

By the Committee on Regulated Industries; and Senator Gardiner

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1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 718.112, F.S.; requiring that each newly elected
4 director certify certain information to the secretary
5 of the association; providing that a failure to timely
6 file the statement of certification automatically
7 disqualifies the director from service on the
8 association's board of directors; requiring that the
9 secretary of the association retain a director's
10 certification for inspection by the members for a
11 specified period after a director's election; amending
12 s. 720.303, F.S.; revising provisions relating to
13 homeowners' association board meetings, inspection and
14 copying of records, and reserve accounts of budgets;
15 prohibiting certain association personnel from
16 receiving a salary or compensation; providing
17 exceptions; conforming a cross-reference to changes
18 made by the act; amending s. 720.305, F.S.;
19 authorizing fines assessed against members in excess
20 of a specified amount to become a lien against a
21 parcel; amending s. 720.306, F.S.; providing
22 requirements for secret ballots; requiring newly
23 elected members of a board of directors to make
24 certain certifications in writing to the association;
25 providing for disqualification for failure to make
26 such certifications; requiring that an association
27 retain certifications for a specified period; creating
28 s. 720.315, F.S.; prohibiting the board of directors
29 of a homeowners' association from passing more than

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30 one special assessment per calendar year under certain
31 circumstances; requiring that each special assessment
32 be adopted at a board meeting conducted solely for the
33 purpose of discussing and adopting such assessment;
34 requiring that the board provide a notice for a
35 specified period before such meeting; providing
36 procedures for providing such notice; requiring that
37 such notice contain certain information; requiring
38 that the meeting be held in the same county in which
39 the association is located; limiting the amount of a
40 special assessment and restricting the manner in which
41 moneys collected pursuant thereto may be used;
42 providing that lots or units owned by the developer
43 are subject to the same payment requirements and
44 deadlines as those owned by members; providing
45 exceptions; prohibiting a developer from delaying
46 payment of a special assessment based on the use of a
47 developer's guarantee; requiring that a board of
48 directors initiate or authorize collection efforts
49 against units owned by a developer under certain
50 circumstances; providing that failure of the board to
51 take certain action constitutes a defense to
52 nonpayment of a special assessment for certain members
53 of the association; amending s. 720.401, F.S.;
54 requiring that the disclosure summary to prospective
55 parcel owners include additional provisions; amending
56 s. 34.01, F.S.; correcting a cross-reference to
57 conform to changes made by the act; amending s.
58 720.302, F.S.; correcting a cross-reference to conform

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59 to changes made by the act; providing legislative
60 intent; repealing s. 720.311, F.S., relating to a
61 procedure for dispute resolution in homeowners'
62 associations; creating part IV of ch. 720, F.S.,
63 relating to dispute resolution; creating s. 720.501,
64 F.S.; providing a short title; creating s. 720.502,
65 F.S.; providing legislative findings; creating s.
66 720.503, F.S.; providing applicability of provisions
67 for mediation and arbitration applicable to disputes
68 in homeowners' associations; providing exceptions;
69 providing for applicability; tolling applicable
70 statutes of limitations; creating s. 720.504, F.S.;
71 requiring that a notice of dispute be delivered before
72 referral to mediation or arbitration; creating s.
73 720.505, F.S.; creating a statutory notice form for
74 referral to mediation; requiring delivery by certified
75 mail or personal delivery; setting deadlines;
76 requiring that parties share certain costs; requiring
77 the selection of a mediator and meeting times;
78 providing penalties for failure to mediate; creating
79 s. 720.506, F.S.; providing an opt-out provision;
80 creating s. 720.507, F.S.; providing a statutory
81 notice form for referral to arbitration; requiring
82 delivery by certified mail or personal delivery;
83 providing deadlines; requiring that parties share
84 certain costs; requiring the selection of an
85 arbitrator and meeting times; providing penalties for
86 failure to arbitrate; creating s. 720.508, F.S.;
87 providing rules of procedure; providing for

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88 confidentiality; providing that settlement agreements
89 resulting from a mediation or arbitration proceeding
90 do not have precedential value in other proceedings
91 involving other parties; providing that arbitration
92 awards have precedential value under specified
93 conditions; creating s. 720.509, F.S.; setting
94 qualifications for mediators and arbitrators; creating
95 s. 720.510, F.S.; providing for the enforcement of
96 mediation agreements and arbitration awards; providing
97 an effective date.

98

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

100

101 Section 1. Paragraph (d) of subsection (2) of section
102 718.112, Florida Statutes, is amended to read:

103 718.112 Bylaws.—

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

107 (d) *Unit owner meetings*.—

108 1. There shall be an annual meeting of the unit owners held
109 at the location provided in the association bylaws and, if the
110 bylaws are silent as to the location, the meeting shall be held
111 within 45 miles of the condominium property. However, such
112 distance requirement does not apply to an association governing
113 a timeshare condominium. Unless the bylaws provide otherwise, a
114 vacancy on the board caused by the expiration of a director's
115 term shall be filled by electing a new board member, and the
116 election shall be by secret ballot; however, if the number of

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117 vacancies equals or exceeds the number of candidates, no
118 election is required. The terms of all members of the board
119 shall expire at the annual meeting and such board members may
120 stand for reelection unless otherwise permitted by the bylaws.
121 In the event that the bylaws permit staggered terms of no more
122 than 2 years and upon approval of a majority of the total voting
123 interests, the association board members may serve 2-year
124 staggered terms. If no person is interested in or demonstrates
125 an intention to run for the position of a board member whose
126 term has expired according to the provisions of this
127 subparagraph, such board member whose term has expired shall be
128 automatically reappointed to the board of administration and
129 need not stand for reelection. In a condominium association of
130 more than 10 units, coowners of a unit may not serve as members
131 of the board of directors at the same time. Any unit owner
132 desiring to be a candidate for board membership shall comply
133 with subparagraph 3. A person who has been suspended or removed
134 by the division under this chapter, or who is delinquent in the
135 payment of any fee or assessment as provided in paragraph (n),
136 is not eligible for board membership. A person who has been
137 convicted of any felony in this state or in a United States
138 District or Territorial Court, or who has been convicted of any
139 offense in another jurisdiction that would be considered a
140 felony if committed in this state, is not eligible for board
141 membership unless such felon's civil rights have been restored
142 for a period of no less than 5 years as of the date on which
143 such person seeks election to the board. The validity of an
144 action by the board is not affected if it is later determined
145 that a member of the board is ineligible for board membership

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146 due to having been convicted of a felony.

147 2. The bylaws shall provide the method of calling meetings
148 of unit owners, including annual meetings. Written notice, which
149 notice must include an agenda, shall be mailed, hand delivered,
150 or electronically transmitted to each unit owner at least 14
151 days prior to the annual meeting and shall be posted in a
152 conspicuous place on the condominium property at least 14
153 continuous days preceding the annual meeting. Upon notice to the
154 unit owners, the board shall by duly adopted rule designate a
155 specific location on the condominium property or association
156 property upon which all notices of unit owner meetings shall be
157 posted; however, if there is no condominium property or
158 association property upon which notices can be posted, this
159 requirement does not apply. In lieu of or in addition to the
160 physical posting of notice of any meeting of the unit owners on
161 the condominium property, the association may, by reasonable
162 rule, adopt a procedure for conspicuously posting and repeatedly
163 broadcasting the notice and the agenda on a closed-circuit cable
164 television system serving the condominium association. However,
165 if broadcast notice is used in lieu of a notice posted
166 physically on the condominium property, the notice and agenda
167 must be broadcast at least four times every broadcast hour of
168 each day that a posted notice is otherwise required under this
169 section. When broadcast notice is provided, the notice and
170 agenda must be broadcast in a manner and for a sufficient
171 continuous length of time so as to allow an average reader to
172 observe the notice and read and comprehend the entire content of
173 the notice and the agenda. Unless a unit owner waives in writing
174 the right to receive notice of the annual meeting, such notice

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175 shall be hand delivered, mailed, or electronically transmitted
176 to each unit owner. Notice for meetings and notice for all other
177 purposes shall be mailed to each unit owner at the address last
178 furnished to the association by the unit owner, or hand
179 delivered to each unit owner. However, if a unit is owned by
180 more than one person, the association shall provide notice, for
181 meetings and all other purposes, to that one address which the
182 developer initially identifies for that purpose and thereafter
183 as one or more of the owners of the unit shall so advise the
184 association in writing, or if no address is given or the owners
185 of the unit do not agree, to the address provided on the deed of
186 record. An officer of the association, or the manager or other
187 person providing notice of the association meeting, shall
188 provide an affidavit or United States Postal Service certificate
189 of mailing, to be included in the official records of the
190 association affirming that the notice was mailed or hand
191 delivered, in accordance with this provision.

