



202796

LEGISLATIVE ACTION

Senate	.	House
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Senator Garcia moved the following:

1 **Senate Amendment to Amendment (927562) (with title**
2 **amendment)**

3
4 After line 1830
5 insert:

6 Section 23. Section 720.311, Florida Statutes, is repealed.

7 Section 24. Part IV of chapter 720, Florida Statutes, to be
8 entitled "Dispute Resolution," consisting of sections 720.501,
9 720.502, 720.503, 720.504, 720.505, 720.506, 720.507, 720.508,
10 720.509, and 720.510, is created to read:

11 720.501 Short title.—This part may be cited as the "Home
12 Court Advantage Dispute Resolution Act."

13 720.502 Legislative findings.—The Legislature finds that



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14 alternative dispute resolution has made progress in reducing
15 court dockets and trials and in offering a more efficient, cost-
16 effective option to litigation.

17 720.503 Applicability of this part.-

18 (1) Unless otherwise provided in this part, before a
19 dispute described in this part between a homeowners' association
20 and a parcel owner or owners, or a dispute between parcel owners
21 within the same homeowners' association, may be filed in court,
22 the dispute is subject to presuit mediation pursuant to s.
23 720.505 or presuit arbitration pursuant to s. 720.507, at the
24 option of the aggrieved party who initiates the first formal
25 action of alternative dispute resolution under this part. The
26 parties may mutually agree to participate in both presuit
27 mediation and presuit arbitration prior to suit being filed by
28 either party.

29 (2) Unless otherwise provided in this part, the mediation
30 and arbitration provisions of this part are limited to disputes
31 between an association and a parcel owner or owners or between
32 parcel owners regarding the use of or changes to the parcel or
33 the common areas under the governing documents and other
34 disputes involving violations of the recorded declaration of
35 covenants or other governing documents, disputes arising
36 concerning enforcement of the governing documents or any
37 amendments thereto, and disputes involving access to the
38 official records of the association. A dispute concerning title
39 to any parcel or common area, interpretation or enforcement of
40 any warranty, the levy of a fee or assessment, the collection of
41 an assessment levied against a party, the eviction or other
42 removal of a tenant from a parcel, alleged breaches of fiduciary



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43 duty by one or more directors, or any action to collect mortgage
44 indebtedness or to foreclosure a mortgage shall not be subject
45 to the provisions of this part.

46 (3) All disputes arising after the effective date of this
47 part involving the election of the board of directors for an
48 association or the recall of any member of the board or officer
49 of the association shall not be eligible for presuit mediation
50 under s. 720.505, but shall be subject to the provisions
51 concerning presuit arbitration under s. 720.507.

52 (4) In any dispute subject to presuit mediation or presuit
53 arbitration under this part for which emergency relief is
54 required, a motion for temporary injunctive relief may be filed
55 with the court without first complying with the presuit
56 mediation or presuit arbitration requirements of this part.
57 After any issues regarding emergency or temporary relief are
58 resolved, the court may refer the parties to a mediation program
59 administered by the courts or require mediation or arbitration
60 under this part.

61 (5) The mailing of a statutory notice of presuit mediation
62 or presuit arbitration as provided in this part shall toll the
63 applicable statute of limitations during the pendency of the
64 mediation or arbitration and for a period of 30 days following
65 the conclusion of either proceeding. The 30-day period shall
66 start upon the filing of the mediator's notice of impasse or the
67 arbitrator's written arbitration award. If the parties mutually
68 agree to participate in both presuit mediation and presuit
69 arbitration under this part, the tolling of the applicable
70 statute of limitations for each such alternative dispute
71 resolution proceeding shall be consecutive.



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72 720.504 Notice of dispute.—Prior to giving the statutory
73 notice to proceed under presuit mediation or presuit arbitration
74 under this part, the aggrieved association or parcel owner shall
75 first provide written notice of the dispute to the responding
76 party in the manner provided by this section.

77 (1) The notice of dispute shall be delivered to the
78 responding party by certified mail, return receipt requested, or
79 the notice of dispute may be hand delivered, and the person
80 making delivery shall file with their notice of mediation either
81 the proof of receipt of mailing or an affidavit stating the date
82 and time of the delivery of the notice of dispute. If the notice
83 is delivered by certified mail, return receipt requested, and
84 the responding party fails or refuses to accept delivery, notice
85 shall be considered properly delivered for purposes of this
86 section on the date of the first attempted delivery.

87 (2) The notice of dispute shall state with specificity the
88 nature of the dispute, including the date, time, and location of
89 each event that is the subject of the dispute and the action
90 requested to resolve the dispute. The notice shall also include
91 the text of any provision in the governing documents, including
92 the rules and regulations, of the association which form the
93 basis of the dispute.

94 (3) Unless the parties otherwise agree in writing to a
95 longer time period, the party receiving the notice of dispute
96 shall have 10 days following the date of receipt of notice to
97 resolve the dispute. If the alleged dispute has not been
98 resolved within the 10-day period, the aggrieved party may
99 proceed under this part at any time thereafter within the
100 applicable statute of limitations.



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101 (4) A copy of the notice and the text of the provision in
102 the governing documents, or the rules and regulations, of the
103 association which are the basis of the dispute, along with proof
104 of service of the notice of dispute and a copy of any written
105 responses received from the responding party, shall be included
106 as an exhibit to any demand for mediation or arbitration under
107 this part.

108 720.505 Presuit mediation.—

109 (1) Disputes between an association and a parcel owner or
110 owners and between parcel owners must be submitted to presuit
111 mediation before the dispute may be filed in court; or, at the
112 election of the party initiating the presuit procedures, such
113 dispute may be submitted to presuit arbitration pursuant to s.
114 720.507 before the dispute may be filed in court. An aggrieved
115 party who elects to use the presuit mediation procedure under
116 this section shall serve on the responding party a written
117 notice of presuit mediation in substantially the following form:

118
119 STATUTORY NOTICE OF PRESUIT MEDIATION

120
121 THE ALLEGED AGGRIEVED PARTY, _____,
122 HEREBY DEMANDS THAT _____, AS THE
123 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
124 MEDIATION IN CONNECTION WITH THE FOLLOWING DISPUTE(S)
125 WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT ARE
126 SUBJECT TO PRESUIT MEDIATION:

127
128 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION
129 WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO



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130 BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF
131 A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
132 LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING
133 DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE
134 DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE
135 YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN
136 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

137
138 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
139 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
140 MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
141 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
142 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
143 MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER
144 TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
145 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
146 PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO
147 THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A
148 NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER
149 S. 720.506, FLORIDA STATUTES, YOUR FAILURE TO
150 PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A
151 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT
152 FURTHER NOTICE.

