENGAGE
784 IN PRESUIT MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN
785 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT ACTION,
786 AND THE AGGRIEVED PARTY DEMANDS THAT YOU PARTICIPATE IN THIS
787 PROCESS. UNLESS YOU RESPOND TO THIS NOTICE BY FILING WITH THE
788 AGGRIEVED PARTY A NOTICE OF OPTING OUT AND DEMAND FOR
789 ARBITRATION UNDER SECTION 720.506, FLORIDA STATUTES, YOUR
790 FAILURE TO PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A
791 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT FURTHER NOTICE.

792
793 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED NEGOTIATION
794 PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-PARTY MEDIATOR MEETS



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795 WITH BOTH PARTIES AND ASSISTS THEM IN EXPLORING POSSIBLE
796 OPPORTUNITIES FOR RESOLVING PART OR ALL OF THE DISPUTE. BY
797 AGREEING TO PARTICIPATE IN PRESUIT MEDIATION, YOU ARE NOT BOUND
798 IN ANY WAY TO CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR
799 HAS NO AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO
800 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A FACILITATOR
801 TO ENSURE THAT EACH PARTY UNDERSTANDS THE POSITION OF THE OTHER
802 PARTY AND THAT ALL OPTIONS FOR REASONABLE SETTLEMENT ARE FULLY
803 EXPLORED.

804
805 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO WRITING
806 AND BECOME A BINDING AND ENFORCEABLE CONTRACT BETWEEN THE
807 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS FASHION
808 AVOIDS THE NEED TO LITIGATE THESE ISSUES IN COURT. THE FAILURE
809 TO REACH AN AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE
810 IN THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN IMPASSE IN
811 THE MEDIATION, AFTER WHICH THE AGGRIEVED PARTY MAY PROCEED TO
812 FILE A LAWSUIT ON ALL OUTSTANDING, UNSETTLED DISPUTES. IF YOU
813 HAVE FAILED OR REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION
814 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES IF
815 YOU PREVAIL IN A SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME
816 DISPUTE.

817
818 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF ELIGIBLE,
819 QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED MEDIATORS WHO THE
820 AGGRIEVED PARTY BELIEVES TO BE NEUTRAL AND QUALIFIED TO MEDIATE
821 THE DISPUTE. YOU HAVE THE RIGHT TO SELECT ANY ONE OF THESE
822 MEDIATORS. THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR
823 MORE OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE MEDIATOR



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824 CANNOT ACT AS A NEUTRAL AND IMPARTIAL FACILITATOR. THE NAMES OF
825 THE MEDIATORS THAT THE AGGRIEVED PARTY HEREBY SUBMITS TO YOU,
826 AND FROM WHOM YOU MAY CHOOSE ONE; THEIR CURRENT ADDRESSES; THEIR
827 TELEPHONE NUMBERS; AND THEIR HOURLY RATES ARE AS FOLLOWS:

828

829 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND HOURLY
830 RATES OF THE MEDIATORS. OTHER PERTINENT INFORMATION ABOUT THE
831 BACKGROUND OF THE MEDIATORS MAY BE INCLUDED AS AN ATTACHMENT.)

832

833 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO CONFIRM
834 THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL BE NEUTRAL AND WILL
835 NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY. UNLESS OTHERWISE
836 AGREED TO BY THE PARTIES, PART IV OF CHAPTER 720, FLORIDA
837 STATUTES, REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT
838 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE MEDIATOR. AN
839 AVERAGE MEDIATION MAY REQUIRE 3 TO 4 HOURS OF THE MEDIATOR'S
840 TIME, INCLUDING SOME PREPARATION TIME, AND THE PARTIES WOULD
841 NEED TO EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE
842 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF THEY CHOOSE
843 TO EMPLOY AN ATTORNEY IN CONNECTION WITH THE MEDIATION. HOWEVER,
844 USE OF AN ATTORNEY IS NOT REQUIRED AND IS AT THE OPTION OF EACH
845 PARTY. THE MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
846 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY HEREBY AGREES
847 TO PAY OR PREPAY ONE-HALF OF THE SELECTED MEDIATOR'S ESTIMATED
848 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER REASONABLE ADVANCE
849 DEPOSITS AS THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE
850 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE RETURNED
851 TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR SHARE OF THE
852 MEDIATOR FEES INCURRED.



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TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO TRY TO
RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER LEGAL ACTION,
PLEASE SIGN BELOW AND CLEARLY INDICATE WHICH MEDIATOR IS
ACCEPTABLE TO YOU FROM THE FIVE MEDIATORS LISTED BY THE
AGGRIEVED PARTY ABOVE.

YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE OF
PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE YOU MUST
PROVIDE A LISTING OF AT LEAST THREE DATES AND TIMES IN WHICH YOU
ARE AVAILABLE TO PARTICIPATE IN THE MEDIATION WHICH ARE WITHIN
90 DAYS AFTER THE POSTMARKED DATE OF THE MAILING OF THIS NOTICE
OF PRESUIT MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE
SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY WILL THEN
ASK THE MEDIATOR TO SCHEDULE A MUTUALLY CONVENIENT TIME AND
PLACE FOR THE MEDIATION CONFERENCE TO BE HELD. IF YOU DO NOT
PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE MEDIATOR IS
AUTHORIZED TO SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING
YOUR SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO EVENT
WILL THE MEDIATION CONFERENCE BE LATER THAN 90 DAYS AFTER THE
NOTICE OF PRESUIT MEDIATION WAS FIRST SERVED, UNLESS ALL PARTIES
MUTUALLY AGREE OTHERWISE. IN THE EVENT THAT YOU FAIL TO RESPOND
WITHIN 20 DAYS AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE
THE MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE AVAILABLE FOR
THE MEDIATION CONFERENCE, FAIL TO AGREE TO AT LEAST ONE OF THE
MEDIATORS THAT THE AGGRIEVED PARTY HAS LISTED, FAIL TO PAY OR
PREPAY TO THE MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL
TO APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE
AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE FILING OF



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882 A LAWSUIT AGAINST YOU WITHOUT FURTHER NOTICE. IN ANY SUBSEQUENT
883 COURT ACTION, THE AGGRIEVED PARTY MAY SEEK AN AWARD OF
884 REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN ATTEMPTING TO
885 OBTAIN MEDIATION.

886
887 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY LAW,
888 YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-CLASS MAIL,
889 RETURN RECEIPT REQUESTED, TO THE AGGRIEVED PARTY LISTED ABOVE AT
890 THE ADDRESS SHOWN ON THIS NOTICE AND POSTMARKED NO MORE THAN 20
891 DAYS AFTER THE DATE OF THE POSTMARKED DATE FOR THIS NOTICE OR
892 WITHIN 20 DAYS AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A
893 COPY OF THIS NOTICE.

894
895 _____
896 SIGNATURE OF AGGRIEVED PARTY

897
898 _____
899 PRINTED NAME OF AGGRIEVED PARTY

900
901 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR
902 ACCEPTANCE OF THE AGREEMENT TO MEDIATE.

903
904 AGREEMENT TO MEDIATE

905
906 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN PRESUIT
907 MEDIATION AND AGREES TO ATTEND A MEDIATION CONDUCTED BY THE
908 FOLLOWING MEDIATOR(S) LISTED BELOW AS ACCEPTABLE TO MEDIATE THIS
909 DISPUTE:

910



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911 (LIST ONE ACCEPTABLE MEDIATOR FROM THOSE LISTED BY THE
912 AGGRIEVED PARTY.)

913
914 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE CAN ATTEND
915 AND PARTICIPATE IN THE PRESUIT MEDIATION AT THE FOLLOWING DATES
916 AND TIMES:

917
918 (LIST AT LEAST THREE AVAILABLE DATES AND TIMES WITHIN THE
919 90-DAY TIME LIMIT DESCRIBED ABOVE.)

920
921 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
922 MEDIATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS AS THE
923 MEDIATOR MAY REQUIRE FOR THIS PURPOSE.

924
925 _____
926 SIGNATURE OF RESPONDING PARTY #1

927 _____
928 TELEPHONE CONTACT INFORMATION

929
930 _____
931 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF RESPONDING
932 PARTY #2, IF APPLICABLE. IF THE PROPERTY IS OWNED BY MORE THAN
933 ONE PERSON, ALL OWNERS MUST SIGN, OR A PERSON MAY SIGN WHO IS
934 ACTING UNDER AUTHORITY OF A VALID POWER OF ATTORNEY GRANTED BY
935 AN OWNER.

936
937 (2) (a) Service of the notice of presuit mediation shall be
938 effected either by personal service, as provided in chapter 48,
939 or by certified mail, return receipt requested, in a letter in



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940 substantial conformity with the form provided in subsection (1),
941 with an additional copy being sent by regular first-class mail
942 to the address of the responding party as it last appears on the
943 books and records of the association or, if not available, then
944 as it last appears in the official records of the county
945 property appraiser where the parcel in dispute is located. The
946 responding party has either 20 days after the postmarked date of
947 the mailing of the statutory notice or 20 days after the date
948 the responding party is served with a copy of the notice to
949 serve a written response to the aggrieved party. The response
950 shall be served by certified mail, return receipt requested,
951 with an additional copy being sent by regular first-class mail
952 to the address shown on the statutory notice. The date of the
953 postmark on the envelope for the response constitutes the date
954 that the response is served. Once the parties have agreed on a
955 mediator, the mediator may schedule or reschedule the mediation
956 for a date and time mutually convenient to the parties within 90
957 days after the date of service of the statutory notice. After
958 the 90-day period, the mediator may reschedule the mediation
959 only upon the mutual written agreement of all the parties.

