

1                   A bill to be entitled  
2           An act relating to residential properties; amending s.  
3           718.112, F.S.; requiring each newly elected director to  
4           certify to the secretary of the association that he or she  
5           has read the association's declarations of covenants and  
6           restrictions, articles of incorporation, bylaws, and  
7           current written policies and will work to uphold such  
8           documents and policies to the best of his or her ability;  
9           providing that a failure to timely file the statement  
10          automatically disqualifies the director from service on  
11          the association's board of directors; requiring the  
12          secretary of the association to retain a director's  
13          certification for inspection by the members for a  
14          specified period of years after a director's election;  
15          amending s. 720.303, F.S.; revising provisions relating to  
16          homeowners' association board meetings, inspection and  
17          copying of records, and reserve accounts of budgets;  
18          prohibiting a salary or compensation for certain  
19          association personnel; providing exceptions; amending s.  
20          720.305, F.S.; authorizing fines assessed against members  
21          which exceed a certain amount to become a lien against a  
22          parcel; amending s. 720.306, F.S.; providing requirements  
23          for secret ballots; requiring newly elected members of a  
24          board of directors to make certain certifications in  
25          writing to the association; providing for disqualification  
26          for failure to make such certifications; requiring an  
27          association to retain certifications for a specified time;  
28          amending s. 720.401, F.S.; requiring that the disclosure

29 summary to prospective parcel owners include additional  
30 provisions; amending s. 34.01, F.S.; correcting a cross-  
31 reference to conform to changes made by the act; amending  
32 s. 720.302, F.S.; correcting a cross-reference to conform  
33 to changes made by the act; establishing legislative  
34 intent; repealing s. 720.311, F.S., relating to a  
35 procedure for dispute resolution in homeowners'  
36 associations; providing that dispute resolution cases  
37 pending on the date of repeal will continue under the  
38 repealed provisions; creating part IV of ch. 720, F.S.,  
39 relating to dispute resolution; creating s. 720.501, F.S.;  
40 providing a short title; creating s. 720.502, F.S.;  
41 providing legislative findings; creating s. 720.503, F.S.;  
42 setting applicability of provisions for mediation and  
43 arbitration applicable to disputes in homeowners'  
44 associations; creating exceptions; providing  
45 applicability; tolling applicable statutes of limitations;  
46 creating s. 720.504, F.S.; requiring that the notice of  
47 dispute be delivered before referral to mediation or  
48 arbitration; creating s. 720.505, F.S.; creating a  
49 statutory notice form for referral to mediation; requiring  
50 delivery by certified mail or personal delivery; setting  
51 deadlines; requiring parties to share costs; requiring the  
52 selection of a mediator and times to meet; providing  
53 penalties for failure to mediate; creating s. 720.506,  
54 F.S.; creating an opt-out provision; creating s. 720.507,  
55 F.S.; creating a statutory notice form for referral to  
56 arbitration; requiring delivery by certified mail or

57 | personal delivery; setting deadlines; requiring parties to  
 58 | share costs; requiring the selection of an arbitrator and  
 59 | times to meet; providing penalties for failure to  
 60 | arbitrate; creating s. 720.508, F.S.; providing for rules  
 61 | of procedure; providing for confidentiality; creating s.  
 62 | 720.509, F.S.; setting qualifications for mediators and  
 63 | arbitrators; creating s. 720.510, F.S.; providing for  
 64 | enforcement of mediation agreements and arbitration  
 65 | awards; repealing ss. 720.303(10)(b) and 720.306(9), F.S.,  
 66 | relating to the recall and election of directors, to the  
 67 | extent that such provisions are inconsistent with part IV  
 68 | of ch. 720, F.S., relating to dispute resolution;  
 69 | providing an effective date.

70 |

71 | Be It Enacted by the Legislature of the State of Florida:

72 |

73 | Section 1. Paragraph (d) of subsection (2) of section  
 74 | 718.112, Florida Statutes, is amended to read:

75 | 718.112 Bylaws.--

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

79 | (d) Unit owner meetings.--

80 | 1. There shall be an annual meeting of the unit owners  
 81 | held at the location provided in the association bylaws and, if  
 82 | the bylaws are silent as to the location, the meeting shall be  
 83 | held within 45 miles of the condominium property. However, such  
 84 | distance requirement does not apply to an association governing

CS/CS/HB 27

2009

85 a timeshare condominium. Unless the bylaws provide otherwise, a  
86 vacancy on the board caused by the expiration of a director's  
87 term shall be filled by electing a new board member, and the  
88 election shall be by secret ballot; however, if the number of  
89 vacancies equals or exceeds the number of candidates, no  
90 election is required. The terms of all members of the board  
91 shall expire at the annual meeting and such board members may  
92 stand for reelection unless otherwise permitted by the bylaws.  
93 In the event that the bylaws permit staggered terms of no more  
94 than 2 years and upon approval of a majority of the total voting  
95 interests, the association board members may serve 2-year  
96 staggered terms. If no person is interested in or demonstrates  
97 an intention to run for the position of a board member whose  
98 term has expired according to the provisions of this  
99 subparagraph, such board member whose term has expired shall be  
100 automatically reappointed to the board of administration and  
101 need not stand for reelection. In a condominium association of  
102 more than 10 units, coowners of a unit may not serve as members  
103 of the board of directors at the same time. Any unit owner  
104 desiring to be a candidate for board membership shall comply  
105 with subparagraph 3. A person who has been suspended or removed  
106 by the division under this chapter, or who is delinquent in the  
107 payment of any fee or assessment as provided in paragraph (n),  
108 is not eligible for board membership. A person who has been  
109 convicted of any felony in this state or in a United States  
110 District or Territorial Court, or who has been convicted of any  
111 offense in another jurisdiction that would be considered a  
112 felony if committed in this state, is not eligible for board

113 membership unless such felon's civil rights have been restored  
114 for a period of no less than 5 years as of the date on which  
115 such person seeks election to the board. The validity of an  
116 action by the board is not affected if it is later determined  
117 that a member of the board is ineligible for board membership  
118 due to having been convicted of a felony.

119       2. The bylaws shall provide the method of calling meetings  
120 of unit owners, including annual meetings. Written notice, which  
121 notice must include an agenda, shall be mailed, hand delivered,  
122 or electronically transmitted to each unit owner at least 14  
123 days prior to the annual meeting and shall be posted in a  
124 conspicuous place on the condominium property at least 14  
125 continuous days preceding the annual meeting. Upon notice to the  
126 unit owners, the board shall by duly adopted rule designate a  
127 specific location on the condominium property or association  
128 property upon which all notices of unit owner meetings shall be  
129 posted; however, if there is no condominium property or  
130 association property upon which notices can be posted, this  
131 requirement does not apply. In lieu of or in addition to the  
132 physical posting of notice of any meeting of the unit owners on  
133 the condominium property, the association may, by reasonable  
134 rule, adopt a procedure for conspicuously posting and repeatedly  
135 broadcasting the notice and the agenda on a closed-circuit cable  
136 television system serving the condominium association. However,  
137 if broadcast notice is used in lieu of a notice posted  
138 physically on the condominium property, the notice and agenda  
139 must be broadcast at least four times every broadcast hour of  
140 each day that a posted notice is otherwise required under this

141 section. When broadcast notice is provided, the notice and  
142 agenda must be broadcast in a manner and for a sufficient  
143 continuous length of time so as to allow an average reader to  
144 observe the notice and read and comprehend the entire content of  
145 the notice and the agenda. Unless a unit owner waives in writing  
146 the right to receive notice of the annual meeting, such notice  
147 shall be hand delivered, mailed, or electronically transmitted  
148 to each unit owner. Notice for meetings and notice for all other  
149 purposes shall be mailed to each unit owner at the address last  
150 furnished to the association by the unit owner, or hand  
151 delivered to each unit owner. However, if a unit is owned by  
152 more than one person, the association shall provide notice, for  
153 meetings and all other purposes, to that one address which the  
154 developer initially identifies for that purpose and thereafter  
155 as one or more of the owners of the unit shall so advise the  
156 association in writing, or if no address is given or the owners  
157 of the unit do not agree, to the address provided on the deed of  
158 record. An officer of the association, or the manager or other  
159 person providing notice of the association meeting, shall  
160 provide an affidavit or United States Postal Service certificate  
161 of mailing, to be included in the official records of the  
162 association affirming that the notice was mailed or hand  
163 delivered, in accordance with this provision.