192 3. The members of the board shall be elected by written
193 ballot or voting machine. Proxies shall in no event be used in
194 electing the board, either in general elections or elections to
195 fill vacancies caused by recall, resignation, or otherwise,
196 unless otherwise provided in this chapter. Not less than 60 days
197 before a scheduled election, the association shall mail,
198 deliver, or electronically transmit, whether by separate
199 association mailing or included in another association mailing,
200 delivery, or transmission, including regularly published
201 newsletters, to each unit owner entitled to a vote, a first
202 notice of the date of the election along with a certification
203 form provided by the division attesting that he or she has read

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204 and understands, to the best of his or her ability, the
205 governing documents of the association and the provisions of
206 this chapter and any applicable rules. Any unit owner or other
207 eligible person desiring to be a candidate for the board must
208 give written notice to the association not less than 40 days
209 before a scheduled election. Together with the written notice
210 and agenda as set forth in subparagraph 2., the association
211 shall mail, deliver, or electronically transmit a second notice
212 of the election to all unit owners entitled to vote therein,
213 together with a ballot which shall list all candidates. Upon
214 request of a candidate, the association shall include an
215 information sheet, no larger than 8 1/2 inches by 11 inches,
216 which must be furnished by the candidate not less than 35 days
217 before the election, along with the signed certification form
218 provided for in this subparagraph, to be included with the
219 mailing, delivery, or transmission of the ballot, with the costs
220 of mailing, delivery, or electronic transmission and copying to
221 be borne by the association. The association is not liable for
222 the contents of the information sheets prepared by the
223 candidates. In order to reduce costs, the association may print
224 or duplicate the information sheets on both sides of the paper.
225 The division shall by rule establish voting procedures
226 consistent with the provisions contained herein, including rules
227 establishing procedures for giving notice by electronic
228 transmission and rules providing for the secrecy of ballots.
229 Elections shall be decided by a plurality of those ballots cast.
230 There shall be no quorum requirement; however, at least 20
231 percent of the eligible voters must cast a ballot in order to
232 have a valid election of members of the board. No unit owner

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233 shall permit any other person to vote his or her ballot, and any
234 such ballots improperly cast shall be deemed invalid, provided
235 any unit owner who violates this provision may be fined by the
236 association in accordance with s. 718.303. A unit owner who
237 needs assistance in casting the ballot for the reasons stated in
238 s. 101.051 may obtain assistance in casting the ballot. The
239 regular election shall occur on the date of the annual meeting.
240 The provisions of this subparagraph shall not apply to timeshare
241 condominium associations. Notwithstanding the provisions of this
242 subparagraph, an election is not required unless more candidates
243 file notices of intent to run or are nominated than board
244 vacancies exist.

245 4. Any approval by unit owners called for by this chapter
246 or the applicable declaration or bylaws, including, but not
247 limited to, the approval requirement in s. 718.111(8), shall be
248 made at a duly noticed meeting of unit owners and shall be
249 subject to all requirements of this chapter or the applicable
250 condominium documents relating to unit owner decisionmaking,
251 except that unit owners may take action by written agreement,
252 without meetings, on matters for which action by written
253 agreement without meetings is expressly allowed by the
254 applicable bylaws or declaration or any statute that provides
255 for such action.

256 5. Unit owners may waive notice of specific meetings if
257 allowed by the applicable bylaws or declaration or any statute.
258 If authorized by the bylaws, notice of meetings of the board of
259 administration, unit owner meetings, except unit owner meetings
260 called to recall board members under paragraph (j), and
261 committee meetings may be given by electronic transmission to

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262 unit owners who consent to receive notice by electronic
263 transmission.

264 6. Unit owners shall have the right to participate in
265 meetings of unit owners with reference to all designated agenda
266 items. However, the association may adopt reasonable rules
267 governing the frequency, duration, and manner of unit owner
268 participation.

269 7. Any unit owner may tape record or videotape a meeting of
270 the unit owners subject to reasonable rules adopted by the
271 division.

272 8. Unless otherwise provided in the bylaws, any vacancy
273 occurring on the board before the expiration of a term may be
274 filled by the affirmative vote of the majority of the remaining
275 directors, even if the remaining directors constitute less than
276 a quorum, or by the sole remaining director. In the alternative,
277 a board may hold an election to fill the vacancy, in which case
278 the election procedures must conform to the requirements of
279 subparagraph 3. unless the association governs 10 units or less
280 and has opted out of the statutory election process, in which
281 case the bylaws of the association control. Unless otherwise
282 provided in the bylaws, a board member appointed or elected
283 under this section shall fill the vacancy for the unexpired term
284 of the seat being filled. Filling vacancies created by recall is
285 governed by paragraph (j) and rules adopted by the division.

286 9. Within 30 days after being elected to the board of
287 directors, a new director shall certify in writing to the
288 secretary of the association that he or she has read the
289 association's declarations of covenants and restrictions,
290 articles of incorporation, bylaws, and current written policies,

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291 that he or she will work to uphold such documents and policies
292 to the best of his or her ability, and that he or she will
293 faithfully discharge his or her fiduciary responsibility to the
294 association's members. Failure to timely file the statement
295 automatically disqualifies the director from service on the
296 association's board of directors. The secretary shall cause the
297 association to retain a director's certification for inspection
298 by the members for 5 years after a director's election. Failure
299 to have such certification on file does not affect the validity
300 of any appropriate action.

301
302 Notwithstanding subparagraphs (b)2. and (d)3., an association of
303 10 or fewer units may, by the affirmative vote of a majority of
304 the total voting interests, provide for different voting and
305 election procedures in its bylaws, which vote may be by a proxy
306 specifically delineating the different voting and election
307 procedures. The different voting and election procedures may
308 provide for elections to be conducted by limited or general
309 proxy.

310 Section 2. Paragraph (b) of subsection (2), paragraphs (a)
311 and (c) of subsection (5), paragraphs (b), (c), (d), (f), and
312 (g) of subsection (6), and paragraphs (b) and (d) of subsection
313 (10) of section 720.303, Florida Statutes, are amended, and
314 subsection (12) is added to that section, to read:

315 720.303 Association powers and duties; meetings of board;
316 official records; budgets; financial reporting; association
317 funds; recalls.—

318 (2) BOARD MEETINGS.—

319 (b) Members have the right to attend all meetings of the

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320 board and to speak on any matter placed on the agenda by
321 petition of the voting interests for at least 3 minutes. The
322 association may adopt written reasonable rules expanding the
323 right of members to speak and governing the frequency, duration,
324 and other manner of member statements, which rules must be
325 consistent with this paragraph and may include a sign-up sheet
326 for members wishing to speak. Notwithstanding any other law, ~~the~~
327 ~~requirement that board meetings and committee meetings be open~~
328 ~~to the members is inapplicable to meetings between the board or~~
329 a committee and the association's attorney to discuss proposed
330 or pending litigation, or with respect to meetings of the board
331 held for the purpose of discussing personnel matters are not
332 required to be open to the members.

333 (5) INSPECTION AND COPYING OF RECORDS.—The official records
334 shall be maintained within the state and must be open to
335 inspection and available for photocopying by members or their
336 authorized agents at reasonable times and places within 10
337 business days after receipt of a written request for access.
338 This subsection may be complied with by having a copy of the
339 official records available for inspection or copying in the
340 community. If the association has a photocopy machine available
341 where the records are maintained, it must provide parcel owners
342 with copies on request during the inspection if the entire
343 request is limited to no more than 25 pages.

344 (a) The failure of an association to provide access to the
345 records within 10 business days after receipt of a written
346 request submitted by certified mail, return receipt requested,
347 creates a rebuttable presumption that the association willfully
348 failed to comply with this subsection.

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349 (c) The association may adopt reasonable written rules
350 governing the frequency, time, location, notice, records to be
351 inspected, and manner of inspections, but may not require ~~impose~~
352 ~~a requirement that~~ a parcel owner to demonstrate any proper
353 purpose for the inspection, state any reason for the inspection,
354 or limit a parcel owner's right to inspect records to less than
355 one 8-hour business day per month. The association may impose
356 fees to cover the costs of providing copies of the official
357 records, including, without limitation, the costs of copying.
358 The association may charge up to 50 cents per page for copies
359 made on the association's photocopier. If the association does
360 not have a photocopy machine available where the records are
361 kept, or if the records requested to be copied exceed 25 pages
362 in length, the association may have copies made by an outside
363 vendor or association management company personnel and may
364 charge the actual cost of copying, including any reasonable
365 costs involving personnel fees and charges at an hourly rate for
366 employee time to cover administrative costs to the association.
367 The association shall maintain an adequate number of copies of
368 the recorded governing documents, to ensure their availability
369 to members and prospective members. Notwithstanding the
370 provisions of this paragraph, the following records are ~~shall~~
371 not ~~be~~ accessible to members or parcel owners:

372 1. Any record protected by the lawyer-client privilege as
373 described in s. 90.502 and any record protected by the work-
374 product privilege, including, but not limited to, any record
375 prepared by an association attorney or prepared at the
376 attorney's express direction which reflects a mental impression,
377 conclusion, litigation strategy, or legal theory of the attorney

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378 or the association and which was prepared exclusively for civil
379 or criminal litigation or for adversarial administrative
380 proceedings or which was prepared in anticipation of imminent
381 civil or criminal litigation or imminent adversarial
382 administrative proceedings until the conclusion of the
383 litigation or ~~adversarial~~ administrative proceedings.

384 2. Information obtained by an association in connection
385 with the approval of the lease, sale, or other transfer of a
386 parcel.

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

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

390 (6) BUDGETS.—

391 (b) In addition to annual operating expenses, the budget
392 may include reserve accounts for capital expenditures and
393 deferred maintenance for which the association is responsible.
394 If reserve accounts are not established pursuant to paragraph
395 (d), funding of such reserves shall be limited to the extent
396 that the governing documents do not limit increases in
397 assessments, including reserves. If the budget of the
398 association includes reserve accounts established pursuant to
399 paragraph (d), such reserves shall be determined, maintained,
400 and waived in the manner provided in this subsection. Once an
401 association provides for reserve accounts pursuant to paragraph
402 (d) in the budget, the association shall thereafter determine,
403 maintain, and waive reserves in compliance with this subsection.
404 The provisions of this section do not preclude the termination
405 of a reserve account established pursuant to this paragraph upon
406 approval of a majority of the voting interests of the

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407 association. Upon such approval, the terminating reserve account
408 shall be removed from the budget.

