

1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 718.111, F.S.; requiring that association access to a unit
4 must be by two persons, one of whom must be a board member
5 or manager or employee of the association; providing an
6 exception for emergencies; amending s. 718.112, F.S.;
7 revising notice requirements for board of administration
8 meetings; requiring each newly elected director to certify
9 to the secretary of the association that he or she has
10 read the association's declarations of covenants and
11 restrictions, articles of incorporation, bylaws, and
12 current written policies and will work to uphold such
13 documents and policies to the best of his or her ability;
14 providing that a failure to timely file the statement
15 automatically disqualifies the director from service on
16 the association's board of directors; requiring the
17 secretary of the association to retain a director's
18 certification for inspection by the members for a
19 specified period of years after a director's election;
20 amending s. 718.1265, F.S.; limiting the exercise of
21 specified special powers unless a certain number of units
22 are rendered uninhabitable; amending s. 718.303, F.S.;
23 revising provisions relating to levy of fines; amending s.
24 720.303, F.S.; revising provisions relating to homeowners'
25 association board meetings, inspection and copying of
26 records, reserve accounts of budgets, and recall of
27 directors; prohibiting a salary or compensation for
28 certain association personnel; providing exceptions;

29 | amending s. 720.305, F.S.; authorizing fines assessed
30 | against members which exceed a certain amount to become a
31 | lien against a parcel; amending s. 720.306, F.S.;
32 | providing requirements for secret ballots; requiring newly
33 | elected members of a board of directors to make certain
34 | certifications in writing to the association; providing
35 | for disqualification for failure to make such
36 | certifications; requiring an association to retain
37 | certifications for a specified time; amending s. 720.401,
38 | F.S.; requiring that the disclosure summary to prospective
39 | parcel owners include additional provisions; amending s.
40 | 34.01, F.S.; correcting a cross-reference to conform to
41 | changes made by the act; amending s. 720.302, F.S.;
42 | correcting a cross-reference to conform to changes made by
43 | the act; establishing legislative intent; repealing s.
44 | 720.311, F.S., relating to a procedure for dispute
45 | resolution in homeowners' associations; providing that
46 | dispute resolution cases pending on the date of repeal
47 | will continue under the repealed provisions; creating part
48 | IV of ch. 720, F.S., relating to dispute resolution;
49 | creating s. 720.501, F.S.; providing a short title;
50 | creating s. 720.502, F.S.; providing legislative findings;
51 | creating s. 720.503, F.S.; setting applicability of
52 | provisions for mediation and arbitration applicable to
53 | disputes in homeowners' associations; creating exceptions;
54 | providing applicability; tolling applicable statutes of
55 | limitations; creating s. 720.504, F.S.; requiring that the
56 | notice of dispute be delivered before referral to

57 mediation or arbitration; creating s. 720.505, F.S.;

58 creating a statutory notice form for referral to

59 mediation; requiring delivery by certified mail or

60 personal delivery; setting deadlines; requiring parties to

61 share costs; requiring the selection of a mediator and

62 times to meet; providing penalties for failure to mediate;

63 creating s. 720.506, F.S.; creating an opt-out provision;

64 creating s. 720.507, F.S.; creating a statutory notice

65 form for referral to arbitration; requiring delivery by

66 certified mail or personal delivery; setting deadlines;

67 requiring parties to share costs; requiring the selection

68 of an arbitrator and times to meet; providing penalties

69 for failure to arbitrate; creating s. 720.508, F.S.;

70 providing for rules of procedure; providing for

71 confidentiality; creating s. 720.509, F.S.; setting

72 qualifications for mediators and arbitrators; creating s.

73 720.510, F.S.; providing for enforcement of mediation

74 agreements and arbitration awards; amending s. 718.103,

75 F.S.; expanding the definition of "developer" to include a

76 bulk assignee or bulk buyer; amending s. 718.301, F.S.;

77 revising conditions under which unit owners other than the

78 developer may elect not less than a majority of the

79 members of the board of administration of an association;

80 creating part VII of ch. 718, F.S.; providing a short

81 title; providing legislative findings and intent; defining

82 the terms "bulk assignee" and "bulk buyer"; providing for

83 the assignment of developer rights by a bulk assignee;

84 specifying liabilities of bulk assignees and bulk buyers;

85 providing exceptions; providing additional
86 responsibilities of bulk assignees and bulk buyers;
87 authorizing certain entities to assign developer rights to
88 a bulk assignee; limiting the number of bulk assignees at
89 any given time; providing for the transfer of control of a
90 board of administration; providing effects of such
91 transfer on parcels acquired by a bulk assignee; providing
92 obligations of a bulk assignee upon the transfer of
93 control of a board of administration; requiring that a
94 bulk assignee certify certain information in writing;
95 providing for the resolution of a conflict between
96 specified provisions of state law; providing that the
97 failure of a bulk assignee or bulk buyer to comply with
98 specified provisions of state law results in the loss of
99 certain protections and exemptions; requiring that a bulk
100 assignee or bulk buyer file certain information with the
101 Division of Florida Condominiums, Timeshares, and Mobile
102 Homes of the Department of Business and Professional
103 Regulation before offering any units for sale or lease in
104 excess of a specified term; requiring that a copy of such
105 information be provided to a prospective purchaser;
106 requiring that certain contracts and disclosure statements
107 contain specified statements; requiring that a bulk
108 assignee or bulk buyer comply with certain disclosure
109 requirements; prohibiting a bulk assignee from taking
110 certain actions on behalf of an association while the bulk
111 assignee is in control of the board of administration of
112 the association and requiring that such bulk assignee

113 | comply with certain requirements; requiring that a bulk
 114 | assignee or bulk buyer comply with certain requirements
 115 | regarding certain contracts; providing unit owners with
 116 | specified protections regarding certain contracts;
 117 | requiring that a bulk buyer comply with certain
 118 | requirements regarding the transfer of a unit; prohibiting
 119 | a person from being classified as a bulk assignee or bulk
 120 | buyer unless condominium parcels were acquired before a
 121 | specified date; providing for the determination of the
 122 | date of acquisition of a parcel; providing that the
 123 | assignment of developer rights to a bulk assignee does not
 124 | release a developer from certain liabilities; preserving
 125 | certain liabilities for certain parties; providing an
 126 | effective date.

127 |
 128 | Be It Enacted by the Legislature of the State of Florida:

129 |
 130 | Section 1. Subsection (5) of section 718.111, Florida
 131 | Statutes, is amended to read:

132 | 718.111 The association.--

133 | (5) RIGHT OF ACCESS TO UNITS.--The association has the
 134 | irrevocable right of access to each unit during reasonable
 135 | hours, when necessary for the maintenance, repair, or
 136 | replacement of any common elements or of any portion of a unit
 137 | to be maintained by the association pursuant to the declaration
 138 | or as necessary to prevent damage to the common elements or to a
 139 | unit or units. Except in cases of emergency, the association
 140 | must give the unit owner advance written notice of not less than

141 24 hours of its intent to access the unit and such access must
 142 be by two persons, one of whom must be a member of the board of
 143 administration or a manager or employee of the association and
 144 one of whom must be an authorized representative of the
 145 association. The identity of the authorized representative
 146 seeking access to the unit shall be provided to the unit owner
 147 prior to entering the unit.

148 Section 2. Paragraphs (c) and (d) of subsection (2) of
 149 section 718.112, Florida Statutes, are amended to read:

150 718.112 Bylaws.--

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

154 (c) Board of administration meetings.--Meetings of the
 155 board of administration at which a quorum of the members is
 156 present shall be open to all unit owners. Any unit owner may
 157 tape record or videotape meetings of the board of
 158 administration. The right to attend such meetings includes the
 159 right to speak at such meetings with reference to all designated
 160 agenda items. The division shall adopt reasonable rules
 161 governing the tape recording and videotaping of the meeting. The
 162 association may adopt written reasonable rules governing the
 163 frequency, duration, and manner of unit owner statements.
 164 Adequate notice of all meetings, which notice shall specifically
 165 incorporate an identification of agenda items, shall be posted
 166 conspicuously on the condominium property at least 48 continuous
 167 hours preceding the meeting except in an emergency. If 20
 168 percent of the voting interests petition the board to address an

169 item of business, the board shall at its next regular board
170 meeting or at a special meeting of the board, but not later than
171 60 days after the receipt of the petition, place the item on the
172 agenda. Any item not included on the notice may be taken up on
173 an emergency basis by at least a majority plus one of the
174 members of the board. Such emergency action shall be noticed and
175 ratified at the next regular meeting of the board. However,
176 written notice of any meeting at which nonemergency special
177 assessments, or at which amendment to rules regarding unit use,
178 will be considered shall be mailed, delivered, or electronically
179 transmitted to the unit owners and posted conspicuously on the
180 condominium property not less than 14 days prior to the meeting.
181 Evidence of compliance with this 14-day notice shall be made by
182 an affidavit executed by the person providing the notice and
183 filed among the official records of the association. Upon notice
184 to the unit owners, the board shall by duly adopted rule
185 designate a specific location on the condominium property or
186 association property upon which all notices of board meetings
187 shall be posted. If there is no condominium property or
188 association property upon which notices can be posted, notices
189 of board meetings shall be mailed, delivered, or electronically
190 transmitted at least 14 days before the meeting to the owner of
191 each unit. In lieu of or in addition to the physical posting of
192 notice of any meeting of the board of administration on the
193 condominium property, the association may, by reasonable rule,
194 adopt a procedure for conspicuously posting and repeatedly
195 broadcasting the notice and the agenda on a closed-circuit cable
196 television system serving the condominium association. However,

197 | if broadcast notice is used in lieu of a notice posted
198 | physically on the condominium property, the notice and agenda
199 | must be broadcast at least four times every broadcast hour of
200 | each day that a posted notice is otherwise required under this
201 | section. When broadcast notice is provided, the notice and
202 | agenda must be broadcast in a manner and for a sufficient
203 | continuous length of time so as to allow an average reader to
204 | observe the notice and read and comprehend the entire content of
205 | the notice and the agenda. Notice of any meeting in which
206 | regular or special assessments against unit owners are to be
207 | considered for any reason shall specifically state that
208 | assessments will be considered and the nature of, actual amount
209 | of any bids or proposals for estimated cost, and description of
210 | the purposes for such assessments. Meetings of a committee to
211 | take final action on behalf of the board or make recommendations
212 | to the board regarding the association budget are subject to the
213 | provisions of this paragraph. Meetings of a committee that does
214 | not take final action on behalf of the board or make
215 | recommendations to the board regarding the association budget
216 | are subject to the provisions of this section, unless those
217 | meetings are exempted from this section by the bylaws of the
218 | association. Notwithstanding any other law, the requirement that
219 | board meetings and committee meetings be open to the unit owners
220 | is inapplicable to meetings between the board or a committee and
221 | the association's attorney, with respect to proposed or pending
222 | litigation, when the meeting is held for the purpose of seeking
223 | or rendering legal advice.

