

1                           A bill to be entitled  
2       An act relating to residential properties; amending s.  
3       468.436, F.S.; revising a ground for disciplinary action  
4       relating to misconduct or negligence; requiring the  
5       Department of Business and Professional Regulation to  
6       enter an order permanently revoking certain community  
7       association manager licenses; amending s. 718.111, F.S.;  
8       providing that an association has power to borrow money;  
9       requiring two-thirds vote of members to borrow money above  
10      a certain threshold; requiring certain notice of meeting;  
11      requiring that association access to a unit must be by two  
12      persons, one of whom must be a board member or manager or  
13      employee of the association; providing an exception for  
14      emergencies; amending s. 718.112, F.S.; revising notice  
15      requirements for board of administration meetings;  
16      revising requirements for the reappointment of certain  
17      board members; providing an exception to the expiration of  
18      the terms of members of certain boards; revising board  
19      eligibility requirements; revising notice requirements for  
20      board candidates; establishing requirements for newly  
21      elected board members; providing requirements for bylaw  
22      amendments by a board of administration; amending s.  
23      718.116, F.S.; authorizing association demands for  
24      assessment payments from tenants of delinquent owners  
25      during pendency of a foreclosure action of a condominium  
26      unit; providing for notice; providing for credits against  
27      rent for assessment payments by tenants; providing for  
28      eviction proceedings for nonpayment; providing for effect

29 of provisions on rights and duties of the tenant and  
30 association; amending s. 718.501, F.S.; providing for  
31 division jurisdiction to investigate complaints concerning  
32 failure to maintain common elements; prohibiting an  
33 officer or director from acting as such for a specified  
34 period after having been found to have committed specified  
35 violations; providing for payment of restitution and costs  
36 of investigation and prosecution in certain circumstances;  
37 amending s. 718.115, F.S.; requiring that certain services  
38 obtained pursuant to a bulk contract as provided in the  
39 declaration be deemed a common expense; requiring that  
40 such contracts contain certain provisions; authorizing the  
41 cancellation of certain contracts; amending s. 718.1265,  
42 F.S.; limiting the exercise of specified special powers  
43 unless a certain number of units are rendered  
44 uninhabitable; amending s. 718.303, F.S.; revising  
45 provisions relating to levy of fines; amending s.  
46 718.5012, F.S.; providing a responsibility of the  
47 ombudsman to prepare and adopt a "Florida Condominium  
48 Handbook"; requiring the publishing and updating of the  
49 handbook to be done in conjunction with the Division of  
50 Florida Condominiums, Timeshares, and Mobile Homes;  
51 providing the purpose of the handbook; requiring the  
52 handbook to be published on the ombudsman's Internet  
53 website; amending s. 720.303, F.S.; revising provisions  
54 relating to homeowners' association board meetings,  
55 inspection and copying of records, reserve accounts of  
56 budgets, and recall of directors; prohibiting a salary or

57        compensation for certain association personnel; providing  
58        exceptions; providing requirements for the borrowing of  
59        funds or committing to a line of credit by the board;  
60        providing requirements relating to transfer fees; amending  
61        s. 720.304, F.S.; revising requirements with respect to  
62        the display of flags; amending s. 720.305, F.S.;  
63        authorizing fines assessed against members which exceed a  
64        certain amount to become a lien against a parcel; amending  
65        s. 720.306, F.S.; providing requirements for secret  
66        ballots; requiring newly elected members of a board of  
67        directors to make certain certifications in writing to the  
68        association; providing for disqualification for failure to  
69        make such certifications; requiring an association to  
70        retain certifications for a specified time; amending s.  
71        720.3085, F.S.; requiring a tenant in a unit in which the  
72        regular assessments are delinquent to pay future regular  
73        assessments to the association; requiring notice;  
74        providing for eviction by the association; specifying  
75        rights of the tenant; creating s. 720.3095, F.S.;  
76        providing requirements of maintenance and management  
77        contracts of a homeowners' association; requiring  
78        disclosures; providing a penalty; providing exceptions;  
79        creating s. 720.3096, F.S.; limiting contracts entered  
80        into by a homeowners' association; providing requirements  
81        for such contracts; amending s. 720.401, F.S.; requiring  
82        that the disclosure summary to prospective parcel owners  
83        include additional provisions; amending s. 34.01, F.S.;  
84        correcting a cross-reference to conform to changes made by

85        the act; amending s. 720.302, F.S.; correcting a cross-  
86        reference to conform to changes made by the act;  
87        establishing legislative intent; repealing s. 720.311,  
88        F.S., relating to a procedure for dispute resolution in  
89        homeowners' associations; providing that dispute  
90        resolution cases pending on the date of repeal will  
91        continue under the repealed provisions; creating part IV  
92        of ch. 720, F.S., relating to dispute resolution; creating  
93        s. 720.501, F.S.; providing a short title; creating s.  
94        720.502, F.S.; providing legislative findings; creating s.  
95        720.503, F.S.; setting applicability of provisions for  
96        mediation and arbitration applicable to disputes in  
97        homeowners' associations; creating exceptions; providing  
98        applicability; tolling applicable statutes of limitations;  
99        creating s. 720.504, F.S.; requiring that the notice of  
100       dispute be delivered before referral to mediation or  
101       arbitration; creating s. 720.505, F.S.; creating a  
102       statutory notice form for referral to mediation; requiring  
103       delivery by certified mail or personal delivery; setting  
104       deadlines; requiring parties to share costs; requiring the  
105       selection of a mediator and times to meet; providing  
106       penalties for failure to mediate; creating s. 720.506,  
107       F.S.; creating an opt-out provision; creating s. 720.507,  
108       F.S.; creating a statutory notice form for referral to  
109       arbitration; requiring delivery by certified mail or  
110       personal delivery; setting deadlines; requiring parties to  
111       share costs; requiring the selection of an arbitrator and  
112       times to meet; providing penalties for failure to