409 (c)1. If the budget of the association does not provide for
410 reserve accounts pursuant to paragraph (d) ~~governed by this~~
411 ~~subsection~~ and the association is responsible for the repair and
412 maintenance of capital improvements that may result in a special
413 assessment if reserves are not provided, each financial report
414 for the preceding fiscal year required by subsection (7) shall
415 contain the following statement in conspicuous type: THE BUDGET
416 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR
417 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
418 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
419 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
420 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN A~~
421 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY
422 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

423 2. If the budget of the association does provide for
424 funding accounts for deferred expenditures, including, but not
425 limited to, funds for capital expenditures and deferred
426 maintenance, but such accounts are not created or established
427 pursuant to paragraph (d), each financial report for the
428 preceding fiscal year required under subsection (7) must also
429 contain the following statement in conspicuous type: THE BUDGET
430 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED
431 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
432 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
433 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
434 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),
435 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE

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436 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
437 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

438 (d) An association shall be deemed to have provided for
439 reserve accounts if ~~when~~ reserve accounts have been initially
440 established by the developer or if ~~when~~ the membership of the
441 association affirmatively elects to provide for reserves. If
442 reserve accounts are not initially provided for by the
443 developer, the membership of the association may elect to do so
444 upon the affirmative approval of ~~not less than~~ a majority of the
445 total voting interests of the association. Such approval may be
446 obtained ~~attained~~ by vote of the members at a duly called
447 meeting of the membership or by the ~~upon a~~ written consent of
448 ~~executed by not less than~~ a majority of the total voting
449 interests in the community. The approval action of the
450 membership shall state that reserve accounts shall be provided
451 for in the budget and shall designate the components for which
452 the reserve accounts are to be established. Upon approval by the
453 membership, the board of directors shall include ~~provide for~~ the
454 required reserve accounts ~~for inclusion~~ in the budget in the
455 next fiscal year following the approval and ~~in~~ each year
456 thereafter. Once established as provided in this subsection, the
457 reserve accounts shall be funded or maintained or shall have
458 their funding waived in the manner provided in paragraph (f).

459 (f) After one or more ~~Once a reserve account or~~ reserve
460 accounts are established, the membership of the association,
461 upon a majority vote at a meeting at which a quorum is present,
462 may provide for no reserves or less reserves than required by
463 this section. If a meeting of the unit owners has been called to
464 determine whether to waive or reduce the funding of reserves and

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465 no such result is achieved or a quorum is not present, the
466 reserves as included in the budget shall go into effect. After
467 the turnover, the developer may vote its voting interest to
468 waive or reduce the funding of reserves. Any vote taken pursuant
469 to this subsection to waive or reduce reserves is ~~shall be~~
470 applicable only to one budget year.

471 (g) Funding formulas for reserves authorized by this
472 section shall be based on either a separate analysis of each of
473 the required assets or a pooled analysis of two or more of the
474 required assets.

475 1. If the association maintains separate reserve accounts
476 for each of the required assets, the amount of the contribution
477 to each reserve account is ~~shall be~~ the sum of the following two
478 calculations:

479 a. The total amount necessary, if any, to bring a negative
480 component balance to zero.

481 b. The total estimated deferred maintenance expense or
482 estimated replacement cost of the reserve component less the
483 estimated balance of the reserve component as of the beginning
484 of the period ~~for which~~ the budget will be in effect. The
485 remainder, if greater than zero, shall be divided by the
486 estimated remaining useful life of the component.

487
488 The formula may be adjusted each year for changes in estimates
489 and deferred maintenance performed during the year and may
490 include factors such as inflation and earnings on invested
491 funds.

492 2. If the association maintains a pooled account of two or
493 more of the required reserve assets, the amount of the

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494 contribution to the pooled reserve account as disclosed on the
495 proposed budget may ~~shall~~ not be less than that required to
496 ensure that the balance on hand at the beginning of the period
497 ~~for which~~ the budget will go into effect plus the projected
498 annual cash inflows over the remaining estimated useful life of
499 all of the assets that make up the reserve pool are equal to or
500 greater than the projected annual cash outflows over the
501 remaining estimated useful lives of all ~~of~~ the assets that make
502 up the reserve pool, based on the current reserve analysis. The
503 projected annual cash inflows may include estimated earnings
504 from investment of principal and accounts receivable minus the
505 allowance for doubtful accounts. The reserve funding formula may
506 ~~shall~~ not include any type of balloon payments.

507 (10) RECALL OF DIRECTORS.—

508 (b)1. Board directors may be recalled by an agreement in
509 writing or by written ballot without a membership meeting. The
510 agreement in writing or the written ballots, or a copy thereof,
511 shall be served on the association by certified mail or by
512 personal service in the manner authorized by chapter 48 and the
513 Florida Rules of Civil Procedure.

514 2. The board shall duly notice and hold a meeting of the
515 board within 5 full business days after receipt of the agreement
516 in writing or written ballots. At the meeting, the board shall
517 either certify the written ballots or written agreement to
518 recall a director or directors of the board, in which case such
519 director or directors shall be recalled effective immediately
520 and shall turn over to the board within 5 full business days any
521 and all records and property of the association in their
522 possession, or proceed as described in paragraph (d).

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523 3. When it is determined ~~by the department~~ pursuant to
524 binding arbitration proceedings that an initial recall effort
525 was defective, written recall agreements or written ballots used
526 in the first recall effort and not found to be defective may be
527 reused in one subsequent recall effort. However, in no event is
528 a written agreement or written ballot valid for more than 120
529 days after it has been signed by the member.

530 4. Any rescission or revocation of a member's written
531 recall ballot or agreement must be in writing and, in order to
532 be effective, must be delivered to the association before the
533 association is served with the written recall agreements or
534 ballots.

535 5. The agreement in writing or ballot shall list at least
536 as many possible replacement directors as there are directors
537 subject to the recall, when at least a majority of the board is
538 sought to be recalled; the person executing the recall
539 instrument may vote for as many replacement candidates as there
540 are directors subject to the recall.

541 (d) If the board determines not to certify the written
542 agreement or written ballots to recall a director or directors
543 of the board or does not certify the recall by a vote at a
544 meeting, the board shall, within 5 full business days after the
545 meeting, initiate ~~file with the department a petition for~~
546 binding arbitration pursuant to the applicable procedures in s.
547 720.507 ~~ss. 718.112(2)(j) and 718.1255 and the rules adopted~~
548 ~~thereunder~~. For the purposes of this section, the members who
549 voted at the meeting or who executed the agreement in writing
550 shall constitute one party under the petition for arbitration.
551 If the arbitrator certifies the recall as to any director or

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552 directors of the board, the recall will be effective upon
553 mailing of the final order of arbitration to the association.
554 The director or directors so recalled shall deliver to the board
555 any and all records of the association in their possession
556 within 5 full business days after the effective date of the
557 recall.

558 (12) COMPENSATION PROHIBITED.—A director, officer, or
559 committee member of the association may not receive directly or
560 indirectly any salary or compensation from the association for
561 the performance of duties as a director, officer, or committee
562 member and may not in any other way benefit financially from
563 service to the association. This subsection does not preclude:

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

569 (b) Reimbursement for out-of-pocket expenses incurred by
570 such person on behalf of the association, subject to approval in
571 accordance with procedures established by the association's
572 governing documents or, in the absence of such procedures, in
573 accordance with an approval process established by the board.

574 (c) Any recovery of insurance proceeds derived from a
575 policy of insurance maintained by the association for the
576 benefit of its members.

577 (d) Any fee or compensation authorized in the governing
578 documents.

579 (e) Any fee or compensation authorized in advance by a vote
580 of a majority of the voting interests voting in person or by

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581 proxy at a meeting of the members.

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

584 720.305 Obligations of members; remedies at law or in
585 equity; levy of fines and suspension of use rights.—

586 (2) If the governing documents so provide, an association
587 may suspend, for a reasonable period of time, the rights of a
588 member or a member's tenants, guests, or invitees, or both, to
589 use common areas and facilities and may levy reasonable fines of
590 up to, not to exceed \$100 per violation, against any member or
591 any tenant, guest, or invitee. A fine may be levied on the basis
592 of each day of a continuing violation, with a single notice and
593 opportunity for hearing, except that a no-such fine may not
594 ~~shall~~ exceed \$1,000 in the aggregate unless otherwise provided
595 in the governing documents. A fine of less than \$1,000 may shall
596 not become a lien against a parcel. In any action to recover a
597 fine, the prevailing party is entitled to collect its reasonable
598 attorney's fees and costs from the nonprevailing party as
599 determined by the court.

600 (a) A fine or suspension may not be imposed without ~~notice~~
601 ~~of~~ at least 14 days' notice ~~days~~ to the person sought to be
602 fined or suspended and an opportunity for a hearing before a
603 committee of at least three members appointed by the board who
604 are not officers, directors, or employees of the association, or
605 the spouse, parent, child, brother, or sister of an officer,
606 director, or employee. If the committee, by majority vote, does
607 not approve a proposed fine or suspension, it may not be
608 imposed.

609 (b) The requirements of this subsection do not apply to the

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610 imposition of suspensions or fines upon any member because of
611 the failure of the member to pay assessments or other charges
612 when due if such action is authorized by the governing
613 documents.

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

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

620 720.306 Meetings of members; voting and election
621 procedures; amendments.—

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

625 (a) To be valid, a proxy must be dated, must state the
626 date, time, and place of the meeting for which it was given, and
627 must be signed by the authorized person who executed the proxy.
628 A proxy is effective only for the specific meeting for which it
629 was originally given, as the meeting may lawfully be adjourned
630 and reconvened from time to time, and automatically expires 90
631 days after the date of the meeting for which it was originally
632 given. A proxy is revocable at any time at the pleasure of the
633 person who executes it. If the proxy form expressly so provides,
634 any proxy holder may appoint, in writing, a substitute to act in
635 his or her place.