153
154 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED
155 NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-
156 PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS
157 THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING
158 PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE



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159 IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO
160 CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO
161 AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO
162 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A
163 FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE
164 POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR
165 REASONABLE SETTLEMENT ARE FULLY EXPLORED.

166
167 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO
168 WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT
169 BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE
170 DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE
171 THESE ISSUES IN COURT. THE FAILURE TO REACH AN
172 AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN
173 THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN
174 IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED
175 PARTY MAY PROCEED TO FILE A LAWSUIT ON ALL
176 OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR
177 REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION
178 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER
179 ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT
180 PROCEEDING INVOLVING THE SAME DISPUTE.

181
182 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF
183 ELIGIBLE, QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED
184 MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
185 NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE
186 THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE
187 FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE



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188 OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE
189 MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL
190 FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE
191 AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU
192 MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE
193 NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

194
195 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND
196 HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT
197 INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY
198 BE INCLUDED AS AN ATTACHMENT.)

199
200 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO
201 CONFIRM THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL
202 BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD
203 EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE
204 PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES,
205 REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT
206 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE
207 MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4
208 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME
209 PREPARATION TIME, AND THE PARTIES WOULD NEED TO
210 EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE
211 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF
212 THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH
213 THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT
214 REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE
215 MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
216 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY



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217 HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE
218 SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS
219 AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS
220 THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE
221 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE
222 RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR
223 SHARE OF THE MEDIATOR FEES INCURRED.

224
225 TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO
226 TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER
227 LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE
228 WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE
229 MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.

230
231 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
232 OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE
233 YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND
234 TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE
235 MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED
236 DATE OF THE MAILING OF THIS NOTICE OF PRESUIT
237 MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE
238 SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY
239 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY
240 CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE
241 TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE
242 DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO
243 SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR
244 SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO
245 EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90



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246 DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST
247 SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN
248 THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS
249 AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE
250 MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE
251 AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE
252 TO AT LEAST ONE OF THE MEDIATORS THAT THE AGGRIEVED
253 PARTY HAS LISTED, FAIL TO PAY OR PREPAY TO THE
254 MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL TO
255 APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE
256 AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE
257 FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER
258 NOTICE. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED
259 PARTY MAY SEEK AN AWARD OF REASONABLE ATTORNEY'S FEES
260 AND COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.

261
262 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY
263 LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-
264 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED
265 PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE
266 AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF
267 THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS
268 AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY
269 OF THIS NOTICE.

270
271 _____
272 SIGNATURE OF AGGRIEVED PARTY
273
274 _____



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PRINTED NAME OF AGGRIEVED PARTY

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

AGREEMENT TO MEDIATE

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

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

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

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

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

SIGNATURE OF RESPONDING PARTY #1



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304 TELEPHONE CONTACT INFORMATION

305
306
307 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF
308 RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS
309 OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,
310 OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF
311 A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

312
313 (2) (a) Service of the notice of presuit mediation shall be
314 effected either by personal service, as provided in chapter 48,
315 or by certified mail, return receipt requested, in a letter in
316 substantial conformity with the form provided in subsection (1),
317 with an additional copy being sent by regular first-class mail,
318 to the address of the responding party as it last appears on the
319 books and records of the association or, if not available, then
320 as it last appears in the official records of the county
321 property appraiser where the parcel in dispute is located. The
322 responding party has either 20 days after the postmarked date of
323 the mailing of the statutory notice or 20 days after the date
324 the responding party is served with a copy of the notice to
325 serve a written response to the aggrieved party. The response
326 shall be served by certified mail, return receipt requested,
327 with an additional copy being sent by regular first-class mail,
328 to the address shown on the statutory notice. The date of the
329 postmark on the envelope for the response shall constitute the
330 date that the response is served. Once the parties have agreed
331 on a mediator, the mediator may schedule or reschedule the
332 mediation for a date and time mutually convenient to the parties



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333 within 90 days after the date of service of the statutory
334 notice. After such 90-day period, the mediator may reschedule
335 the mediation only upon the mutual written agreement of all the
336 parties.

337 (b) The parties shall share the costs of presuit mediation
338 equally, including the fee charged by the mediator, if any,
339 unless the parties agree otherwise, and the mediator may require
340 advance payment of his or her reasonable fees and costs. Each
341 party shall be responsible for that party's own attorney's fees
342 if a party chooses to be represented by an attorney at the
343 mediation.

344 (c) The party responding to the aggrieved party may provide
345 a notice of opting out under s. 720.506 and demand arbitration
346 or may sign the agreement to mediate included in the notice of
347 presuit mediation. A responding party signing the agreement to
348 mediate must clearly indicate the name of the mediator who is
349 acceptable from the five names provided by the aggrieved party
350 and must provide a list of dates and times in which the
351 responding party is available to participate in the mediation
352 within 90 days after the date the responding party was served,
353 either by process server or by certified mail, with the
354 statutory notice of presuit mediation.

355 (d) The mediator who has been selected and agreed to
356 mediate must schedule the mediation conference at a mutually
357 convenient time and place within that 90-day period; but, if the
358 responding party does not provide a list of available dates and
359 times, the mediator is authorized to schedule a mediation
360 conference without taking the responding party's schedule and
361 convenience into consideration. Within 10 days after the



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362 designation of the mediator, the mediator shall coordinate with
363 the parties and notify the parties in writing of the date, time,
364 and place of the mediation conference.