113 arbitrate; creating s. 720.508, F.S.; providing for rules  
114 of procedure; providing for confidentiality; creating s.  
115 720.509, F.S.; setting qualifications for mediators and  
116 arbitrators; creating s. 720.510, F.S.; providing for  
117 enforcement of mediation agreements and arbitration  
118 awards; amending s. 718.103, F.S.; expanding the  
119 definition of "developer" to include a bulk assignee or  
120 bulk buyer; amending s. 718.301, F.S.; revising conditions  
121 under which unit owners other than the developer may elect  
122 not less than a majority of the members of the board of  
123 administration of an association; creating part VII of ch.  
124 718, F.S.; providing a short title; providing legislative  
125 findings and intent; defining the terms "bulk assignee"  
126 and "bulk buyer"; providing for the assignment of  
127 developer rights by a bulk assignee; specifying  
128 liabilities of bulk assignees and bulk buyers; providing  
129 exceptions; providing additional responsibilities of bulk  
130 assignees and bulk buyers; authorizing certain entities to  
131 assign developer rights to a bulk assignee; limiting the  
132 number of bulk assignees at any given time; providing for  
133 the transfer of control of a board of administration;  
134 providing effects of such transfer on parcels acquired by  
135 a bulk assignee; providing obligations of a bulk assignee  
136 upon the transfer of control of a board of administration;  
137 requiring that a bulk assignee certify certain information  
138 in writing; providing for the resolution of a conflict  
139 between specified provisions of state law; providing that  
140 the failure of a bulk assignee or bulk buyer to comply

141       with specified provisions of state law results in the loss  
142       of certain protections and exemptions; requiring that a  
143       bulk assignee or bulk buyer file certain information with  
144       the Division of Florida Condominiums, Timeshares, and  
145       Mobile Homes of the Department of Business and  
146       Professional Regulation before offering any units for sale  
147       or lease in excess of a specified term; requiring that a  
148       copy of such information be provided to a prospective  
149       purchaser; requiring that certain contracts and disclosure  
150       statements contain specified statements; requiring that a  
151       bulk assignee or bulk buyer comply with certain disclosure  
152       requirements; prohibiting a bulk assignee from taking  
153       certain actions on behalf of an association while the bulk  
154       assignee is in control of the board of administration of  
155       the association and requiring that such bulk assignee  
156       comply with certain requirements; requiring that a bulk  
157       assignee or bulk buyer comply with certain requirements  
158       regarding certain contracts; providing unit owners with  
159       specified protections regarding certain contracts;  
160       requiring that a bulk buyer comply with certain  
161       requirements regarding the transfer of a unit; prohibiting  
162       a person from being classified as a bulk assignee or bulk  
163       buyer unless condominium parcels were acquired before a  
164       specified date; providing for the determination of the  
165       date of acquisition of a parcel; providing that the  
166       assignment of developer rights to a bulk assignee does not  
167       release a developer from certain liabilities; preserving  
168       certain liabilities for certain parties; requiring all new

residential construction in a deed-restricted community that requires mandatory membership in the association under specified provisions of Florida law to comply with specified provisions of federal law; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

468.436 Disciplinary proceedings.--

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of any provision of this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of ~~gross~~ misconduct or ~~gross~~ negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

(6) Upon the fifth or later finding that a community

197 association manager is guilty of any of the grounds set forth in  
198 subsection (2), or upon the third or later finding that a  
199 community association manager is guilty of a specific ground for  
200 which the disciplinary actions set forth in subsection (2) may  
201 be taken, the department's discretion under subsection (4) shall  
202 not apply and the division shall enter an order permanently  
203 revoking the license.

204 Section 2. Subsections (3) and (5) of section 718.111,  
205 Florida Statutes, are amended to read:

206 718.111 The association.--

207 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,  
208 SUE, AND BE SUED.--

209 (a) The association may contract, sue, or be sued with  
210 respect to the exercise or nonexercise of its powers. For these  
211 purposes, the powers of the association include, but are not  
212 limited to, the maintenance, management, and operation of the  
213 condominium property.

214 (b) After control of the association is obtained by unit  
215 owners other than the developer, the association may institute,  
216 maintain, settle, or appeal actions or hearings in its name on  
217 behalf of all unit owners concerning matters of common interest  
218 to most or all unit owners, including, but not limited to, the  
219 common elements; the roof and structural components of a  
220 building or other improvements; mechanical, electrical, and  
221 plumbing elements serving an improvement or a building;  
222 representations of the developer pertaining to any existing or  
223 proposed commonly used facilities; and protesting ad valorem  
224 taxes on commonly used facilities and on units; and may defend



225 actions in eminent domain or bring inverse condemnation actions.

226 (c) If the association has the authority to maintain a  
227 class action, the association may be joined in an action as  
228 representative of that class with reference to litigation and  
229 disputes involving the matters for which the association could  
230 bring a class action. Nothing herein limits any statutory or  
231 common-law right of any individual unit owner or class of unit  
232 owners to bring any action without participation by the  
233 association which may otherwise be available.

234 (d) The borrowing of funds or committing to a line of  
235 credit by the board of administration shall be considered a  
236 special assessment, and any meeting of the board of  
237 administration to discuss such matters shall be noticed as  
238 provided in s. 718.112(2)(c). The board shall not have the  
239 authority to enter into a line of credit or borrow funds for any  
240 purpose unless the specific use of funds from the line of credit  
241 or loan is set forth in the notice of meeting with the same  
242 specificity as required for a special assessment or unless the  
243 borrowing or line of credit has received the prior approval of  
244 not less than two-thirds of the voting interests of the  
245 association.

246 (5) RIGHT OF ACCESS TO UNITS.--The association has the  
247 irrevocable right of access to each unit during reasonable  
248 hours, when necessary for the maintenance, repair, or  
249 replacement of any common elements or of any portion of a unit  
250 to be maintained by the association pursuant to the declaration  
251 or as necessary to prevent damage to the common elements or to a  
252 unit or units. Except in cases of emergency, the association

253 must give the unit owner advance written notice of not less than  
254 24 hours of its intent to access the unit and such access must  
255 be by two persons, one of whom must be a member of the board of  
256 administration or a manager or employee of the association and  
257 one of whom must be an authorized representative of the  
258 association. The identity of the authorized representative  
259 seeking access to the unit shall be provided to the unit owner  
260 prior to entering the unit.