636 (b) If the governing documents permit voting by secret
637 ballot by members who are not in attendance at a meeting of the
638 members for the election of directors, such ballots shall be

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639 placed in an inner envelope with no identifying markings and
640 mailed or delivered to the association in an outer envelope
641 bearing identifying information reflecting the name of the
642 member, the lot or parcel for which the vote is being cast, and
643 the signature of the lot or parcel owner casting that ballot. If
644 the eligibility of the member to vote is confirmed and no other
645 ballot has been submitted for that lot or parcel, the inner
646 envelope shall be removed from the outer envelope bearing the
647 identification information, placed with the ballots which were
648 personally cast, and opened when the ballots are counted. If
649 more than one ballot is submitted for a lot or parcel, the
650 ballots for that lot or parcel shall be disqualified. Any vote
651 by ballot received after the closing of the balloting may not be
652 considered.

653 (9) ELECTIONS; BOARD MEMBER CERTIFICATION.-

654 (a) Elections of directors must be conducted in accordance
655 with the procedures set forth in the governing documents of the
656 association. All members of the association are ~~shall be~~
657 eligible to serve on the board of directors, and a member may
658 nominate himself or herself as a candidate for the board at a
659 meeting where the election is to be held or, if the election
660 process allows voting by absentee ballot, in advance of the
661 balloting. Except as otherwise provided in the governing
662 documents, boards of directors must be elected by a plurality of
663 the votes cast by eligible voters. Any election dispute between
664 a member and an association must be submitted to mandatory
665 binding arbitration ~~with the division~~. Such proceedings shall be
666 conducted in the manner provided by s. 720.507 ~~s. 718.1255~~ and
667 ~~the procedural rules adopted by the division.~~

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668 (b) Within 30 days after being elected to the board of
669 directors, a new director shall certify in writing to the
670 secretary of the association that he or she has read the
671 association's declarations of covenants and restrictions,
672 articles of incorporation, bylaws, and current written policies
673 and that he or she will work to uphold each to the best of his
674 or her ability and will faithfully discharge his or her
675 fiduciary responsibility to the association's members. Failure
676 to timely file such statement shall automatically disqualify the
677 director from service on the association's board of directors.
678 The secretary shall cause the association to retain a director's
679 certification for inspection by the members for 5 years after a
680 director's election. Failure to have such certification on file
681 does not affect the validity of any appropriate action.

682 Section 5. Section 720.315, Florida Statutes, is created to
683 read:

684 720.315 Passage of special assessments before turnover by
685 developer.—

686 (1) Before the turnover of an association by a developer as
687 described in this chapter, the board of directors may not pass
688 more than one special assessment during a calendar year.

689 (2) Each special assessment must be adopted at a meeting of
690 the board conducted solely for the purpose of discussing and
691 adopting such assessment. The location of the meeting must be in
692 the same county in which the association is located. The board
693 shall provide at least 30 days' notice of the meeting by:

694 (a) Posting a sign in the association's common area listing
695 the date, time, and location of the meeting and containing, in
696 at least 36-point, boldface type, the words "SPECIAL MEETING

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697 REGARDING PROPOSED SPECIAL ASSESSMENT."

698 (b) Mailing to all members of the association, at the
699 address contained in the association's membership log or, if the
700 association does not maintain a membership log, at the address
701 of the property located within the association, a letter
702 containing:

703 1. The date, time, and location of the meeting;
704 2. The amount of the proposed special assessment to be
705 assessed to each member of the association;

706 3. A copy of each document used or relied upon by the
707 association or its agents in calculating the amount of the
708 special assessment; and

709 4. A letter of explanation from a certified public
710 accountant disclosing the method and manner used to calculate
711 the amount of the special assessment.

712 (3) The proposed special assessment may not exceed 20
713 percent of the current year's regular annual assessment. Moneys
714 collected as a result of a special assessment may not be used to
715 supplement or fund reserve items.

716 (4) Lots or units owned by the developer, excluding common
717 areas, are subject to the same payment requirements or payment
718 deadlines as those owned by members, effective on the date on
719 which a special assessment is adopted by the board. The
720 developer may not delay payment of a special assessment based on
721 the use of a developer's guarantee. If the board existing before
722 turnover of the association initiates or authorizes collection
723 efforts against any member for nonpayment of the special
724 assessment, it must simultaneously initiate or authorize
725 collection efforts against any developer-owned units or property

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726 if the special assessment has not been paid by the developer. If
 727 the board fails to pursue the developer for nonpayment of the
 728 special assessment in the same manner and at the same time it
 729 pursues members for nonpayment, a presumption of selective
 730 enforcement is created which constitutes a defense that may be
 731 raised by a member as a complete defense to nonpayment of the
 732 special assessment.

733 Section 6. Paragraph (a) of subsection (1) of section
 734 720.401, Florida Statutes, is amended to read:

735 720.401 Prospective purchasers subject to association
 736 membership requirement; disclosure required; covenants;
 737 assessments; contract cancellation.—

738 (1) (a) A prospective parcel owner in a community must be
 739 presented a disclosure summary before executing the contract for
 740 sale. The disclosure summary must be in a form substantially
 741 similar to the following form:

742
 743 DISCLOSURE SUMMARY
 744 FOR
 745 (NAME OF COMMUNITY)
 746

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

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

752 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
 753 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF
 754 APPLICABLE, THE CURRENT AMOUNT IS \$.... PER YOU WILL ALSO

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755 BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE
756 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.
757 IF APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

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

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

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

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

772 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE
773 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
774 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
775 DOCUMENTS BEFORE PURCHASING PROPERTY.

776 9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND
777 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE
778 PROPERTY IS LOCATED, OR, IF ARE NOT RECORDED, ~~AND~~ CAN BE
779 OBTAINED FROM THE DEVELOPER.

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

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

787
 788 DATE: PURCHASER:
 789 PURCHASER:

790
 791 The disclosure must be supplied by the developer, or by the
 792 parcel owner if the sale is by an owner that is not the
 793 developer. Any contract or agreement for sale shall refer to and
 794 incorporate the disclosure summary and shall include, in
 795 prominent language, a statement that the potential buyer should
 796 not execute the contract or agreement until he or she has ~~they~~
 797 ~~have~~ received and read the disclosure summary required by this
 798 section.

799 Section 7. Paragraph (d) of subsection (1) of section
 800 34.01, Florida Statutes, is amended to read:

801 34.01 Jurisdiction of county court.—

802 (1) County courts shall have original jurisdiction:

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

806 Section 8. Subsection (2) of section 720.302, Florida
 807 Statutes, is amended to read:

808 720.302 Purposes, scope, and application.—

809 (2) The Legislature recognizes that it is not in the best
 810 interest of homeowners' associations or the individual
 811 association members thereof to create or impose a bureau or
 812 other agency of state government to regulate the affairs of

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813 homeowners' associations. However, in accordance with part IV of
814 this chapter s. 720.311, the Legislature finds that homeowners'
815 associations and their individual members will benefit from an
816 expedited alternative process for resolution of ~~election and~~
817 ~~recall disputes and presuit mediation of other~~ disputes
818 involving covenant enforcement in homeowner's associations and
819 deed-restricted communities using the procedures provided in
820 part IV of and ~~authorizes the department to hear, administer,~~
821 ~~and determine these disputes as more fully set forth in this~~
822 chapter. Further, the Legislature recognizes that certain
823 contract rights have been created for the benefit of homeowners'
824 associations and members thereof as well as deed-restricted
825 communities before the effective date of this act and that part
826 IV of this chapter is ss. 720.301-720.407 are not intended to
827 impair such contract rights, including, but not limited to, the
828 rights of the developer to complete the community as initially
829 contemplated.

830 Section 9. Section 720.311, Florida Statutes, is repealed.

831 Section 10. Part IV of chapter 720, Florida Statutes, to be
832 entitled "Dispute Resolution," consisting of sections 720.501,
833 720.502, 720.503, 720.504, 720.505, 720.506, 720.507, 720.508,
834 720.509, and 720.510, is created to read:

835 720.501 Short title.—This part may be cited as the "Home
836 Court Advantage Dispute Resolution Act."

837 720.502 Legislative findings.—The Legislature finds that
838 alternative dispute resolution has made progress in reducing
839 court dockets and trials and in offering a more efficient, cost-
840 effective option to litigation.

841 720.503 Applicability of this part.—

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842 (1) Unless otherwise provided in this part, before a
843 dispute described in this part between a homeowners' association
844 and a parcel owner or owners, or a dispute between parcel owners
845 within the same homeowners' association, may be filed in court,
846 the dispute is subject to presuit mediation pursuant to s.
847 720.505 or presuit arbitration pursuant to s. 720.507, at the
848 option of the aggrieved party who initiates the first formal
849 action of alternative dispute resolution under this part. The
850 parties may mutually agree to participate in both presuit
851 mediation and presuit arbitration before the suit is filed by
852 either party.

853 (2) Unless otherwise provided in this part, the mediation
854 and arbitration provisions of this part are limited to disputes
855 between an association and a parcel owner or owners or between
856 parcel owners regarding the use of or changes to the parcel or
857 the common areas under the governing documents and other
858 disputes involving violations of the recorded declaration of
859 covenants or other governing documents, disputes arising
860 concerning the enforcement of the governing documents or any
861 amendments thereto, and disputes involving access to the
862 official records of the association. A dispute concerning a
863 title to any parcel or common area, the interpretation or
864 enforcement of any warranty, the levy of a fee or assessment,
865 the collection of an assessment levied against a party, the
866 eviction or other removal of a tenant from a parcel, alleged
867 breaches of fiduciary duty by one or more directors, or any
868 action to collect mortgage indebtedness or to foreclose a
869 mortgage is not subject to the provisions of this part.

870 (3) All disputes arising after the effective date of this

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871 part involving the election of the board of directors for an
872 association or the recall of any member of the board or officer
873 of the association are not eligible for presuit mediation under
874 s. 720.505, but are subject to binding presuit arbitration under
875 s. 720.507.