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

966 (c) The party responding to the aggrieved party may provide
967 a notice of opting out under s. 720.506 and demand arbitration
968 or may sign the agreement to mediate included in the notice of



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969 presuit mediation. A responding party signing the agreement to
970 mediate must clearly indicate the name of the mediator who is
971 acceptable from the five names provided by the aggrieved party
972 and must provide a list of dates and times in which the
973 responding party is available to participate in the mediation
974 within 90 days after the date the responding party was served,
975 either by a process server or by certified mail, with the
976 statutory notice of presuit mediation.

977 (d) The mediator who has been selected and agreed to
978 mediate must schedule the mediation conference at a mutually
979 convenient time and place within that 90-day period; however, if
980 the responding party does not provide a list of available dates
981 and times, the mediator is authorized to schedule a mediation
982 conference without taking the responding party's schedule and
983 convenience into consideration. Within 10 days after the
984 designation of the mediator, the mediator shall coordinate with
985 the parties and notify the parties in writing of the date, time,
986 and place of the mediation conference.

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

996 (f) If the responding party fails to respond within 30 days
997 after the date of service of the statutory notice of presuit



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998 mediation, fails to agree to at least one of the mediators
999 listed by the aggrieved party in the notice, fails to pay or
1000 prepay to the mediator one-half of the costs of the mediator, or
1001 fails to appear and participate at the scheduled mediation, the
1002 aggrieved party is authorized to proceed with the filing of a
1003 lawsuit without further notice.

1004 (g)1. The failure of any party to respond to the statutory
1005 notice of presuit mediation within 20 days, the failure to agree
1006 upon a mediator, the failure to provide a listing of dates and
1007 times in which the responding party is available to participate
1008 in the mediation within 90 days after the date the responding
1009 party was served with the statutory notice of presuit mediation,
1010 the failure to make payment of fees and costs within the time
1011 established by the mediator, or the failure to appear for a
1012 scheduled mediation session without the approval of the
1013 mediator, constitutes in each instance a failure or refusal to
1014 participate in the mediation process and operates as an impasse
1015 in the presuit mediation by such party, entitling the other
1016 party to file a lawsuit in court and to seek an award of the
1017 costs and attorney's fees associated with the mediation.

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



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1027 own costs and attorney's fees and one-half of any mediator fees
1028 and filing fees, and either party may file a lawsuit in court
1029 regarding the dispute.

1030 720.506 Opt out of presuit mediation.—A party served with a
1031 notice of presuit mediation under s. 720.505 may opt out of
1032 presuit mediation and demand that the dispute proceed under
1033 nonbinding arbitration as follows:

1034 (1) In lieu of a response to the notice of presuit
1035 mediation as required under s. 720.505, the responding party may
1036 serve upon the aggrieved party, in the same manner as the
1037 response to a notice for presuit mediation under s. 720.505, a
1038 notice of opting out of mediation and demand that the dispute
1039 instead proceed to presuit arbitration under s. 720.507.

1040 (2) The aggrieved party shall be relieved from having to
1041 satisfy the requirements of s. 720.504 as a condition precedent
1042 to filing the demand for presuit arbitration.

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

1048 720.507 Presuit arbitration.—

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



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1056
1057 STATUTORY NOTICE OF PRESUIT ARBITRATION

1058
1059 THE ALLEGED AGGRIEVED PARTY, _____, HEREBY
1060 DEMANDS THAT _____, AS THE RESPONDING PARTY,
1061 ENGAGE IN MANDATORY PRESUIT ARBITRATION IN CONNECTION WITH THE
1062 FOLLOWING DISPUTES WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT
1063 ARE SUBJECT TO PRESUIT ARBITRATION:

1064
1065 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE
1066 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A VIOLATION
1067 AS TO EACH DISPUTE, INCLUDING, BUT NOT LIMITED TO, ALL
1068 APPLICABLE PROVISIONS OF THE GOVERNING DOCUMENTS BELIEVED TO
1069 APPLY TO THE DISPUTE BETWEEN THE PARTIES.)