261 Section 3. Paragraphs (c) and (h) of subsection (2) of  
262 section 718.112, Florida Statutes, are amended to read:

263 718.112 Bylaws.--

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

267 (c) Board of administration meetings.--Meetings of the  
268 board of administration at which a quorum of the members is  
269 present shall be open to all unit owners. Any unit owner may  
270 tape record or videotape meetings of the board of  
271 administration. The right to attend such meetings includes the  
272 right to speak at such meetings with reference to all designated  
273 agenda items. The division shall adopt reasonable rules  
274 governing the tape recording and videotaping of the meeting. The  
275 association may adopt written reasonable rules governing the  
276 frequency, duration, and manner of unit owner statements.  
277 Adequate notice of all meetings, which notice shall specifically  
278 incorporate an identification of agenda items, shall be posted  
279 conspicuously on the condominium property at least 48 continuous  
280 hours preceding the meeting except in an emergency. If 20

281 percent of the voting interests petition the board to address an  
282 item of business, the board shall at its next regular board  
283 meeting or at a special meeting of the board, but not later than  
284 60 days after the receipt of the petition, place the item on the  
285 agenda. Any item not included on the notice may be taken up on  
286 an emergency basis by at least a majority plus one of the  
287 members of the board. Such emergency action shall be noticed and  
288 ratified at the next regular meeting of the board. However,  
289 written notice of any meeting at which nonemergency special  
290 assessments, or at which amendment to rules regarding unit use,  
291 will be considered shall be mailed, delivered, or electronically  
292 transmitted to the unit owners and posted conspicuously on the  
293 condominium property not less than 14 days prior to the meeting.  
294 Evidence of compliance with this 14-day notice shall be made by  
295 an affidavit executed by the person providing the notice and  
296 filed among the official records of the association. Upon notice  
297 to the unit owners, the board shall by duly adopted rule  
298 designate a specific location on the condominium property or  
299 association property upon which all notices of board meetings  
300 shall be posted. If there is no condominium property or  
301 association property upon which notices can be posted, notices  
302 of board meetings shall be mailed, delivered, or electronically  
303 transmitted at least 14 days before the meeting to the owner of  
304 each unit. In lieu of or in addition to the physical posting of  
305 notice of any meeting of the board of administration on the  
306 condominium property, the association may, by reasonable rule,  
307 adopt a procedure for conspicuously posting and repeatedly  
308 broadcasting the notice and the agenda on a closed-circuit cable

309 television system serving the condominium association. However,  
310 if broadcast notice is used in lieu of a notice posted  
311 physically on the condominium property, the notice and agenda  
312 must be broadcast at least four times every broadcast hour of  
313 each day that a posted notice is otherwise required under this  
314 section. When broadcast notice is provided, the notice and  
315 agenda must be broadcast in a manner and for a sufficient  
316 continuous length of time so as to allow an average reader to  
317 observe the notice and read and comprehend the entire content of  
318 the notice and the agenda. Notice of any meeting in which  
319 regular or special assessments against unit owners are to be  
320 considered for any reason shall specifically state that  
321 assessments will be considered and the nature of, actual amount  
322 of any bids or proposals for estimated cost, and description of  
323 the purposes for such assessments. Meetings of a committee to  
324 take final action on behalf of the board or make recommendations  
325 to the board regarding the association budget are subject to the  
326 provisions of this paragraph. Meetings of a committee that does  
327 not take final action on behalf of the board or make  
328 recommendations to the board regarding the association budget  
329 are subject to the provisions of this section, unless those  
330 meetings are exempted from this section by the bylaws of the  
331 association. Notwithstanding any other law, the requirement that  
332 board meetings and committee meetings be open to the unit owners  
333 is inapplicable to meetings between the board or a committee and  
334 the association's attorney, with respect to proposed or pending  
335 litigation, when the meeting is held for the purpose of seeking  
336 or rendering legal advice.

(d) Unit owner meetings.--

1. There shall be an annual meeting of the unit owners held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting shall be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election shall be by secret ballot; however, if the number of vacancies equals ~~or exceeds~~ the number of candidates, no election is required. Except in an association governing a timeshare condominium, the terms of all members of the board shall expire at the annual meeting and such board members may stand for reelection unless otherwise permitted by the bylaws. In the event that the bylaws permit staggered terms of no more than 2 years and upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If the number ~~no person is interested in or demonstrates an intention to run for the position~~ of a board ~~members~~ member whose terms have ~~term has~~ expired according to the provisions of this subparagraph exceeds the number of eligible association members showing interest in or demonstrating an intention to run for the vacant positions, each ~~such~~ board member whose term has expired shall become eligible for reappointment ~~be automatically reappointed~~ to the board of administration and need not stand for reelection. In a condominium association of more than 10 units, or in a

365 condominium association that does not include timeshare units,  
366 coowners of a unit may not serve as members of the board of  
367 directors at the same time unless they own more than one unit  
368 and are not co-occupants of a unit or unless there is an  
369 insufficient number of eligible association members showing  
370 interest in or demonstrating an intention to run for the vacant  
371 positions on the board. Any unit owner desiring to be a  
372 candidate for board membership shall comply with sub-  
373 subparagraph ~~subparagraph~~ 3.a. A person who has been suspended  
374 or removed by the division under this chapter, or who is  
375 delinquent in the payment of any fee, fine, or special or  
376 regular assessment as provided in paragraph (n), is not eligible  
377 for board membership. A person who has been convicted of any  
378 felony in this state or in a United States District or  
379 Territorial Court, or who has been convicted of any offense in  
380 another jurisdiction that would be considered a felony if  
381 committed in this state, is not eligible for board membership  
382 unless such felon's civil rights have been restored for a period  
383 of no less than 5 years as of the date on which such person  
384 seeks election to the board. The validity of an action by the  
385 board is not affected if it is later determined that a member of  
386 the board is ineligible for board membership due to having been  
387 convicted of a felony.