876 (4) In any dispute subject to presuit mediation or presuit
877 arbitration under this part for which emergency relief is
878 required, a motion for temporary injunctive relief may be filed
879 with the court without first complying with the presuit
880 mediation or presuit arbitration requirements of this part.
881 After any issues regarding emergency or temporary relief are
882 resolved, the court may refer the parties to a mediation program
883 administered by the courts or require mediation or arbitration
884 under this part.

885 (5) The mailing of a statutory notice of presuit mediation
886 or presuit arbitration as provided in this part shall toll the
887 applicable statute of limitations during the pendency of the
888 mediation or arbitration and for a period of 30 days following
889 the conclusion of either proceeding. The 30-day period starts
890 upon the filing of the mediator's notice of impasse or the
891 arbitrator's written arbitration award. If the parties mutually
892 agree to participate in both presuit mediation and presuit
893 arbitration under this part, the tolling of the applicable
894 statute of limitations for each such alternative dispute
895 resolution proceeding shall be consecutive.

896 720.504 Notice of dispute.—Before giving the statutory
897 notice to proceed under presuit mediation or presuit arbitration
898 under this part, the aggrieved association or parcel owner shall
899 first provide written notice of the dispute to the responding

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900 party in the manner provided by this section.

901 (1) The notice of dispute shall be delivered to the
902 responding party by certified mail, return receipt requested, or
903 shall be hand delivered, and the person making delivery shall
904 file with the notice of mediation either the proof of receipt of
905 mailing or an affidavit stating the date and time of the
906 delivery of the notice of dispute. If the notice is delivered by
907 certified mail, return receipt requested, and the responding
908 party fails or refuses to accept delivery, notice shall be
909 considered properly delivered for purposes of this section on
910 the date of the first attempted delivery.

911 (2) The notice of dispute must state with specificity the
912 nature of the dispute, including the date, time, and location of
913 each event that is the subject of the dispute and the action
914 requested to resolve the dispute. The notice must also include
915 the text of any provision in the governing documents, including
916 the rules and regulations, of the association which form the
917 basis of the dispute.

918 (3) Unless the parties otherwise agree in writing to a
919 longer time period, the party receiving the notice of dispute
920 has 10 days following the date of receipt of notice to resolve
921 the dispute. If the alleged dispute has not been resolved within
922 the 10-day period, the aggrieved party may proceed under this
923 part at any time thereafter within the applicable statute of
924 limitations.

925 (4) A copy of the notice and the text of the provision in
926 the governing documents, or the rules and regulations, of the
927 association which are the basis of the dispute, along with proof
928 of service of the notice of dispute and a copy of any written

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929 responses received from the responding party, shall be included
 930 as an exhibit to any demand for mediation or arbitration under
 931 this part.

932 720.505 Presuit mediation.-

933 (1) Disputes between an association and a parcel owner or
 934 owners and between parcel owners must be submitted to presuit
 935 mediation before the dispute may be filed in court; or, at the
 936 election of the party initiating the presuit procedures, such
 937 dispute may be submitted to presuit arbitration pursuant to s.
 938 720.507 before the dispute may be filed in court. An aggrieved
 939 party who elects to use the presuit mediation procedure under
 940 this section shall serve on the responding party a written
 941 notice of presuit mediation in substantially the following form:

942
 943 STATUTORY NOTICE OF PRESUIT MEDIATION

944
 945 THE ALLEGED AGGRIEVED PARTY, _____, HEREBY
 946 DEMANDS THAT _____, AS THE RESPONDING PARTY,
 947 ENGAGE IN MANDATORY PRESUIT MEDIATION IN CONNECTION WITH THE
 948 FOLLOWING DISPUTES WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT
 949 ARE SUBJECT TO PRESUIT MEDIATION:

950
 951 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION WHICH
 952 DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO BE MEDIATED AND
 953 THE AUTHORITY SUPPORTING A FINDING OF A VIOLATION AS TO EACH
 954 DISPUTE, INCLUDING, BUT NOT LIMITED TO, THE APPLICABLE
 955 PROVISIONS OF THE GOVERNING DOCUMENTS OF THE ASSOCIATION
 956 BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE PARTIES, AND A COPY
 957 OF THE NOTICE YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN

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958 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

959

960 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES, THIS

961 DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT MEDIATION IS

962 REQUIRED BEFORE A LAWSUIT CAN BE FILED CONCERNING THE DISPUTE.

963 PURSUANT TO FLORIDA STATUTES, THE PARTIES ARE REQUIRED TO ENGAGE

964 IN PRESUIT MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN

965 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT ACTION,

966 AND THE AGGRIEVED PARTY DEMANDS THAT YOU PARTICIPATE IN THIS

967 PROCESS. UNLESS YOU RESPOND TO THIS NOTICE BY FILING WITH THE

968 AGGRIEVED PARTY A NOTICE OF OPTING OUT AND DEMAND FOR

969 ARBITRATION UNDER SECTION 720.506, FLORIDA STATUTES, YOUR

970 FAILURE TO PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A

971 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT FURTHER NOTICE.

972

973 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED NEGOTIATION

974 PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-PARTY MEDIATOR MEETS

975 WITH BOTH PARTIES AND ASSISTS THEM IN EXPLORING POSSIBLE

976 OPPORTUNITIES FOR RESOLVING PART OR ALL OF THE DISPUTE. BY

977 AGREEING TO PARTICIPATE IN PRESUIT MEDIATION, YOU ARE NOT BOUND

978 IN ANY WAY TO CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR

979 HAS NO AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO

980 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A FACILITATOR

981 TO ENSURE THAT EACH PARTY UNDERSTANDS THE POSITION OF THE OTHER

982 PARTY AND THAT ALL OPTIONS FOR REASONABLE SETTLEMENT ARE FULLY

983 EXPLORED.

984

985 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO WRITING

986 AND BECOME A BINDING AND ENFORCEABLE CONTRACT BETWEEN THE

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987 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS FASHION
988 AVOIDS THE NEED TO LITIGATE THESE ISSUES IN COURT. THE FAILURE
989 TO REACH AN AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE
990 IN THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN IMPASSE IN
991 THE MEDIATION, AFTER WHICH THE AGGRIEVED PARTY MAY PROCEED TO
992 FILE A LAWSUIT ON ALL OUTSTANDING, UNSETTLED DISPUTES. IF YOU
993 HAVE FAILED OR REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION
994 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES IF
995 YOU PREVAIL IN A SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME
996 DISPUTE.

997
998 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF ELIGIBLE,
999 QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED MEDIATORS WHO THE
1000 AGGRIEVED PARTY BELIEVES TO BE NEUTRAL AND QUALIFIED TO MEDIATE
1001 THE DISPUTE. YOU HAVE THE RIGHT TO SELECT ANY ONE OF THESE
1002 MEDIATORS. THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR
1003 MORE OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE MEDIATOR
1004 CANNOT ACT AS A NEUTRAL AND IMPARTIAL FACILITATOR. THE NAMES OF
1005 THE MEDIATORS THAT THE AGGRIEVED PARTY HEREBY SUBMITS TO YOU,
1006 AND FROM WHOM YOU MAY CHOOSE ONE; THEIR CURRENT ADDRESSES; THEIR
1007 TELEPHONE NUMBERS; AND THEIR HOURLY RATES ARE AS FOLLOWS:

1008
1009 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND HOURLY
1010 RATES OF THE MEDIATORS. OTHER PERTINENT INFORMATION ABOUT THE
1011 BACKGROUND OF THE MEDIATORS MAY BE INCLUDED AS AN ATTACHMENT.)

1012
1013 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO CONFIRM
1014 THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL BE NEUTRAL AND WILL
1015 NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY. UNLESS OTHERWISE

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1016 AGREED TO BY THE PARTIES, PART IV OF CHAPTER 720, FLORIDA
 1017 STATUTES, REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT
 1018 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE MEDIATOR. AN
 1019 AVERAGE MEDIATION MAY REQUIRE 3 TO 4 HOURS OF THE MEDIATOR'S
 1020 TIME, INCLUDING SOME PREPARATION TIME, AND THE PARTIES WOULD
 1021 NEED TO EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE
 1022 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF THEY CHOOSE
 1023 TO EMPLOY AN ATTORNEY IN CONNECTION WITH THE MEDIATION. HOWEVER,
 1024 USE OF AN ATTORNEY IS NOT REQUIRED AND IS AT THE OPTION OF EACH
 1025 PARTY. THE MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
 1026 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY HEREBY AGREES
 1027 TO PAY OR PREPAY ONE-HALF OF THE SELECTED MEDIATOR'S ESTIMATED
 1028 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER REASONABLE ADVANCE
 1029 DEPOSITS AS THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE
 1030 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE RETURNED
 1031 TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR SHARE OF THE
 1032 MEDIATOR FEES INCURRED.

1033
 1034 TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO TRY TO
 1035 RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER LEGAL ACTION,
 1036 PLEASE SIGN BELOW AND CLEARLY INDICATE WHICH MEDIATOR IS
 1037 ACCEPTABLE TO YOU FROM THE FIVE MEDIATORS LISTED BY THE
 1038 AGGRIEVED PARTY ABOVE.