1070
1071 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES, THIS
1072 DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT ARBITRATION IS
1073 REQUIRED BEFORE A LAWSUIT CAN BE FILED CONCERNING THE DISPUTE.
1074 PURSUANT TO FLORIDA STATUTES, THE PARTIES ARE REQUIRED TO ENGAGE
1075 IN PRESUIT ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN
1076 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT ACTION,
1077 AND THE AGGRIEVED PARTY DEMANDS THAT YOU PARTICIPATE IN THIS
1078 PROCESS. IF YOU FAIL TO PARTICIPATE IN THE ARBITRATION PROCESS,
1079 A LAWSUIT MAY BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER
1080 WARNING.

1081
1082 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD PERSON
1083 WHO CONSIDERS THE LAW AND FACTS PRESENTED BY THE PARTIES AND
1084 RENDERS A WRITTEN DECISION CALLED AN "ARBITRATION AWARD."



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1085 PURSUANT TO SECTION 720.507, FLORIDA STATUTES, THE ARBITRATION
1086 AWARD SHALL BE FINAL UNLESS A LAWSUIT IS FILED IN A COURT OF
1087 COMPETENT JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE
1088 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION IS/ARE LOCATED
1089 WITHIN 30 DAYS AFTER THE DATE OF THE ARBITRATION AWARD.

1090
1091 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE ARBITRATION
1092 AWARD, IT SHALL BE REDUCED TO WRITING AND BECOME A BINDING AND
1093 ENFORCEABLE CONTRACT OF THE PARTIES. A RESOLUTION OF ONE OR MORE
1094 DISPUTES IN THIS FASHION AVOIDS THE NEED TO ARBITRATE THESE
1095 ISSUES OR TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE
1096 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE PARTIES UNDER
1097 SECTION 720.505, FLORIDA STATUTES. THE FAILURE OF A PARTY TO
1098 PARTICIPATE IN THE ARBITRATION PROCESS MAY RESULT IN THE
1099 ARBITRATOR ISSUING AN ARBITRATION AWARD BY DEFAULT IN THE
1100 ARBITRATION. IF YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE
1101 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER
1102 ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A SUBSEQUENT COURT
1103 PROCEEDING INVOLVING THE SAME DISPUTE BETWEEN THE SAME PARTIES.

1104
1105 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE ARBITRATORS
1106 WHO THE AGGRIEVED PARTY BELIEVES TO BE NEUTRAL AND QUALIFIED TO
1107 ARBITRATE THE DISPUTE. YOU HAVE THE RIGHT TO SELECT ANY ONE OF
1108 THE ARBITRATORS. THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH
1109 ONE OR MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE
1110 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL ARBITRATOR. ANY
1111 ARBITRATOR WHO CANNOT ACT IN THIS CAPACITY IS REQUIRED ETHICALLY
1112 TO DECLINE TO ACCEPT ENGAGEMENT. THE NAMES OF THE FIVE
1113 ARBITRATORS THAT THE AGGRIEVED PARTY HAS CHOSEN, AND FROM WHICH



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1114 YOU MAY SELECT ONE; THEIR CURRENT ADDRESSES; THEIR TELEPHONE
1115 NUMBERS; AND THEIR HOURLY RATES, ARE AS FOLLOWS:

1116
1117 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND HOURLY
1118 RATES OF AT LEAST FIVE ARBITRATORS.

1119
1120 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO CONFIRM
1121 THAT THE LISTED ARBITRATORS WILL BE NEUTRAL AND WILL NOT SHOW
1122 ANY FAVORITISM TOWARD EITHER PARTY.

1123
1124 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF
1125 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE PARTIES SHARE
1126 THE COSTS OF PRESUIT ARBITRATION EQUALLY, INCLUDING THE FEE
1127 CHARGED BY THE ARBITRATOR. THE PARTIES ARE RESPONSIBLE FOR THEIR
1128 OWN ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY IN
1129 CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN ATTORNEY TO
1130 REPRESENT YOU FOR THE ARBITRATION IS NOT REQUIRED. THE
1131 ARBITRATOR SELECTED MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
1132 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY HEREBY AGREES
1133 TO PAY OR PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED
1134 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER REASONABLE ADVANCE
1135 DEPOSITS AS THE ARBITRATOR WHO IS SELECTED REQUIRES FOR THIS
1136 PURPOSE. ANY FUNDS DEPOSITED WILL BE RETURNED TO YOU IF THESE
1137 FUNDS ARE IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.

1138
1139 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND CLEARLY
1140 INDICATE THE NAME OF THE ARBITRATOR WHO IS ACCEPTABLE TO YOU
1141 FROM THE NAMES LISTED BY THE AGGRIEVED PARTY.