388 2. The bylaws shall provide the method of calling meetings  
389 of unit owners, including annual meetings. Written notice, which  
390 notice must include an agenda, shall be mailed, hand delivered,  
391 or electronically transmitted to each unit owner at least 14  
392 days prior to the annual meeting and shall be posted in a

393 conspicuous place on the condominium property at least 14  
394 continuous days preceding the annual meeting. Upon notice to the  
395 unit owners, the board shall by duly adopted rule designate a  
396 specific location on the condominium property or association  
397 property upon which all notices of unit owner meetings shall be  
398 posted; however, if there is no condominium property or  
399 association property upon which notices can be posted, this  
400 requirement does not apply. In lieu of or in addition to the  
401 physical posting of notice of any meeting of the unit owners on  
402 the condominium property, the association may, by reasonable  
403 rule, adopt a procedure for conspicuously posting and repeatedly  
404 broadcasting the notice and the agenda on a closed-circuit cable  
405 television system serving the condominium association. However,  
406 if broadcast notice is used in lieu of a notice posted  
407 physically on the condominium property, the notice and agenda  
408 must be broadcast at least four times every broadcast hour of  
409 each day that a posted notice is otherwise required under this  
410 section. When broadcast notice is provided, the notice and  
411 agenda must be broadcast in a manner and for a sufficient  
412 continuous length of time so as to allow an average reader to  
413 observe the notice and read and comprehend the entire content of  
414 the notice and the agenda. Unless a unit owner waives in writing  
415 the right to receive notice of the annual meeting, such notice  
416 shall be hand delivered, mailed, or electronically transmitted  
417 to each unit owner. Notice for meetings and notice for all other  
418 purposes shall be mailed to each unit owner at the address last  
419 furnished to the association by the unit owner, or hand  
420 delivered to each unit owner. However, if a unit is owned by

421 more than one person, the association shall provide notice, for  
422 meetings and all other purposes, to that one address which the  
423 developer initially identifies for that purpose and thereafter  
424 as one or more of the owners of the unit shall so advise the  
425 association in writing, or if no address is given or the owners  
426 of the unit do not agree, to the address provided on the deed of  
427 record. An officer of the association, or the manager or other  
428 person providing notice of the association meeting, shall  
429 provide an affidavit or United States Postal Service certificate  
430 of mailing, to be included in the official records of the  
431 association affirming that the notice was mailed or hand  
432 delivered, in accordance with this provision.

433       3.a. The members of the board shall be elected by written  
434 ballot or voting machine. Proxies shall in no event be used in  
435 electing the board, either in general elections or elections to  
436 fill vacancies caused by recall, resignation, or otherwise,  
437 unless otherwise provided in this chapter. Not less than 60 days  
438 before a scheduled election, the association shall mail,  
439 deliver, or electronically transmit, whether by separate  
440 association mailing or included in another association mailing,  
441 delivery, or transmission, including regularly published  
442 newsletters, to each unit owner entitled to a vote, a first  
443 notice of the date of the election ~~along with a certification~~  
444 ~~form provided by the division attesting that he or she has read~~  
445 ~~and understands, to the best of his or her ability, the~~  
446 ~~governing documents of the association and the provisions of~~  
447 ~~this chapter and any applicable rules.~~ Any unit owner or other  
448 eligible person desiring to be a candidate for the board must



449 give written notice of his or her intent to be a candidate to  
450 the association not less than 40 days before a scheduled  
451 election. Together with the written notice and agenda as set  
452 forth in subparagraph 2., the association shall mail, deliver,  
453 or electronically transmit a second notice of the election to  
454 all unit owners entitled to vote therein, together with a ballot  
455 which shall list all candidates. Upon request of a candidate,  
456 ~~the association shall include~~ an information sheet, no larger  
457 than 8 1/2 inches by 11 inches, which must be furnished by the  
458 candidate not less than 35 days before the election, shall ~~along~~  
459 ~~with the signed certification form provided for in this~~  
460 ~~subparagraph,~~ to be included with the mailing, delivery, or  
461 transmission of the ballot, with the costs of mailing, delivery,  
462 or electronic transmission and copying to be borne by the  
463 association. The association is not liable for the contents of  
464 the information sheets prepared by the candidates. In order to  
465 reduce costs, the association may print or duplicate the  
466 information sheets on both sides of the paper. The division  
467 shall by rule establish voting procedures consistent with the  
468 provisions contained herein, including rules establishing  
469 procedures for giving notice by electronic transmission and  
470 rules providing for the secrecy of ballots. Elections shall be  
471 decided by a plurality of those ballots cast. There shall be no  
472 quorum requirement; however, at least 20 percent of the eligible  
473 voters must cast a ballot in order to have a valid election of  
474 members of the board. No unit owner shall permit any other  
475 person to vote his or her ballot, and any such ballots  
476 improperly cast shall be deemed invalid, provided any unit owner

477 who violates this provision may be fined by the association in  
478 accordance with s. 718.303. A unit owner who needs assistance in  
479 casting the ballot for the reasons stated in s. 101.051 may  
480 obtain assistance in casting the ballot. The regular election  
481 shall occur on the date of the annual meeting. The provisions of  
482 this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare  
483 condominium associations. Notwithstanding the provisions of this  
484 sub-subparagraph ~~subparagraph~~, an election is not required  
485 unless more candidates file notices of intent to run or are  
486 nominated than board vacancies exist.

487 b. Within 90 days after being elected to the board, each  
488 newly elected director shall certify in writing to the secretary  
489 of the association that he or she has read the association's  
490 declarations of covenants and restrictions, articles of  
491 incorporation, bylaws, and current written policies; that he or  
492 she will work to uphold such documents and policies to the best  
493 of his or her ability; and that he or she will faithfully  
494 discharge his or her fiduciary responsibility to the  
495 association's members. In lieu of this written certification,  
496 the newly elected director may submit a certificate of  
497 satisfactory completion of the educational curriculum  
498 administered by a division-approved condominium education  
499 provider. Failure to timely file the written certification or  
500 educational certificate automatically disqualifies the director  
501 from service on the board. The secretary shall cause the  
502 association to retain a director's written certification or  
503 educational certificate for inspection by the members for 5  
504 years after a director's election. Failure to have such written

505 certification or educational certificate on file does not affect  
506 the validity of any appropriate action.