365 (e) The mediation conference must be held on the scheduled
366 date and may be rescheduled if a rescheduled date is approved by
367 the mediator. However, in no event shall the mediation be held
368 later than 90 days after the notice of presuit mediation was
369 first served, unless all parties mutually agree in writing
370 otherwise. If the presuit mediation is not completed within the
371 required time limits, the mediator shall declare an impasse
372 unless the mediation date is extended by mutual written
373 agreement by all parties and approved by the mediator.

374 (f) If the responding party fails to respond within 30 days
375 after the date of service of the statutory notice of presuit
376 mediation, fails to agree to at least one of the mediators
377 listed by the aggrieved party in the notice, fails to pay or
378 prepay to the mediator one-half of the costs of the mediator, or
379 fails to appear and participate at the scheduled mediation, the
380 aggrieved party shall be authorized to proceed with the filing
381 of a lawsuit without further notice.

382 (g)1. The failure of any party to respond to the statutory
383 notice of presuit mediation within 20 days, the failure to agree
384 upon a mediator, the failure to provide a listing of dates and
385 times in which the responding party is available to participate
386 in the mediation within 90 days after the date the responding
387 party was served with the statutory notice of presuit mediation,
388 the failure to make payment of fees and costs within the time
389 established by the mediator, or the failure to appear for a
390 scheduled mediation session without the approval of the



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391 mediator, shall in each instance constitute a failure or refusal
392 to participate in the mediation process and shall operate as an
393 impasse in the presuit mediation by such party, entitling the
394 other party to file a lawsuit in court and to seek an award of
395 the costs and attorney's fees associated with the mediation.

396 2. Persons who fail or refuse to participate in the entire
397 mediation process may not recover attorney's fees and costs in
398 subsequent litigation relating to the same dispute between the
399 same parties. If any presuit mediation session cannot be
400 scheduled and conducted within 90 days after the offer to
401 participate in mediation was filed, through no fault of either
402 party, then an impasse shall be deemed to have occurred unless
403 the parties mutually agree in writing to extend this deadline.
404 In the event of such impasse, each party shall be responsible
405 for its own costs and attorney's fees and one-half of any
406 mediator fees and filing fees, and either party may file a
407 lawsuit in court regarding the dispute.

408 720.506 Opt-out of presuit mediation.—A party served with a
409 notice of presuit mediation under s. 720.505 may opt out of
410 presuit mediation and demand that the dispute proceed under
411 nonbinding arbitration as follows:

412 (1) In lieu of a response to the notice of presuit
413 mediation as required under s. 720.505, the responding party may
414 serve upon the aggrieved party, in the same manner as the
415 response to a notice for presuit mediation under s. 720.505, a
416 notice of opting out of mediation and demand that the dispute
417 instead proceed to presuit arbitration under s. 720.507.

418 (2) The aggrieved party shall be relieved from having to
419 satisfy the requirements of s. 720.504 as a condition precedent



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420 to filing the demand for presuit arbitration.

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

426 720.507 Presuit arbitration.-

427 (1) Disputes between an association and a parcel owner or
428 owners and disputes between parcel owners are subject to a
429 demand for presuit arbitration pursuant to this section before
430 the dispute may be filed in court. A party who elects to use the
431 presuit arbitration procedure under this part shall serve on the
432 responding party a written notice of presuit arbitration in
433 substantially the following form:

434
435 STATUTORY NOTICE OF PRESUIT ARBITRATION

436
437 THE ALLEGED AGGRIEVED PARTY, _____,
438 HEREBY DEMANDS THAT _____, AS THE
439 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
440 ARBITRATION IN CONNECTION WITH THE FOLLOWING
441 DISPUTE(S) WITH YOU, WHICH BY STATUTE ARE OF A TYPE
442 THAT ARE SUBJECT TO PRESUIT ARBITRATION:

443
444 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE
445 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A
446 VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
447 LIMITED TO, ALL APPLICABLE PROVISIONS OF THE GOVERNING
448 DOCUMENTS BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE



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449 PARTIES.)

450
451 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
452 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
453 ARBITRATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
454 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
455 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
456 ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN
457 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
458 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
459 PARTICIPATE IN THIS PROCESS. IF YOU FAIL TO
460 PARTICIPATE IN THE ARBITRATION PROCESS, A LAWSUIT MAY
461 BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER
462 WARNING.

463
464 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD
465 PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY
466 THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN
467 "ARBITRATION AWARD." PURSUANT TO S. 720.507, FLORIDA
468 STATUTES, THE ARBITRATION AWARD SHALL BE FINAL UNLESS
469 A LAWSUIT IS FILED IN A COURT OF COMPETENT
470 JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE
471 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION
472 IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE OF THE
473 ARBITRATION AWARD.

474
475 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE
476 ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND
477 BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE



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478 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS
479 FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR
480 TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE
481 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE
482 PARTIES UNDER S. 720.505, FLORIDA STATUTES. THE
483 FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION
484 PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN
485 ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF
486 YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE
487 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED
488 TO RECOVER ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A
489 SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE
490 BETWEEN THE SAME PARTIES.

491
492 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE
493 ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
494 NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU
495 HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS.
496 THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR
497 MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE
498 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL
499 ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS
500 CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT
501 ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE
502 AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT
503 ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS,
504 AND HOURLY RATES, ARE AS FOLLOWS:

505
506 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND



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507 HOURLY RATES OF AT LEAST FIVE ARBITRATORS.

508
509 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO
510 CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL
511 AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.

512
513 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF
514 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE
515 PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION
516 EQUALLY, INCLUDING THE FEE CHARGED BY THE ARBITRATOR.
517 THE PARTIES SHALL BE RESPONSIBLE FOR THEIR OWN
518 ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY
519 IN CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN
520 ATTORNEY TO REPRESENT YOU FOR THE ARBITRATION IS NOT
521 REQUIRED. THE ARBITRATOR SELECTED MAY REQUIRE THE
522 ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED
523 FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR
524 PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED
525 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER
526 REASONABLE ADVANCE DEPOSITS AS THE ARBITRATOR WHO IS
527 SELECTED REQUIRES FOR THIS PURPOSE. ANY FUNDS
528 DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE
529 IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.