164 3. The members of the board shall be elected by written  
165 ballot or voting machine. Proxies shall in no event be used in  
166 electing the board, either in general elections or elections to  
167 fill vacancies caused by recall, resignation, or otherwise,  
168 unless otherwise provided in this chapter. Not less than 60 days

CS/CS/HB 27

2009

169 before a scheduled election, the association shall mail,  
170 deliver, or electronically transmit, whether by separate  
171 association mailing or included in another association mailing,  
172 delivery, or transmission, including regularly published  
173 newsletters, to each unit owner entitled to a vote, a first  
174 notice of the date of the election along with a certification  
175 form provided by the division attesting that he or she has read  
176 and understands, to the best of his or her ability, the  
177 governing documents of the association and the provisions of  
178 this chapter and any applicable rules. Any unit owner or other  
179 eligible person desiring to be a candidate for the board must  
180 give written notice to the association not less than 40 days  
181 before a scheduled election. Together with the written notice  
182 and agenda as set forth in subparagraph 2., the association  
183 shall mail, deliver, or electronically transmit a second notice  
184 of the election to all unit owners entitled to vote therein,  
185 together with a ballot which shall list all candidates. Upon  
186 request of a candidate, the association shall include an  
187 information sheet, no larger than 8 1/2 inches by 11 inches,  
188 which must be furnished by the candidate not less than 35 days  
189 before the election, along with the signed certification form  
190 provided for in this subparagraph, to be included with the  
191 mailing, delivery, or transmission of the ballot, with the costs  
192 of mailing, delivery, or electronic transmission and copying to  
193 be borne by the association. The association is not liable for  
194 the contents of the information sheets prepared by the  
195 candidates. In order to reduce costs, the association may print  
196 or duplicate the information sheets on both sides of the paper.

Page 7 of 55

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

hb0027-02-c2

197 The division shall by rule establish voting procedures  
198 consistent with the provisions contained herein, including rules  
199 establishing procedures for giving notice by electronic  
200 transmission and rules providing for the secrecy of ballots.  
201 Elections shall be decided by a plurality of those ballots cast.  
202 There shall be no quorum requirement; however, at least 20  
203 percent of the eligible voters must cast a ballot in order to  
204 have a valid election of members of the board. No unit owner  
205 shall permit any other person to vote his or her ballot, and any  
206 such ballots improperly cast shall be deemed invalid, provided  
207 any unit owner who violates this provision may be fined by the  
208 association in accordance with s. 718.303. A unit owner who  
209 needs assistance in casting the ballot for the reasons stated in  
210 s. 101.051 may obtain assistance in casting the ballot. The  
211 regular election shall occur on the date of the annual meeting.  
212 The provisions of this subparagraph shall not apply to timeshare  
213 condominium associations. Notwithstanding the provisions of this  
214 subparagraph, an election is not required unless more candidates  
215 file notices of intent to run or are nominated than board  
216 vacancies exist.

217 4. Any approval by unit owners called for by this chapter  
218 or the applicable declaration or bylaws, including, but not  
219 limited to, the approval requirement in s. 718.111(8), shall be  
220 made at a duly noticed meeting of unit owners and shall be  
221 subject to all requirements of this chapter or the applicable  
222 condominium documents relating to unit owner decisionmaking,  
223 except that unit owners may take action by written agreement,  
224 without meetings, on matters for which action by written



225 agreement without meetings is expressly allowed by the  
226 applicable bylaws or declaration or any statute that provides  
227 for such action.

228 5. Unit owners may waive notice of specific meetings if  
229 allowed by the applicable bylaws or declaration or any statute.  
230 If authorized by the bylaws, notice of meetings of the board of  
231 administration, unit owner meetings, except unit owner meetings  
232 called to recall board members under paragraph (j), and  
233 committee meetings may be given by electronic transmission to  
234 unit owners who consent to receive notice by electronic  
235 transmission.

236 6. Unit owners shall have the right to participate in  
237 meetings of unit owners with reference to all designated agenda  
238 items. However, the association may adopt reasonable rules  
239 governing the frequency, duration, and manner of unit owner  
240 participation.

241 7. Any unit owner may tape record or videotape a meeting  
242 of the unit owners subject to reasonable rules adopted by the  
243 division.

244 8. Unless otherwise provided in the bylaws, any vacancy  
245 occurring on the board before the expiration of a term may be  
246 filled by the affirmative vote of the majority of the remaining  
247 directors, even if the remaining directors constitute less than  
248 a quorum, or by the sole remaining director. In the alternative,  
249 a board may hold an election to fill the vacancy, in which case  
250 the election procedures must conform to the requirements of  
251 subparagraph 3. unless the association governs 10 units or less  
252 and has opted out of the statutory election process, in which

253 case the bylaws of the association control. Unless otherwise  
254 provided in the bylaws, a board member appointed or elected  
255 under this section shall fill the vacancy for the unexpired term  
256 of the seat being filled. Filling vacancies created by recall is  
257 governed by paragraph (j) and rules adopted by the division.

258 9. Within 30 days after being elected to the board of  
259 directors, a new director shall certify in writing to the  
260 secretary of the association that he or she has read the  
261 association's declarations of covenants and restrictions,  
262 articles of incorporation, bylaws, and current written policies,  
263 that he or she will work to uphold such documents and policies  
264 to the best of his or her ability, and that he or she will  
265 faithfully discharge his or her fiduciary responsibility to the  
266 association's members. Failure to timely file the statement  
267 automatically disqualifies the director from service on the  
268 association's board of directors. The secretary shall cause the  
269 association to retain a director's certification for inspection  
270 by the members for 5 years after a director's election. Failure  
271 to have such certification on file does not affect the validity  
272 of any appropriate action.

273  
274 Notwithstanding subparagraphs (b)2. and (d)3., an association of  
275 10 or fewer units may, by the affirmative vote of a majority of  
276 the total voting interests, provide for different voting and  
277 election procedures in its bylaws, which vote may be by a proxy  
278 specifically delineating the different voting and election  
279 procedures. The different voting and election procedures may

280 provide for elections to be conducted by limited or general  
 281 proxy.

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

286 720.303 Association powers and duties; meetings of board;  
 287 official records; budgets; financial reporting; association  
 288 funds; recalls.--

289 (2) BOARD MEETINGS.--

290 (b) Members have the right to attend all meetings of the  
 291 board and to speak on any matter placed on the agenda by  
 292 petition of the voting interests for at least 3 minutes. The  
 293 association may adopt written reasonable rules expanding the  
 294 right of members to speak and governing the frequency, duration,  
 295 and other manner of member statements, which rules must be  
 296 consistent with this paragraph and may include a sign-up sheet  
 297 for members wishing to speak. Notwithstanding any other law, ~~the~~  
 298 ~~requirement that board meetings and committee meetings be open~~  
 299 ~~to the members is inapplicable to~~ meetings between the board or  
 300 a committee to discuss proposed or pending litigation with and  
 301 the association's attorney, or ~~with respect to~~ meetings of the  
 302 board held for the purpose of discussing personnel matters are  
 303 not required to be open to the members.

304 (5) INSPECTION AND COPYING OF RECORDS.--The official  
 305 records shall be maintained within the state and must be open to  
 306 inspection and available for photocopying by members or their  
 307 authorized agents at reasonable times and places within 10

308 business days after receipt of a written request for access.  
309 This subsection may be complied with by having a copy of the  
310 official records available for inspection or copying in the  
311 community. If the association has a photocopier machine available  
312 where the records are maintained, it must provide parcel owners  
313 with copies on request during the inspection if the entire  
314 request is limited to no more than 25 pages.

315 (a) The failure of an association to provide access to the  
316 records within 10 business days after receipt of a written  
317 request submitted by certified mail, return receipt requested,  
318 creates a rebuttable presumption that the association willfully  
319 failed to comply with this subsection.

320 (c) The association may adopt reasonable written rules  
321 governing the frequency, time, location, notice, records to be  
322 inspected, and manner of inspections, but may not require ~~impose~~  
323 ~~a requirement that~~ a parcel owner to demonstrate any proper  
324 purpose for the inspection, state any reason for the inspection,  
325 or limit a parcel owner's right to inspect records to less than  
326 one 8-hour business day per month. The association may impose  
327 fees to cover the costs of providing copies of the official  
328 records, including, without limitation, the costs of copying.  
329 The association may charge up to 50 cents per page for copies  
330 made on the association's photocopier. If the association does  
331 not have a photocopier machine available where the records are  
332 kept, or if the records requested to be copied exceed 25 pages  
333 in length, the association may have copies made by an outside  
334 vendor or association management company personnel and may  
335 charge the actual cost of copying, including any reasonable

336 costs involving personnel fees and charges at an hourly rate for  
337 employee time to cover administrative costs to the association.