224 | (d) Unit owner meetings.--

225 1. There shall be an annual meeting of the unit owners
226 held at the location provided in the association bylaws and, if
227 the bylaws are silent as to the location, the meeting shall be
228 held within 45 miles of the condominium property. However, such
229 distance requirement does not apply to an association governing
230 a timeshare condominium. Unless the bylaws provide otherwise, a
231 vacancy on the board caused by the expiration of a director's
232 term shall be filled by electing a new board member, and the
233 election shall be by secret ballot; however, if the number of
234 vacancies equals or exceeds the number of candidates, no
235 election is required. The terms of all members of the board
236 shall expire at the annual meeting and such board members may
237 stand for reelection unless otherwise permitted by the bylaws.
238 In the event that the bylaws permit staggered terms of no more
239 than 2 years and upon approval of a majority of the total voting
240 interests, the association board members may serve 2-year
241 staggered terms. If no person is interested in or demonstrates
242 an intention to run for the position of a board member whose
243 term has expired according to the provisions of this
244 subparagraph, such board member whose term has expired shall be
245 automatically reappointed to the board of administration and
246 need not stand for reelection. In a condominium association of
247 more than 10 units, coowners of a unit may not serve as members
248 of the board of directors at the same time. Any unit owner
249 desiring to be a candidate for board membership shall comply
250 with subparagraph 3. A person who has been suspended or removed
251 by the division under this chapter, or who is delinquent in the
252 payment of any fee or assessment as provided in paragraph (n),

253 is not eligible for board membership. A person who has been
254 convicted of any felony in this state or in a United States
255 District or Territorial Court, or who has been convicted of any
256 offense in another jurisdiction that would be considered a
257 felony if committed in this state, is not eligible for board
258 membership unless such felon's civil rights have been restored
259 for a period of no less than 5 years as of the date on which
260 such person seeks election to the board. The validity of an
261 action by the board is not affected if it is later determined
262 that a member of the board is ineligible for board membership
263 due to having been convicted of a felony.

264 2. The bylaws shall provide the method of calling meetings
265 of unit owners, including annual meetings. Written notice, which
266 notice must include an agenda, shall be mailed, hand delivered,
267 or electronically transmitted to each unit owner at least 14
268 days prior to the annual meeting and shall be posted in a
269 conspicuous place on the condominium property at least 14
270 continuous days preceding the annual meeting. Upon notice to the
271 unit owners, the board shall by duly adopted rule designate a
272 specific location on the condominium property or association
273 property upon which all notices of unit owner meetings shall be
274 posted; however, if there is no condominium property or
275 association property upon which notices can be posted, this
276 requirement does not apply. In lieu of or in addition to the
277 physical posting of notice of any meeting of the unit owners on
278 the condominium property, the association may, by reasonable
279 rule, adopt a procedure for conspicuously posting and repeatedly
280 broadcasting the notice and the agenda on a closed-circuit cable

281 television system serving the condominium association. However,
282 if broadcast notice is used in lieu of a notice posted
283 physically on the condominium property, the notice and agenda
284 must be broadcast at least four times every broadcast hour of
285 each day that a posted notice is otherwise required under this
286 section. When broadcast notice is provided, the notice and
287 agenda must be broadcast in a manner and for a sufficient
288 continuous length of time so as to allow an average reader to
289 observe the notice and read and comprehend the entire content of
290 the notice and the agenda. Unless a unit owner waives in writing
291 the right to receive notice of the annual meeting, such notice
292 shall be hand delivered, mailed, or electronically transmitted
293 to each unit owner. Notice for meetings and notice for all other
294 purposes shall be mailed to each unit owner at the address last
295 furnished to the association by the unit owner, or hand
296 delivered to each unit owner. However, if a unit is owned by
297 more than one person, the association shall provide notice, for
298 meetings and all other purposes, to that one address which the
299 developer initially identifies for that purpose and thereafter
300 as one or more of the owners of the unit shall so advise the
301 association in writing, or if no address is given or the owners
302 of the unit do not agree, to the address provided on the deed of
303 record. An officer of the association, or the manager or other
304 person providing notice of the association meeting, shall
305 provide an affidavit or United States Postal Service certificate
306 of mailing, to be included in the official records of the
307 association affirming that the notice was mailed or hand
308 delivered, in accordance with this provision.

309 3. The members of the board shall be elected by written
310 ballot or voting machine. Proxies shall in no event be used in
311 electing the board, either in general elections or elections to
312 fill vacancies caused by recall, resignation, or otherwise,
313 unless otherwise provided in this chapter. Not less than 60 days
314 before a scheduled election, the association shall mail,
315 deliver, or electronically transmit, whether by separate
316 association mailing or included in another association mailing,
317 delivery, or transmission, including regularly published
318 newsletters, to each unit owner entitled to a vote, a first
319 notice of the date of the election along with a certification
320 form provided by the division attesting that he or she has read
321 and understands, to the best of his or her ability, the
322 governing documents of the association and the provisions of
323 this chapter and any applicable rules. Any unit owner or other
324 eligible person desiring to be a candidate for the board must
325 give written notice to the association not less than 40 days
326 before a scheduled election. Together with the written notice
327 and agenda as set forth in subparagraph 2., the association
328 shall mail, deliver, or electronically transmit a second notice
329 of the election to all unit owners entitled to vote therein,
330 together with a ballot which shall list all candidates. Upon
331 request of a candidate, the association shall include an
332 information sheet, no larger than 8 1/2 inches by 11 inches,
333 which must be furnished by the candidate not less than 35 days
334 before the election, along with the signed certification form
335 provided for in this subparagraph, to be included with the
336 mailing, delivery, or transmission of the ballot, with the costs

337 of mailing, delivery, or electronic transmission and copying to
338 be borne by the association. The association is not liable for
339 the contents of the information sheets prepared by the
340 candidates. In order to reduce costs, the association may print
341 or duplicate the information sheets on both sides of the paper.
342 The division shall by rule establish voting procedures
343 consistent with the provisions contained herein, including rules
344 establishing procedures for giving notice by electronic
345 transmission and rules providing for the secrecy of ballots.
346 Elections shall be decided by a plurality of those ballots cast.
347 There shall be no quorum requirement; however, at least 20
348 percent of the eligible voters must cast a ballot in order to
349 have a valid election of members of the board. No unit owner
350 shall permit any other person to vote his or her ballot, and any
351 such ballots improperly cast shall be deemed invalid, provided
352 any unit owner who violates this provision may be fined by the
353 association in accordance with s. 718.303. A unit owner who
354 needs assistance in casting the ballot for the reasons stated in
355 s. 101.051 may obtain assistance in casting the ballot. The
356 regular election shall occur on the date of the annual meeting.
357 The provisions of this subparagraph shall not apply to timeshare
358 condominium associations. Notwithstanding the provisions of this
359 subparagraph, an election is not required unless more candidates
360 file notices of intent to run or are nominated than board
361 vacancies exist.

362 4. Any approval by unit owners called for by this chapter
363 or the applicable declaration or bylaws, including, but not
364 limited to, the approval requirement in s. 718.111(8), shall be

365 made at a duly noticed meeting of unit owners and shall be
366 subject to all requirements of this chapter or the applicable
367 condominium documents relating to unit owner decisionmaking,
368 except that unit owners may take action by written agreement,
369 without meetings, on matters for which action by written
370 agreement without meetings is expressly allowed by the
371 applicable bylaws or declaration or any statute that provides
372 for such action.

373 5. Unit owners may waive notice of specific meetings if
374 allowed by the applicable bylaws or declaration or any statute.
375 If authorized by the bylaws, notice of meetings of the board of
376 administration, unit owner meetings, except unit owner meetings
377 called to recall board members under paragraph (j), and
378 committee meetings may be given by electronic transmission to
379 unit owners who consent to receive notice by electronic
380 transmission.

381 6. Unit owners shall have the right to participate in
382 meetings of unit owners with reference to all designated agenda
383 items. However, the association may adopt reasonable rules
384 governing the frequency, duration, and manner of unit owner
385 participation.

386 7. Any unit owner may tape record or videotape a meeting
387 of the unit owners subject to reasonable rules adopted by the
388 division.

389 8. Unless otherwise provided in the bylaws, any vacancy
390 occurring on the board before the expiration of a term may be
391 filled by the affirmative vote of the majority of the remaining
392 directors, even if the remaining directors constitute less than

393 a quorum, or by the sole remaining director. In the alternative,
394 a board may hold an election to fill the vacancy, in which case
395 the election procedures must conform to the requirements of
396 subparagraph 3. unless the association governs 10 units or less
397 and has opted out of the statutory election process, in which
398 case the bylaws of the association control. Unless otherwise
399 provided in the bylaws, a board member appointed or elected
400 under this section shall fill the vacancy for the unexpired term
401 of the seat being filled. Filling vacancies created by recall is
402 governed by paragraph (j) and rules adopted by the division.

403 9. Within 30 days after being elected to the board of
404 directors, a new director shall certify in writing to the
405 secretary of the association that he or she has read the
406 association's declarations of covenants and restrictions,
407 articles of incorporation, bylaws, and current written policies,
408 that he or she will work to uphold such documents and policies
409 to the best of his or her ability, and that he or she will
410 faithfully discharge his or her fiduciary responsibility to the
411 association's members. Failure to timely file the statement
412 automatically disqualifies the director from service on the
413 association's board of directors. The secretary shall cause the
414 association to retain a director's certification for inspection
415 by the members for 5 years after a director's election. Failure
416 to have such certification on file does not affect the validity
417 of any appropriate action.

418
419 Notwithstanding subparagraphs (b)2. and (d)3., an association of
420 10 or fewer units may, by the affirmative vote of a majority of

421 the total voting interests, provide for different voting and
422 election procedures in its bylaws, which vote may be by a proxy
423 specifically delineating the different voting and election
424 procedures. The different voting and election procedures may
425 provide for elections to be conducted by limited or general
426 proxy.

427 Section 3. Subsection (2) of section 718.1265, Florida
428 Statutes, is amended to read:

429 718.1265 Association emergency powers.--

430 (2) The special powers authorized under subsection (1)
431 shall be limited to that time reasonably necessary to protect
432 the health, safety, and welfare of the association and the unit
433 owners and the unit owners' family members, tenants, guests,
434 agents, or invitees and shall be reasonably necessary to
435 mitigate further damage and make emergency repairs.

436 Additionally, unless 20 percent or more of the units are made
437 uninhabitable by the emergency, the special powers authorized
438 under subsection (1) shall only be exercised during the term of
439 the Governor's executive order or proclamation declaring the
440 state of emergency in the locale in which the condominium is
441 located.

442 Section 4. Subsection (3) of section 718.303, Florida
443 Statutes, is amended, and subsections (4) and (5) are added to
444 that section, to read:

445 718.303 Obligations of owners; waiver; levy of fine
446 against unit by association.--

447 (3) If a unit owner is delinquent for more than 90 days in
448 the payment of regular or special assessments or the declaration

449 | or bylaws so provide, the association may suspend, for a
450 | reasonable time, the right of a unit owner or a unit's occupant,
451 | licensee, or invitee to use common elements, common facilities,
452 | or any other association property. This subsection does not
453 | apply to limited common elements intended to be used only by
454 | that unit, common elements that must be used to access the unit,
455 | utility services provided to the unit, parking spaces, or
456 | elevators. The association may also levy reasonable fines
457 | ~~against a unit~~ for the failure of the owner of the unit, or its
458 | occupant, licensee, or invitee, to comply with any provision of
459 | the declaration, the association bylaws, or reasonable rules of
460 | the association. No fine will become a lien against a unit. A ~~No~~
461 | fine may not exceed \$100 per violation. However, a fine may be
462 | levied on the basis of each day of a continuing violation, with
463 | a single notice and opportunity for hearing, provided that no
464 | such fine shall in the aggregate exceed \$1,000. A ~~No~~ fine may
465 | not be levied and a suspension may not be imposed unless the
466 | association first gives ~~except after giving~~ reasonable notice
467 | and opportunity for a hearing to the unit owner and, if
468 | applicable, its occupant, licensee, or invitee. The hearing must
469 | be held before a committee of other unit owners who are neither
470 | board members nor persons residing in a board member's
471 | household. If the committee does not agree with the fine or
472 | suspension, the fine or suspension may not be levied or imposed.
473 | ~~The provisions of this subsection do not apply to unoccupied~~
474 | ~~units.~~

475 | (4) The notice and hearing requirements of subsection (3)
476 | do not apply to the imposition of suspensions or fines against a

477 unit owner or a unit's occupant, licensee, or invitee because of
478 the failure to pay any amounts due the association. If such a
479 fine or suspension is imposed, the association must levy the
480 fine or impose a reasonable suspension at a properly noticed
481 board meeting, and after the imposition of such fine or
482 suspension, the association must notify the unit owner and, if
483 applicable, the unit's occupant, licensee, or invitee by mail or
484 hand delivery.