530
531 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND
532 CLEARLY INDICATE THE NAME OF THE ARBITRATOR WHO IS
533 ACCEPTABLE TO YOU FROM THE NAMES LISTED BY THE
534 AGGRIEVED PARTY.



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536 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
537 WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF
538 PRESUIT ARBITRATION WAS EITHER PERSONALLY SERVED ON
539 YOU OR 20 DAYS AFTER THE POSTMARKED DATE THAT THIS
540 NOTICE OF PRESUIT ARBITRATION WAS SENT TO YOU BY
541 CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT
542 LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE
543 TO PARTICIPATE IN THE ARBITRATION THAT ARE WITHIN 90
544 DAYS AFTER THE DATE YOU WERE PERSONALLY SERVED OR
545 WITHIN 90 DAYS AFTER THE POSTMARKED DATE OF THE
546 CERTIFIED MAILING OF THIS STATUTORY NOTICE OF PRESUIT
547 ARBITRATION. A COPY OF THIS NOTICE AND YOUR RESPONSE
548 WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE
549 ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE
550 A MUTUALLY CONVENIENT TIME AND PLACE FOR THE
551 ARBITRATION CONFERENCE TO BE HELD. IF YOU DO NOT
552 PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE
553 ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION
554 CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND
555 CONVENIENCE INTO CONSIDERATION. THE ARBITRATION
556 CONFERENCE MUST BE HELD ON THE SCHEDULED DATE, OR ANY
557 RESCHEDULED DATE APPROVED BY THE ARBITRATOR. IN NO
558 EVENT SHALL THE ARBITRATION CONFERENCE BE LATER THAN
559 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS
560 FIRST SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN
561 WRITING OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED
562 WITHIN THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL
563 ISSUE AN ARBITRATION AWARD, UNLESS THE HEARING IS
564 EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES



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565 AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU
566 FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE
567 SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE
568 ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE
569 AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO
570 AGREE EITHER TO ONE OF THE ARBITRATORS THAT THE
571 AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO
572 THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS
573 REQUIRED, OR FAIL TO APPEAR AND PARTICIPATE AT THE
574 SCHEDULED ARBITRATION CONFERENCE, THE AGGRIEVED PARTY
575 MAY REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION
576 AWARD. IN THE SUBSEQUENT COURT ACTION, THE AGGRIEVED
577 PARTY SHALL BE ENTITLED TO RECOVER AN AWARD OF
578 REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ANY
579 FEES PAID TO THE ARBITRATOR, INCURRED IN OBTAINING AN
580 ARBITRATION AWARD PURSUANT TO S. 720.507, FLORIDA
581 STATUTES.

582
583 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY
584 LAW, YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY
585 CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED,
586 TO THE ADDRESS SHOWN ON THIS NOTICE OF PRESUIT
587 ARBITRATION.

588
589 _____
590 Signature of aggrieved party

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592 _____
593 PRINTED NAME OF AGGRIEVED PARTY



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

AGREEMENT TO ARBITRATE

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

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

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

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

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



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AS THE ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

SIGNATURE OF RESPONDING PARTY #1

TELEPHONE CONTACT INFORMATION

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

(2) (a) Service of the statutory notice of presuit
arbitration shall be effected either by personal service, as
provided in chapter 48, or by certified mail, return receipt
requested, in a letter in substantial conformity with the form
provided in subsection (1), with an additional copy being sent
by regular first-class mail, to the address of the responding
party as it last appears on the books and records of the
association, or if not available, the last address as it appears
on the official records of the county property appraiser for the
county in which the property is situated that is subject to the
association documents. The responding party has 20 days after
the postmarked date of the certified mailing of the statutory
notice of presuit arbitration or 20 days after the date the
responding party is personally served with the statutory notice
of presuit arbitration by to serve a written response to the



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652 aggrieved party. The response shall be served by certified mail,
653 return receipt requested, with an additional copy being sent by
654 regular first-class mail, to the address shown on the statutory
655 notice of presuit arbitration. The postmarked date on the
656 envelope of the response shall constitute the date the response
657 was served.

658 (b) The parties shall share the costs of presuit
659 arbitration equally, including the fee charged by the
660 arbitrator, if any, unless the parties agree otherwise, and the
661 arbitrator may require advance payment of his or her reasonable
662 fees and costs. Each party shall be responsible for all of their
663 own attorney's fees if a party chooses to be represented by an
664 attorney for the arbitration proceedings.

665 (c)1. The party responding to the aggrieved party must sign
666 the agreement to arbitrate included in the notice of presuit
667 arbitration and clearly indicate the name of the arbitrator who
668 is acceptable of those arbitrators listed by the aggrieved
669 party. The responding party must provide a list of at least
670 three dates and times in which the responding party is available
671 to participate in the arbitration conference within 90 days
672 after the date the responding party was served with the
673 statutory notice of presuit arbitration.

674 2. The arbitrator must schedule the arbitration conference
675 at a mutually convenient time and place, but if the responding
676 party does not provide a list of available dates and times, the
677 arbitrator is authorized to schedule an arbitration conference
678 without taking the responding party's schedule and convenience
679 into consideration. Within 10 days after the designation of the
680 arbitrator, the arbitrator shall notify the parties in writing



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681 of the date, time, and place of the arbitration conference.

682 3. The arbitration conference must be held on the scheduled
683 date and may be rescheduled if approved by the arbitrator.

684 However, in no event shall the arbitration hearing be later than
685 90 days after the notice of presuit arbitration was first
686 served, unless all parties mutually agree in writing otherwise.

687 If the arbitration hearing is not completed within the required
688 time limits, the arbitrator may issue an arbitration award
689 unless the time for the hearing is extended as provided herein.

690 If the responding party fails to respond within 20 days after
691 the date of statutory notice of presuit arbitration, fails to
692 agree to at least one of the arbitrators that have been listed
693 by the aggrieved party in the presuit notice of arbitration,
694 fails to pay or prepay to the arbitrator one-half of the costs
695 involved, or fails to appear and participate at the scheduled
696 arbitration, the aggrieved party is authorized to proceed with a
697 request that the arbitrator issue an arbitration award.