1142



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1143 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE WITHIN
1144 20 DAYS AFTER THE DATE THAT THE NOTICE OF PRESUIT ARBITRATION
1145 WAS EITHER PERSONALLY SERVED ON YOU OR 20 DAYS AFTER THE
1146 POSTMARKED DATE THAT THIS NOTICE OF PRESUIT ARBITRATION WAS SENT
1147 TO YOU BY CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT
1148 LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE TO
1149 PARTICIPATE IN THE ARBITRATION WHICH ARE WITHIN 90 DAYS AFTER
1150 THE DATE YOU WERE PERSONALLY SERVED OR WITHIN 90 DAYS AFTER THE
1151 POSTMARKED DATE OF THE CERTIFIED MAILING OF THIS STATUTORY
1152 NOTICE OF PRESUIT ARBITRATION. A COPY OF THIS NOTICE AND YOUR
1153 RESPONSE WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE
1154 ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE A MUTUALLY
1155 CONVENIENT TIME AND PLACE FOR THE ARBITRATION CONFERENCE TO BE
1156 HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE DATES AND TIMES,
1157 THE ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION
1158 CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND CONVENIENCE INTO
1159 CONSIDERATION. THE ARBITRATION CONFERENCE MUST BE HELD ON THE
1160 SCHEDULED DATE, OR ANY RESCHEDULED DATE APPROVED BY THE
1161 ARBITRATOR. IN NO EVENT WILL THE ARBITRATION CONFERENCE BE LATER
1162 THAN 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS FIRST
1163 SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN WRITING OTHERWISE.
1164 IF THE ARBITRATION IS NOT COMPLETED WITHIN THE REQUIRED TIME
1165 LIMITS, THE ARBITRATOR SHALL ISSUE AN ARBITRATION AWARD, UNLESS
1166 THE HEARING IS EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE
1167 PARTIES AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU
1168 FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE SERVED
1169 WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE ARBITRATOR WITH
1170 DATES AND TIMES IN WHICH YOU ARE AVAILABLE FOR THE ARBITRATION
1171 CONFERENCE, FAIL TO AGREE TO ONE OF THE ARBITRATORS THAT THE



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1172 AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO THE
1173 ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS REQUIRED, OR FAIL
1174 TO APPEAR AND PARTICIPATE AT THE SCHEDULED ARBITRATION
1175 CONFERENCE, THE AGGRIEVED PARTY MAY REQUEST THE ARBITRATOR TO
1176 ISSUE AN ARBITRATION AWARD. IN THE SUBSEQUENT COURT ACTION, THE
1177 AGGRIEVED PARTY IS ENTITLED TO RECOVER AN AWARD OF REASONABLE
1178 ATTORNEY'S FEES AND COSTS, INCLUDING ANY FEES PAID TO THE
1179 ARBITRATOR, INCURRED IN OBTAINING AN ARBITRATION AWARD PURSUANT
1180 TO SECTION 720.507, FLORIDA STATUTES.

1181
1182 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY LAW,
1183 YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY CERTIFIED, FIRST-
1184 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS SHOWN ON
1185 THIS NOTICE OF PRESUIT ARBITRATION.

1186
1187
1188 _____
SIGNATURE OF AGGRIEVED PARTY

1189
1190 _____
1191 PRINTED NAME OF AGGRIEVED PARTY

1192
1193 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR
1194 ACCEPTANCE OF THE AGREEMENT TO ARBITRATE.

1195
1196 AGREEMENT TO ARBITRATE

1197
1198 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN PRESUIT
1199 ARBITRATION AND AGREES TO ATTEND AN ARBITRATION CONDUCTED BY THE
1200 FOLLOWING ARBITRATOR LISTED BELOW AS SOMEONE WHO WOULD BE



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1201 ACCEPTABLE TO ARBITRATE THIS DISPUTE:

1202

1203 (IN YOUR RESPONSE, SELECT THE NAME OF ONE ARBITRATOR THAT
1204 IS ACCEPTABLE TO YOU FROM THOSE ARBITRATORS LISTED BY THE
1205 AGGRIEVED PARTY.)

1206

1207 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS
1208 AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE PRESUIT
1209 ARBITRATION CONFERENCE AT THE FOLLOWING DATES AND TIMES:

1210

1211 (LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE MUST BE
1212 AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE ON WHICH YOU WERE
1213 SERVED, EITHER BY A PROCESS SERVER OR BY CERTIFIED MAIL, WITH
1214 THE NOTICE OF PRESUIT ARBITRATION.)

1215

1216 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
1217 ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS AS THE
1218 ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

1219

1220

1221 _____
SIGNATURE OF RESPONDING PARTY #1

1222

1223 _____
TELEPHONE CONTACT INFORMATION

1224

1225

1226 _____
SIGNATURE AND TELEPHONE CONTACT INFORMATION OF RESPONDING
1227 PARTY #2, IF APPLICABLE. IF THE PROPERTY IS OWNED BY MORE THAN
1228 ONE PERSON, ALL OWNERS MUST SIGN, OR A PERSON MAY SIGN WHO IS
1229 ACTING UNDER AUTHORITY OF A VALID POWER OF ATTORNEY GRANTED BY



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1230 AN OWNER.