507 4. Any approval by unit owners called for by this chapter  
508 or the applicable declaration or bylaws, including, but not  
509 limited to, the approval requirement in s. 718.111(8), shall be  
510 made at a duly noticed meeting of unit owners and shall be  
511 subject to all requirements of this chapter or the applicable  
512 condominium documents relating to unit owner decisionmaking,  
513 except that unit owners may take action by written agreement,  
514 without meetings, on matters for which action by written  
515 agreement without meetings is expressly allowed by the  
516 applicable bylaws or declaration or any statute that provides  
517 for such action.

518 5. Unit owners may waive notice of specific meetings if  
519 allowed by the applicable bylaws or declaration or any statute.  
520 If authorized by the bylaws, notice of meetings of the board of  
521 administration, unit owner meetings, except unit owner meetings  
522 called to recall board members under paragraph (j), and  
523 committee meetings may be given by electronic transmission to  
524 unit owners who consent to receive notice by electronic  
525 transmission.

526 6. Unit owners shall have the right to participate in  
527 meetings of unit owners with reference to all designated agenda  
528 items. However, the association may adopt reasonable rules  
529 governing the frequency, duration, and manner of unit owner  
530 participation.

531 7. Any unit owner may tape record or videotape a meeting  
532 of the unit owners subject to reasonable rules adopted by the

533 division.

534 8. Unless otherwise provided in the bylaws, any vacancy  
535 occurring on the board before the expiration of a term may be  
536 filled by the affirmative vote of the majority of the remaining  
537 directors, even if the remaining directors constitute less than  
538 a quorum, or by the sole remaining director. In the alternative,  
539 a board may hold an election to fill the vacancy, in which case  
540 the election procedures must conform to the requirements of sub-  
541 subparagraph ~~subparagraph~~ 3.a. unless the association governs 10  
542 units or fewer ~~less~~ and has opted out of the statutory election  
543 process, in which case the bylaws of the association control.  
544 Unless otherwise provided in the bylaws, a board member  
545 appointed or elected under this section shall fill the vacancy  
546 for the unexpired term of the seat being filled. Filling  
547 vacancies created by recall is governed by paragraph (j) and  
548 rules adopted by the division.

549  
550 Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-  
551 subparagraph (d)3.a., an association of 10 or fewer units may,  
552 by the affirmative vote of a majority of the total voting  
553 interests, provide for different voting and election procedures  
554 in its bylaws, which vote may be by a proxy specifically  
555 delineating the different voting and election procedures. The  
556 different voting and election procedures may provide for  
557 elections to be conducted by limited or general proxy.

558 (h) Amendment of bylaws.--

559 1. The method by which the bylaws may be amended  
560 consistent with the provisions of this chapter shall be stated.

561 If the bylaws fail to provide a method of amendment, the bylaws  
562 may be amended if the amendment is approved by the owners of not  
563 less than two-thirds of the voting interests.

564 2. No bylaw shall be revised or amended by reference to  
565 its title or number only. Proposals to amend existing bylaws  
566 shall contain the full text of the bylaws to be amended; new  
567 words shall be inserted in the text underlined, and words to be  
568 deleted shall be lined through with hyphens. However, if the  
569 proposed change is so extensive that this procedure would  
570 hinder, rather than assist, the understanding of the proposed  
571 amendment, it is not necessary to use underlining and hyphens as  
572 indicators of words added or deleted, but, instead, a notation  
573 must be inserted immediately preceding the proposed amendment in  
574 substantially the following language: "Substantial rewording of  
575 bylaw. See bylaw \_\_\_\_\_ for present text."

576 3. Nonmaterial errors or omissions in the bylaw process  
577 will not invalidate an otherwise properly promulgated amendment.

578 4. If the bylaws provide for amendment by the board of  
579 administration, no bylaw may be amended unless it is heard and  
580 noticed at two consecutive meetings of the board of  
581 administration that are at least 1 week apart.

582 Section 4. Subsection (11) is added to section 718.116,  
583 Florida Statutes, to read:

584 718.116 Assessments; liability; lien and priority;  
585 interest; collection.--

586 (11) During the pendency of any foreclosure action of a  
587 condominium unit, if the unit is occupied by a tenant and the  
588 unit owner is delinquent in the payment of regular assessments,

589 the association may demand that the tenant pay to the  
590 association the future regular assessments related to the  
591 condominium unit. The demand shall be continuing in nature, and  
592 upon demand the tenant shall continue to pay the regular  
593 assessments to the association until the association releases  
594 the tenant or the tenant discontinues tenancy in the unit. The  
595 association shall mail written notice to the unit owner of the  
596 association's demand that the tenant pay regular assessments to  
597 the association. The tenant shall not be liable for increases in  
598 the amount of the regular assessment due unless the tenant was  
599 reasonably notified of the increase prior to the day that the  
600 rent is due. The tenant shall be given a credit against rents  
601 due to the unit owner in the amount of assessments paid to the  
602 association. The association shall, upon request, provide the  
603 tenant with written receipts for payments made. The association  
604 may issue notices under s. 83.56 and may sue for eviction under  
605 ss. 83.59-83.625 as if the association were a landlord under  
606 part II of chapter 83 should the tenant fail to pay an  
607 assessment. However, the association shall not otherwise be  
608 considered a landlord under chapter 83 and shall specifically  
609 not have any duty under s. 83.51. The tenant shall not, by  
610 virtue of payment of assessments, have any of the rights of a  
611 unit owner to vote in any election or to examine the books and  
612 records of the association. A court may supersede the effect of  
613 this subsection by appointing a receiver.