698 (d)1. The failure of any party to respond to the statutory
699 notice of presuit arbitration within 20 days, the failure to
700 either select one of the five arbitrators listed by the
701 aggrieved party, the failure to provide a listing of dates and
702 times in which the responding party is available to participate
703 in the arbitration conference within 90 days after the date of
704 the responding party being served with the statutory notice of
705 presuit arbitration, the failure to make payment of fees and
706 costs as required within the time established by the arbitrator,
707 or the failure to appear for an arbitration conference without
708 the approval of the arbitrator, shall entitle the other party to
709 request the arbitrator to enter an arbitration award, including



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710 an award of the reasonable costs and attorney's fees associated
711 with the arbitration.

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

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

718 (b) An arbitrator in a proceeding initiated pursuant to the
719 provisions of this part may shorten the time for discovery or
720 otherwise limit discovery in a manner consistent with the policy
721 goals of this part to reduce the time and expense of litigating
722 homeowners' association disputes initiated pursuant to this
723 chapter and promoting an expeditious alternative dispute
724 resolution procedure for parties to such actions.

725 (4) At the request of any party to the arbitration, the
726 arbitrator may issue subpoenas for the attendance of witnesses
727 and the production of books, records, documents, and other
728 evidence, and any party on whose behalf a subpoena is issued may
729 apply to the court for orders compelling such attendance and
730 production. Subpoenas shall be served and are enforceable in the
731 manner provided by the Florida Rules of Civil Procedure.
732 Discovery may, at the discretion of the arbitrator, be permitted
733 in the manner provided by the Florida Rules of Civil Procedure.

734 (5) The final arbitration award shall be sent to the
735 parties in writing no later than 30 days after the date of the
736 arbitration hearing, absent extraordinary circumstances
737 necessitating a later filing the reasons for which shall be
738 stated in the final award if filed more than 30 days after the



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739 date of the final session of the arbitration conference. An
740 agreed arbitration award is final in those disputes in which the
741 parties have mutually agreed to be bound. An arbitration award
742 decided by the arbitrator is final unless a lawsuit seeking a
743 trial de novo is filed in a court of competent jurisdiction
744 within 30 days after the date of the arbitration award. The
745 right to file for a trial de novo entitles the parties to file a
746 complaint in the appropriate trial court for a judicial
747 resolution of the dispute. The prevailing party in an
748 arbitration proceeding shall be awarded the costs of the
749 arbitration and reasonable attorney's fees in an amount
750 determined by the arbitrator.

751 (6) The party filing a motion for a trial de novo shall be
752 assessed the other party's arbitration costs, court costs, and
753 other reasonable costs, including attorney's fees, investigation
754 expenses, and expenses for expert or other testimony or evidence
755 incurred after the arbitration hearing, if the judgment upon the
756 trial de novo is not more favorable than the final arbitration
757 award.

758 720.508 Rules of procedure.-

759 (1) Presuit mediation and presuit arbitration proceedings
760 under this part must be conducted in accordance with the
761 applicable Florida Rules of Civil Procedure and rules governing
762 mediations and arbitrations under chapter 44, except that this
763 part shall be controlling to the extent of any conflict with
764 other applicable rules or statutes. The arbitrator may shorten
765 any applicable time period and otherwise limit the scope of
766 discovery on request of the parties or within the discretion of
767 the arbitrator exercised consistent with the purpose and



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768 objective of reducing the expense and expeditiously concluding
769 proceedings under this part.

770 (2) Presuit mediation proceedings under s. 720.505 are
771 privileged and confidential to the same extent as court-ordered
772 mediation under chapter 44. An arbitrator or judge may not
773 consider any information or evidence arising from the presuit
774 mediation proceeding except in a proceeding to impose sanctions
775 for failure to attend a presuit mediation session or to enforce
776 a mediated settlement agreement.

777 (3) Persons who are not parties to the dispute may not
778 attend the presuit mediation conference without consent of all
779 parties, with the exception of counsel for the parties and a
780 corporate representative designated by the association. Presuit
781 mediations under this part are not a board meeting for purposes
782 of notice and participation set forth in this chapter.

783 (4) Attendance at a mediation conference by the board of
784 directors shall not require notice or participation by nonboard
785 members as otherwise required by this chapter for meetings of
786 the board.

787 (5) Settlement agreements resulting from a mediation or
788 arbitration proceeding do not have precedential value in
789 proceedings involving parties other than those participating in
790 the mediation or arbitration.

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

794 720.509 Mediators and arbitrators; qualifications and
795 registration.—A person is authorized to conduct mediation or
796 arbitration under this part if he or she has been certified as a



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797 circuit court civil mediator under the requirements adopted
798 pursuant to s. 44.106, is a member in good standing with The
799 Florida Bar, and otherwise meets all other requirements imposed
800 by chapter 44.

801 720.510 Enforcement of mediation agreement or arbitration
802 award.-

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

808 (2) Any party to an arbitration proceeding may enforce an
809 arbitration award by filing a petition in a court of competent
810 jurisdiction in which the homeowners' association is located.
811 The prevailing party in such proceeding shall be awarded
812 reasonable attorney's fees and costs incurred in such
813 proceeding.

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

818 Section 25. Part VII of chapter 718, Florida Statutes,
819 consisting of sections 718.701, 718.702, 718.703, 718.704,
820 718.705, 718.706, 718.707, and 718.708, is created to read:

821 718.701 Short title.-This part may be cited as the
822 "Distressed Condominium Relief Act."

823 718.702 Legislative intent.-

824 (1) The Legislature acknowledges the massive downturn in
825 the condominium market which has transpired throughout the state



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826 and the impact of such downturn on developers, lenders, unit
827 owners, and condominium associations. Numerous condominium
828 projects have either failed or are in the process of failing,
829 whereby the condominium has a small percentage of third-party
830 unit owners as compared to the unsold inventory of units. As a
831 result of the inability to find purchasers for this inventory of
832 units, which results in part from the devaluing of real estate
833 in this state, developers are unable to satisfy the requirements
834 of their lenders, leading to defaults on mortgages.
835 Consequently, lenders are faced with the task of finding a
836 solution to the problem in order to be paid for their
837 investments.