1231
1232 (2) (a) Service of the statutory notice of presuit
1233 arbitration shall be effected either by personal service, as
1234 provided in chapter 48, or by certified mail, return receipt
1235 requested, in a letter in substantial conformity with the form
1236 provided in subsection (1), with an additional copy being sent
1237 by regular first-class mail to the address of the responding
1238 party as it last appears on the books and records of the
1239 association, or if not available, the last address as it appears
1240 on the official records of the county property appraiser for the
1241 county in which the property is situated that is subject to the
1242 association documents. The responding party has 20 days after
1243 the postmarked date of the certified mailing of the statutory
1244 notice of presuit arbitration or 20 days after the date the
1245 responding party is personally served with the statutory notice
1246 of presuit arbitration to serve a written response to the
1247 aggrieved party. The response shall be served by certified mail,
1248 return receipt requested, with an additional copy being sent by
1249 regular first-class mail to the address shown on the statutory
1250 notice of presuit arbitration. The postmarked date on the
1251 envelope of the response constitutes the date the response was
1252 served.

1253 (b) The parties shall share the costs of presuit
1254 arbitration equally, including the fee charged by the
1255 arbitrator, if any, unless the parties agree otherwise, and the
1256 arbitrator may require advance payment of his or her reasonable
1257 fees and costs. Each party is responsible for all of their own
1258 attorney's fees if a party chooses to be represented by an



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1259 attorney for the arbitration proceedings.

1260 (c)1. The party responding to the aggrieved party must sign
1261 the agreement to arbitrate included in the notice of presuit
1262 arbitration and clearly indicate the name of the arbitrator who
1263 is acceptable of those arbitrators listed by the aggrieved
1264 party. The responding party must provide a list of at least
1265 three dates and times in which the responding party is available
1266 to participate in the arbitration conference within 90 days
1267 after the date the responding party was served with the
1268 statutory notice of presuit arbitration.

1269 2. The arbitrator must schedule the arbitration conference
1270 at a mutually convenient time and place, but if the responding
1271 party does not provide a list of available dates and times, the
1272 arbitrator is authorized to schedule an arbitration conference
1273 without taking the responding party's schedule and convenience
1274 into consideration. Within 10 days after the designation of the
1275 arbitrator, the arbitrator shall notify the parties in writing
1276 of the date, time, and place of the arbitration conference.

1277 3. The arbitration conference must be held on the scheduled
1278 date and may be rescheduled if a rescheduled date is approved by
1279 the arbitrator. However, the arbitration hearing may not be held
1280 later than 90 days after the notice of presuit arbitration was
1281 first served, unless all parties mutually agree in writing
1282 otherwise. If the arbitration hearing is not completed within
1283 the required time limits, the arbitrator may issue an
1284 arbitration award, unless the time for the hearing is extended
1285 as provided herein. If the responding party fails to respond
1286 within 20 days after the date of statutory notice of presuit
1287 arbitration, fails to agree to at least one of the arbitrators



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1288 that have been listed by the aggrieved party in the presuit
1289 notice of arbitration, fails to pay or prepay to the arbitrator
1290 one-half of the costs involved, or fails to appear and
1291 participate at the scheduled arbitration, the aggrieved party is
1292 authorized to proceed with a request that the arbitrator issue
1293 an arbitration award.

1294 (d)1. The failure of any party to respond to the statutory
1295 notice of presuit arbitration within 20 days, the failure to
1296 select one of the five arbitrators listed by the aggrieved
1297 party, the failure to provide a listing of dates and times in
1298 which the responding party is available to participate in the
1299 arbitration conference within 90 days after the date of the
1300 responding party being served with the statutory notice of
1301 presuit arbitration, the failure to make payment of fees and
1302 costs as required within the time established by the arbitrator,
1303 or the failure to appear for an arbitration conference without
1304 the approval of the arbitrator, entitles the other party to
1305 request the arbitrator to enter an arbitration award, including
1306 an award of the reasonable costs and attorney's fees associated
1307 with the arbitration.

1308 2. Persons who fail or refuse to participate in the entire
1309 arbitration process may not recover attorney's fees and costs in
1310 any subsequent litigation proceeding relating to the same
1311 dispute involving the same parties.

1312 (3) (a) In an arbitration proceeding, the arbitrator may not
1313 consider any unsuccessful mediation of the dispute.