485 (5) If the declaration or bylaws so provide, an
486 association may also suspend the voting rights of a member due
487 to nonpayment of assessments, fines, or other charges payable to
488 the association which are delinquent in excess of 90 days

489 Section 5. Paragraph (b) of subsection (2), paragraphs (a)
490 and (c) of subsection (5), paragraphs (b), (c), (d), (f), and
491 (g) of subsection (6), and paragraph (d) of subsection (10) of
492 section 720.303, Florida Statutes, are amended, and subsection
493 (12) is added to that section, to read:

494 720.303 Association powers and duties; meetings of board;
495 official records; budgets; financial reporting; association
496 funds; recalls.--

497 (2) BOARD MEETINGS.--

498 (b) Members have the right to attend all meetings of the
499 board and to speak on any matter placed on the agenda by
500 petition of the voting interests for at least 3 minutes. The
501 association may adopt written reasonable rules expanding the
502 right of members to speak and governing the frequency, duration,
503 and other manner of member statements, which rules must be
504 consistent with this paragraph and may include a sign-up sheet

505 for members wishing to speak. Notwithstanding any other law, ~~the~~
 506 ~~requirement that board meetings and committee meetings be open~~
 507 ~~to the members is inapplicable to~~ meetings between the board or
 508 a committee to discuss proposed or pending litigation with and
 509 the association's attorney, or ~~with respect to~~ meetings of the
 510 board held for the purpose of discussing personnel matters are
 511 not required to be open to the members.

512 (5) INSPECTION AND COPYING OF RECORDS.--The official
 513 records shall be maintained within the state and must be open to
 514 inspection and available for photocopying by members or their
 515 authorized agents at reasonable times and places within 10
 516 business days after receipt of a written request for access.
 517 This subsection may be complied with by having a copy of the
 518 official records available for inspection or copying in the
 519 community. If the association has a photocopy machine available
 520 where the records are maintained, it must provide parcel owners
 521 with copies on request during the inspection if the entire
 522 request is limited to no more than 25 pages.

523 (a) The failure of an association to provide access to the
 524 records within 10 business days after receipt of a written
 525 request submitted by certified mail, return receipt requested,
 526 creates a rebuttable presumption that the association willfully
 527 failed to comply with this subsection.

528 (c) The association may adopt reasonable written rules
 529 governing the frequency, time, location, notice, records to be
 530 inspected, and manner of inspections, but may not require ~~impose~~
 531 ~~a requirement that~~ a parcel owner to demonstrate any proper
 532 purpose for the inspection, state any reason for the inspection,

533 or limit a parcel owner's right to inspect records to less than
534 one 8-hour business day per month. The association may impose
535 fees to cover the costs of providing copies of the official
536 records, including, without limitation, the costs of copying.
537 The association may charge up to 50 cents per page for copies
538 made on the association's photocopier. If the association does
539 not have a photocopy machine available where the records are
540 kept, or if the records requested to be copied exceed 25 pages
541 in length, the association may have copies made by an outside
542 vendor or association management company personnel and may
543 charge the actual cost of copying, including any reasonable
544 costs involving personnel fees and charges at an hourly rate for
545 employee time to cover administrative costs to the association.
546 The association shall maintain an adequate number of copies of
547 the recorded governing documents, to ensure their availability
548 to members and prospective members. Notwithstanding the
549 provisions of this paragraph, the following records are ~~shall~~
550 not ~~be~~ accessible to members or parcel owners:

551 1. Any record protected by the lawyer-client privilege as
552 described in s. 90.502 and any record protected by the work-
553 product privilege, including, but not limited to, any record
554 prepared by an association attorney or prepared at the
555 attorney's express direction which reflects a mental impression,
556 conclusion, litigation strategy, or legal theory of the attorney
557 or the association and which was prepared exclusively for civil
558 or criminal litigation or for adversarial administrative
559 proceedings or which was prepared in anticipation of imminent
560 civil or criminal litigation or imminent adversarial

561 administrative proceedings until the conclusion of the
562 litigation or ~~adversarial~~ administrative proceedings.

563 2. Information obtained by an association in connection
564 with the approval of the lease, sale, or other transfer of a
565 parcel.

566 3. Disciplinary, health, insurance, and personnel records
567 of the association's employees.

568 4. Medical records of parcel owners or community
569 residents.

570 (6) BUDGETS.--

571 (b) In addition to annual operating expenses, the budget
572 may include reserve accounts for capital expenditures and
573 deferred maintenance for which the association is responsible.
574 If reserve accounts are not established pursuant to paragraph
575 (d), funding of such reserves shall be limited to the extent
576 that the governing documents ~~do not~~ limit increases in
577 assessments, including reserves. If the budget of the
578 association includes reserve accounts established pursuant to
579 paragraph (d), such reserves shall be determined, maintained,
580 and waived in the manner provided in this subsection. Once an
581 association provides for reserve accounts pursuant to paragraph
582 (d) in the budget, the association shall thereafter determine,
583 maintain, and waive reserves in compliance with this subsection.
584 The provisions of this section do not preclude the termination
585 of a reserve account established pursuant to this paragraph upon
586 approval of a majority of the voting interests of the
587 association. Upon such approval, the terminating reserve account
588 shall be removed from the budget.

589 (c) 1. If the budget of the association does not provide
 590 for reserve accounts pursuant to paragraph (d) ~~governed by this~~
 591 ~~subsection~~ and the association is responsible for the repair and
 592 maintenance of capital improvements that may result in a special
 593 assessment if reserves are not provided, each financial report
 594 for the preceding fiscal year required by subsection (7) shall
 595 contain the following statement in conspicuous type: THE BUDGET
 596 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR
 597 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN
 598 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE
 599 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
 600 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN A~~
 601 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY
 602 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

603 2. If the budget of the association does provide for
 604 funding accounts for deferred expenditures, including, but not
 605 limited to, funds for capital expenditures and deferred
 606 maintenance, but such accounts are not created or established
 607 pursuant to paragraph (d), each financial report for the
 608 preceding fiscal year required under subsection (7) must also
 609 contain the following statement in conspicuous type: THE BUDGET
 610 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED
 611 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND
 612 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN
 613 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
 614 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),
 615 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE

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

618 (d) An association shall be deemed to have provided for
619 reserve accounts if ~~when~~ reserve accounts have been initially
620 established by the developer or if ~~when~~ the membership of the
621 association affirmatively elects to provide for reserves. If
622 reserve accounts are not initially provided for by the
623 developer, the membership of the association may elect to do so
624 upon the affirmative approval of ~~not less than~~ a majority of the
625 total voting interests of the association. Such approval may be
626 obtained ~~attained~~ by vote of the members at a duly called
627 meeting of the membership or by the ~~upon a~~ written consent of
628 ~~executed by not less than~~ a majority of the total voting
629 interests in the community. The approval action of the
630 membership shall state that reserve accounts shall be provided
631 for in the budget and shall designate the components for which
632 the reserve accounts are to be established. Upon approval by the
633 membership, the board of directors shall include ~~provide for~~ the
634 required reserve accounts ~~for inclusion~~ in the budget in the
635 next fiscal year following the approval and ~~in~~ each year
636 thereafter. Once established as provided in this subsection, the
637 reserve accounts shall be funded or maintained or shall have
638 their funding waived in the manner provided in paragraph (f).

639 (f) After one or more ~~Once a reserve account or~~ reserve
640 accounts are established, the membership of the association,
641 upon a majority vote at a meeting at which a quorum is present,
642 may provide for no reserves or less reserves than required by
643 this section. If a meeting of the unit owners has been called to

644 determine whether to waive or reduce the funding of reserves and
645 no such result is achieved or a quorum is not present, the
646 reserves as included in the budget shall go into effect. After
647 the turnover, the developer may vote its voting interest to
648 waive or reduce the funding of reserves. Any vote taken pursuant
649 to this subsection to waive or reduce reserves is ~~shall be~~
650 applicable only to one budget year.

651 (g) Funding formulas for reserves authorized by this
652 section shall be based on either a separate analysis of each of
653 the required assets or a pooled analysis of two or more of the
654 required assets.

655 1. If the association maintains separate reserve accounts
656 for each of the required assets, the amount of the contribution
657 to each reserve account is ~~shall be~~ the sum of the following two
658 calculations:

659 a. The total amount necessary, if any, to bring a negative
660 component balance to zero.

661 b. The total estimated deferred maintenance expense or
662 estimated replacement cost of the reserve component less the
663 estimated balance of the reserve component as of the beginning
664 of the period ~~for which~~ the budget will be in effect. The
665 remainder, if greater than zero, shall be divided by the
666 estimated remaining useful life of the component.

667
668 The formula may be adjusted each year for changes in estimates
669 and deferred maintenance performed during the year and may
670 include factors such as inflation and earnings on invested
671 funds.

672 2. If the association maintains a pooled account of two or
 673 more of the required reserve assets, the amount of the
 674 contribution to the pooled reserve account as disclosed on the
 675 proposed budget may ~~shall~~ not be less than that required to
 676 ensure that the balance on hand at the beginning of the period
 677 ~~for which~~ the budget will go into effect plus the projected
 678 annual cash inflows over the remaining estimated useful life of
 679 all of the assets that make up the reserve pool are equal to or
 680 greater than the projected annual cash outflows over the
 681 remaining estimated useful lives of all ~~of~~ the assets that make
 682 up the reserve pool, based on the current reserve analysis. The
 683 projected annual cash inflows may include estimated earnings
 684 from investment of principal and accounts receivable minus the
 685 allowance for doubtful accounts. The reserve funding formula may
 686 ~~shall~~ not include any type of balloon payments.

687 (10) RECALL OF DIRECTORS.--

688 (d) If the board determines not to certify the written
 689 agreement or written ballots to recall a director or directors
 690 of the board or does not certify the recall by a vote at a
 691 meeting, the board shall, within 5 full business days after the
 692 meeting, initiate ~~file with the department a petition for~~
 693 binding arbitration pursuant to the applicable procedures in s.
 694 720.507 ~~ss. 718.112(2)(j) and 718.1255 and the rules adopted~~
 695 ~~thereunder~~. For the purposes of this section, the members who
 696 voted at the meeting or who executed the agreement in writing
 697 shall constitute one party under the petition for arbitration.
 698 If the arbitrator certifies the recall as to any director or
 699 directors of the board, the recall will be effective upon

700 mailing of the final order of arbitration to the association.
 701 The director or directors so recalled shall deliver to the board
 702 any and all records of the association in their possession
 703 within 5 full business days after the effective date of the
 704 recall.

705 (12) COMPENSATION PROHIBITED.--A director, officer, or
 706 committee member of the association may not receive directly or
 707 indirectly any salary or compensation from the association for
 708 the performance of duties as a director, officer, or committee
 709 member and may not in any other way benefit financially from
 710 service to the association. This subsection does not preclude:

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

716 (b) Reimbursement for out-of-pocket expenses incurred by
 717 such person on behalf of the association, subject to approval in
 718 accordance with procedures established by the association's
 719 governing documents or, in the absence of such procedures, in
 720 accordance with an approval process established by the board.

721 (c) Any recovery of insurance proceeds derived from a
 722 policy of insurance maintained by the association for the
 723 benefit of its members.

724 (d) Any fee or compensation authorized in the governing
 725 documents.

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

729 (f) A developer or its representative from serving as a
730 director, officer, or committee member of the association and
731 benefiting financially from service to the association.