838 (2) The Legislature recognizes that all of the factors
839 listed in this section lead to condominiums becoming distressed,
840 resulting in detriment to the unit owners and the condominium
841 association on account of the resulting shortage of assessment
842 moneys available to support the financial requirements for
843 proper maintenance of the condominium. Such shortage and the
844 resulting lack of proper maintenance further erodes property
845 values. The Legislature finds that individuals and entities
846 within Florida and in other states have expressed interest in
847 purchasing unsold inventory in one or more condominium projects,
848 but are reticent to do so because of accompanying liabilities
849 inherited from the original developer, which are by definition
850 imputed to the successor purchaser, including a foreclosing
851 mortgagee. This results in the potential purchaser having
852 unknown and unquantifiable risks, and potential successor
853 purchasers are unwilling to accept such risks. The result is
854 that condominium projects stagnate, leaving all parties involved



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855 at an impasse without the ability to find a solution.

856 (3) The Legislature finds and declares that it is the
857 public policy of this state to protect the interests of
858 developers, lenders, unit owners, and condominium associations
859 with regard to distressed condominiums, and that there is a need
860 for relief from certain provisions of the Florida Condominium
861 Act geared toward enabling economic opportunities within these
862 condominiums for successor purchasers, including foreclosing
863 mortgagees. Such relief would benefit existing unit owners and
864 condominium associations. The Legislature further finds and
865 declares that this situation cannot be open-ended without
866 potentially prejudicing the rights of unit owners and
867 condominium associations, and thereby declares that the
868 provisions of this part shall be used by purchasers of
869 condominium inventory for a specific and defined period.

870 718.703 Definitions.—As used in this part, the term:

871 (1) "Bulk assignee" means a person who:

872 (a) Acquires more than seven condominium parcels as set
873 forth in s. 718.707; and

874 (b) Receives an assignment of some or all of the rights of
875 the developer as are set forth in the declaration of condominium
876 or in this chapter by a written instrument recorded as an
877 exhibit to the deed or as a separate instrument in the public
878 records of the county in which the condominium is located.

879 (2) "Bulk buyer" means a person who acquires more than
880 seven condominium parcels as set forth in s. 718.707 but who
881 does not receive an assignment of any developer rights other
882 than the right to conduct sales, leasing, and marketing
883 activities within the condominium.



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884 718.704 Assignment and assumption of developer rights by
885 bulk assignee; bulk buyer.—

886 (1) A bulk assignee shall be deemed to have assumed and is
887 liable for all duties and responsibilities of the developer
888 under the declaration and this chapter, except:

889 (a) Warranties of the developer under s. 718.203(1) or s.
890 718.618, except for design, construction, development, or repair
891 work performed by or on behalf of such bulk assignee;

892 (b) The obligation to:

893 1. Fund converter reserves under s. 718.618 for a unit
894 which was not acquired by the bulk assignee; or

895 2. Provide converter warranties on any portion of the
896 condominium property except as may be expressly provided by the
897 bulk assignee in the contract for purchase and sale executed
898 with a purchaser and pertaining to any design, construction,
899 development, or repair work performed by or on behalf of the
900 bulk assignee;

901 (c) The requirement to provide the association with a
902 cumulative audit of the association's finances from the date of
903 formation of the condominium association as required by s.
904 718.301. However, the bulk assignee shall provide an audit for
905 the period for which the bulk assignee elects a majority of the
906 members of the board of administration;

907 (d) Any liability arising out of or in connection with
908 actions taken by the board of administration or the developer-
909 appointed directors before the bulk assignee elects a majority
910 of the members of the board of administration; and

911 (e) Any liability for or arising out of the developer's
912 failure to fund previous assessments or to resolve budgetary



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913 deficits in relation to a developer's right to guarantee
914 assessments, except as otherwise provided in subsection (2).

915
916 Further, the bulk assignee is responsible for delivering
917 documents and materials in accordance with s. 718.705(3). A bulk
918 assignee may expressly assume some or all of the obligations of
919 the developer described in paragraphs (a)-(e).

920 (2) A bulk assignee receiving the assignment of the rights
921 of the developer to guarantee the level of assessments and fund
922 budgetary deficits pursuant to s. 718.116 shall be deemed to
923 have assumed and is liable for all obligations of the developer
924 with respect to such guarantee, including any applicable funding
925 of reserves to the extent required by law, for as long as the
926 guarantee remains in effect. A bulk assignee not receiving an
927 assignment of the right of the developer to guarantee the level
928 of assessments and fund budgetary deficits pursuant to s.
929 718.116 or a bulk buyer is not deemed to have assumed and is not
930 liable for the obligations of the developer with respect to such
931 guarantee, but is responsible for payment of assessments in the
932 same manner as all other owners of condominium parcels.

933 (3) A bulk buyer is liable for the duties and
934 responsibilities of the developer under the declaration and this
935 chapter only to the extent provided in this part, together with
936 any other duties or responsibilities of the developer expressly
937 assumed in writing by the bulk buyer.

938 (4) An acquirer of condominium parcels is not considered a
939 bulk assignee or a bulk buyer if the transfer to such acquirer
940 was made with the intent to hinder, delay, or defraud any
941 purchaser, unit owner, or the association, or if the acquirer is



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942 a person who would constitute an insider under s. 726.102(7).

943 (5) An assignment of developer rights to a bulk assignee
944 may be made by the developer, a previous bulk assignee, or a
945 court of competent jurisdiction acting on behalf of the
946 developer or the previous bulk assignee. At any particular time,
947 there may be no more than one bulk assignee within a
948 condominium, but there may be more than one bulk buyer. If more
949 than one acquirer of condominium parcels receives an assignment
950 of developer rights from the same person, the bulk assignee is
951 the acquirer whose instrument of assignment is recorded first in
952 applicable public records.