614 Section 5. Subsection (1) of section 718.501, Florida  
615 Statutes, is amended to read:

616 718.501 Authority, responsibility, and duties of Division

617 of Florida Condominiums, Timeshares, and Mobile Homes.--

618 (1) The Division of Florida Condominiums, Timeshares, and  
619 Mobile Homes of the Department of Business and Professional  
620 Regulation, referred to as the "division" in this part, has the  
621 power to enforce and ensure compliance with the provisions of  
622 this chapter and rules relating to the development,  
623 construction, sale, lease, ownership, operation, and management  
624 of residential condominium units. In performing its duties, the  
625 division has complete jurisdiction to investigate complaints and  
626 enforce compliance with the provisions of this chapter with  
627 respect to associations that are still under developer control  
628 and complaints against developers involving improper turnover or  
629 failure to turnover, pursuant to s. 718.301. However, after  
630 turnover has occurred, the division shall only have jurisdiction  
631 to investigate complaints related to financial issues, failure  
632 to maintain common elements, elections, and unit owner access to  
633 association records pursuant to s. 718.111(12).

634 (a)1. The division may make necessary public or private  
635 investigations within or outside this state to determine whether  
636 any person has violated this chapter or any rule or order  
637 hereunder, to aid in the enforcement of this chapter, or to aid  
638 in the adoption of rules or forms hereunder.

639 2. The division may submit any official written report,  
640 worksheet, or other related paper, or a duly certified copy  
641 thereof, compiled, prepared, drafted, or otherwise made by and  
642 duly authenticated by a financial examiner or analyst to be  
643 admitted as competent evidence in any hearing in which the  
644 financial examiner or analyst is available for cross-examination

645 and attests under oath that such documents were prepared as a  
646 result of an examination or inspection conducted pursuant to  
647 this chapter.

648       (b) The division may require or permit any person to file  
649 a statement in writing, under oath or otherwise, as the division  
650 determines, as to the facts and circumstances concerning a  
651 matter to be investigated.

652       (c) For the purpose of any investigation under this  
653 chapter, the division director or any officer or employee  
654 designated by the division director may administer oaths or  
655 affirmations, subpoena witnesses and compel their attendance,  
656 take evidence, and require the production of any matter which is  
657 relevant to the investigation, including the existence,  
658 description, nature, custody, condition, and location of any  
659 books, documents, or other tangible things and the identity and  
660 location of persons having knowledge of relevant facts or any  
661 other matter reasonably calculated to lead to the discovery of  
662 material evidence. Upon the failure by a person to obey a  
663 subpoena or to answer questions propounded by the investigating  
664 officer and upon reasonable notice to all persons affected  
665 thereby, the division may apply to the circuit court for an  
666 order compelling compliance.

667       (d) Notwithstanding any remedies available to unit owners  
668 and associations, if the division has reasonable cause to  
669 believe that a violation of any provision of this chapter or  
670 related rule has occurred, the division may institute  
671 enforcement proceedings in its own name against any developer,  
672 association, officer, or member of the board of administration,



673 or its assignees or agents, as follows:

674 1. The division may permit a person whose conduct or  
675 actions may be under investigation to waive formal proceedings  
676 and enter into a consent proceeding whereby orders, rules, or  
677 letters of censure or warning, whether formal or informal, may  
678 be entered against the person.

679 2. The division may issue an order requiring the  
680 developer, association, developer-designated officer, or  
681 developer-designated member of the board of administration,  
682 developer-designated assignees or agents, community association  
683 manager, or community association management firm to cease and  
684 desist from the unlawful practice and take such affirmative  
685 action as in the judgment of the division will carry out the  
686 purposes of this chapter. If the division finds that a  
687 developer, association, officer, or member of the board of  
688 administration, or its assignees or agents, is violating or is  
689 about to violate any provision of this chapter, any rule adopted  
690 or order issued by the division, or any written agreement  
691 entered into with the division, and presents an immediate danger  
692 to the public requiring an immediate final order, it may issue  
693 an emergency cease and desist order reciting with particularity  
694 the facts underlying such findings. The emergency cease and  
695 desist order is effective for 90 days. If the division begins  
696 nonemergency cease and desist proceedings, the emergency cease  
697 and desist order remains effective until the conclusion of the  
698 proceedings under ss. 120.569 and 120.57.

699 3. If a developer fails to pay any restitution determined  
700 by the division to be owed, plus any accrued interest at the

701 highest rate permitted by law, within 30 days after expiration  
702 of any appellate time period of a final order requiring payment  
703 of restitution or the conclusion of any appeal thereof,  
704 whichever is later, the division shall bring an action in  
705 circuit or county court on behalf of any association, class of  
706 unit owners, lessees, or purchasers for restitution, declaratory  
707 relief, injunctive relief, or any other available remedy. The  
708 division may also temporarily revoke its acceptance of the  
709 filing for the developer to which the restitution relates until  
710 payment of restitution is made.

711       4. The division may petition the court for the appointment  
712 of a receiver or conservator. If appointed, the receiver or  
713 conservator may take action to implement the court order to  
714 ensure the performance of the order and to remedy any breach  
715 thereof. In addition to all other means provided by law for the  
716 enforcement of an injunction or temporary restraining order, the  
717 circuit court may impound or sequester the property of a party  
718 defendant, including books, papers, documents, and related  
719 records, and allow the examination and use of the property by  
720 the division and a court-appointed receiver or conservator.

721       5. The division may apply to the circuit court for an  
722 order of restitution whereby the defendant in an action brought  
723 pursuant to subparagraph 4. shall be ordered to make restitution  
724 of those sums shown by the division to have been obtained by the  
725 defendant in violation of this chapter. Such restitution shall,  
726 at the option of the court, be payable to the conservator or  
727 receiver appointed pursuant to subparagraph 4. or directly to  
728 the persons whose funds or assets were obtained in violation of

729 | this chapter.