732 Section 6. Subsection (2) of section 720.305, Florida
733 Statutes, is amended to read:

734 720.305 Obligations of members; remedies at law or in
735 equity; levy of fines and suspension of use rights.--

736 (2) If the governing documents so provide, an association
737 may suspend, for a reasonable period of time, the rights of a
738 member or a member's tenants, guests, or invitees, or both, to
739 use common areas and facilities and may levy reasonable fines of
740 up to, ~~not to exceed~~ \$100 per violation, against any member or
741 any tenant, guest, or invitee. A fine may be levied on the basis
742 of each day of a continuing violation, with a single notice and
743 opportunity for hearing, except that no ~~such~~ fine may ~~shall~~
744 exceed \$1,000 in the aggregate unless otherwise provided in the
745 governing documents. A fine of less than \$1,000 may ~~shall~~ not
746 become a lien against a parcel. In any action to recover a fine,
747 the prevailing party is entitled to collect its reasonable
748 attorney's fees and costs from the nonprevailing party as
749 determined by the court.

750 (a) A fine or suspension may not be imposed without ~~notice~~
751 ~~of~~ at least 14 days' notice ~~days~~ to the person sought to be
752 fined or suspended and an opportunity for a hearing before a
753 committee of at least three members appointed by the board who

754 are not officers, directors, or employees of the association, or
 755 the spouse, parent, child, brother, or sister of an officer,
 756 director, or employee. If the committee, by majority vote, does
 757 not approve a proposed fine or suspension, it may not be
 758 imposed.

759 (b) The requirements of this subsection do not apply to
 760 the imposition of suspensions or fines upon any member because
 761 of the failure of the member to pay assessments or other charges
 762 when due if such action is authorized by the governing
 763 documents.

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

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

770 720.306 Meetings of members; voting and election
 771 procedures; amendments.--

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

775 (a) To be valid, a proxy must be dated, must state the
 776 date, time, and place of the meeting for which it was given, and
 777 must be signed by the authorized person who executed the proxy.
 778 A proxy is effective only for the specific meeting for which it
 779 was originally given, as the meeting may lawfully be adjourned
 780 and reconvened from time to time, and automatically expires 90
 781 days after the date of the meeting for which it was originally

782 given. A proxy is revocable at any time at the pleasure of the
783 person who executes it. If the proxy form expressly so provides,
784 any proxy holder may appoint, in writing, a substitute to act in
785 his or her place.

786 (b) If the governing documents permit voting by secret
787 ballot by members who are not in attendance at a meeting of the
788 members for the election of directors, such ballots shall be
789 placed in an inner envelope with no identifying markings and
790 mailed or delivered to the association in an outer envelope
791 bearing identifying information reflecting the name of the
792 member, the lot or parcel for which the vote is being cast, and
793 the signature of the lot or parcel owner casting that ballot.
794 After the eligibility of the member to vote and confirmation
795 that no other ballot has been submitted for that lot or parcel,
796 the inner envelope shall be removed from the outer envelope
797 bearing the identification information, placed with the ballots
798 which were personally cast, and opened when the ballots are
799 counted. If more than one ballot is submitted for a lot or
800 parcel, the ballots for that lot or parcel shall be
801 disqualified. Any vote by ballot received after the closing of
802 the balloting may not be considered.

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

804 (a) Elections of directors must be conducted in accordance
805 with the procedures set forth in the governing documents of the
806 association. All members of the association are ~~shall be~~
807 eligible to serve on the board of directors, and a member may
808 nominate himself or herself as a candidate for the board at a
809 meeting where the election is to be held or, if the election

810 process allows voting by absentee ballot, in advance of the
811 balloting. Except as otherwise provided in the governing
812 documents, boards of directors must be elected by a plurality of
813 the votes cast by eligible voters. Any election dispute between
814 a member and an association must be submitted to mandatory
815 binding arbitration with the division. Such proceedings shall be
816 conducted in the manner provided by s. 720.507 ~~718.1255~~ and the
817 ~~procedural rules adopted by the division.~~

818 (b) Within 30 days after being elected to the board of
819 directors, a new director shall certify in writing to the
820 secretary of the association that he or she has read the
821 association's declarations of covenants and restrictions,
822 articles of incorporation, bylaws, and current written policies
823 and that he or she will work to uphold each to the best of his
824 or her ability and will faithfully discharge his or her
825 fiduciary responsibility to the association's members. Failure
826 to timely file such statement shall automatically disqualify the
827 director from service on the association's board of directors.
828 The secretary shall cause the association to retain a director's
829 certification for inspection by the members for 5 years after a
830 director's election. Failure to have such certification on file
831 does not affect the validity of any appropriate action.

832 Section 8. Paragraph (a) of subsection (1) of section
833 720.401, Florida Statutes, is amended to read:

834 720.401 Prospective purchasers subject to association
835 membership requirement; disclosure required; covenants;
836 assessments; contract cancellation.--

837 (1) (a) A prospective parcel owner in a community must be
 838 presented a disclosure summary before executing the contract for
 839 sale. The disclosure summary must be in a form substantially
 840 similar to the following form:

841
 842 DISCLOSURE SUMMARY
 843 FOR
 844 (NAME OF COMMUNITY)
 845

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

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

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

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

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

863 6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES
 864 FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN

865 OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF
 866 APPLICABLE, THE CURRENT AMOUNT IS \$ _____ PER _____.

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

871 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE
 872 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
 873 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
 874 DOCUMENTS BEFORE PURCHASING PROPERTY.

875 9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND
 876 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE
 877 PROPERTY IS LOCATED, OR, IF ARE NOT RECORDED, ~~AND~~ CAN BE
 878 OBTAINED FROM THE DEVELOPER.

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

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

887 DATE: PURCHASER:
 888 PURCHASER:

889
 890 The disclosure must be supplied by the developer, or by the
 891 parcel owner if the sale is by an owner that is not the
 892 developer. Any contract or agreement for sale shall refer to and

893 incorporate the disclosure summary and shall include, in
 894 prominent language, a statement that the potential buyer should
 895 not execute the contract or agreement until he or she has ~~they~~
 896 ~~have~~ received and read the disclosure summary required by this
 897 section.

898 Section 9. Paragraph (d) of subsection (1) of section
 899 34.01, Florida Statutes, is amended to read:

900 34.01 Jurisdiction of county court.--

901 (1) County courts shall have original jurisdiction:

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

905 Section 10. Subsection (2) of section 720.302, Florida
 906 Statutes, is amended to read:

907 720.302 Purposes, scope, and application.--

908 (2) The Legislature recognizes that it is not in the best
 909 interest of homeowners' associations or the individual
 910 association members thereof to create or impose a bureau or
 911 other agency of state government to regulate the affairs of
 912 homeowners' associations. However, in accordance with part IV of
 913 this chapter s. 720.311, the Legislature finds that homeowners'
 914 associations and their individual members will benefit from an
 915 expedited alternative process for resolution of ~~election and~~
 916 ~~recall disputes and presuit mediation of other~~ disputes
 917 involving covenant enforcement in homeowner's associations and
 918 deed-restricted communities using the procedures provided in
 919 part IV of and ~~authorizes the department to hear, administer,~~
 920 and ~~determine these disputes as more fully set forth in this~~

921 chapter. Further, the Legislature recognizes that certain
 922 contract rights have been created for the benefit of homeowners'
 923 associations and members thereof as well as deed-restricted
 924 communities before the effective date of this act and that part
 925 IV of this chapter is ss. 720.301-720.407 are not intended to
 926 impair such contract rights, including, but not limited to, the
 927 rights of the developer to complete the community as initially
 928 contemplated.

929 Section 11. Section 720.311, Florida Statutes, is
 930 repealed.

931 Section 12. Part IV of chapter 720, Florida Statutes, to
 932 be entitled "Dispute Resolution," consisting of sections
 933 720.501, 720.502, 720.503, 720.504, 720.505, 720.506, 720.507,
 934 720.508, 720.509, and 720.510, is created to read:

935 720.501 Short title.--This part may be cited as the "Home
 936 Court Advantage Dispute Resolution Act."

937 720.502 Legislative findings.--The Legislature finds that
 938 alternative dispute resolution has made progress in reducing
 939 court dockets and trials and in offering a more efficient, cost-
 940 effective option to litigation.

941 720.503 Applicability of this part.--

942 (1) Unless otherwise provided in this part, before a
 943 dispute described in this part between a homeowners' association
 944 and a parcel owner or owners, or a dispute between parcel owners
 945 within the same homeowners' association, may be filed in court,
 946 the dispute is subject to presuit mediation pursuant to s.
 947 720.505 or presuit arbitration pursuant to s. 720.507, at the
 948 option of the aggrieved party who initiates the first formal

949 action of alternative dispute resolution under this part. The
950 parties may mutually agree to participate in both presuit
951 mediation and presuit arbitration prior to suit being filed by
952 either party.

953 (2) Unless otherwise provided in this part, the mediation
954 and arbitration provisions of this part are limited to disputes
955 between an association and a parcel owner or owners or between
956 parcel owners regarding the use of or changes to the parcel or
957 the common areas under the governing documents and other
958 disputes involving violations of the recorded declaration of
959 covenants or other governing documents, disputes arising
960 concerning enforcement of the governing documents or any
961 amendments thereto, and disputes involving access to the
962 official records of the association. A dispute concerning title
963 to any parcel or common area, interpretation or enforcement of
964 any warranty, the levy of a fee or assessment, the collection of
965 an assessment levied against a party, the eviction or other
966 removal of a tenant from a parcel, alleged breaches of fiduciary
967 duty by one or more directors, or any action to collect mortgage
968 indebtedness or to foreclosure a mortgage shall not be subject
969 to the provisions of this part.

970 (3) All disputes arising after the effective date of this
971 part involving the election of the board of directors for an
972 association or the recall of any member of the board or officer
973 of the association shall not be eligible for presuit mediation
974 under s. 720.505, but shall be subject to the provisions
975 concerning presuit arbitration under s. 720.507.

976 (4) In any dispute subject to presuit mediation or presuit
977 arbitration under this part for which emergency relief is
978 required, a motion for temporary injunctive relief may be filed
979 with the court without first complying with the presuit
980 mediation or presuit arbitration requirements of this part.
981 After any issues regarding emergency or temporary relief are
982 resolved, the court may refer the parties to a mediation program
983 administered by the courts or require mediation or arbitration
984 under this part.

985 (5) The mailing of a statutory notice of presuit mediation
986 or presuit arbitration as provided in this part shall toll the
987 applicable statute of limitations during the pendency of the
988 mediation or arbitration and for a period of 30 days following
989 the conclusion of either proceeding. The 30-day period shall
990 start upon the filing of the mediator's notice of impasse or the
991 arbitrator's written arbitration award. If the parties mutually
992 agree to participate in both presuit mediation and presuit
993 arbitration under this part, the tolling of the applicable
994 statute of limitations for each such alternative dispute
995 resolution proceeding shall be consecutive.

996 720.504 Notice of dispute.--Prior to giving the statutory
997 notice to proceed under presuit mediation or presuit arbitration
998 under this part, the aggrieved association or parcel owner shall
999 first provide written notice of the dispute to the responding
1000 party in the manner provided by this section.

1001 (1) The notice of dispute shall be delivered to the
1002 responding party by certified mail, return receipt requested, or
1003 the notice of dispute may be hand delivered, and the person

1004 making delivery shall file with their notice of mediation either
1005 the proof of receipt of mailing or an affidavit stating the date
1006 and time of the delivery of the notice of dispute. If the notice
1007 is delivered by certified mail, return receipt requested, and
1008 the responding party fails or refuses to accept delivery, notice
1009 shall be considered properly delivered for purposes of this
1010 section on the date of the first attempted delivery.

1011 (2) The notice of dispute shall state with specificity the
1012 nature of the dispute, including the date, time, and location of
1013 each event that is the subject of the dispute and the action
1014 requested to resolve the dispute. The notice shall also include
1015 the text of any provision in the governing documents, including
1016 the rules and regulations, of the association which form the
1017 basis of the dispute.