338 The association shall maintain an adequate number of copies of  
339 the recorded governing documents, to ensure their availability  
340 to members and prospective members. Notwithstanding the  
341 provisions of this paragraph, the following records are ~~shall~~  
342 not ~~be~~ accessible to members or parcel owners:

343 1. Any record protected by the lawyer-client privilege as  
344 described in s. 90.502 and any record protected by the work-  
345 product privilege, including, but not limited to, any record  
346 prepared by an association attorney or prepared at the  
347 attorney's express direction which reflects a mental impression,  
348 conclusion, litigation strategy, or legal theory of the attorney  
349 or the association and which was prepared exclusively for civil  
350 or criminal litigation or for adversarial administrative  
351 proceedings or which was prepared in anticipation of imminent  
352 civil or criminal litigation or imminent adversarial  
353 administrative proceedings until the conclusion of the  
354 litigation or ~~adversarial~~ administrative proceedings.

355 2. Information obtained by an association in connection  
356 with the approval of the lease, sale, or other transfer of a  
357 parcel.

358 3. Disciplinary, health, insurance, and personnel records  
359 of the association's employees.

360 4. Medical records of parcel owners or community  
361 residents.

362 (6) BUDGETS.--

CS/CS/HB 27

2009

363 (b) In addition to annual operating expenses, the budget  
364 may include reserve accounts for capital expenditures and  
365 deferred maintenance for which the association is responsible.  
366 If reserve accounts are not established pursuant to paragraph  
367 (d), funding of such reserves shall be limited to the extent  
368 that the governing documents ~~do not~~ limit increases in  
369 assessments, including reserves. If the budget of the  
370 association includes reserve accounts established pursuant to  
371 paragraph (d), such reserves shall be determined, maintained,  
372 and waived in the manner provided in this subsection. Once an  
373 association provides for reserve accounts pursuant to paragraph  
374 (d) in the budget, the association shall thereafter determine,  
375 maintain, and waive reserves in compliance with this subsection.  
376 The provisions of this section do not preclude the termination  
377 of a reserve account established pursuant to this paragraph upon  
378 approval of a majority of the voting interests of the  
379 association. Upon such approval, the terminating reserve account  
380 shall be removed from the budget.

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

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

395 2. If the budget of the association does provide for  
 396 funding accounts for deferred expenditures, including, but not  
 397 limited to, funds for capital expenditures and deferred  
 398 maintenance, but such accounts are not created or established  
 399 pursuant to paragraph (d), each financial report for the  
 400 preceding fiscal year required under subsection (7) must also  
 401 contain the following statement in conspicuous type: THE BUDGET  
 402 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED  
 403 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND  
 404 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN  
 405 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO  
 406 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),  
 407 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE  
 408 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR  
 409 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

410 (d) An association shall be deemed to have provided for  
 411 reserve accounts if ~~when~~ reserve accounts have been initially  
 412 established by the developer or if ~~when~~ the membership of the  
 413 association affirmatively elects to provide for reserves. If  
 414 reserve accounts are not initially provided for by the  
 415 developer, the membership of the association may elect to do so  
 416 upon the affirmative approval of ~~not less than~~ a majority of the  
 417 total voting interests of the association. Such approval may be  
 418 obtained ~~attained~~ by vote of the members at a duly called

CS/CS/HB 27

2009

419 meeting of the membership or by the ~~upon a~~ written consent of  
420 ~~executed by not less than~~ a majority of the total voting  
421 interests in the community. The approval action of the  
422 membership shall state that reserve accounts shall be provided  
423 for in the budget and shall designate the components for which  
424 the reserve accounts are to be established. Upon approval by the  
425 membership, the board of directors shall include ~~provide for~~ the  
426 required reserve accounts ~~for inclusion~~ in the budget in the  
427 next fiscal year following the approval and ~~in~~ each year  
428 thereafter. Once established as provided in this subsection, the  
429 reserve accounts shall be funded or maintained or shall have  
430 their funding waived in the manner provided in paragraph (f).

431 (f) After one or more ~~Once a reserve account or~~ reserve  
432 accounts are established, the membership of the association,  
433 upon a majority vote at a meeting at which a quorum is present,  
434 may provide for no reserves or less reserves than required by  
435 this section. If a meeting of the unit owners has been called to  
436 determine whether to waive or reduce the funding of reserves and  
437 no such result is achieved or a quorum is not present, the  
438 reserves as included in the budget shall go into effect. After  
439 the turnover, the developer may vote its voting interest to  
440 waive or reduce the funding of reserves. Any vote taken pursuant  
441 to this subsection to waive or reduce reserves is ~~shall be~~  
442 applicable only to one budget year.

443 (g) Funding formulas for reserves authorized by this  
444 section shall be based on either a separate analysis of each of  
445 the required assets or a pooled analysis of two or more of the  
446 required assets.



447 1. If the association maintains separate reserve accounts  
 448 for each of the required assets, the amount of the contribution  
 449 to each reserve account is ~~shall be~~ the sum of the following two  
 450 calculations:

451 a. The total amount necessary, if any, to bring a negative  
 452 component balance to zero.

453 b. The total estimated deferred maintenance expense or  
 454 estimated replacement cost of the reserve component less the  
 455 estimated balance of the reserve component as of the beginning  
 456 of the period ~~for which~~ the budget will be in effect. The  
 457 remainder, if greater than zero, shall be divided by the  
 458 estimated remaining useful life of the component.

459

460 The formula may be adjusted each year for changes in estimates  
 461 and deferred maintenance performed during the year and may  
 462 include factors such as inflation and earnings on invested  
 463 funds.

464 2. If the association maintains a pooled account of two or  
 465 more of the required reserve assets, the amount of the  
 466 contribution to the pooled reserve account as disclosed on the  
 467 proposed budget may ~~shall~~ not be less than that required to  
 468 ensure that the balance on hand at the beginning of the period  
 469 ~~for which~~ the budget will go into effect plus the projected  
 470 annual cash inflows over the remaining estimated useful life of  
 471 all of the assets that make up the reserve pool are equal to or  
 472 greater than the projected annual cash outflows over the  
 473 remaining estimated useful lives of all ~~of~~ the assets that make  
 474 up the reserve pool, based on the current reserve analysis. The

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

479 (12) COMPENSATION PROHIBITED.--A director, officer, or  
 480 committee member of the association may not receive directly or  
 481 indirectly any salary or compensation from the association for  
 482 the performance of duties as a director, officer, or committee  
 483 member and may not in any other way benefit financially from  
 484 service to the association. This subsection does not preclude:

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

490 (b) Reimbursement for out-of-pocket expenses incurred by  
 491 such person on behalf of the association, subject to approval in  
 492 accordance with procedures established by the association's  
 493 governing documents or, in the absence of such procedures, in  
 494 accordance with an approval process established by the board.

495 (c) Any recovery of insurance proceeds derived from a  
 496 policy of insurance maintained by the association for the  
 497 benefit of its members.

498 (d) Any fee or compensation authorized in the governing  
 499 documents.

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

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

505 720.305 Obligations of members; remedies at law or in  
 506 equity; levy of fines and suspension of use rights.--

507 (2) If the governing documents so provide, an association  
 508 may suspend, for a reasonable period of time, the rights of a  
 509 member or a member's tenants, guests, or invitees, or both, to  
 510 use common areas and facilities and may levy reasonable fines of  
 511 up to, ~~not to exceed~~ \$100 per violation, against any member or  
 512 any tenant, guest, or invitee. A fine may be levied on the basis  
 513 of each day of a continuing violation, with a single notice and  
 514 opportunity for hearing, except that no ~~such~~ fine may ~~shall~~  
 515 exceed \$1,000 in the aggregate unless otherwise provided in the  
 516 governing documents. A fine of less than \$1,000 may ~~shall~~ not  
 517 become a lien against a parcel. In any action to recover a fine,  
 518 the prevailing party is entitled to collect its reasonable  
 519 attorney's fees and costs from the nonprevailing party as  
 520 determined by the court.

521 (a) A fine or suspension may not be imposed without ~~notice~~  
 522 ~~of~~ at least 14 days' notice ~~days~~ to the person sought to be  
 523 fined or suspended and an opportunity for a hearing before a  
 524 committee of at least three members appointed by the board who  
 525 are not officers, directors, or employees of the association, or  
 526 the spouse, parent, child, brother, or sister of an officer,  
 527 director, or employee. If the committee, by majority vote, does  
 528 not approve a proposed fine or suspension, it may not be  
 529 imposed.