730 |         6. The division may impose a civil penalty against a  
731 | developer or association, or its assignee or agent, for any  
732 | violation of this chapter or a rule adopted under this chapter.  
733 | The division may impose a civil penalty individually against any  
734 | officer or board member who willfully and knowingly violates a  
735 | provision of this chapter, adopted rule, or a final order of the  
736 | division; may order the removal of such individual as an officer  
737 | or from the board of administration or as an officer of the  
738 | association; and may prohibit such individual from serving as an  
739 | officer or on the board of a community association for a period  
740 | of time. The term "willfully and knowingly" means that the  
741 | division informed the officer or board member that his or her  
742 | action or intended action violates this chapter, a rule adopted  
743 | under this chapter, or a final order of the division and that  
744 | the officer or board member refused to comply with the  
745 | requirements of this chapter, a rule adopted under this chapter,  
746 | or a final order of the division. The division, prior to  
747 | initiating formal agency action under chapter 120, shall afford  
748 | the officer or board member an opportunity to voluntarily comply  
749 | with this chapter, a rule adopted under this chapter, or a final  
750 | order of the division. An officer or board member who complies  
751 | within 10 days is not subject to a civil penalty. A penalty may  
752 | be imposed on the basis of each day of continuing violation, but  
753 | in no event shall the penalty for any offense exceed \$5,000. By  
754 | January 1, 1998, the division shall adopt, by rule, penalty  
755 | guidelines applicable to possible violations or to categories of  
756 | violations of this chapter or rules adopted by the division. The

757 guidelines must specify a meaningful range of civil penalties  
758 for each such violation of the statute and rules and must be  
759 based upon the harm caused by the violation, the repetition of  
760 the violation, and upon such other factors deemed relevant by  
761 the division. For example, the division may consider whether the  
762 violations were committed by a developer or owner-controlled  
763 association, the size of the association, and other factors. The  
764 guidelines must designate the possible mitigating or aggravating  
765 circumstances that justify a departure from the range of  
766 penalties provided by the rules. It is the legislative intent  
767 that minor violations be distinguished from those which endanger  
768 the health, safety, or welfare of the condominium residents or  
769 other persons and that such guidelines provide reasonable and  
770 meaningful notice to the public of likely penalties that may be  
771 imposed for proscribed conduct. This subsection does not limit  
772 the ability of the division to informally dispose of  
773 administrative actions or complaints by stipulation, agreed  
774 settlement, or consent order. All amounts collected shall be  
775 deposited with the Chief Financial Officer to the credit of the  
776 Division of Florida Condominiums, Timeshares, and Mobile Homes  
777 Trust Fund. If a developer fails to pay the civil penalty and  
778 the amount deemed to be owed to the association, the division  
779 shall issue an order directing that such developer cease and  
780 desist from further operation until such time as the civil  
781 penalty is paid or may pursue enforcement of the penalty in a  
782 court of competent jurisdiction. If an association fails to pay  
783 the civil penalty, the division shall pursue enforcement in a  
784 court of competent jurisdiction, and the order imposing the

785 civil penalty or the cease and desist order will not become  
786 effective until 20 days after the date of such order. Any action  
787 commenced by the division shall be brought in the county in  
788 which the division has its executive offices or in the county  
789 where the violation occurred.

790 7. If a unit owner presents the division with proof that  
791 the unit owner has requested access to official records in  
792 writing by certified mail, and that after 10 days the unit owner  
793 again made the same request for access to official records in  
794 writing by certified mail, and that more than 10 days has  
795 elapsed since the second request and the association has still  
796 failed or refused to provide access to official records as  
797 required by this chapter, the division shall issue a subpoena  
798 requiring production of the requested records where the records  
799 are kept pursuant to s. 718.112.

800 8. In addition to subparagraph 6., the division may seek  
801 the imposition of a civil penalty through the circuit court for  
802 any violation for which the division may issue a notice to show  
803 cause under paragraph (r). The civil penalty shall be at least  
804 \$500 but no more than \$5,000 for each violation. The court may  
805 also award to the prevailing party court costs and reasonable  
806 attorney's fees and, if the division prevails, may also award  
807 reasonable costs of investigation.

808 9. Notwithstanding subparagraph 6., when the division  
809 finds that an officer or director has intentionally falsified  
810 association records with the intent to conceal material facts  
811 from the division, the board, or unit owners, the division shall  
812 prohibit the officer or director from acting as an officer or

813 director of any condominium, cooperative, or homeowners'  
814 association for at least 1 year.

815 10. When the division finds that any person has derived an  
816 improper personal benefit from a condominium association, the  
817 division shall order the person to pay restitution to the  
818 association and shall order the person to pay to the division  
819 the costs of investigation and prosecution.

820 (e) The division may prepare and disseminate a prospectus  
821 and other information to assist prospective owners, purchasers,  
822 lessees, and developers of residential condominiums in assessing  
823 the rights, privileges, and duties pertaining thereto.

824 (f) The division has authority to adopt rules pursuant to  
825 ss. 120.536(1) and 120.54 to implement and enforce the  
826 provisions of this chapter.

827 (g) The division shall establish procedures for providing  
828 notice to an association and the developer during the period  
829 where the developer controls the association when the division  
830 is considering the issuance of a declaratory statement with  
831 respect to the declaration of condominium or any related  
832 document governing in such condominium community.

833 (h) The division shall furnish each association which pays  
834 the fees required by paragraph (2)(a) a copy of this act,  
835 subsequent changes to this act on an annual basis, an amended  
836 version of this act as it becomes available from the Secretary  
837 of State's office on a biennial basis, and the rules adopted  
838 thereto on an annual basis.

839 (i) The division shall annually provide each association  
840 with a summary of declaratory statements and formal legal

841 opinions relating to the operations of condominiums which were  
842 rendered by the division during the previous year.

843 (j) The division shall provide training and educational  
844 programs for condominium association board members and unit  
845 owners. The training may, in the division's discretion, include  
846 web-based electronic media, and live training and seminars in  
847 various locations throughout the state. The division shall have  
848 the authority to review and approve education and training  
849 programs for board members and unit owners offered by providers  
850 and shall maintain a current list of approved programs and  
851 providers and shall make such list available to board members  
852 and unit owners in a reasonable and cost-effective manner.