1314 (b) An arbitrator in a proceeding initiated pursuant to the
1315 provisions of this part may shorten the time for discovery or
1316 otherwise limit discovery in a manner consistent with the policy



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1317 goals of this part to reduce the time and expense of litigating
1318 homeowners' association disputes initiated pursuant to this
1319 chapter and to promote an expeditious alternative dispute
1320 resolution procedure for parties to such actions.

1321 (4) At the request of any party to the arbitration, the
1322 arbitrator may issue subpoenas for the attendance of witnesses
1323 and the production of books, records, documents, and other
1324 evidence, and any party on whose behalf a subpoena is issued may
1325 apply to the court for orders compelling such attendance and
1326 production. Subpoenas shall be served and are enforceable in the
1327 manner provided by the Florida Rules of Civil Procedure.

1328 Discovery may, at the discretion of the arbitrator, be permitted
1329 in the manner provided by the Florida Rules of Civil Procedure.

1330 (5) The final arbitration award shall be sent to the
1331 parties in writing no later than 30 days after the date of the
1332 arbitration hearing, absent extraordinary circumstances
1333 necessitating a later filing the reasons for which shall be
1334 stated in the final award if filed more than 30 days after the
1335 date of the final session of the arbitration conference. An
1336 agreed arbitration award is final in those disputes in which the
1337 parties have mutually agreed to be bound. An arbitration award
1338 decided by the arbitrator is final unless a lawsuit seeking a
1339 trial de novo is filed in a court of competent jurisdiction
1340 within 30 days after the date of the arbitration award. The
1341 right to file for a trial de novo entitles the parties to file a
1342 complaint in the appropriate trial court for a judicial
1343 resolution of the dispute. The prevailing party in an
1344 arbitration proceeding shall be awarded the costs of the
1345 arbitration and reasonable attorney's fees in an amount



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1346 determined by the arbitrator.

1347 (6) The party filing a motion for a trial de novo shall be
1348 assessed the other party's arbitration costs, court costs, and
1349 other reasonable costs, including attorney's fees, investigation
1350 expenses, and expenses for expert or other testimony or evidence
1351 incurred after the arbitration hearing, if the judgment upon the
1352 trial de novo is not more favorable than the final arbitration
1353 award.

1354 720.508 Rules of procedure.—

1355 (1) Presuit mediation and presuit arbitration proceedings
1356 under this part must be conducted in accordance with the
1357 applicable Florida Rules of Civil Procedure and rules governing
1358 mediations and arbitrations under chapter 44, except that this
1359 part shall be controlling to the extent of any conflict with
1360 other applicable rules or statutes. The arbitrator may shorten
1361 any applicable time period and otherwise limit the scope of
1362 discovery on request of the parties or within the discretion of
1363 the arbitrator exercised consistent with the purpose and
1364 objective of reducing the expense and expeditiously concluding
1365 proceedings under this part.

1366 (2) Presuit mediation proceedings under s. 720.505 are
1367 privileged and confidential to the same extent as court-ordered
1368 mediation under chapter 44. An arbitrator or judge may not
1369 consider any information or evidence arising from the presuit
1370 mediation proceeding except in a proceeding to impose sanctions
1371 for failure to attend a presuit mediation session or to enforce
1372 a mediated settlement agreement.

1373 (3) Persons who are not parties to the dispute may not
1374 attend the presuit mediation conference without consent of all



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1375 parties, with the exception of counsel for the parties and a
1376 corporate representative designated by the association. Presuit
1377 mediations under this part are not a board meeting for purposes
1378 of notice and participation set forth in this chapter.

1379 (4) Attendance at a mediation conference by the board of
1380 directors does not require notice or participation by nonboard
1381 members as otherwise required by this chapter for meetings of
1382 the board.

1383 (5) Settlement agreements resulting from a mediation or
1384 arbitration proceeding do not have precedential value in
1385 proceedings involving parties other than those participating in
1386 the mediation or arbitration.

1387 (6) Arbitration awards by an arbitrator have precedential
1388 value in other proceedings involving the same association or
1389 with respect to the same parcel owner.

1390 720.509 Mediators and arbitrators; qualifications and
1391 registration.—A person is authorized to conduct mediation or
1392 arbitration under this part if he or she has been certified as a
1393 circuit court civil mediator under the requirements adopted
1394 pursuant to s. 44.106, is a member in good standing with The
1395 Florida Bar, and otherwise meets all other requirements imposed
1396 by chapter 44.

1397 720.510 Enforcement of mediation agreement or arbitration
1398 award.—

1399 (1) A mediation settlement may be enforced through the
1400 county or circuit court, as applicable, and any costs and
1401 attorney's fees incurred in the enforcement of a settlement
1402 agreement reached at mediation shall be awarded to the
1403 prevailing party in any enforcement action.