530 (b) The requirements of this subsection do not apply to  
 531 the imposition of suspensions or fines upon any member because  
 532 of the failure of the member to pay assessments or other charges  
 533 when due if such action is authorized by the governing  
 534 documents.

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

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

541 720.306 Meetings of members; voting and election  
 542 procedures; amendments.--

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

546 (a) To be valid, a proxy must be dated, must state the  
 547 date, time, and place of the meeting for which it was given, and  
 548 must be signed by the authorized person who executed the proxy.  
 549 A proxy is effective only for the specific meeting for which it  
 550 was originally given, as the meeting may lawfully be adjourned  
 551 and reconvened from time to time, and automatically expires 90  
 552 days after the date of the meeting for which it was originally  
 553 given. A proxy is revocable at any time at the pleasure of the  
 554 person who executes it. If the proxy form expressly so provides,  
 555 any proxy holder may appoint, in writing, a substitute to act in  
 556 his or her place.

CS/CS/HB 27

2009

557        (b) If the governing documents permit voting by secret  
558 ballot by members who are not in attendance at a meeting of the  
559 members for the election of directors, such ballots shall be  
560 placed in an inner envelope with no identifying markings and  
561 mailed or delivered to the association in an outer envelope  
562 bearing identifying information reflecting the name of the  
563 member, the lot or parcel for which the vote is being cast, and  
564 the signature of the lot or parcel owner casting that ballot.  
565 After the eligibility of the member to vote and confirmation  
566 that no other ballot has been submitted for that lot or parcel,  
567 the inner envelope shall be removed from the outer envelope  
568 bearing the identification information, placed with the ballots  
569 which were personally cast, and opened when the ballots are  
570 counted. If more than one ballot is submitted for a lot or  
571 parcel, the ballots for that lot or parcel shall be  
572 disqualified. Any vote by ballot received after the closing of  
573 the balloting may not be considered.

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

575        (a) Elections of directors must be conducted in accordance  
576 with the procedures set forth in the governing documents of the  
577 association. All members of the association ~~are~~ shall be  
578 eligible to serve on the board of directors, and a member may  
579 nominate himself or herself as a candidate for the board at a  
580 meeting where the election is to be held or, if the election  
581 process allows voting by absentee ballot, in advance of the  
582 balloting. Except as otherwise provided in the governing  
583 documents, boards of directors must be elected by a plurality of  
584 the votes cast by eligible voters. Any election dispute between

585 a member and an association must be submitted to mandatory  
 586 binding arbitration with the division. Such proceedings shall be  
 587 conducted in the manner provided by s. 718.1255 and the  
 588 procedural rules adopted by the division.

589 (b) Within 30 days after being elected to the board of  
 590 directors, a new director shall certify in writing to the  
 591 secretary of the association that he or she has read the  
 592 association's declarations of covenants and restrictions,  
 593 articles of incorporation, bylaws, and current written policies  
 594 and that he or she will work to uphold each to the best of his  
 595 or her ability and will faithfully discharge his or her  
 596 fiduciary responsibility to the association's members. Failure  
 597 to timely file such statement shall automatically disqualify the  
 598 director from service on the association's board of directors.  
 599 The secretary shall cause the association to retain a director's  
 600 certification for inspection by the members for 5 years after a  
 601 director's election. Failure to have such certification on file  
 602 does not affect the validity of any appropriate action.

603 Section 5. Paragraph (a) of subsection (1) of section  
 604 720.401, Florida Statutes, is amended to read:

605 720.401 Prospective purchasers subject to association  
 606 membership requirement; disclosure required; covenants;  
 607 assessments; contract cancellation.--

608 (1) (a) A prospective parcel owner in a community must be  
 609 presented a disclosure summary before executing the contract for  
 610 sale. The disclosure summary must be in a form substantially  
 611 similar to the following form:

612

DISCLOSURE SUMMARY  
 FOR  
 (NAME OF COMMUNITY)

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

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

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

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

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

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

7. IF THE ASSOCIATION IS STILL UNDER THE CONTROL OF THE DEVELOPER, THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE

CS/CS/HB 27

2009

640 RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION  
 641 MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

642 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE  
 643 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU  
 644 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING  
 645 DOCUMENTS BEFORE PURCHASING PROPERTY.

646 9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND  
 647 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE  
 648 PROPERTY IS LOCATED, OR, IF ARE NOT RECORDED, ~~AND~~ CAN BE  
 649 OBTAINED FROM THE DEVELOPER.

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

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

657  
 658 DATE: PURCHASER:  
 659 PURCHASER:

660  
 661 The disclosure must be supplied by the developer, or by the  
 662 parcel owner if the sale is by an owner that is not the  
 663 developer. Any contract or agreement for sale shall refer to and  
 664 incorporate the disclosure summary and shall include, in  
 665 prominent language, a statement that the potential buyer should  
 666 not execute the contract or agreement until he or she has ~~they~~



667 ~~have~~ received and read the disclosure summary required by this  
 668 section.

669 Section 6. Effective July 1, 2010, paragraph (d) of  
 670 subsection (1) of section 34.01, Florida Statutes, is amended to  
 671 read:

672 34.01 Jurisdiction of county court.--

673 (1) County courts shall have original jurisdiction:

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

677 Section 7. Effective July 1, 2010, subsection (2) of  
 678 section 720.302, Florida Statutes, is amended to read:

679 720.302 Purposes, scope, and application.--

680 (2) The Legislature recognizes that it is not in the best  
 681 interest of homeowners' associations or the individual  
 682 association members thereof to create or impose a bureau or  
 683 other agency of state government to regulate the affairs of  
 684 homeowners' associations. However, in accordance with part IV of  
 685 this chapter ~~s. 720.311~~, the Legislature finds that homeowners'  
 686 associations and their individual members will benefit from an  
 687 expedited alternative process for resolution of ~~election and~~  
 688 ~~recall disputes and presuit mediation of other~~ disputes  
 689 involving covenant enforcement in homeowner's associations and  
 690 deed-restricted communities using the procedures provided in  
 691 part IV of ~~and authorizes the department to hear, administer,~~  
 692 ~~and determine these disputes as more fully set forth in this~~  
 693 chapter. Further, the Legislature recognizes that certain  
 694 contract rights have been created for the benefit of homeowners'

695 associations and members thereof as well as deed-restricted  
696 communities before the effective date of this act and that part  
697 IV of this chapter is ss. ~~720.301-720.407~~ are not intended to  
698 impair such contract rights, including, but not limited to, the  
699 rights of the developer to complete the community as initially  
700 contemplated.

701 Section 8. Effective July 1, 2010, section 720.311,  
702 Florida Statutes, is repealed.

703 Section 9. Effective July 1, 2010, part IV of chapter 720,  
704 Florida Statutes, to be entitled "Dispute Resolution,"  
705 consisting of sections 720.501, 720.502, 720.503, 720.504,  
706 720.505, 720.506, 720.507, 720.508, 720.509, and 720.510, is  
707 created to read:

708 720.501 Short title.--This part may be cited as the "Home  
709 Court Advantage Dispute Resolution Act."

710 720.502 Legislative findings.--The Legislature finds that  
711 alternative dispute resolution has made progress in reducing  
712 court dockets and trials and in offering a more efficient, cost-  
713 effective option to litigation.

714 720.503 Applicability of this part.--

715 (1) Unless otherwise provided in this part, before a  
716 dispute described in this part between a homeowners' association  
717 and a parcel owner or owners, or a dispute between parcel owners  
718 within the same homeowners' association, may be filed in court,  
719 the dispute is subject to presuit mediation pursuant to s.  
720 720.505 or presuit arbitration pursuant to s. 720.507, at the  
721 option of the aggrieved party who initiates the first formal  
722 action of alternative dispute resolution under this part. The

723 parties may mutually agree to participate in both presuit  
724 mediation and presuit arbitration prior to suit being filed by  
725 either party.

726 (2) Unless otherwise provided in this part, the mediation  
727 and arbitration provisions of this part are limited to disputes  
728 between an association and a parcel owner or owners or between  
729 parcel owners regarding the use of or changes to the parcel or  
730 the common areas under the governing documents and other  
731 disputes involving violations of the recorded declaration of  
732 covenants or other governing documents, disputes arising  
733 concerning enforcement of the governing documents or any  
734 amendments thereto, and disputes involving access to the  
735 official records of the association. A dispute concerning title  
736 to any parcel or common area, interpretation or enforcement of  
737 any warranty, the levy of a fee or assessment, the collection of  
738 an assessment levied against a party, the eviction or other  
739 removal of a tenant from a parcel, alleged breaches of fiduciary  
740 duty by one or more directors, or any action to collect mortgage  
741 indebtedness or to foreclosure a mortgage shall not be subject  
742 to the provisions of this part.