953 718.705 Board of administration; transfer of control.-

954 (1) For purposes of determining the timing for transfer of
955 control of the board of administration of the association to
956 unit owners other than the developer under ss. 718.301(1)(a) and
957 (b), if a bulk assignee is entitled to elect a majority of the
958 members of the board, a condominium parcel acquired by the bulk
959 assignee shall not be deemed to be conveyed to a purchaser, or
960 to be owned by an owner other than the developer, until such
961 condominium parcel is conveyed to an owner who is not a bulk
962 assignee.

963 (2) Unless control of the board of administration of the
964 association has already been relinquished pursuant to s.
965 718.301(1), the bulk assignee is obligated to relinquish control
966 of the association in accordance with s. 718.301 and this part.

967 (3) When a bulk assignee relinquishes control of the board
968 of administration as set forth in s. 718.301, the bulk assignee
969 shall deliver all of those items required by s. 718.301(4).

970 However, the bulk assignee is not required to deliver items and



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971 documents not in the possession of the bulk assignee during the
972 period during which the bulk assignee was the owner of
973 condominium parcels. In conjunction with acquisition of
974 condominium parcels, a bulk assignee shall undertake a good
975 faith effort to obtain the documents and materials required to
976 be provided to the association pursuant to s. 718.301(4). To the
977 extent the bulk assignee is not able to obtain all of such
978 documents and materials, the bulk assignee shall certify in
979 writing to the association the names or descriptions of the
980 documents and materials that were not obtainable by the bulk
981 assignee. Delivery of the certificate relieves the bulk assignee
982 of responsibility for the delivery of the documents and
983 materials referenced in the certificate as otherwise required
984 under ss. 718.112 and 718.301 and this part. The responsibility
985 of the bulk assignee for the audit required by s. 718.301(4)
986 shall commence as of the date on which the bulk assignee elected
987 a majority of the members of the board of administration.

988 (4) If a conflict arises between the provisions or
989 application of this section and s. 718.301, this section shall
990 prevail.

991 (5) Failure of a bulk assignee or bulk buyer to comply with
992 all the requirements contained in this part shall result in the
993 loss of any and all protections or exemptions provided under
994 this part.

995 718.706 Specific provisions pertaining to offering of units
996 by a bulk assignee or bulk buyer.—

997 (1) Before offering any units for sale or for lease for a
998 term exceeding 5 years, a bulk assignee or a bulk buyer shall
999 file the following documents with the division and provide such



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1000 documents to a prospective purchaser:

1001 (a) An updated prospectus or offering circular, or a
1002 supplement to the prospectus or offering circular, filed by the
1003 creating developer prepared in accordance with s. 718.504, which
1004 shall include the form of contract for purchase and sale in
1005 compliance with s. 718.503(2);

1006 (b) An updated Frequently Asked Questions and Answers
1007 sheet;

1008 (c) The executed escrow agreement if required under s.
1009 718.202; and

1010 (d) The financial information required by s. 718.111(13).
1011 However, if a financial information report does not exist for
1012 the fiscal year before acquisition of title by the bulk assignee
1013 or bulk buyer, or accounting records cannot be obtained in good
1014 faith by the bulk assignee or the bulk buyer which would permit
1015 preparation of the required financial information report, the
1016 bulk assignee or bulk buyer is excused from the requirement of
1017 this paragraph. However, the bulk assignee or bulk buyer must
1018 include in the purchase contract the following statement in
1019 conspicuous type:

1020 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
1021 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE
1022 ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER
1023 AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE
1024 ASSOCIATION.

1025 (2) Before offering any units for sale or for lease for a
1026 term exceeding 5 years, a bulk assignee shall file with the
1027 division and provide to a prospective purchaser a disclosure
1028 statement that must include, but is not limited to:



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1029 (a) A description to the purchaser of any rights of the
1030 developer which have been assigned to the bulk assignee;

1031 (b) The following statement in conspicuous type:

1032 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER
1033 UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR
1034 DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY
1035 OR ON BEHALF OF SELLER; and

1036 (c) If the condominium is a conversion subject to part VI,
1037 the following statement in conspicuous type:

1038 SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO
1039 PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF
1040 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF
1041 THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
1042 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,
1043 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
1044 BEHALF OF THE SELLER.

1045 (3) In addition to the requirements set forth in subsection
1046 (1), a bulk assignee or bulk buyer must comply with the
1047 nondeveloper disclosure requirements set forth in s. 718.503(2)
1048 before offering any units for sale or for lease for a term
1049 exceeding 5 years.

1050 (4) A bulk assignee, while it is in control of the board of
1051 administration of the association, may not authorize, on behalf
1052 of the association:

1053 (a) The waiver of reserves or the reduction of funding of
1054 the reserves in accordance with s. 718.112(2)(f)2., unless
1055 approved by a majority of the voting interests not controlled by
1056 the developer, bulk assignee, and bulk buyer; or

1057 (b) The use of reserve expenditures for other purposes in



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1058 accordance with s. 718.112(2)(f)3., unless approved by a
1059 majority of the voting interests not controlled by the
1060 developer, bulk assignee, and bulk buyer.

1061 (5) A bulk assignee, while it is in control of the board of
1062 administration of the association, shall comply with the
1063 requirements imposed upon developers to transfer control of the
1064 association to the unit owners in accordance with s. 718.301.

1065 (6) A bulk assignee or a bulk buyer shall comply with all
1066 the requirements of s. 718.302 regarding any contracts entered
1067 into by the association during the period the bulk assignee or
1068 bulk buyer maintains control of the board of administration.
1069 Unit owners shall be afforded all the protections contained in
1070 s. 718.302 regarding agreements entered into by the association
1071 before unit owners other than the developer, bulk assignee, or
1072 bulk buyer elected a majority of the board of administration.

1073 (7) A bulk buyer shall comply with the requirements
1074 contained in the declaration regarding any transfer of a unit,
1075 including sales, leases, and subleases. A bulk buyer is not
1076 entitled to any exemptions afforded a developer or successor
1077 developer under this chapter regarding any transfer of a unit,
1078 including sales, leases, or subleases.