1404 (2) Any party to an arbitration proceeding may enforce an
1405 arbitration award by filing a petition in a court of competent
1406 jurisdiction in which the homeowners' association is located.
1407 The prevailing party in such proceeding shall be awarded
1408 reasonable attorney's fees and costs incurred in such
1409 proceeding.

1410 (3) If a complaint is filed seeking a trial de novo, the
1411 arbitration award shall be stayed and a petition to enforce the
1412 award may not be granted. Such award, however, is admissible in
1413 the court proceeding seeking a trial de novo.

1414 Section 10. Sections 720.303(10)(b) and 720.306(9), Florida
1415 Statutes, are repealed to the extent that they are inconsistent
1416 with part IV of chapter 720, Florida Statutes.

1417 Section 11. This act shall take effect July 1, 2009.

1418
1419 ===== T I T L E A M E N D M E N T =====

1420 And the title is amended as follows:

1421 Delete everything before the enacting clause
1422 and insert:

1423 A bill to be entitled
1424 An act relating to residential properties; amending s.
1425 718.112, F.S.; requiring that each newly elected
1426 director certify certain information to the secretary
1427 of the association; providing that a failure to timely
1428 file the statement of certification automatically
1429 disqualifies the director from service on the
1430 association's board of directors; requiring that the
1431 secretary of the association retain a director's
1432 certification for inspection by the members for a



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1433 specified period after a director's election; amending
1434 s. 720.303, F.S.; revising provisions relating to
1435 homeowners' association board meetings, inspection and
1436 copying of records, and reserve accounts of budgets;
1437 prohibiting certain association personnel from
1438 receiving a salary or compensation; providing
1439 exceptions; conforming a cross-reference to changes
1440 made by the act; amending s. 720.305, F.S.;
1441 authorizing fines assessed against members in excess
1442 of a specified amount to become a lien against a
1443 parcel; amending s. 720.306, F.S.; providing
1444 requirements for secret ballots; requiring newly
1445 elected members of a board of directors to make
1446 certain certifications in writing to the association;
1447 providing for disqualification for failure to make
1448 such certifications; requiring that an association
1449 retain certifications for a specified period; amending
1450 s. 720.401, F.S.; requiring that the disclosure
1451 summary to prospective parcel owners include
1452 additional provisions; amending s. 34.01, F.S.;
1453 correcting a cross-reference to conform to changes
1454 made by the act; amending s. 720.302, F.S.; correcting
1455 a cross-reference to conform to changes made by the
1456 act; providing legislative intent; repealing s.
1457 720.311, F.S., relating to a procedure for dispute
1458 resolution in homeowners' associations; creating part
1459 IV of ch. 720, F.S., relating to dispute resolution;
1460 creating s. 720.501, F.S.; providing a short title;
1461 creating s. 720.502, F.S.; providing legislative



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1462 findings; creating s. 720.503, F.S.; providing
1463 applicability of provisions for mediation and
1464 arbitration applicable to disputes in homeowners'
1465 associations; providing exceptions; providing for
1466 applicability; tolling applicable statutes of
1467 limitations; creating s. 720.504, F.S.; requiring that
1468 a notice of dispute be delivered before referral to
1469 mediation or arbitration; creating s. 720.505, F.S.;
1470 creating a statutory notice form for referral to
1471 mediation; requiring delivery by certified mail or
1472 personal delivery; setting deadlines; requiring that
1473 parties share certain costs; requiring the selection
1474 of a mediator and meeting times; providing penalties
1475 for failure to mediate; creating s. 720.506, F.S.;
1476 providing an opt-out provision; creating s. 720.507,
1477 F.S.; providing a statutory notice form for referral
1478 to arbitration; requiring delivery by certified mail
1479 or personal delivery; providing deadlines; requiring
1480 that parties share certain costs; requiring the
1481 selection of an arbitrator and meeting times;
1482 providing penalties for failure to arbitrate; creating
1483 s. 720.508, F.S.; providing rules of procedure;
1484 providing for confidentiality; providing that
1485 settlement agreements resulting from a mediation or
1486 arbitration proceeding do not have precedential value
1487 in other proceedings involving other parties;
1488 providing that arbitration awards have precedential
1489 value under specified conditions; creating s. 720.509,
1490 F.S.; setting qualifications for mediators and



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1491 arbitrators; creating s. 720.510, F.S.; providing for
1492 the enforcement of mediation agreements and
1493 arbitration awards; repealing ss. 720.303(10)(b) and
1494 720.306(9), F.S., relating to the recall and election
1495 of directors, to the extent that such provisions are
1496 inconsistent with part IV of ch. 720, F.S., which
1497 provides for dispute resolution; providing an
1498 effective date.