1018 (3) Unless the parties otherwise agree in writing to a
1019 longer time period, the party receiving the notice of dispute
1020 shall have 10 days following the date of receipt of notice to
1021 resolve the dispute. If the alleged dispute has not been
1022 resolved within the 10-day period, the aggrieved party may
1023 proceed under this part at any time thereafter within the
1024 applicable statute of limitations.

1025 (4) A copy of the notice and the text of the provision in
1026 the governing documents, or the rules and regulations, of the
1027 association which are the basis of the dispute, along with proof
1028 of service of the notice of dispute and a copy of any written
1029 responses received from the responding party, shall be included
1030 as an exhibit to any demand for mediation or arbitration under
1031 this part.

1032 720.505 Presuit mediation.--
 1033 (1) Disputes between an association and a parcel owner or
 1034 owners and between parcel owners must be submitted to presuit
 1035 mediation before the dispute may be filed in court; or, at the
 1036 election of the party initiating the presuit procedures, such
 1037 dispute may be submitted to presuit arbitration pursuant to s.
 1038 720.507 before the dispute may be filed in court. An aggrieved
 1039 party who elects to use the presuit mediation procedure under
 1040 this section shall serve on the responding party a written
 1041 notice of presuit mediation in substantially the following form:

1042
 1043 STATUTORY NOTICE OF PRESUIT MEDIATION

1044
 1045 THE ALLEGED AGGRIEVED PARTY, _____,
 1046 HEREBY DEMANDS THAT _____, AS THE
 1047 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
 1048 MEDIATION IN CONNECTION WITH THE FOLLOWING DISPUTE(S)
 1049 WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT ARE
 1050 SUBJECT TO PRESUIT MEDIATION:

1051
 1052 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION
 1053 WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO
 1054 BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF
 1055 A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
 1056 LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING
 1057 DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE
 1058 DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE

1059 YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN
 1060 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.
 1061
 1062 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
 1063 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
 1064 MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
 1065 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
 1066 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
 1067 MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER
 1068 TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
 1069 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
 1070 PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO
 1071 THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A
 1072 NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER
 1073 S. 720.506, FLORIDA STATUTES, YOUR FAILURE TO
 1074 PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A
 1075 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT
 1076 FURTHER NOTICE.
 1077
 1078 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED
 1079 NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-
 1080 PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS
 1081 THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING
 1082 PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE
 1083 IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO
 1084 CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO
 1085 AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO
 1086 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A

1087 FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE
 1088 POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR
 1089 REASONABLE SETTLEMENT ARE FULLY EXPLORED.

1090

1091 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO
 1092 WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT
 1093 BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE
 1094 DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE
 1095 THESE ISSUES IN COURT. THE FAILURE TO REACH AN
 1096 AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN
 1097 THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN
 1098 IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED
 1099 PARTY MAY PROCEED TO FILE A LAWSUIT ON ALL
 1100 OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR
 1101 REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION
 1102 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER
 1103 ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT
 1104 PROCEEDING INVOLVING THE SAME DISPUTE.

1105

1106 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF
 1107 ELIGIBLE, QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED
 1108 MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
 1109 NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE
 1110 THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE
 1111 FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE
 1112 OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE
 1113 MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL
 1114 FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE

1115 AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU
 1116 MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE
 1117 NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

1118
 1119 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND
 1120 HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT
 1121 INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY
 1122 BE INCLUDED AS AN ATTACHMENT.)

1123
 1124 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO
 1125 CONFIRM THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL
 1126 BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD
 1127 EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE
 1128 PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES,
 1129 REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT
 1130 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE
 1131 MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4
 1132 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME
 1133 PREPARATION TIME, AND THE PARTIES WOULD NEED TO
 1134 EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE
 1135 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF
 1136 THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH
 1137 THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT
 1138 REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE
 1139 MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
 1140 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY
 1141 HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE
 1142 SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS

1143 AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS
 1144 THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE
 1145 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE
 1146 RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR
 1147 SHARE OF THE MEDIATOR FEES INCURRED.

1148
 1149 TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO
 1150 TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER
 1151 LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE
 1152 WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE
 1153 MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.

1154
 1155 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
 1156 OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE
 1157 YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND
 1158 TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE
 1159 MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED
 1160 DATE OF THE MAILING OF THIS NOTICE OF PRESUIT
 1161 MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE
 1162 SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY
 1163 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY
 1164 CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE
 1165 TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE
 1166 DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO
 1167 SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR
 1168 SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO
 1169 EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90
 1170 DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST

1171 SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN
 1172 THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS
 1173 AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE
 1174 MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE
 1175 AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE
 1176 TO AT LEAST ONE OF THE MEDIATORS THAT THE AGGRIEVED
 1177 PARTY HAS LISTED, FAIL TO PAY OR PREPAY TO THE
 1178 MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL TO
 1179 APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE
 1180 AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE
 1181 FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER
 1182 NOTICE. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED
 1183 PARTY MAY SEEK AN AWARD OF REASONABLE ATTORNEY'S FEES
 1184 AND COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.

1185
 1186 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY
 1187 LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-
 1188 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED
 1189 PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE
 1190 AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF
 1191 THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS
 1192 AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY
 1193 OF THIS NOTICE.

1194
 1195 _____
 1196 SIGNATURE OF AGGRIEVED PARTY
 1197
 1198 _____

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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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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 notice of presuit mediation 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, then
as it last appears in the official records of the county
property appraiser where the parcel in dispute is located. The
responding party has either 20 days after the postmarked date of
the mailing of the statutory notice or 20 days after the date
the responding party is served with a copy of the notice to
serve a written response to the aggrieved party. The response
shall be served by certified mail, return receipt requested,
with an additional copy being sent by regular first-class mail,
to the address shown on the statutory notice. The date of the
postmark on the envelope for the response shall constitute the
date that the response is served. Once the parties have agreed

1255 on a mediator, the mediator may schedule or reschedule the
 1256 mediation for a date and time mutually convenient to the parties
 1257 within 90 days after the date of service of the statutory
 1258 notice. After such 90-day period, the mediator may reschedule
 1259 the mediation only upon the mutual written agreement of all the
 1260 parties.

1261 (b) The parties shall share the costs of presuit mediation
 1262 equally, including the fee charged by the mediator, if any,
 1263 unless the parties agree otherwise, and the mediator may require
 1264 advance payment of his or her reasonable fees and costs. Each
 1265 party shall be responsible for that party's own attorney's fees
 1266 if a party chooses to be represented by an attorney at the
 1267 mediation.

1268 (c) The party responding to the aggrieved party may
 1269 provide a notice of opting out under s. 720.506 and demand
 1270 arbitration or may sign the agreement to mediate included in the
 1271 notice of presuit mediation. A responding party signing the
 1272 agreement to mediate must clearly indicate the name of the
 1273 mediator who is acceptable from the five names provided by the
 1274 aggrieved party and must provide a list of dates and times in
 1275 which the responding party is available to participate in the
 1276 mediation within 90 days after the date the responding party was
 1277 served, either by process server or by certified mail, with the
 1278 statutory notice of presuit mediation.

1279 (d) The mediator who has been selected and agreed to
 1280 mediate must schedule the mediation conference at a mutually
 1281 convenient time and place within that 90-day period; but, if the
 1282 responding party does not provide a list of available dates and

1283 times, the mediator is authorized to schedule a mediation
1284 conference without taking the responding party's schedule and
1285 convenience into consideration. Within 10 days after the
1286 designation of the mediator, the mediator shall coordinate with
1287 the parties and notify the parties in writing of the date, time,
1288 and place of the mediation conference.

1289 (e) The mediation conference must be held on the scheduled
1290 date and may be rescheduled if a rescheduled date is approved by
1291 the mediator. However, in no event shall the mediation be held
1292 later than 90 days after the notice of presuit mediation was
1293 first served, unless all parties mutually agree in writing
1294 otherwise. If the presuit mediation is not completed within the
1295 required time limits, the mediator shall declare an impasse
1296 unless the mediation date is extended by mutual written
1297 agreement by all parties and approved by the mediator.

1298 (f) If the responding party fails to respond within 30
1299 days after the date of service of the statutory notice of
1300 presuit mediation, fails to agree to at least one of the
1301 mediators listed by the aggrieved party in the notice, fails to
1302 pay or prepay to the mediator one-half of the costs of the
1303 mediator, or fails to appear and participate at the scheduled
1304 mediation, the aggrieved party shall be authorized to proceed
1305 with the filing of a lawsuit without further notice.

1306 (g)1. The failure of any party to respond to the statutory
1307 notice of presuit mediation within 20 days, the failure to agree
1308 upon a mediator, the failure to provide a listing of dates and
1309 times in which the responding party is available to participate
1310 in the mediation within 90 days after the date the responding

1311 party was served with the statutory notice of presuit mediation,
1312 the failure to make payment of fees and costs within the time
1313 established by the mediator, or the failure to appear for a
1314 scheduled mediation session without the approval of the
1315 mediator, shall in each instance constitute a failure or refusal
1316 to participate in the mediation process and shall operate as an
1317 impasse in the presuit mediation by such party, entitling the
1318 other party to file a lawsuit in court and to seek an award of
1319 the costs and attorney's fees associated with the mediation.

1320 2. Persons who fail or refuse to participate in the entire
1321 mediation process may not recover attorney's fees and costs in
1322 subsequent litigation relating to the same dispute between the
1323 same parties. If any presuit mediation session cannot be
1324 scheduled and conducted within 90 days after the offer to
1325 participate in mediation was filed, through no fault of either
1326 party, then an impasse shall be deemed to have occurred unless
1327 the parties mutually agree in writing to extend this deadline.
1328 In the event of such impasse, each party shall be responsible
1329 for its own costs and attorney's fees and one-half of any
1330 mediator fees and filing fees, and either party may file a
1331 lawsuit in court regarding the dispute.

1332 720.506 Opt-out of presuit mediation.--A party served with
1333 a notice of presuit mediation under s. 720.505 may opt out of
1334 presuit mediation and demand that the dispute proceed under
1335 nonbinding arbitration as follows:

1336 (1) In lieu of a response to the notice of presuit
1337 mediation as required under s. 720.505, the responding party may
1338 serve upon the aggrieved party, in the same manner as the

1339 response to a notice for presuit mediation under s. 720.505, a
 1340 notice of opting out of mediation and demand that the dispute
 1341 instead proceed to presuit arbitration under s. 720.507.

1342 (2) The aggrieved party shall be relieved from having to
 1343 satisfy the requirements of s. 720.504 as a condition precedent
 1344 to filing the demand for presuit arbitration.

1345 (3) Except as otherwise provided in this part, the choice
 1346 of which presuit alternative dispute resolution procedure is
 1347 used shall be at the election of the aggrieved party who first
 1348 initiated such proceeding after complying with the provisions of
 1349 s. 720.504.

1350 720.507 Presuit arbitration.--

1351 (1) Disputes between an association and a parcel owner or
 1352 owners and disputes between parcel owners are subject to a
 1353 demand for presuit arbitration pursuant to this section before
 1354 the dispute may be filed in court. A party who elects to use the
 1355 presuit arbitration procedure under this part shall serve on the
 1356 responding party a written notice of presuit arbitration in
 1357 substantially the following form:

1359 STATUTORY NOTICE OF PRESUIT ARBITRATION

1361 THE ALLEGED AGGRIEVED PARTY, _____,
 1362 HEREBY DEMANDS THAT _____, AS THE
 1363 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
 1364 ARBITRATION IN CONNECTION WITH THE FOLLOWING
 1365 DISPUTE(S) WITH YOU, WHICH BY STATUTE ARE OF A TYPE
 1366 THAT ARE SUBJECT TO PRESUIT ARBITRATION:

1367
 1368 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE
 1369 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A
 1370 VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
 1371 LIMITED TO, ALL APPLICABLE PROVISIONS OF THE GOVERNING
 1372 DOCUMENTS BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE
 1373 PARTIES.)