1039
 1040 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE OF
 1041 PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE YOU MUST
 1042 PROVIDE A LISTING OF AT LEAST THREE DATES AND TIMES IN WHICH YOU
 1043 ARE AVAILABLE TO PARTICIPATE IN THE MEDIATION WHICH ARE WITHIN
 1044 90 DAYS AFTER THE POSTMARKED DATE OF THE MAILING OF THIS NOTICE

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1045 OF PRESUIT MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE
1046 SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY WILL THEN
1047 ASK THE MEDIATOR TO SCHEDULE A MUTUALLY CONVENIENT TIME AND
1048 PLACE FOR THE MEDIATION CONFERENCE TO BE HELD. IF YOU DO NOT
1049 PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE MEDIATOR IS
1050 AUTHORIZED TO SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING
1051 YOUR SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO EVENT
1052 WILL THE MEDIATION CONFERENCE BE LATER THAN 90 DAYS AFTER THE
1053 NOTICE OF PRESUIT MEDIATION WAS FIRST SERVED, UNLESS ALL PARTIES
1054 MUTUALLY AGREE OTHERWISE. IN THE EVENT THAT YOU FAIL TO RESPOND
1055 WITHIN 20 DAYS AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE
1056 THE MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE AVAILABLE FOR
1057 THE MEDIATION CONFERENCE, FAIL TO AGREE TO AT LEAST ONE OF THE
1058 MEDIATORS THAT THE AGGRIEVED PARTY HAS LISTED, FAIL TO PAY OR
1059 PREPAY TO THE MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL
1060 TO APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE
1061 AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE FILING OF
1062 A LAWSUIT AGAINST YOU WITHOUT FURTHER NOTICE. IN ANY SUBSEQUENT
1063 COURT ACTION, THE AGGRIEVED PARTY MAY SEEK AN AWARD OF
1064 REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN ATTEMPTING TO
1065 OBTAIN MEDIATION.

1066
1067 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY LAW,
1068 YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-CLASS MAIL,
1069 RETURN RECEIPT REQUESTED, TO THE AGGRIEVED PARTY LISTED ABOVE AT
1070 THE ADDRESS SHOWN ON THIS NOTICE AND POSTMARKED NO MORE THAN 20
1071 DAYS AFTER THE DATE OF THE POSTMARKED DATE FOR THIS NOTICE OR
1072 WITHIN 20 DAYS AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A
1073 COPY OF THIS NOTICE.

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SIGNATURE OF AGGRIEVED PARTY

PRINTED NAME OF AGGRIEVED PARTY

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

AGREEMENT TO MEDIATE

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

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

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

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

I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
MEDIATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS AS THE

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1103 MEDIATOR MAY REQUIRE FOR THIS PURPOSE.

1104

1105

1106 _____
SIGNATURE OF RESPONDING PARTY #1

1107

1108 _____
TELEPHONE CONTACT INFORMATION

1109

1110

1111 _____
SIGNATURE AND TELEPHONE CONTACT INFORMATION OF RESPONDING
1112 PARTY #2, IF APPLICABLE. IF THE PROPERTY IS OWNED BY MORE THAN
1113 ONE PERSON, ALL OWNERS MUST SIGN, OR A PERSON MAY SIGN WHO IS
1114 ACTING UNDER AUTHORITY OF A VALID POWER OF ATTORNEY GRANTED BY
1115 AN OWNER.

1116

1117 (2) (a) Service of the notice of presuit mediation shall be
1118 effected either by personal service, as provided in chapter 48,
1119 or by certified mail, return receipt requested, in a letter in
1120 substantial conformity with the form provided in subsection (1),
1121 with an additional copy being sent by regular first-class mail
1122 to the address of the responding party as it last appears on the
1123 books and records of the association or, if not available, then
1124 as it last appears in the official records of the county
1125 property appraiser where the parcel in dispute is located. The
1126 responding party has either 20 days after the postmarked date of
1127 the mailing of the statutory notice or 20 days after the date
1128 the responding party is served with a copy of the notice to
1129 serve a written response to the aggrieved party. The response
1130 shall be served by certified mail, return receipt requested,
1131 with an additional copy being sent by regular first-class mail

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1132 to the address shown on the statutory notice. The date of the
1133 postmark on the envelope for the response constitutes the date
1134 that the response is served. Once the parties have agreed on a
1135 mediator, the mediator may schedule or reschedule the mediation
1136 for a date and time mutually convenient to the parties within 90
1137 days after the date of service of the statutory notice. After
1138 the 90-day period, the mediator may reschedule the mediation
1139 only upon the mutual written agreement of all the parties.

1140 (b) The parties shall share the costs of presuit mediation
1141 equally, including the fee charged by the mediator, if any,
1142 unless the parties agree otherwise, and the mediator may require
1143 advance payment of his or her reasonable fees and costs. Each
1144 party is responsible for that party's own attorney's fees if a
1145 party chooses to be represented by an attorney at the mediation.

1146 (c) The party responding to the aggrieved party may provide
1147 a notice of opting out under s. 720.506 and demand arbitration
1148 or may sign the agreement to mediate included in the notice of
1149 presuit mediation. A responding party signing the agreement to
1150 mediate must clearly indicate the name of the mediator who is
1151 acceptable from the five names provided by the aggrieved party
1152 and must provide a list of dates and times in which the
1153 responding party is available to participate in the mediation
1154 within 90 days after the date the responding party was served,
1155 either by a process server or by certified mail, with the
1156 statutory notice of presuit mediation.

1157 (d) The mediator who has been selected and agreed to
1158 mediate must schedule the mediation conference at a mutually
1159 convenient time and place within that 90-day period; however, if
1160 the responding party does not provide a list of available dates

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1161 and times, the mediator is authorized to schedule a mediation
1162 conference without taking the responding party's schedule and
1163 convenience into consideration. Within 10 days after the
1164 designation of the mediator, the mediator shall coordinate with
1165 the parties and notify the parties in writing of the date, time,
1166 and place of the mediation conference.

1167 (e) The mediation conference must be held on the scheduled
1168 date and may be rescheduled if a rescheduled date is approved by
1169 the mediator. However, in no event shall the mediation be held
1170 later than 90 days after the notice of presuit mediation was
1171 first served, unless all parties mutually agree in writing
1172 otherwise. If the presuit mediation is not completed within the
1173 required time limits, the mediator shall declare an impasse,
1174 unless the mediation date is extended by mutual written
1175 agreement by all parties and approved by the mediator.

1176 (f) If the responding party fails to respond within 30 days
1177 after the date of service of the statutory notice of presuit
1178 mediation, fails to agree to at least one of the mediators
1179 listed by the aggrieved party in the notice, fails to pay or
1180 prepay to the mediator one-half of the costs of the mediator, or
1181 fails to appear and participate at the scheduled mediation, the
1182 aggrieved party is authorized to proceed with the filing of a
1183 lawsuit without further notice.

1184 (g)1. The failure of any party to respond to the statutory
1185 notice of presuit mediation within 20 days, the failure to agree
1186 upon a mediator, the failure to provide a listing of dates and
1187 times in which the responding party is available to participate
1188 in the mediation within 90 days after the date the responding
1189 party was served with the statutory notice of presuit mediation,

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1190 the failure to make payment of fees and costs within the time
1191 established by the mediator, or the failure to appear for a
1192 scheduled mediation session without the approval of the
1193 mediator, constitutes in each instance a failure or refusal to
1194 participate in the mediation process and operates as an impasse
1195 in the presuit mediation by such party, entitling the other
1196 party to file a lawsuit in court and to seek an award of the
1197 costs and attorney's fees associated with the mediation.

1198 2. Persons who fail or refuse to participate in the entire
1199 mediation process may not recover attorney's fees and costs in
1200 subsequent litigation relating to the same dispute between the
1201 same parties. If any presuit mediation session cannot be
1202 scheduled and conducted within 90 days after the offer to
1203 participate in mediation was filed, through no fault of either
1204 party, then an impasse shall be deemed to have occurred unless
1205 the parties mutually agree in writing to extend this deadline.
1206 In the event of such impasse, each party is responsible for its
1207 own costs and attorney's fees and one-half of any mediator fees
1208 and filing fees, and either party may file a lawsuit in court
1209 regarding the dispute.

1210 720.506 Opt out of presuit mediation.—A party served with a
1211 notice of presuit mediation under s. 720.505 may opt out of
1212 presuit mediation and demand that the dispute proceed under
1213 nonbinding arbitration as follows:

1214 (1) In lieu of a response to the notice of presuit
1215 mediation as required under s. 720.505, the responding party may
1216 serve upon the aggrieved party, in the same manner as the
1217 response to a notice for presuit mediation under s. 720.505, a
1218 notice of opting out of mediation and demand that the dispute

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1219 instead proceed to presuit arbitration under s. 720.507.

1220 (2) The aggrieved party shall be relieved from having to
1221 satisfy the requirements of s. 720.504 as a condition precedent
1222 to filing the demand for presuit arbitration.

1223 (3) Except as otherwise provided in this part, the choice
1224 of which presuit alternative dispute resolution procedure is
1225 used is at the election of the aggrieved party who first
1226 initiated such proceeding after complying with the provisions of
1227 s. 720.504.

1228 720.507 Presuit arbitration.—

1229 (1) Disputes between an association and a parcel owner or
1230 owners and disputes between parcel owners are subject to a
1231 demand for presuit arbitration pursuant to this section before
1232 the dispute may be filed in court. A party who elects to use the
1233 presuit arbitration procedure under this part shall serve on the
1234 responding party a written notice of presuit arbitration in
1235 substantially the following form:

1236
1237 STATUTORY NOTICE OF PRESUIT ARBITRATION

1238
1239 THE ALLEGED AGGRIEVED PARTY, _____, HEREBY
1240 DEMANDS THAT _____, AS THE RESPONDING PARTY,
1241 ENGAGE IN MANDATORY PRESUIT ARBITRATION IN CONNECTION WITH THE
1242 FOLLOWING DISPUTES WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT
1243 ARE SUBJECT TO PRESUIT ARBITRATION:

1244
1245 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE
1246 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A VIOLATION
1247 AS TO EACH DISPUTE, INCLUDING, BUT NOT LIMITED TO, ALL

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1248 APPLICABLE PROVISIONS OF THE GOVERNING DOCUMENTS BELIEVED TO
1249 APPLY TO THE DISPUTE BETWEEN THE PARTIES.)