743 (3) All disputes arising after the effective date of this  
744 part involving the election of the board of directors for an  
745 association or the recall of any member of the board or officer  
746 of the association shall not be eligible for presuit mediation  
747 under s. 720.505, but shall be subject to the provisions  
748 concerning presuit arbitration under s. 720.507.

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

CS/CS/HB 27

2009

751 required, a motion for temporary injunctive relief may be filed  
752 with the court without first complying with the presuit  
753 mediation or presuit arbitration requirements of this part.  
754 After any issues regarding emergency or temporary relief are  
755 resolved, the court may refer the parties to a mediation program  
756 administered by the courts or require mediation or arbitration  
757 under this part.

758 (5) The mailing of a statutory notice of presuit mediation  
759 or presuit arbitration as provided in this part shall toll the  
760 applicable statute of limitations during the pendency of the  
761 mediation or arbitration and for a period of 30 days following  
762 the conclusion of either proceeding. The 30-day period shall  
763 start upon the filing of the mediator's notice of impasse or the  
764 arbitrator's written arbitration award. If the parties mutually  
765 agree to participate in both presuit mediation and presuit  
766 arbitration under this part, the tolling of the applicable  
767 statute of limitations for each such alternative dispute  
768 resolution proceeding shall be consecutive.

769 720.504 Notice of dispute.--Prior to giving the statutory  
770 notice to proceed under presuit medication or presuit  
771 arbitration under this part, the aggrieved association or parcel  
772 owner shall first provide written notice of the dispute to the  
773 responding party in the manner provided by this section.

774 (1) The notice of dispute shall be delivered to the  
775 responding party by certified mail, return receipt requested, or  
776 the notice of dispute may be hand delivered, and the person  
777 making delivery shall file with their notice of mediation either  
778 the proof of receipt of mailing or an affidavit stating the date

CS/CS/HB 27

2009

779 and time of the delivery of the notice of dispute. If the notice  
780 is delivered by certified mail, return receipt requested, and  
781 the responding party fails or refuses to accept delivery, notice  
782 shall be considered properly delivered for purposes of this  
783 section on the date of the first attempted delivery.

784 (2) The notice of dispute shall state with specificity the  
785 nature of the dispute, including the date, time, and location of  
786 each event that is the subject of the dispute and the action  
787 requested to resolve the dispute. The notice shall also include  
788 the text of any provision in the governing documents, including  
789 the rules and regulations, of the association which form the  
790 basis of the dispute.

791 (3) Unless the parties otherwise agree in writing to a  
792 longer time period, the party receiving the notice of dispute  
793 shall have 10 days following the date of receipt of notice to  
794 resolve the dispute. If the alleged dispute has not been  
795 resolved within the 10-day period, the aggrieved party may  
796 proceed under this part at any time thereafter within the  
797 applicable statute of limitations.

798 (4) A copy of the notice and the text of the provision in  
799 the governing documents, or the rules and regulations, of the  
800 association which are the basis of the dispute, along with proof  
801 of service of the notice of dispute and a copy of any written  
802 responses received from the responding party, shall be included  
803 as an exhibit to any demand for mediation or arbitration under  
804 this part.

805 720.505 Presuit mediation.--

806        (1) Disputes between an association and a parcel owner or  
 807 owners and between parcel owners must be submitted to presuit  
 808 mediation before the dispute may be filed in court; or, at the  
 809 election of the party initiating the presuit procedures, such  
 810 dispute may be submitted to presuit arbitration pursuant to s.  
 811 720.507 before the dispute may be filed in court. An aggrieved  
 812 party who elects to use the presuit mediation procedure under  
 813 this section shall serve on the responding party a written  
 814 notice of presuit mediation in substantially the following form:

815  
 816                                STATUTORY NOTICE OF PRESUIT MEDIATION

817  
 818        THE ALLEGED AGGRIEVED PARTY, \_\_\_\_\_,  
 819 HEREBY DEMANDS THAT \_\_\_\_\_, AS THE  
 820 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT  
 821 MEDIATION IN CONNECTION WITH THE FOLLOWING DISPUTE(S)  
 822 WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT ARE  
 823 SUBJECT TO PRESUIT MEDIATION:

824  
 825        ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION  
 826 WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO  
 827 BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF  
 828 A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT  
 829 LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING  
 830 DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE  
 831 DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE  
 832 YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN  
 833 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

834  
835 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,  
836 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT  
837 MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED  
838 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,  
839 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT  
840 MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER  
841 TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT  
842 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU  
843 PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO  
844 THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A  
845 NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER  
846 S. 720.506, FLORIDA STATUTES, YOUR FAILURE TO  
847 PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A  
848 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT  
849 FURTHER NOTICE.

850  
851 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED  
852 NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-  
853 PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS  
854 THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING  
855 PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE  
856 IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO  
857 CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO  
858 AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO  
859 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A  
860 FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE

861        POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR  
 862        REASONABLE SETTLEMENT ARE FULLY EXPLORED.

863

864        IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO  
 865        WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT  
 866        BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE  
 867        DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE  
 868        THESE ISSUES IN COURT. THE FAILURE TO REACH AN  
 869        AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN  
 870        THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN  
 871        IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED  
 872        PARTY MAY PROCEED TO FILE A LAWSUIT ON ALL  
 873        OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR  
 874        REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION  
 875        PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER  
 876        ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT  
 877        PROCEEDING INVOLVING THE SAME DISPUTE.

878

879        THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF  
 880        ELIGIBLE, QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED  
 881        MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE  
 882        NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE  
 883        THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE  
 884        FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE  
 885        OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE  
 886        MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL  
 887        FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE  
 888        AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU



889 MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE  
 890 NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

891  
 892 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND  
 893 HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT  
 894 INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY  
 895 BE INCLUDED AS AN ATTACHMENT.)

896  
 897 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO  
 898 CONFIRM THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL  
 899 BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD  
 900 EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE  
 901 PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES,  
 902 REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT  
 903 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE  
 904 MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4  
 905 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME  
 906 PREPARATION TIME, AND THE PARTIES WOULD NEED TO  
 907 EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE  
 908 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF  
 909 THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH  
 910 THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT  
 911 REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE  
 912 MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR  
 913 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY  
 914 HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE  
 915 SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS  
 916 AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS

917 THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE  
 918 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE  
 919 RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR  
 920 SHARE OF THE MEDIATOR FEES INCURRED.

921  
 922 TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO  
 923 TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER  
 924 LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE  
 925 WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE  
 926 MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.

927  
 928 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE  
 929 OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE  
 930 YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND  
 931 TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE  
 932 MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED  
 933 DATE OF THE MAILING OF THIS NOTICE OF PRESUIT  
 934 MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE  
 935 SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY  
 936 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY  
 937 CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE  
 938 TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE  
 939 DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO  
 940 SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR  
 941 SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO  
 942 EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90  
 943 DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST  
 944 SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN

945 THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS  
 946 AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE  
 947 MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE  
 948 AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE  
 949 TO AT LEAST ONE OF THE MEDIATORS THAT THE AGGRIEVED  
 950 PARTY HAS LISTED, FAIL TO PAY OR PREPAY TO THE  
 951 MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL TO  
 952 APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE  
 953 AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE  
 954 FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER  
 955 NOTICE. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED  
 956 PARTY MAY SEEK AN AWARD OF REASONABLE ATTORNEY'S FEES  
 957 AND COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.

958  
 959 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY  
 960 LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-  
 961 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED  
 962 PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE  
 963 AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF  
 964 THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS  
 965 AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY  
 966 OF THIS NOTICE.