1374
 1375 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
 1376 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
 1377 ARBITRATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
 1378 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
 1379 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
 1380 ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN
 1381 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
 1382 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
 1383 PARTICIPATE IN THIS PROCESS. IF YOU FAIL TO
 1384 PARTICIPATE IN THE ARBITRATION PROCESS, A LAWSUIT MAY
 1385 BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER
 1386 WARNING.

1387
 1388 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD
 1389 PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY
 1390 THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN
 1391 "ARBITRATION AWARD." PURSUANT TO S. 720.507, FLORIDA
 1392 STATUTES, THE ARBITRATION AWARD SHALL BE FINAL UNLESS
 1393 A LAWSUIT IS FILED IN A COURT OF COMPETENT
 1394 JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE

1395 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION
 1396 IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE OF THE
 1397 ARBITRATION AWARD.

1398

1399 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE
 1400 ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND
 1401 BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE
 1402 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS
 1403 FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR
 1404 TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE
 1405 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE
 1406 PARTIES UNDER S. 720.505, FLORIDA STATUTES. THE
 1407 FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION
 1408 PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN
 1409 ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF
 1410 YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE
 1411 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED
 1412 TO RECOVER ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A
 1413 SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE
 1414 BETWEEN THE SAME PARTIES.

1415

1416 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE
 1417 ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
 1418 NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU
 1419 HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS.
 1420 THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR
 1421 MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE
 1422 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL

1423 ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS
1424 CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT
1425 ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE
1426 AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT
1427 ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS,
1428 AND HOURLY RATES, ARE AS FOLLOWS:

1429
1430 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND
1431 HOURLY RATES OF AT LEAST FIVE ARBITRATORS.

1432
1433 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO
1434 CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL
1435 AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.

1436
1437 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF
1438 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE
1439 PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION
1440 EQUALLY, INCLUDING THE FEE CHARGED BY THE ARBITRATOR.
1441 THE PARTIES SHALL BE RESPONSIBLE FOR THEIR OWN
1442 ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY
1443 IN CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN
1444 ATTORNEY TO REPRESENT YOU FOR THE ARBITRATION IS NOT
1445 REQUIRED. THE ARBITRATOR SELECTED MAY REQUIRE THE
1446 ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED
1447 FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR
1448 PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED
1449 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER
1450 REASONABLE ADVANCE DEPOSITS AS THE ARBITRATOR WHO IS

1451 SELECTED REQUIRES FOR THIS PURPOSE. ANY FUNDS
1452 DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE
1453 IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.
1454
1455 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND
1456 CLEARLY INDICATE THE NAME OF THE ARBITRATOR WHO IS
1457 ACCEPTABLE TO YOU FROM THE NAMES LISTED BY THE
1458 AGGRIEVED PARTY.
1459
1460 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
1461 WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF
1462 PRESUIT ARBITRATION WAS EITHER PERSONALLY SERVED ON
1463 YOU OR 20 DAYS AFTER THE POSTMARKED DATE THAT THIS
1464 NOTICE OF PRESUIT ARBITRATION WAS SENT TO YOU BY
1465 CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT
1466 LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE
1467 TO PARTICIPATE IN THE ARBITRATION THAT ARE WITHIN 90
1468 DAYS AFTER THE DATE YOU WERE PERSONALLY SERVED OR
1469 WITHIN 90 DAYS AFTER THE POSTMARKED DATE OF THE
1470 CERTIFIED MAILING OF THIS STATUTORY NOTICE OF PRESUIT
1471 ARBITRATION. A COPY OF THIS NOTICE AND YOUR RESPONSE
1472 WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE
1473 ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE
1474 A MUTUALLY CONVENIENT TIME AND PLACE FOR THE
1475 ARBITRATION CONFERENCE TO BE HELD. IF YOU DO NOT
1476 PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE
1477 ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION
1478 CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND

1479 CONVENIENCE INTO CONSIDERATION. THE ARBITRATION
1480 CONFERENCE MUST BE HELD ON THE SCHEDULED DATE, OR ANY
1481 RESCHEDULED DATE APPROVED BY THE ARBITRATOR. IN NO
1482 EVENT SHALL THE ARBITRATION CONFERENCE BE LATER THAN
1483 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS
1484 FIRST SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN
1485 WRITING OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED
1486 WITHIN THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL
1487 ISSUE AN ARBITRATION AWARD, UNLESS THE HEARING IS
1488 EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES
1489 AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU
1490 FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE
1491 SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE
1492 ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE
1493 AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO
1494 AGREE EITHER TO ONE OF THE ARBITRATORS THAT THE
1495 AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO
1496 THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS
1497 REQUIRED, OR FAIL TO APPEAR AND PARTICIPATE AT THE
1498 SCHEDULED ARBITRATION CONFERENCE, THE AGGRIEVED PARTY
1499 MAY REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION
1500 AWARD. IN THE SUBSEQUENT COURT ACTION, THE AGGRIEVED
1501 PARTY SHALL BE ENTITLED TO RECOVER AN AWARD OF
1502 REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ANY
1503 FEES PAID TO THE ARBITRATOR, INCURRED IN OBTAINING AN
1504 ARBITRATION AWARD PURSUANT TO S. 720.507, FLORIDA
1505 STATUTES.
1506

1507 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY
 1508 LAW, YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY
 1509 CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED,
 1510 TO THE ADDRESS SHOWN ON THIS NOTICE OF PRESUIT
 1511 ARBITRATION.

1513 _____
 1514 SIGNATURE OF AGGRIEVED PARTY

1516 _____
 1517 PRINTED NAME OF AGGRIEVED PARTY

1518
 1519 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR
 1520 ACCEPTANCE OF THE AGREEMENT TO ARBITRATE.

1521
 1522 AGREEMENT TO ARBITRATE

1523
 1524 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN
 1525 PRESUIT ARBITRATION AND AGREES TO ATTEND AN
 1526 ARBITRATION CONDUCTED BY THE FOLLOWING ARBITRATOR
 1527 LISTED BELOW AS SOMEONE WHO WOULD BE ACCEPTABLE TO
 1528 ARBITRATE THIS DISPUTE:

1529
 1530 (IN YOUR RESPONSE, SELECT THE NAME OF ONE ARBITRATOR
 1531 THAT IS ACCEPTABLE TO YOU FROM THOSE ARBITRATORS
 1532 LISTED BY THE AGGRIEVED PARTY.)

1533

1534 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS
 1535 AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE
 1536 PRESUIT ARBITRATION CONFERENCE AT THE FOLLOWING DATES
 1537 AND TIMES:

1538
 1539 (LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE
 1540 MUST BE AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE
 1541 ON WHICH YOU WERE SERVED, EITHER BY PROCESS SERVER OR
 1542 BY CERTIFIED MAIL, WITH THE NOTICE OF PRESUIT
 1543 ARBITRATION.)

1544
 1545 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
 1546 ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS
 1547 AS THE ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

1548
 1549 _____
 1550 SIGNATURE OF RESPONDING PARTY #1

1551 _____
 1552 TELEPHONE CONTACT INFORMATION

1553
 1554 _____
 1555 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF
 1556 RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS
 1557 OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,
 1558 OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF
 1559 A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

1560

1561 (2) (a) Service of the statutory notice of presuit
1562 arbitration shall be effected either by personal service, as
1563 provided in chapter 48, or by certified mail, return receipt
1564 requested, in a letter in substantial conformity with the form
1565 provided in subsection (1), with an additional copy being sent
1566 by regular first-class mail, to the address of the responding
1567 party as it last appears on the books and records of the
1568 association, or if not available, the last address as it appears
1569 on the official records of the county property appraiser for the
1570 county in which the property is situated that is subject to the
1571 association documents. The responding party has 20 days after
1572 the postmarked date of the certified mailing of the statutory
1573 notice of presuit arbitration or 20 days after the date the
1574 responding party is personally served with the statutory notice
1575 of presuit arbitration by to serve a written response to the
1576 aggrieved party. The response shall be served by certified mail,
1577 return receipt requested, with an additional copy being sent by
1578 regular first-class mail, to the address shown on the statutory
1579 notice of presuit arbitration. The postmarked date on the
1580 envelope of the response shall constitute the date the response
1581 was served.

1582 (b) The parties shall share the costs of presuit
1583 arbitration equally, including the fee charged by the
1584 arbitrator, if any, unless the parties agree otherwise, and the
1585 arbitrator may require advance payment of his or her reasonable
1586 fees and costs. Each party shall be responsible for all of their
1587 own attorney's fees if a party chooses to be represented by an
1588 attorney for the arbitration proceedings.

1589 (c)1. The party responding to the aggrieved party must
1590 sign the agreement to arbitrate included in the notice of
1591 presuit arbitration and clearly indicate the name of the
1592 arbitrator who is acceptable of those arbitrators listed by the
1593 aggrieved party. The responding party must provide a list of at
1594 least three dates and times in which the responding party is
1595 available to participate in the arbitration conference within 90
1596 days after the date the responding party was served with the
1597 statutory notice of presuit arbitration.

1598 2. The arbitrator must schedule the arbitration conference
1599 at a mutually convenient time and place, but if the responding
1600 party does not provide a list of available dates and times, the
1601 arbitrator is authorized to schedule an arbitration conference
1602 without taking the responding party's schedule and convenience
1603 into consideration. Within 10 days after the designation of the
1604 arbitrator, the arbitrator shall notify the parties in writing
1605 of the date, time, and place of the arbitration conference.

1606 3. The arbitration conference must be held on the
1607 scheduled date and may be rescheduled if approved by the
1608 arbitrator. However, in no event shall the arbitration hearing
1609 be later than 90 days after the notice of presuit arbitration
1610 was first served, unless all parties mutually agree in writing
1611 otherwise. If the arbitration hearing is not completed within
1612 the required time limits, the arbitrator may issue an
1613 arbitration award unless the time for the hearing is extended as
1614 provided herein. If the responding party fails to respond within
1615 20 days after the date of statutory notice of presuit
1616 arbitration, fails to agree to at least one of the arbitrators

1617 that have been listed by the aggrieved party in the presuit
1618 notice of arbitration, fails to pay or prepay to the arbitrator
1619 one-half of the costs involved, or fails to appear and
1620 participate at the scheduled arbitration, the aggrieved party is
1621 authorized to proceed with a request that the arbitrator issue
1622 an arbitration award.

1623 (d)1. The failure of any party to respond to the statutory
1624 notice of presuit arbitration within 20 days, the failure to
1625 either select one of the five arbitrators listed by the
1626 aggrieved party, the failure to provide a listing of dates and
1627 times in which the responding party is available to participate
1628 in the arbitration conference within 90 days after the date of
1629 the responding party being served with the statutory notice of
1630 presuit arbitration, the failure to make payment of fees and
1631 costs as required within the time established by the arbitrator,
1632 or the failure to appear for an arbitration conference without
1633 the approval of the arbitrator, shall entitle the other party to
1634 request the arbitrator to enter an arbitration award, including
1635 an award of the reasonable costs and attorney's fees associated
1636 with the arbitration.

1637 2. Persons who fail or refuse to participate in the entire
1638 arbitration process may not recover attorney's fees and costs in
1639 any subsequent litigation proceeding relating to the same
1640 dispute involving the same parties.

1641 (3) (a) In an arbitration proceeding, the arbitrator may
1642 not consider any unsuccessful mediation of the dispute.

1643 (b) An arbitrator in a proceeding initiated pursuant to
1644 the provisions of this part may shorten the time for discovery

1645 or otherwise limit discovery in a manner consistent with the
1646 policy goals of this part to reduce the time and expense of
1647 litigating homeowners' association disputes initiated pursuant
1648 to this chapter and promoting an expeditious alternative dispute
1649 resolution procedure for parties to such actions.