1251 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES, THIS
1252 DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT ARBITRATION IS
1253 REQUIRED BEFORE A LAWSUIT CAN BE FILED CONCERNING THE DISPUTE.
1254 PURSUANT TO FLORIDA STATUTES, THE PARTIES ARE REQUIRED TO ENGAGE
1255 IN PRESUIT ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN
1256 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT ACTION,
1257 AND THE AGGRIEVED PARTY DEMANDS THAT YOU PARTICIPATE IN THIS
1258 PROCESS. IF YOU FAIL TO PARTICIPATE IN THE ARBITRATION PROCESS,
1259 A LAWSUIT MAY BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER
1260 WARNING.

1261
1262 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD PERSON
1263 WHO CONSIDERS THE LAW AND FACTS PRESENTED BY THE PARTIES AND
1264 RENDERS A WRITTEN DECISION CALLED AN "ARBITRATION AWARD."
1265 PURSUANT TO SECTION 720.507, FLORIDA STATUTES, THE ARBITRATION
1266 AWARD SHALL BE FINAL UNLESS A LAWSUIT IS FILED IN A COURT OF
1267 COMPETENT JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE
1268 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION IS/ARE LOCATED
1269 WITHIN 30 DAYS AFTER THE DATE OF THE ARBITRATION AWARD.

1270
1271 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE ARBITRATION
1272 AWARD, IT SHALL BE REDUCED TO WRITING AND BECOME A BINDING AND
1273 ENFORCEABLE CONTRACT OF THE PARTIES. A RESOLUTION OF ONE OR MORE
1274 DISPUTES IN THIS FASHION AVOIDS THE NEED TO ARBITRATE THESE
1275 ISSUES OR TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE
1276 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE PARTIES UNDER

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1277 SECTION 720.505, FLORIDA STATUTES. THE FAILURE OF A PARTY TO
1278 PARTICIPATE IN THE ARBITRATION PROCESS MAY RESULT IN THE
1279 ARBITRATOR ISSUING AN ARBITRATION AWARD BY DEFAULT IN THE
1280 ARBITRATION. IF YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE
1281 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER
1282 ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A SUBSEQUENT COURT
1283 PROCEEDING INVOLVING THE SAME DISPUTE BETWEEN THE SAME PARTIES.
1284

1285 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE ARBITRATORS
1286 WHO THE AGGRIEVED PARTY BELIEVES TO BE NEUTRAL AND QUALIFIED TO
1287 ARBITRATE THE DISPUTE. YOU HAVE THE RIGHT TO SELECT ANY ONE OF
1288 THE ARBITRATORS. THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH
1289 ONE OR MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE
1290 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL ARBITRATOR. ANY
1291 ARBITRATOR WHO CANNOT ACT IN THIS CAPACITY IS REQUIRED ETHICALLY
1292 TO DECLINE TO ACCEPT ENGAGEMENT. THE NAMES OF THE FIVE
1293 ARBITRATORS THAT THE AGGRIEVED PARTY HAS CHOSEN, AND FROM WHICH
1294 YOU MAY SELECT ONE; THEIR CURRENT ADDRESSES; THEIR TELEPHONE
1295 NUMBERS; AND THEIR HOURLY RATES, ARE AS FOLLOWS:
1296

1297 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND HOURLY
1298 RATES OF AT LEAST FIVE ARBITRATORS.
1299

1300 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO CONFIRM
1301 THAT THE LISTED ARBITRATORS WILL BE NEUTRAL AND WILL NOT SHOW
1302 ANY FAVORITISM TOWARD EITHER PARTY.
1303

1304 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF
1305 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE PARTIES SHARE

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1306 THE COSTS OF PRESUIT ARBITRATION EQUALLY, INCLUDING THE FEE
1307 CHARGED BY THE ARBITRATOR. THE PARTIES ARE RESPONSIBLE FOR THEIR
1308 OWN ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY IN
1309 CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN ATTORNEY TO
1310 REPRESENT YOU FOR THE ARBITRATION IS NOT REQUIRED. THE
1311 ARBITRATOR SELECTED MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
1312 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY HEREBY AGREES
1313 TO PAY OR PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED
1314 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER REASONABLE ADVANCE
1315 DEPOSITS AS THE ARBITRATOR WHO IS SELECTED REQUIRES FOR THIS
1316 PURPOSE. ANY FUNDS DEPOSITED WILL BE RETURNED TO YOU IF THESE
1317 FUNDS ARE IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.

1318
1319 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND CLEARLY
1320 INDICATE THE NAME OF THE ARBITRATOR WHO IS ACCEPTABLE TO YOU
1321 FROM THE NAMES LISTED BY THE AGGRIEVED PARTY.

1322
1323 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE WITHIN
1324 20 DAYS AFTER THE DATE THAT THE NOTICE OF PRESUIT ARBITRATION
1325 WAS EITHER PERSONALLY SERVED ON YOU OR 20 DAYS AFTER THE
1326 POSTMARKED DATE THAT THIS NOTICE OF PRESUIT ARBITRATION WAS SENT
1327 TO YOU BY CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT
1328 LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE TO
1329 PARTICIPATE IN THE ARBITRATION WHICH ARE WITHIN 90 DAYS AFTER
1330 THE DATE YOU WERE PERSONALLY SERVED OR WITHIN 90 DAYS AFTER THE
1331 POSTMARKED DATE OF THE CERTIFIED MAILING OF THIS STATUTORY
1332 NOTICE OF PRESUIT ARBITRATION. A COPY OF THIS NOTICE AND YOUR
1333 RESPONSE WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE
1334 ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE A MUTUALLY

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1335 CONVENIENT TIME AND PLACE FOR THE ARBITRATION CONFERENCE TO BE
1336 HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE DATES AND TIMES,
1337 THE ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION
1338 CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND CONVENIENCE INTO
1339 CONSIDERATION. THE ARBITRATION CONFERENCE MUST BE HELD ON THE
1340 SCHEDULED DATE, OR ANY RESCHEDULED DATE APPROVED BY THE
1341 ARBITRATOR. IN NO EVENT WILL THE ARBITRATION CONFERENCE BE LATER
1342 THAN 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS FIRST
1343 SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN WRITING OTHERWISE.
1344 IF THE ARBITRATION IS NOT COMPLETED WITHIN THE REQUIRED TIME
1345 LIMITS, THE ARBITRATOR SHALL ISSUE AN ARBITRATION AWARD, UNLESS
1346 THE HEARING IS EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE
1347 PARTIES AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU
1348 FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE SERVED
1349 WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE ARBITRATOR WITH
1350 DATES AND TIMES IN WHICH YOU ARE AVAILABLE FOR THE ARBITRATION
1351 CONFERENCE, FAIL TO AGREE TO ONE OF THE ARBITRATORS THAT THE
1352 AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO THE
1353 ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS REQUIRED, OR FAIL
1354 TO APPEAR AND PARTICIPATE AT THE SCHEDULED ARBITRATION
1355 CONFERENCE, THE AGGRIEVED PARTY MAY REQUEST THE ARBITRATOR TO
1356 ISSUE AN ARBITRATION AWARD. IN THE SUBSEQUENT COURT ACTION, THE
1357 AGGRIEVED PARTY IS ENTITLED TO RECOVER AN AWARD OF REASONABLE
1358 ATTORNEY'S FEES AND COSTS, INCLUDING ANY FEES PAID TO THE
1359 ARBITRATOR, INCURRED IN OBTAINING AN ARBITRATION AWARD PURSUANT
1360 TO SECTION 720.507, FLORIDA STATUTES.

1361
1362 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY LAW,
1363 YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY CERTIFIED, FIRST-

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1364 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE ADDRESS SHOWN ON
1365 THIS NOTICE OF PRESUIT ARBITRATION.

1366
1367 _____
1368 SIGNATURE OF AGGRIEVED PARTY

1369
1370 _____
1371 PRINTED NAME OF AGGRIEVED PARTY

1372
1373 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR
1374 ACCEPTANCE OF THE AGREEMENT TO ARBITRATE.

1375
1376 AGREEMENT TO ARBITRATE

1377
1378 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN PRESUIT
1379 ARBITRATION AND AGREES TO ATTEND AN ARBITRATION CONDUCTED BY THE
1380 FOLLOWING ARBITRATOR LISTED BELOW AS SOMEONE WHO WOULD BE
1381 ACCEPTABLE TO ARBITRATE THIS DISPUTE:

1382
1383 (IN YOUR RESPONSE, SELECT THE NAME OF ONE ARBITRATOR THAT
1384 IS ACCEPTABLE TO YOU FROM THOSE ARBITRATORS LISTED BY THE
1385 AGGRIEVED PARTY.)

1386
1387 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS
1388 AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE PRESUIT
1389 ARBITRATION CONFERENCE AT THE FOLLOWING DATES AND TIMES:

1390
1391 (LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE MUST BE
1392 AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE ON WHICH YOU WERE

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1393 SERVED, EITHER BY A PROCESS SERVER OR BY CERTIFIED MAIL, WITH
 1394 THE NOTICE OF PRESUIT ARBITRATION.)

1396 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
 1397 ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS AS THE
 1398 ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

1400 _____
 1401 SIGNATURE OF RESPONDING PARTY #1

1402 _____
 1403 TELEPHONE CONTACT INFORMATION

1405 _____
 1406 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF RESPONDING
 1407 PARTY #2, IF APPLICABLE. IF THE PROPERTY IS OWNED BY MORE THAN
 1408 ONE PERSON, ALL OWNERS MUST SIGN, OR A PERSON MAY SIGN WHO IS
 1409 ACTING UNDER AUTHORITY OF A VALID POWER OF ATTORNEY GRANTED BY
 1410 AN OWNER.