967  
 968 \_\_\_\_\_  
 969 SIGNATURE OF AGGRIEVED PARTY

970  
 971 \_\_\_\_\_  
 972 PRINTED NAME OF AGGRIEVED PARTY

973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

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

1001           TELEPHONE CONTACT INFORMATION

1002

1003

1004           SIGNATURE AND TELEPHONE CONTACT INFORMATION OF  
 1005           RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS  
 1006           OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,  
 1007           OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF  
 1008           A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

1009

1010           (2) (a) Service of the notice of presuit mediation shall be  
 1011           effected either by personal service, as provided in chapter 48,  
 1012           or by certified mail, return receipt requested, in a letter in  
 1013           substantial conformity with the form provided in subsection (1),  
 1014           with an additional copy being sent by regular first-class mail,  
 1015           to the address of the responding party as it last appears on the  
 1016           books and records of the association or, if not available, then  
 1017           as it last appears in the official records of the county  
 1018           property appraiser where the parcel in dispute is located. The  
 1019           responding party has either 20 days after the postmarked date of  
 1020           the mailing of the statutory notice or 20 days after the date  
 1021           the responding party is served with a copy of the notice to  
 1022           serve a written response to the aggrieved party. The response  
 1023           shall be served by certified mail, return receipt requested,  
 1024           with an additional copy being sent by regular first-class mail,  
 1025           to the address shown on the statutory notice. The date of the  
 1026           postmark on the envelope for the response shall constitute the  
 1027           date that the response is served. Once the parties have agreed  
 1028           on a mediator, the mediator may schedule or reschedule the

CS/CS/HB 27

2009

1029 mediation for a date and time mutually convenient to the parties  
1030 within 90 days after the date of service of the statutory  
1031 notice. After such 90-day period, the mediator may reschedule  
1032 the mediation only upon the mutual written agreement of all the  
1033 parties.

1034 (b) The parties shall share the costs of presuit mediation  
1035 equally, including the fee charged by the mediator, if any,  
1036 unless the parties agree otherwise, and the mediator may require  
1037 advance payment of his or her reasonable fees and costs. Each  
1038 party shall be responsible for that party's own attorney's fees  
1039 if a party chooses to be represented by an attorney at the  
1040 mediation.

1041 (c) The party responding to the aggrieved party may  
1042 provide a notice of opting out under s. 720.506 and demand  
1043 arbitration or may sign the agreement to mediate included in the  
1044 notice of presuit mediation. A responding party signing the  
1045 agreement to mediate must clearly indicate the name of the  
1046 mediator who is acceptable from the five names provided by the  
1047 aggrieved party and must provide a list of dates and times in  
1048 which the responding party is available to participate in the  
1049 mediation within 90 days after the date the responding party was  
1050 served, either by process server or by certified mail, with the  
1051 statutory notice of presuit mediation.

1052 (d) The mediator who has been selected and agreed to  
1053 mediate must schedule the mediation conference at a mutually  
1054 convenient time and place within that 90-day period; but, if the  
1055 responding party does not provide a list of available dates and  
1056 times, the mediator is authorized to schedule a mediation

CS/CS/HB 27

2009

1057 conference without taking the responding party's schedule and  
1058 convenience into consideration. Within 10 days after the  
1059 designation of the mediator, the mediator shall coordinate with  
1060 the parties and notify the parties in writing of the date, time,  
1061 and place of the mediation conference.

1062 (e) The mediation conference must be held on the scheduled  
1063 date and may be rescheduled if a rescheduled date is approved by  
1064 the mediator. However, in no event shall the mediation be held  
1065 later than 90 days after the notice of presuit mediation was  
1066 first served, unless all parties mutually agree in writing  
1067 otherwise. If the presuit mediation is not completed within the  
1068 required time limits, the mediator shall declare an impasse  
1069 unless the mediation date is extended by mutual written  
1070 agreement by all parties and approved by the mediator.

1071 (f) If the responding party fails to respond within 30  
1072 days after the date of service of the statutory notice of  
1073 presuit mediation, fails to agree to at least one of the  
1074 mediators listed by the aggrieved party in the notice, fails to  
1075 pay or prepay to the mediator one-half of the costs of the  
1076 mediator, or fails to appear and participate at the scheduled  
1077 mediation, the aggrieved party shall be authorized to proceed  
1078 with the filing of a lawsuit without further notice.

1079 (g)1. The failure of any party to respond to the statutory  
1080 notice of presuit mediation within 20 days, the failure to agree  
1081 upon a mediator, the failure to provide a listing of dates and  
1082 times in which the responding party is available to participate  
1083 in the mediation within 90 days after the date the responding  
1084 party was served with the statutory notice of presuit mediation,

CS/CS/HB 27

2009

1085 the failure to make payment of fees and costs within the time  
1086 established by the mediator, or the failure to appear for a  
1087 scheduled mediation session without the approval of the  
1088 mediator, shall in each instance constitute a failure or refusal  
1089 to participate in the mediation process and shall operate as an  
1090 impasse in the presuit mediation by such party, entitling the  
1091 other party to file a lawsuit in court and to seek an award of  
1092 the costs and attorney's fees associated with the mediation.

1093 2. Persons who fail or refuse to participate in the entire  
1094 mediation process may not recover attorney's fees and costs in  
1095 subsequent litigation relating to the same dispute between the  
1096 same parties. If any presuit mediation session cannot be  
1097 scheduled and conducted within 90 days after the offer to  
1098 participate in mediation was filed, through no fault of either  
1099 party, then an impasse shall be deemed to have occurred unless  
1100 the parties mutually agree in writing to extend this deadline.  
1101 In the event of such impasse, each party shall be responsible  
1102 for its own costs and attorney's fees and one-half of any  
1103 mediator fees and filing fees, and either party may file a  
1104 lawsuit in court regarding the dispute.

1105 720.506 Opt-out of presuit mediation.--A party served with  
1106 a notice of presuit mediation under s. 720.505 may opt out of  
1107 presuit mediation and demand that the dispute proceed under  
1108 nonbinding arbitration as follows:

1109 (1) In lieu of a response to the notice of presuit  
1110 mediation as required under s. 720.505, the responding party may  
1111 serve upon the aggrieved party, in the same manner as the  
1112 response to a notice for presuit mediation under s. 720.505, a



1113 notice of opting out of mediation and demand that the dispute  
 1114 instead proceed to presuit arbitration under s. 720.507.

1115 (2) The aggrieved party shall be relieved from having to  
 1116 satisfy the requirements of s. 720.504 as a condition precedent  
 1117 to filing the demand for presuit arbitration.

1118 (3) Except as otherwise provided in this part, the choice  
 1119 of which presuit alternative dispute resolution procedure is  
 1120 used shall be at the election of the aggrieved party who first  
 1121 initiated such proceeding after complying with the provisions of  
 1122 s. 720.504.

1123 720.507 Presuit arbitration.--

1124 (1) Disputes between an association and a parcel owner or  
 1125 owners and disputes between parcel owners are subject to a  
 1126 demand for presuit arbitration pursuant to this section before  
 1127 the dispute may be filed in court. A party who elects to use the  
 1128 presuit arbitration procedure under this part shall serve on the  
 1129 responding party a written notice of presuit arbitration in  
 1130 substantially the following form:

1131  
 1132 STATUTORY NOTICE OF PRESUIT ARBITRATION

1133  
 1134 THE ALLEGED AGGRIEVED PARTY, \_\_\_\_\_,  
 1135 HEREBY DEMANDS THAT \_\_\_\_\_, AS THE  
 1136 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT  
 1137 ARBITRATION IN CONNECTION WITH THE FOLLOWING  
 1138 DISPUTE(S) WITH YOU, WHICH BY STATUTE ARE OF A TYPE  
 1139 THAT ARE SUBJECT TO PRESUIT ARBITRATION:

1141 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE  
 1142 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A  
 1143 VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT  
 1144 LIMITED TO, ALL APPLICABLE PROVISIONS OF THE GOVERNING  
 1145 DOCUMENTS BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE  
 1146 PARTIES.)

1147  
 1148 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,  
 1149 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT  
 1150 ARBITRATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED  
 1151 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,  
 1152 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT  
 1153 ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN  
 1154 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT  
 1155 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU  
 1156 PARTICIPATE IN THIS PROCESS. IF YOU FAIL TO  
 1157 PARTICIPATE IN THE ARBITRATION PROCESS, A LAWSUIT MAY  
 1158 BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER  
 1159 WARNING.