1079 718.707 Time limitation for classification as bulk assignee
1080 or bulk buyer.—A person acquiring condominium parcels may not be
1081 classified as a bulk assignee or bulk buyer unless the
1082 condominium parcels were acquired before July 1, 2011. The date
1083 of such acquisition shall be determined by the date of recording
1084 of a deed or other instrument of conveyance for such parcels in
1085 the public records of the county in which the condominium is
1086 located, or by the date of issuance of a certificate of title in



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1087 a foreclosure proceeding with respect to such condominium
1088 parcels.

1089 718.708 Liability of developers and others.—An assignment
1090 of developer rights to a bulk assignee or bulk buyer does not
1091 release the developer from any liabilities under the declaration
1092 or this chapter. This part does not limit the liability of the
1093 developer for claims brought by unit owners, bulk assignees, or
1094 bulk buyers for violations of this chapter by the developer,
1095 unless specifically excluded in this part. Nothing contained
1096 within this part waives, releases, compromises, or limits the
1097 liability of contractors, subcontractors, materialmen,
1098 manufacturers, architects, engineers, or any participant in the
1099 design or construction of a condominium for any claim brought by
1100 an association, unit owners, bulk assignees, or bulk buyers
1101 arising from the design of the condominium, construction
1102 defects, misrepresentations associated with condominium
1103 property, or violations of this chapter, unless specifically
1104 excluded in this part.

1105 Section 26. All new residential construction in any deed-
1106 restricted community that requires mandatory membership in the
1107 association under chapter 718, chapter 719, or chapter 720,
1108 Florida Statutes, must comply with the provisions of Pub. L. No.
1109 110-140, Title XIV, ss. 1402 to 1406, 15 U.S.C. ss. 8001-8005.

1111 ===== T I T L E A M E N D M E N T =====

1112 And the title is amended as follows:

1113 Delete line 1980

1114 and insert:

1115 certain contracts; repealing s. 720.311, F.S.,



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1116 relating to a procedure for dispute resolution in
1117 homeowners' associations; providing that dispute
1118 resolution cases pending on the date of repeal will
1119 continue under the repealed provisions; creating part
1120 IV of ch. 720, F.S., relating to dispute resolution;
1121 creating s. 720.501, F.S.; providing a short title;
1122 creating s. 720.502, F.S.; providing legislative
1123 findings; creating s. 720.503, F.S.; setting
1124 applicability of provisions for mediation and
1125 arbitration applicable to disputes in homeowners'
1126 associations; creating exceptions; providing
1127 applicability; tolling applicable statutes of
1128 limitations; creating s. 720.504, F.S.; requiring that
1129 the notice of dispute be delivered before referral to
1130 mediation or arbitration; creating s. 720.505, F.S.;
1131 creating a statutory notice form for referral to
1132 mediation; requiring delivery by certified mail or
1133 personal delivery; setting deadlines; requiring
1134 parties to share costs; requiring the selection of a
1135 mediator and times to meet; providing penalties for
1136 failure to mediate; creating s. 720.506, F.S.;
1137 creating an opt-out provision; creating s. 720.507,
1138 F.S.; creating a statutory notice form for referral to
1139 arbitration; requiring delivery by certified mail or
1140 personal delivery; setting deadlines; requiring
1141 parties to share costs; requiring the selection of an
1142 arbitrator and times to meet; providing penalties for
1143 failure to arbitrate; creating s. 720.508, F.S.;
1144 providing for rules of procedure; providing for



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1145 confidentiality; creating s. 720.509, F.S.; setting
1146 qualifications for mediators and arbitrators; creating
1147 s. 720.510, F.S.; providing for enforcement of
1148 mediation agreements and arbitration awards; creating
1149 part VII of ch. 718, F.S.; providing a short title;
1150 providing legislative findings and intent; defining
1151 the terms "bulk assignee" and "bulk buyer"; providing
1152 for the assignment of developer rights by a bulk
1153 assignee; specifying liabilities of bulk assignees and
1154 bulk buyers; providing exceptions; providing
1155 additional responsibilities of bulk assignees and bulk
1156 buyers; authorizing certain entities to assign
1157 developer rights to a bulk assignee; limiting the
1158 number of bulk assignees at any given time; providing
1159 for the transfer of control of a board of
1160 administration; providing effects of such transfer on
1161 parcels acquired by a bulk assignee; providing
1162 obligations of a bulk assignee upon the transfer of
1163 control of a board of administration; requiring that a
1164 bulk assignee certify certain information in writing;
1165 providing for the resolution of a conflict between
1166 specified provisions of state law; providing that the
1167 failure of a bulk assignee or bulk buyer to comply
1168 with specified provisions of state law results in the
1169 loss of certain protections and exemptions; requiring
1170 that a bulk assignee or bulk buyer file certain
1171 information with the Division of Florida Condominiums,
1172 Timeshares, and Mobile Homes of the Department of
1173 Business and Professional Regulation before offering



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1174 any units for sale or lease in excess of a specified
1175 term; requiring that a copy of such information be
1176 provided to a prospective purchaser; requiring that
1177 certain contracts and disclosure statements contain
1178 specified statements; requiring that a bulk assignee
1179 or bulk buyer comply with certain disclosure
1180 requirements; prohibiting a bulk assignee from taking
1181 certain actions on behalf of an association while the
1182 bulk assignee is in control of the board of
1183 administration of the association and requiring that
1184 such bulk assignee comply with certain requirements;
1185 requiring that a bulk assignee or bulk buyer comply
1186 with certain requirements regarding certain contracts;
1187 providing unit owners with specified protections
1188 regarding certain contracts; requiring that a bulk
1189 buyer comply with certain requirements regarding the
1190 transfer of a unit; prohibiting a person from being
1191 classified as a bulk assignee or bulk buyer unless
1192 condominium parcels were acquired before a specified
1193 date; providing for the determination of the date of
1194 acquisition of a parcel; providing that the assignment
1195 of developer rights to a bulk assignee does not
1196 release a developer from certain liabilities;
1197 preserving certain liabilities for certain parties;
1198 requiring all new residential construction in a deed-
1199 restricted community that requires mandatory
1200 membership in the association under specified
1201 provisions of Florida law to comply with specified
1202 provisions of federal law; creating s. 720.3095, F.S.;