1411
 1412 (2) (a) Service of the statutory notice of presuit
 1413 arbitration shall be effected either by personal service, as
 1414 provided in chapter 48, or by certified mail, return receipt
 1415 requested, in a letter in substantial conformity with the form
 1416 provided in subsection (1), with an additional copy being sent
 1417 by regular first-class mail to the address of the responding
 1418 party as it last appears on the books and records of the
 1419 association, or if not available, the last address as it appears
 1420 on the official records of the county property appraiser for the
 1421 county in which the property is situated that is subject to the

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1422 association documents. The responding party has 20 days after
1423 the postmarked date of the certified mailing of the statutory
1424 notice of presuit arbitration or 20 days after the date the
1425 responding party is personally served with the statutory notice
1426 of presuit arbitration to serve a written response to the
1427 aggrieved party. The response shall be served by certified mail,
1428 return receipt requested, with an additional copy being sent by
1429 regular first-class mail to the address shown on the statutory
1430 notice of presuit arbitration. The postmarked date on the
1431 envelope of the response constitutes the date the response was
1432 served.

1433 (b) The parties shall share the costs of presuit
1434 arbitration equally, including the fee charged by the
1435 arbitrator, if any, unless the parties agree otherwise, and the
1436 arbitrator may require advance payment of his or her reasonable
1437 fees and costs. Each party is responsible for all of their own
1438 attorney's fees if a party chooses to be represented by an
1439 attorney for the arbitration proceedings.

1440 (c)1. The party responding to the aggrieved party must sign
1441 the agreement to arbitrate included in the notice of presuit
1442 arbitration and clearly indicate the name of the arbitrator who
1443 is acceptable of those arbitrators listed by the aggrieved
1444 party. The responding party must provide a list of at least
1445 three dates and times in which the responding party is available
1446 to participate in the arbitration conference within 90 days
1447 after the date the responding party was served with the
1448 statutory notice of presuit arbitration.

1449 2. The arbitrator must schedule the arbitration conference
1450 at a mutually convenient time and place, but if the responding

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1451 party does not provide a list of available dates and times, the
1452 arbitrator is authorized to schedule an arbitration conference
1453 without taking the responding party's schedule and convenience
1454 into consideration. Within 10 days after the designation of the
1455 arbitrator, the arbitrator shall notify the parties in writing
1456 of the date, time, and place of the arbitration conference.

1457 3. The arbitration conference must be held on the scheduled
1458 date and may be rescheduled if a rescheduled date is approved by
1459 the arbitrator. However, the arbitration hearing may not be held
1460 later than 90 days after the notice of presuit arbitration was
1461 first served, unless all parties mutually agree in writing
1462 otherwise. If the arbitration hearing is not completed within
1463 the required time limits, the arbitrator may issue an
1464 arbitration award, unless the time for the hearing is extended
1465 as provided herein. If the responding party fails to respond
1466 within 20 days after the date of statutory notice of presuit
1467 arbitration, fails to agree to at least one of the arbitrators
1468 that have been listed by the aggrieved party in the presuit
1469 notice of arbitration, fails to pay or prepay to the arbitrator
1470 one-half of the costs involved, or fails to appear and
1471 participate at the scheduled arbitration, the aggrieved party is
1472 authorized to proceed with a request that the arbitrator issue
1473 an arbitration award.

1474 (d)1. The failure of any party to respond to the statutory
1475 notice of presuit arbitration within 20 days, the failure to
1476 select one of the five arbitrators listed by the aggrieved
1477 party, the failure to provide a listing of dates and times in
1478 which the responding party is available to participate in the
1479 arbitration conference within 90 days after the date of the

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1480 responding party being served with the statutory notice of
1481 presuit arbitration, the failure to make payment of fees and
1482 costs as required within the time established by the arbitrator,
1483 or the failure to appear for an arbitration conference without
1484 the approval of the arbitrator, entitles the other party to
1485 request the arbitrator to enter an arbitration award, including
1486 an award of the reasonable costs and attorney's fees associated
1487 with the arbitration.

1488 2. Persons who fail or refuse to participate in the entire
1489 arbitration process may not recover attorney's fees and costs in
1490 any subsequent litigation proceeding relating to the same
1491 dispute involving the same parties.

1492 (3) (a) In an arbitration proceeding, the arbitrator may not
1493 consider any unsuccessful mediation of the dispute.

1494 (b) An arbitrator in a proceeding initiated pursuant to the
1495 provisions of this part may shorten the time for discovery or
1496 otherwise limit discovery in a manner consistent with the policy
1497 goals of this part to reduce the time and expense of litigating
1498 homeowners' association disputes initiated pursuant to this
1499 chapter and to promote an expeditious alternative dispute
1500 resolution procedure for parties to such actions.

1501 (4) At the request of any party to the arbitration, the
1502 arbitrator may issue subpoenas for the attendance of witnesses
1503 and the production of books, records, documents, and other
1504 evidence, and any party on whose behalf a subpoena is issued may
1505 apply to the court for orders compelling such attendance and
1506 production. Subpoenas shall be served and are enforceable in the
1507 manner provided by the Florida Rules of Civil Procedure.

1508 Discovery may, at the discretion of the arbitrator, be permitted

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1509 in the manner provided by the Florida Rules of Civil Procedure.

1510 (5) The final arbitration award shall be sent to the
1511 parties in writing no later than 30 days after the date of the
1512 arbitration hearing, absent extraordinary circumstances
1513 necessitating a later filing the reasons for which shall be
1514 stated in the final award if filed more than 30 days after the
1515 date of the final session of the arbitration conference. An
1516 agreed arbitration award is final in those disputes in which the
1517 parties have mutually agreed to be bound. An arbitration award
1518 decided by the arbitrator is final unless a lawsuit seeking a
1519 trial de novo is filed in a court of competent jurisdiction
1520 within 30 days after the date of the arbitration award. The
1521 right to file for a trial de novo entitles the parties to file a
1522 complaint in the appropriate trial court for a judicial
1523 resolution of the dispute. The prevailing party in an
1524 arbitration proceeding shall be awarded the costs of the
1525 arbitration and reasonable attorney's fees in an amount
1526 determined by the arbitrator.

1527 (6) The party filing a motion for a trial de novo shall be
1528 assessed the other party's arbitration costs, court costs, and
1529 other reasonable costs, including attorney's fees, investigation
1530 expenses, and expenses for expert or other testimony or evidence
1531 incurred after the arbitration hearing, if the judgment upon the
1532 trial de novo is not more favorable than the final arbitration
1533 award.

1534 720.508 Rules of procedure.-

1535 (1) Presuit mediation and presuit arbitration proceedings
1536 under this part must be conducted in accordance with the
1537 applicable Florida Rules of Civil Procedure and rules governing

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1538 mediations and arbitrations under chapter 44, except that this
1539 part shall be controlling to the extent of any conflict with
1540 other applicable rules or statutes. The arbitrator may shorten
1541 any applicable time period and otherwise limit the scope of
1542 discovery on request of the parties or within the discretion of
1543 the arbitrator exercised consistent with the purpose and
1544 objective of reducing the expense and expeditiously concluding
1545 proceedings under this part.

1546 (2) Presuit mediation proceedings under s. 720.505 are
1547 privileged and confidential to the same extent as court-ordered
1548 mediation under chapter 44. An arbitrator or judge may not
1549 consider any information or evidence arising from the presuit
1550 mediation proceeding except in a proceeding to impose sanctions
1551 for failure to attend a presuit mediation session or to enforce
1552 a mediated settlement agreement.

1553 (3) Persons who are not parties to the dispute may not
1554 attend the presuit mediation conference without consent of all
1555 parties, with the exception of counsel for the parties and a
1556 corporate representative designated by the association. Presuit
1557 mediations under this part are not a board meeting for purposes
1558 of notice and participation set forth in this chapter.

1559 (4) Attendance at a mediation conference by the board of
1560 directors does not require notice or participation by nonboard
1561 members as otherwise required by this chapter for meetings of
1562 the board.

1563 (5) Settlement agreements resulting from a mediation or
1564 arbitration proceeding do not have precedential value in
1565 proceedings involving parties other than those participating in
1566 the mediation or arbitration.

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1567 (6) Arbitration awards by an arbitrator have precedential
1568 value in other proceedings involving the same association or
1569 with respect to the same parcel owner.

1570 720.509 Mediators and arbitrators; qualifications and
1571 registration.—A person is authorized to conduct mediation or
1572 arbitration under this part if he or she has been certified as a
1573 circuit court civil mediator under the requirements adopted
1574 pursuant to s. 44.106, is a member in good standing with The
1575 Florida Bar, and otherwise meets all other requirements imposed
1576 by chapter 44.

1577 720.510 Enforcement of mediation agreement or arbitration
1578 award.—

1579 (1) A mediation settlement may be enforced through the
1580 county or circuit court, as applicable, and any costs and
1581 attorney's fees incurred in the enforcement of a settlement
1582 agreement reached at mediation shall be awarded to the
1583 prevailing party in any enforcement action.

1584 (2) Any party to an arbitration proceeding may enforce an
1585 arbitration award by filing a petition in a court of competent
1586 jurisdiction in which the homeowners' association is located.
1587 The prevailing party in such proceeding shall be awarded
1588 reasonable attorney's fees and costs incurred in such
1589 proceeding.

1590 (3) If a complaint is filed seeking a trial de novo, the
1591 arbitration award shall be stayed and a petition to enforce the
1592 award may not be granted. Such award, however, is admissible in
1593 the court proceeding seeking a trial de novo.

1594 Section 11. This act shall take effect July 1, 2009.