1160  
 1161 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD  
 1162 PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY  
 1163 THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN  
 1164 "ARBITRATION AWARD." PURSUANT TO S. 720.507, FLORIDA  
 1165 STATUTES, THE ARBITRATION AWARD SHALL BE FINAL UNLESS  
 1166 A LAWSUIT IS FILED IN A COURT OF COMPETENT  
 1167 JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE  
 1168 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION

1169 IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE OF THE  
 1170 ARBITRATION AWARD.  
 1171  
 1172 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE  
 1173 ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND  
 1174 BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE  
 1175 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS  
 1176 FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR  
 1177 TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE  
 1178 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE  
 1179 PARTIES UNDER S. 720.505, FLORIDA STATUTES. THE  
 1180 FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION  
 1181 PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN  
 1182 ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF  
 1183 YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE  
 1184 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED  
 1185 TO RECOVER ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A  
 1186 SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE  
 1187 BETWEEN THE SAME PARTIES.  
 1188  
 1189 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE  
 1190 ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE  
 1191 NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU  
 1192 HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS.  
 1193 THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR  
 1194 MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE  
 1195 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL  
 1196 ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS

1197 CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT  
 1198 ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE  
 1199 AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT  
 1200 ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS,  
 1201 AND HOURLY RATES, ARE AS FOLLOWS:

1202  
 1203 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND  
 1204 HOURLY RATES OF AT LEAST FIVE ARBITRATORS.

1205  
 1206 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO  
 1207 CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL  
 1208 AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.

1209  
 1210 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF  
 1211 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE  
 1212 PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION  
 1213 EQUALLY, INCLUDING THE FEE CHARGED BY THE ARBITRATOR.  
 1214 THE PARTIES SHALL BE RESPONSIBLE FOR THEIR OWN  
 1215 ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY  
 1216 IN CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN  
 1217 ATTORNEY TO REPRESENT YOU FOR THE ARBITRATION IS NOT  
 1218 REQUIRED. THE ARBITRATOR SELECTED MAY REQUIRE THE  
 1219 ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED  
 1220 FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR  
 1221 PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED  
 1222 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER  
 1223 REASONABLE ADVANCE DEPOSITS AS THE ARBITRATOR WHO IS  
 1224 SELECTED REQUIRES FOR THIS PURPOSE. ANY FUNDS

1225 DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE  
 1226 IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.  
 1227  
 1228 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND  
 1229 CLEARLY INDICATE THE NAME OF THE ARBITRATOR WHO IS  
 1230 ACCEPTABLE TO YOU FROM THE NAMES LISTED BY THE  
 1231 AGGRIEVED PARTY.  
 1232  
 1233 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE  
 1234 WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF  
 1235 PRESUIT ARBITRATION WAS EITHER PERSONALLY SERVED ON  
 1236 YOU OR 20 DAYS AFTER THE POSTMARKED DATE THAT THIS  
 1237 NOTICE OF PRESUIT ARBITRATION WAS SENT TO YOU BY  
 1238 CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT  
 1239 LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE  
 1240 TO PARTICIPATE IN THE ARBITRATION THAT ARE WITHIN 90  
 1241 DAYS AFTER THE DATE YOU WERE PERSONALLY SERVED OR  
 1242 WITHIN 90 DAYS AFTER THE POSTMARKED DATE OF THE  
 1243 CERTIFIED MAILING OF THIS STATUTORY NOTICE OF PRESUIT  
 1244 ARBITRATION. A COPY OF THIS NOTICE AND YOUR RESPONSE  
 1245 WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE  
 1246 ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE  
 1247 A MUTUALLY CONVENIENT TIME AND PLACE FOR THE  
 1248 ARBITRATION CONFERENCE TO BE HELD. IF YOU DO NOT  
 1249 PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE  
 1250 ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION  
 1251 CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND  
 1252 CONVENIENCE INTO CONSIDERATION. THE ARBITRATION

CS/CS/HB 27

2009

1253 CONFERENCE MUST BE HELD ON THE SCHEDULED DATE, OR ANY  
1254 RESCHEDULED DATE APPROVED BY THE ARBITRATOR. IN NO  
1255 EVENT SHALL THE ARBITRATION CONFERENCE BE LATER THAN  
1256 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS  
1257 FIRST SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN  
1258 WRITING OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED  
1259 WITHIN THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL  
1260 ISSUE AN ARBITRATION AWARD, UNLESS THE HEARING IS  
1261 EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES  
1262 AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU  
1263 FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE  
1264 SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE  
1265 ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE  
1266 AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO  
1267 AGREE EITHER TO ONE OF THE ARBITRATORS THAT THE  
1268 AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO  
1269 THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS  
1270 REQUIRED, OR FAIL TO APPEAR AND PARTICIPATE AT THE  
1271 SCHEDULED ARBITRATION CONFERENCE, THE AGGRIEVED PARTY  
1272 MAY REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION  
1273 AWARD. IN THE SUBSEQUENT COURT ACTION, THE AGGRIEVED  
1274 PARTY SHALL BE ENTITLED TO RECOVER AN AWARD OF  
1275 REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ANY  
1276 FEES PAID TO THE ARBITRATOR, INCURRED IN OBTAINING AN  
1277 ARBITRATION AWARD PURSUANT TO S. 720.507, FLORIDA  
1278 STATUTES.

1279

CS/CS/HB 27

2009

1280 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY  
 1281 LAW, YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY  
 1282 CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED,  
 1283 TO THE ADDRESS SHOWN ON THIS NOTICE OF PRESUIT  
 1284 ARBITRATION.

1286 \_\_\_\_\_  
 1287 SIGNATURE OF AGGRIEVED PARTY

1289 \_\_\_\_\_  
 1290 PRINTED NAME OF AGGRIEVED PARTY

1292 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR  
 1293 ACCEPTANCE OF THE AGREEMENT TO ARBITRATE.

1295 AGREEMENT TO ARBITRATE

1297 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN  
 1298 PRESUIT ARBITRATION AND AGREES TO ATTEND AN  
 1299 ARBITRATION CONDUCTED BY THE FOLLOWING ARBITRATOR  
 1300 LISTED BELOW AS SOMEONE WHO WOULD BE ACCEPTABLE TO  
 1301 ARBITRATE THIS DISPUTE:

1303 (IN YOUR RESPONSE, SELECT THE NAME OF ONE ARBITRATOR  
 1304 THAT IS ACCEPTABLE TO YOU FROM THOSE ARBITRATORS  
 1305 LISTED BY THE AGGRIEVED PARTY.)

1307 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS  
 1308 AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE  
 1309 PRESUIT ARBITRATION CONFERENCE AT THE FOLLOWING DATES  
 1310 AND TIMES:

1311  
 1312 (LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE  
 1313 MUST BE AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE  
 1314 ON WHICH YOU WERE SERVED, EITHER BY PROCESS SERVER OR  
 1315 BY CERTIFIED MAIL, WITH THE NOTICE OF PRESUIT  
 1316 ARBITRATION.)

1317  
 1318 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE  
 1319 ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS  
 1320 AS THE ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

1321  
 1322 \_\_\_\_\_  
 1323 SIGNATURE OF RESPONDING PARTY #1

1324 \_\_\_\_\_  
 1325 TELEPHONE CONTACT INFORMATION

1326  
 1327 \_\_\_\_\_  
 1328 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF  
 1329 RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS  
 1330 OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,  
 1331 OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF  
 1332 A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

1333



1334       (2) (a) Service of the statutory notice of presuit  
1335 arbitration shall be effected either by personal service, as  
1336 provided in chapter 48, or by certified mail, return receipt  
1337 requested, in a letter in substantial conformity with the form  
1338 provided in subsection (1), with an additional copy being sent  
1339 by regular first-class mail, to the address of the responding  
1340 party as it last appears on the books and records of the  
1341 association, or if not available, the last address as it appears  
1342 on the official records of the county property appraiser for the  
1343 county in which the property is situated that is subject to the  
1344 association documents. The responding party has 20 days after  
1345 the postmarked date of the certified mailing of the statutory  
1346 notice of presuit arbitration or 20 days after the date the  
1347 responding party is personally served with the statutory notice  
1348 of presuit arbitration by to serve a written response to the  
1349 aggrieved party. The response shall be served by certified mail,  
1350 return receipt requested, with an additional copy being sent by  
1351 regular first-class mail, to the address shown on the statutory  
1352 notice of presuit arbitration. The postmarked date on the  
1353 envelope of the response shall constitute the date the response  
1354 was served.

1355       (b) The parties shall share the costs of presuit  
1356 arbitration equally, including the fee charged by the  
1357 arbitrator, if any, unless the parties agree otherwise, and the  
1358 arbitrator may require advance payment of his or her reasonable  
1359 fees and costs. Each party shall be responsible for all of their  
1360 own attorney's fees if a party chooses to be represented by an  
1361 attorney for the arbitration proceedings.

1362       (c)1. The party responding to the aggrieved party must  
1363 sign the agreement to arbitrate included in the notice of  
1364 presuit arbitration and clearly indicate the name of the  
1365 arbitrator who is acceptable of those arbitrators listed by the  
1366 aggrieved party. The responding party must provide a list of at  
1367 least three dates and times in which the responding party is  
1368 available to participate in the arbitration conference within 90  
1369 days after the date the responding party was served with the  
1370 statutory notice of presuit arbitration.