1650 (4) At the request of any party to the arbitration, the
1651 arbitrator may issue subpoenas for the attendance of witnesses
1652 and the production of books, records, documents, and other
1653 evidence, and any party on whose behalf a subpoena is issued may
1654 apply to the court for orders compelling such attendance and
1655 production. Subpoenas shall be served and are enforceable in the
1656 manner provided by the Florida Rules of Civil Procedure.
1657 Discovery may, at the discretion of the arbitrator, be permitted
1658 in the manner provided by the Florida Rules of Civil Procedure.

1659 (5) The final arbitration award shall be sent to the
1660 parties in writing no later than 30 days after the date of the
1661 arbitration hearing, absent extraordinary circumstances
1662 necessitating a later filing the reasons for which shall be
1663 stated in the final award if filed more than 30 days after the
1664 date of the final session of the arbitration conference. An
1665 agreed arbitration award is final in those disputes in which the
1666 parties have mutually agreed to be bound. An arbitration award
1667 decided by the arbitrator is final unless a lawsuit seeking a
1668 trial de novo is filed in a court of competent jurisdiction
1669 within 30 days after the date of the arbitration award. The
1670 right to file for a trial de novo entitles the parties to file a
1671 complaint in the appropriate trial court for a judicial
1672 resolution of the dispute. The prevailing party in an

1673 arbitration proceeding shall be awarded the costs of the
1674 arbitration and reasonable attorney's fees in an amount
1675 determined by the arbitrator.

1676 (6) The party filing a motion for a trial de novo shall be
1677 assessed the other party's arbitration costs, court costs, and
1678 other reasonable costs, including attorney's fees, investigation
1679 expenses, and expenses for expert or other testimony or evidence
1680 incurred after the arbitration hearing, if the judgment upon the
1681 trial de novo is not more favorable than the final arbitration
1682 award.

1683 720.508 Rules of procedure.--

1684 (1) Presuit mediation and presuit arbitration proceedings
1685 under this part must be conducted in accordance with the
1686 applicable Florida Rules of Civil Procedure and rules governing
1687 mediations and arbitrations under chapter 44, except that this
1688 part shall be controlling to the extent of any conflict with
1689 other applicable rules or statutes. The arbitrator may shorten
1690 any applicable time period and otherwise limit the scope of
1691 discovery on request of the parties or within the discretion of
1692 the arbitrator exercised consistent with the purpose and
1693 objective of reducing the expense and expeditiously concluding
1694 proceedings under this part.

1695 (2) Presuit mediation proceedings under s. 720.505 are
1696 privileged and confidential to the same extent as court-ordered
1697 mediation under chapter 44. An arbitrator or judge may not
1698 consider any information or evidence arising from the presuit
1699 mediation proceeding except in a proceeding to impose sanctions

1700 for failure to attend a presuit mediation session or to enforce
 1701 a mediated settlement agreement.

1702 (3) Persons who are not parties to the dispute may not
 1703 attend the presuit mediation conference without consent of all
 1704 parties, with the exception of counsel for the parties and a
 1705 corporate representative designated by the association. Presuit
 1706 mediations under this part are not a board meeting for purposes
 1707 of notice and participation set forth in this chapter.

1708 (4) Attendance at a mediation conference by the board of
 1709 directors shall not require notice or participation by nonboard
 1710 members as otherwise required by this chapter for meetings of
 1711 the board.

1712 (5) Settlement agreements resulting from a mediation or
 1713 arbitration proceeding do not have precedential value in
 1714 proceedings involving parties other than those participating in
 1715 the mediation or arbitration.

1716 (6) Arbitration awards by an arbitrator shall have
 1717 precedential value in other proceedings involving the same
 1718 association or with respect to the same parcel owner.

1719 720.509 Mediators and arbitrators; qualifications and
 1720 registration.--A person is authorized to conduct mediation or
 1721 arbitration under this part if he or she has been certified as a
 1722 circuit court civil mediator under the requirements adopted
 1723 pursuant to s. 44.106, is a member in good standing with The
 1724 Florida Bar, and otherwise meets all other requirements imposed
 1725 by chapter 44.

1726 720.510 Enforcement of mediation agreement or arbitration
 1727 award.--

1728 (1) A mediation settlement may be enforced through the
 1729 county or circuit court, as applicable, and any costs and
 1730 attorney's fees incurred in the enforcement of a settlement
 1731 agreement reached at mediation shall be awarded to the
 1732 prevailing party in any enforcement action.

1733 (2) Any party to an arbitration proceeding may enforce an
 1734 arbitration award by filing a petition in a court of competent
 1735 jurisdiction in which the homeowners' association is located.
 1736 The prevailing party in such proceeding shall be awarded
 1737 reasonable attorney's fees and costs incurred in such
 1738 proceeding.

1739 (3) If a complaint is filed seeking a trial de novo, the
 1740 arbitration award shall be stayed and a petition to enforce the
 1741 award may not be granted. Such award, however, shall be
 1742 admissible in the court proceeding seeking a trial de novo.

1743 Section 13. Subsection (16) of section 718.103, Florida
 1744 Statutes, is amended to read:

1745 718.103 Definitions.--As used in this chapter, the term:

1746 (16) "Developer" means a person who creates a condominium
 1747 or offers condominium parcels for sale or lease in the ordinary
 1748 course of business, but does not include:

1749 (a) An owner or lessee of a condominium or cooperative
 1750 unit who has acquired the unit for his or her own occupancy;
 1751 ~~nor does it include~~

1752 (b) A cooperative association which creates a condominium
 1753 by conversion of an existing residential cooperative after
 1754 control of the association has been transferred to the unit
 1755 owners if, following the conversion, the unit owners will be the

1756 same persons who were unit owners of the cooperative and no
 1757 units are offered for sale or lease to the public as part of the
 1758 plan of conversion;~~;~~

1759 (c) A bulk assignee or bulk buyer as defined in s.
 1760 718.703; or

1761 (d) A state, county, or municipal entity ~~is not a~~
 1762 developer for any purposes under this act when it is acting as a
 1763 lessor and not otherwise named as a developer in the declaration
 1764 of condominium association.

1765 Section 14. Subsection (1) of section 718.301, Florida
 1766 Statutes, is amended to read:

1767 718.301 Transfer of association control; claims of defect
 1768 by association.--

1769 (1) When unit owners other than the developer own 15
 1770 percent or more of the units in a condominium that will be
 1771 operated ultimately by an association, the unit owners other
 1772 than the developer shall be entitled to elect no less than one-
 1773 third of the members of the board of administration of the
 1774 association. Unit owners other than the developer are entitled
 1775 to elect not less than a majority of the members of the board of
 1776 administration of an association:

1777 (a) Three years after 50 percent of the units that will be
 1778 operated ultimately by the association have been conveyed to
 1779 purchasers;

1780 (b) Three months after 90 percent of the units that will
 1781 be operated ultimately by the association have been conveyed to
 1782 purchasers;

1783 (c) When all the units that will be operated ultimately by

1784 the association have been completed, some of them have been
 1785 conveyed to purchasers, and none of the others are being offered
 1786 for sale by the developer in the ordinary course of business;

1787 (d) When some of the units have been conveyed to
 1788 purchasers and none of the others are being constructed or
 1789 offered for sale by the developer in the ordinary course of
 1790 business;

1791 (e) When the developer files a petition seeking protection
 1792 in bankruptcy;

1793 (f) When a receiver for the developer is appointed by a
 1794 circuit court and is not discharged within 30 days after such
 1795 appointment, unless the court determines within 30 days after
 1796 appointment of the receiver that transfer of control would be
 1797 detrimental to the association or its members; or

1798 (g) Seven years after recordation of the declaration of
 1799 condominium; or, in the case of an association which may
 1800 ultimately operate more than one condominium, 7 years after
 1801 recordation of the declaration for the first condominium it
 1802 operates; or, in the case of an association operating a phase
 1803 condominium created pursuant to s. 718.403, 7 years after
 1804 recordation of the declaration creating the initial phase,
 1805
 1806 whichever occurs first. The developer is entitled to elect at
 1807 least one member of the board of administration of an
 1808 association as long as the developer holds for sale in the
 1809 ordinary course of business at least 5 percent, in condominiums
 1810 with fewer than 500 units, and 2 percent, in condominiums with
 1811 more than 500 units, of the units in a condominium operated by

1812 the association. Following the time the developer relinquishes
 1813 control of the association, the developer may exercise the right
 1814 to vote any developer-owned units in the same manner as any
 1815 other unit owner except for purposes of reacquiring control of
 1816 the association or selecting the majority members of the board
 1817 of administration.

1818 Section 15. Part VII of chapter 718, Florida Statutes,
 1819 consisting of sections 718.701, 718.702, 718.703, 718.704,
 1820 718.705, 718.706, 718.707, and 718.708, is created to read:

1821 718.701 Short title.--This part may be cited as the
 1822 "Distressed Condominium Relief Act."

1823 718.702 Legislative intent.--

1824 (1) The Legislature acknowledges the massive downturn in
 1825 the condominium market which has transpired throughout the state
 1826 and the impact of such downturn on developers, lenders, unit
 1827 owners, and condominium associations. Numerous condominium
 1828 projects have either failed or are in the process of failing,
 1829 whereby the condominium has a small percentage of third-party
 1830 unit owners as compared to the unsold inventory of units. As a
 1831 result of the inability to find purchasers for this inventory of
 1832 units, which results in part from the devaluing of real estate
 1833 in this state, developers are unable to satisfy the requirements
 1834 of their lenders, leading to defaults on mortgages.

1835 Consequently, lenders are faced with the task of finding a
 1836 solution to the problem in order to be paid for their
 1837 investments.

1838 (2) The Legislature recognizes that all of the factors
 1839 listed in this section lead to condominiums becoming distressed,

1840 resulting in detriment to the unit owners and the condominium
1841 association on account of the resulting shortage of assessment
1842 moneys available to support the financial requirements for
1843 proper maintenance of the condominium. Such shortage and the
1844 resulting lack of proper maintenance further erodes property
1845 values. The Legislature finds that individuals and entities
1846 within Florida and in other states have expressed interest in
1847 purchasing unsold inventory in one or more condominium projects,
1848 but are reticent to do so because of accompanying liabilities
1849 inherited from the original developer, which are by definition
1850 imputed to the successor purchaser, including a foreclosing
1851 mortgagee. This results in the potential purchaser having
1852 unknown and unquantifiable risks, and potential successor
1853 purchasers are unwilling to accept such risks. The result is
1854 that condominium projects stagnate, leaving all parties involved
1855 at an impasse without the ability to find a solution.