1371       2. The arbitrator must schedule the arbitration conference  
1372 at a mutually convenient time and place, but if the responding  
1373 party does not provide a list of available dates and times, the  
1374 arbitrator is authorized to schedule an arbitration conference  
1375 without taking the responding party's schedule and convenience  
1376 into consideration. Within 10 days after the designation of the  
1377 arbitrator, the arbitrator shall notify the parties in writing  
1378 of the date, time, and place of the arbitration conference.

1379       3. The arbitration conference must be held on the  
1380 scheduled date and may be rescheduled if approved by the  
1381 arbitrator. However, in no event shall the arbitration hearing  
1382 be later than 90 days after the notice of presuit arbitration  
1383 was first served, unless all parties mutually agree in writing  
1384 otherwise. If the arbitration hearing is not completed within  
1385 the required time limits, the arbitrator may issue an  
1386 arbitration award unless the time for the hearing is extended as  
1387 provided herein. If the responding party fails to respond within  
1388 20 days after the date of statutory notice of presuit  
1389 arbitration, fails to agree to at least one of the arbitrators

CS/CS/HB 27

2009

1390 that have been listed by the aggrieved party in the presuit  
1391 notice of arbitration, fails to pay or prepay to the arbitrator  
1392 one-half of the costs involved, or fails to appear and  
1393 participate at the scheduled arbitration, the aggrieved party is  
1394 authorized to proceed with a request that the arbitrator issue  
1395 an arbitration award.

1396 (d)1. The failure of any party to respond to the statutory  
1397 notice of presuit arbitration within 20 days, the failure to  
1398 either select one of the five arbitrators listed by the  
1399 aggrieved party, the failure to provide a listing of dates and  
1400 times in which the responding party is available to participate  
1401 in the arbitration conference within 90 days after the date of  
1402 the responding party being served with the statutory notice of  
1403 presuit arbitration, the failure to make payment of fees and  
1404 costs as required within the time established by the arbitrator,  
1405 or the failure to appear for an arbitration conference without  
1406 the approval of the arbitrator, shall entitle the other party to  
1407 request the arbitrator to enter an arbitration award, including  
1408 an award of the reasonable costs and attorney's fees associated  
1409 with the arbitration.

1410 2. Persons who fail or refuse to participate in the entire  
1411 arbitration process may not recover attorney's fees and costs in  
1412 any subsequent litigation proceeding relating to the same  
1413 dispute involving the same parties.

1414 (3) (a) In an arbitration proceeding, the arbitrator may  
1415 not consider any unsuccessful mediation of the dispute.

1416 (b) An arbitrator in a proceeding initiated pursuant to  
1417 the provisions of this part may shorten the time for discovery

1418 or otherwise limit discovery in a manner consistent with the  
1419 policy goals of this part to reduce the time and expense of  
1420 litigating homeowners' association disputes initiated pursuant  
1421 to this chapter and promoting an expeditious alternative dispute  
1422 resolution procedure for parties to such actions.

1423 (4) At the request of any party to the arbitration, the  
1424 arbitrator may issue subpoenas for the attendance of witnesses  
1425 and the production of books, records, documents, and other  
1426 evidence, and any party on whose behalf a subpoena is issued may  
1427 apply to the court for orders compelling such attendance and  
1428 production. Subpoenas shall be served and are enforceable in the  
1429 manner provided by the Florida Rules of Civil Procedure.

1430 Discovery may, at the discretion of the arbitrator, be permitted  
1431 in the manner provided by the Florida Rules of Civil Procedure.

1432 (5) The final arbitration award shall be sent to the  
1433 parties in writing no later than 30 days after the date of the  
1434 arbitration hearing, absent extraordinary circumstances  
1435 necessitating a later filing the reasons for which shall be  
1436 stated in the final award if filed more than 30 days after the  
1437 date of the final session of the arbitration conference. An  
1438 agreed arbitration award is final in those disputes in which the  
1439 parties have mutually agreed to be bound. An arbitration award  
1440 decided by the arbitrator is final unless a lawsuit seeking a  
1441 trial de novo is filed in a court of competent jurisdiction  
1442 within 30 days after the date of the arbitration award. The  
1443 right to file for a trial de novo entitles the parties to file a  
1444 complaint in the appropriate trial court for a judicial  
1445 resolution of the dispute. The prevailing party in an

1446 arbitration proceeding shall be awarded the costs of the  
1447 arbitration and reasonable attorney's fees in an amount  
1448 determined by the arbitrator.

1449 (6) The party filing a motion for a trial de novo shall be  
1450 assessed the other party's arbitration costs, court costs, and  
1451 other reasonable costs, including attorney's fees, investigation  
1452 expenses, and expenses for expert or other testimony or evidence  
1453 incurred after the arbitration hearing, if the judgment upon the  
1454 trial de novo is not more favorable than the final arbitration  
1455 award.

1456 720.508 Rules of procedure.--

1457 (1) Presuit mediation and presuit arbitration proceedings  
1458 under this part must be conducted in accordance with the  
1459 applicable Florida Rules of Civil Procedure and rules governing  
1460 mediations and arbitrations under chapter 44, except that this  
1461 part shall be controlling to the extent of any conflict with  
1462 other applicable rules or statutes. The arbitrator may shorten  
1463 any applicable time period and otherwise limit the scope of  
1464 discovery on request of the parties or within the discretion of  
1465 the arbitrator exercised consistent with the purpose and  
1466 objective of reducing the expense and expeditiously concluding  
1467 proceedings under this part.

1468 (2) Presuit mediation proceedings under s. 720.505 are  
1469 privileged and confidential to the same extent as court-ordered  
1470 mediation under chapter 44. An arbitrator or judge may not  
1471 consider any information or evidence arising from the presuit  
1472 mediation proceeding except in a proceeding to impose sanctions

CS/CS/HB 27

2009

1473 for failure to attend a presuit mediation session or to enforce  
1474 a mediated settlement agreement.

1475 (3) Persons who are not parties to the dispute may not  
1476 attend the presuit mediation conference without consent of all  
1477 parties, with the exception of counsel for the parties and a  
1478 corporate representative designated by the association. Presuit  
1479 mediations under this part are not a board meeting for purposes  
1480 of notice and participation set forth in this chapter.

1481 (4) Attendance at a mediation conference by the board of  
1482 directors shall not require notice or participation by nonboard  
1483 members as otherwise required by this chapter for meetings of  
1484 the board.

1485 (5) Settlement agreements resulting from a mediation or  
1486 arbitration proceeding do not have precedential value in  
1487 proceedings involving parties other than those participating in  
1488 the mediation or arbitration.

1489 (6) Arbitration awards by an arbitrator shall have  
1490 precedential value in other proceedings involving the same  
1491 association or with respect to the same parcel owner.

1492 720.509 Mediators and arbitrators; qualifications and  
1493 registration.--A person is authorized to conduct mediation or  
1494 arbitration under this part if he or she has been certified as a  
1495 circuit court civil mediator under the requirements adopted  
1496 pursuant to s. 44.106, is a member in good standing with The  
1497 Florida Bar, and otherwise meets all other requirements imposed  
1498 by chapter 44.

1499 720.510 Enforcement of mediation agreement or arbitration  
1500 award.--

CS/CS/HB 27

2009

1501       (1) A mediation settlement may be enforced through the  
1502 county or circuit court, as applicable, and any costs and  
1503 attorney's fees incurred in the enforcement of a settlement  
1504 agreement reached at mediation shall be awarded to the  
1505 prevailing party in any enforcement action.

1506       (2) Any party to an arbitration proceeding may enforce an  
1507 arbitration award by filing a petition in a court of competent  
1508 jurisdiction in which the homeowners' association is located.  
1509 The prevailing party in such proceeding shall be awarded  
1510 reasonable attorney's fees and costs incurred in such  
1511 proceeding.

1512       (3) If a complaint is filed seeking a trial de novo, the  
1513 arbitration award shall be stayed and a petition to enforce the  
1514 award may not be granted. Such award, however, shall be  
1515 admissible in the court proceeding seeking a trial de novo.

1516       Section 10. Sections 720.303(10)(b) and 720.306(9),  
1517 Florida Statutes, are repealed to the extent that they are  
1518 inconsistent with part IV of chapter 720, Florida Statutes.

1519       Section 11. Except as otherwise expressly provided in this  
1520 act, this act shall take effect July 1, 2009.