1856 (3) The Legislature finds and declares that it is the
1857 public policy of this state to protect the interests of
1858 developers, lenders, unit owners, and condominium associations
1859 with regard to distressed condominiums, and that there is a need
1860 for relief from certain provisions of the Florida Condominium
1861 Act geared toward enabling economic opportunities within these
1862 condominiums for successor purchasers, including foreclosing
1863 mortgagees. Such relief would benefit existing unit owners and
1864 condominium associations. The Legislature further finds and
1865 declares that this situation cannot be open-ended without
1866 potentially prejudicing the rights of unit owners and
1867 condominium associations, and thereby declares that the

1868 provisions of this part shall be used by purchasers of
 1869 condominium inventory for a specific and defined period.
 1870 718.703 Definitions.--As used in this part, the term:
 1871 (1) "Bulk assignee" means a person who:
 1872 (a) Acquires more than seven condominium parcels as set
 1873 forth in s. 718.707; and
 1874 (b) Receives an assignment of some or all of the rights of
 1875 the developer as are set forth in the declaration of condominium
 1876 or in this chapter by a written instrument recorded as an
 1877 exhibit to the deed or as a separate instrument in the public
 1878 records of the county in which the condominium is located.
 1879 (2) "Bulk buyer" means a person who acquires more than
 1880 seven condominium parcels as set forth in s. 718.707 but who
 1881 does not receive an assignment of any developer rights other
 1882 than the right to conduct sales, leasing, and marketing
 1883 activities within the condominium.
 1884 718.704 Assignment and assumption of developer rights by
 1885 bulk assignee; bulk buyer.--
 1886 (1) A bulk assignee shall be deemed to have assumed and is
 1887 liable for all duties and responsibilities of the developer
 1888 under the declaration and this chapter, except:
 1889 (a) Warranties of the developer under s. 718.203(1) or s.
 1890 718.618, except for design, construction, development, or repair
 1891 work performed by or on behalf of such bulk assignee;
 1892 (b) The obligation to:
 1893 1. Fund converter reserves under s. 718.618 for a unit
 1894 which was not acquired by the bulk assignee; or
 1895 2. Provide converter warranties on any portion of the

1896 condominium property except as may be expressly provided by the
 1897 bulk assignee in the contract for purchase and sale executed
 1898 with a purchaser and pertaining to any design, construction,
 1899 development, or repair work performed by or on behalf of the
 1900 bulk assignee;

1901 (c) The requirement to provide the association with a
 1902 cumulative audit of the association's finances from the date of
 1903 formation of the condominium association as required by s.
 1904 718.301. However, the bulk assignee shall provide an audit for
 1905 the period for which the bulk assignee elects a majority of the
 1906 members of the board of administration;

1907 (d) Any liability arising out of or in connection with
 1908 actions taken by the board of administration or the developer-
 1909 appointed directors before the bulk assignee elects a majority
 1910 of the members of the board of administration; and

1911 (e) Any liability for or arising out of the developer's
 1912 failure to fund previous assessments or to resolve budgetary
 1913 deficits in relation to a developer's right to guarantee
 1914 assessments, except as otherwise provided in subsection (2).

1915
 1916 Further, the bulk assignee is responsible for delivering
 1917 documents and materials in accordance with s. 718.705(3). A bulk
 1918 assignee may expressly assume some or all of the obligations of
 1919 the developer described in paragraphs (a)-(e).

1920 (2) A bulk assignee receiving the assignment of the rights
 1921 of the developer to guarantee the level of assessments and fund
 1922 budgetary deficits pursuant to s. 718.116 shall be deemed to
 1923 have assumed and is liable for all obligations of the developer

1924 with respect to such guarantee, including any applicable funding
 1925 of reserves to the extent required by law, for as long as the
 1926 guarantee remains in effect. A bulk assignee not receiving an
 1927 assignment of the right of the developer to guarantee the level
 1928 of assessments and fund budgetary deficits pursuant to s.
 1929 718.116 or a bulk buyer is not deemed to have assumed and is not
 1930 liable for the obligations of the developer with respect to such
 1931 guarantee, but is responsible for payment of assessments in the
 1932 same manner as all other owners of condominium parcels.

1933 (3) A bulk buyer is liable for the duties and
 1934 responsibilities of the developer under the declaration and this
 1935 chapter only to the extent provided in this part, together with
 1936 any other duties or responsibilities of the developer expressly
 1937 assumed in writing by the bulk buyer.

1938 (4) An acquirer of condominium parcels is not considered a
 1939 bulk assignee or a bulk buyer if the transfer to such acquirer
 1940 was made with the intent to hinder, delay, or defraud any
 1941 purchaser, unit owner, or the association, or if the acquirer is
 1942 a person who would constitute an insider under s. 726.102(7).

1943 (5) An assignment of developer rights to a bulk assignee
 1944 may be made by the developer, a previous bulk assignee, or a
 1945 court of competent jurisdiction acting on behalf of the
 1946 developer or the previous bulk assignee. At any particular time,
 1947 there may be no more than one bulk assignee within a
 1948 condominium, but there may be more than one bulk buyer. If more
 1949 than one acquirer of condominium parcels receives an assignment
 1950 of developer rights from the same person, the bulk assignee is
 1951 the acquirer whose instrument of assignment is recorded first in

1952 applicable public records.

1953 718.705 Board of administration; transfer of control.--

1954 (1) For purposes of determining the timing for transfer of

1955 control of the board of administration of the association to

1956 unit owners other than the developer under ss. 718.301(1)(a) and

1957 (b), if a bulk assignee is entitled to elect a majority of the

1958 members of the board, a condominium parcel acquired by the bulk

1959 assignee shall not be deemed to be conveyed to a purchaser, or

1960 to be owned by an owner other than the developer, until such

1961 condominium parcel is conveyed to an owner who is not a bulk

1962 assignee.

1963 (2) Unless control of the board of administration of the

1964 association has already been relinquished pursuant to s.

1965 718.301(1), the bulk assignee is obligated to relinquish control

1966 of the association in accordance with s. 718.301 and this part.

1967 (3) When a bulk assignee relinquishes control of the board

1968 of administration as set forth in s. 718.301, the bulk assignee

1969 shall deliver all of those items required by s. 718.301(4).

1970 However, the bulk assignee is not required to deliver items and

1971 documents not in the possession of the bulk assignee during the

1972 period during which the bulk assignee was the owner of

1973 condominium parcels. In conjunction with acquisition of

1974 condominium parcels, a bulk assignee shall undertake a good

1975 faith effort to obtain the documents and materials required to

1976 be provided to the association pursuant to s. 718.301(4). To the

1977 extent the bulk assignee is not able to obtain all of such

1978 documents and materials, the bulk assignee shall certify in

1979 writing to the association the names or descriptions of the

1980 documents and materials that were not obtainable by the bulk
 1981 assignee. Delivery of the certificate relieves the bulk assignee
 1982 of responsibility for the delivery of the documents and
 1983 materials referenced in the certificate as otherwise required
 1984 under ss. 718.112 and 718.301 and this part. The responsibility
 1985 of the bulk assignee for the audit required by s. 718.301(4)
 1986 shall commence as of the date on which the bulk assignee elected
 1987 a majority of the members of the board of administration.

1988 (4) If a conflict arises between the provisions or
 1989 application of this section and s. 718.301, this section shall
 1990 prevail.

1991 (5) Failure of a bulk assignee or bulk buyer to comply
 1992 with all the requirements contained in this part shall result in
 1993 the loss of any and all protections or exemptions provided under
 1994 this part.

1995 718.706 Specific provisions pertaining to offering of
 1996 units by a bulk assignee or bulk buyer.--

1997 (1) Before offering any units for sale or for lease for a
 1998 term exceeding 5 years, a bulk assignee or a bulk buyer shall
 1999 file the following documents with the division and provide such
 2000 documents to a prospective purchaser:

2001 (a) An updated prospectus or offering circular, or a
 2002 supplement to the prospectus or offering circular, filed by the
 2003 creating developer prepared in accordance with s. 718.504, which
 2004 shall include the form of contract for purchase and sale in
 2005 compliance with s. 718.503(2);

2006 (b) An updated Frequently Asked Questions and Answers
 2007 sheet;

2008 (c) The executed escrow agreement if required under s.
 2009 718.202; and

2010 (d) The financial information required by s. 718.111(13).
 2011 However, if a financial information report does not exist for
 2012 the fiscal year before acquisition of title by the bulk assignee
 2013 or bulk buyer, or accounting records cannot be obtained in good
 2014 faith by the bulk assignee or the bulk buyer which would permit
 2015 preparation of the required financial information report, the
 2016 bulk assignee or bulk buyer is excused from the requirement of
 2017 this paragraph. However, the bulk assignee or bulk buyer must
 2018 include in the purchase contract the following statement in
 2019 conspicuous type:

2020 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.
 2021 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE
 2022 ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER
 2023 AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE
 2024 ASSOCIATION.

2025 (2) Before offering any units for sale or for lease for a
 2026 term exceeding 5 years, a bulk assignee shall file with the
 2027 division and provide to a prospective purchaser a disclosure
 2028 statement that must include, but is not limited to:

2029 (a) A description to the purchaser of any rights of the
 2030 developer which have been assigned to the bulk assignee;

2031 (b) The following statement in conspicuous type:

2032 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER
 2033 UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR
 2034 DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY
 2035 OR ON BEHALF OF SELLER; and

2036 (c) If the condominium is a conversion subject to part VI,
 2037 the following statement in conspicuous type:

2038 SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO
 2039 PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF
 2040 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF
 2041 THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE
 2042 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,
 2043 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON
 2044 BEHALF OF THE SELLER.

2045 (3) In addition to the requirements set forth in
 2046 subsection (1), a bulk assignee or bulk buyer must comply with
 2047 the nondeveloper disclosure requirements set forth in s.
 2048 718.503(2) before offering any units for sale or for lease for a
 2049 term exceeding 5 years.

2050 (4) A bulk assignee, while it is in control of the board
 2051 of administration of the association, may not authorize, on
 2052 behalf of the association:

2053 (a) The waiver of reserves or the reduction of funding of
 2054 the reserves in accordance with s. 718.112(2)(f)2., unless
 2055 approved by a majority of the voting interests not controlled by
 2056 the developer, bulk assignee, and bulk buyer; or

2057 (b) The use of reserve expenditures for other purposes in
 2058 accordance with s. 718.112(2)(f)3., unless approved by a
 2059 majority of the voting interests not controlled by the
 2060 developer, bulk assignee, and bulk buyer.

2061 (5) A bulk assignee, while it is in control of the board
 2062 of administration of the association, shall comply with the
 2063 requirements imposed upon developers to transfer control of the

2064 association to the unit owners in accordance with s. 718.301.

2065 (6) A bulk assignee or a bulk buyer shall comply with all
 2066 the requirements of s. 718.302 regarding any contracts entered
 2067 into by the association during the period the bulk assignee or
 2068 bulk buyer maintains control of the board of administration.

2069 Unit owners shall be afforded all the protections contained in
 2070 s. 718.302 regarding agreements entered into by the association
 2071 before unit owners other than the developer, bulk assignee, or
 2072 bulk buyer elected a majority of the board of administration.

2073 (7) A bulk buyer shall comply with the requirements
 2074 contained in the declaration regarding any transfer of a unit,
 2075 including sales, leases, and subleases. A bulk buyer is not
 2076 entitled to any exemptions afforded a developer or successor
 2077 developer under this chapter regarding any transfer of a unit,
 2078 including sales, leases, or subleases.

2079 718.707 Time limitation for classification as bulk
 2080 assignee or bulk buyer.--A person acquiring condominium parcels
 2081 may not be classified as a bulk assignee or bulk buyer unless
 2082 the condominium parcels were acquired before July 1, 2011. The
 2083 date of such acquisition shall be determined by the date of
 2084 recording of a deed or other instrument of conveyance for such
 2085 parcels in the public records of the county in which the
 2086 condominium is located, or by the date of issuance of a
 2087 certificate of title in a foreclosure proceeding with respect to
 2088 such condominium parcels.

2089 718.708 Liability of developers and others.--An assignment
 2090 of developer rights to a bulk assignee or bulk buyer does not
 2091 release the developer from any liabilities under the declaration

2092 or this chapter. This part does not limit the liability of the
2093 developer for claims brought by unit owners, bulk assignees, or
2094 bulk buyers for violations of this chapter by the developer,
2095 unless specifically excluded in this part. Nothing contained
2096 within this part waives, releases, compromises, or limits the
2097 liability of contractors, subcontractors, materialmen,
2098 manufacturers, architects, engineers, or any participant in the
2099 design or construction of a condominium for any claim brought by
2100 an association, unit owners, bulk assignees, or bulk buyers
2101 arising from the design of the condominium, construction
2102 defects, misrepresentations associated with condominium
2103 property, or violations of this chapter, unless specifically
2104 excluded in this part.

2105 Section 16. This act shall take effect July 1, 2009.