853 (k) The division shall maintain a toll-free telephone  
854 number accessible to condominium unit owners.

855 (l) The division shall develop a program to certify both  
856 volunteer and paid mediators to provide mediation of condominium  
857 disputes. The division shall provide, upon request, a list of  
858 such mediators to any association, unit owner, or other  
859 participant in arbitration proceedings under s. 718.1255  
860 requesting a copy of the list. The division shall include on the  
861 list of volunteer mediators only the names of persons who have  
862 received at least 20 hours of training in mediation techniques  
863 or who have mediated at least 20 disputes. In order to become  
864 initially certified by the division, paid mediators must be  
865 certified by the Supreme Court to mediate court cases in county  
866 or circuit courts. However, the division may adopt, by rule,  
867 additional factors for the certification of paid mediators,  
868 which factors must be related to experience, education, or

869 background. Any person initially certified as a paid mediator by  
870 the division must, in order to continue to be certified, comply  
871 with the factors or requirements imposed by rules adopted by the  
872 division.

873 (m) When a complaint is made, the division shall conduct  
874 its inquiry with due regard to the interests of the affected  
875 parties. Within 30 days after receipt of a complaint, the  
876 division shall acknowledge the complaint in writing and notify  
877 the complainant whether the complaint is within the jurisdiction  
878 of the division and whether additional information is needed by  
879 the division from the complainant. The division shall conduct  
880 its investigation and shall, within 90 days after receipt of the  
881 original complaint or of timely requested additional  
882 information, take action upon the complaint. However, the  
883 failure to complete the investigation within 90 days does not  
884 prevent the division from continuing the investigation,  
885 accepting or considering evidence obtained or received after 90  
886 days, or taking administrative action if reasonable cause exists  
887 to believe that a violation of this chapter or a rule of the  
888 division has occurred. If an investigation is not completed  
889 within the time limits established in this paragraph, the  
890 division shall, on a monthly basis, notify the complainant in  
891 writing of the status of the investigation. When reporting its  
892 action to the complainant, the division shall inform the  
893 complainant of any right to a hearing pursuant to ss. 120.569  
894 and 120.57.

895 (n) Condominium association directors, officers, and  
896 employees; condominium developers; community association



897 managers; and community association management firms have an  
898 ongoing duty to reasonably cooperate with the division in any  
899 investigation pursuant to this section. The division shall refer  
900 to local law enforcement authorities any person whom the  
901 division believes has altered, destroyed, concealed, or removed  
902 any record, document, or thing required to be kept or maintained  
903 by this chapter with the purpose to impair its verity or  
904 availability in the department's investigation.

905 (o) The division may:

- 906 1. Contract with agencies in this state or other  
907 jurisdictions to perform investigative functions; or  
908 2. Accept grants-in-aid from any source.

909 (p) The division shall cooperate with similar agencies in  
910 other jurisdictions to establish uniform filing procedures and  
911 forms, public offering statements, advertising standards, and  
912 rules and common administrative practices.

913 (q) The division shall consider notice to a developer to  
914 be complete when it is delivered to the developer's address  
915 currently on file with the division.

916 (r) In addition to its enforcement authority, the division  
917 may issue a notice to show cause, which shall provide for a  
918 hearing, upon written request, in accordance with chapter 120.

919 (s) The division shall submit to the Governor, the  
920 President of the Senate, the Speaker of the House of  
921 Representatives, and the chairs of the legislative  
922 appropriations committees an annual report that includes, but  
923 need not be limited to, the number of training programs provided  
924 for condominium association board members and unit owners, the

925 number of complaints received by type, the number and percent of  
926 complaints acknowledged in writing within 30 days and the number  
927 and percent of investigations acted upon within 90 days in  
928 accordance with paragraph (m), and the number of investigations  
929 exceeding the 90-day requirement. The annual report shall also  
930 include an evaluation of the division's core business processes  
931 and make recommendations for improvements, including statutory  
932 changes. The report shall be submitted by September 30 following  
933 the end of the fiscal year.

934 Section 6. Paragraph (d) of subsection (1) of section  
935 718.115, Florida Statutes, is amended to read:

936 718.115 Common expenses and common surplus.--

937 (1)

938 (d) If so provided in the declaration, the cost of  
939 communications services as defined in chapter 202, information  
940 services, or Internet services ~~a master antenna television~~  
941 ~~system or duly franchised cable television service~~ obtained  
942 pursuant to a bulk contract shall be deemed a common expense. If  
943 the declaration does not provide for the cost of communications  
944 services as defined in chapter 202, information services, or  
945 Internet services ~~a master antenna television system or duly~~  
946 ~~franchised cable television service~~ obtained under a bulk  
947 contract as a common expense, the board may enter into such a  
948 contract, and the cost of the service will be a common expense  
949 but allocated on a per-unit basis rather than a percentage basis  
950 if the declaration provides for other than an equal sharing of  
951 common expenses, and any contract entered into before July 1,  
952 1998, in which the cost of the service is not equally divided

953 among all unit owners, may be changed by vote of a majority of  
954 the voting interests present at a regular or special meeting of  
955 the association, to allocate the cost equally among all units.  
956 The contract shall be for a term of not less than 2 years.

957 1. Any contract made by the board after the effective date  
958 hereof for communications services as defined in chapter 202,  
959 information services, or Internet services ~~a community antenna~~  
960 ~~system or duly franchised cable television service~~ may be  
961 canceled by a majority of the voting interests present at the  
962 next regular or special meeting of the association. Any member  
963 may make a motion to cancel the ~~said~~ contract, but if no motion  
964 is made or if such motion fails to obtain the required majority  
965 at the next regular or special meeting, whichever occurs ~~is~~  
966 sooner, following the making of the contract, ~~then~~ such contract  
967 shall be deemed ratified for the term therein expressed.

968 2. Any such contract shall provide, and shall be deemed to  
969 provide if not expressly set forth, that any hearing-impaired or  
970 legally blind unit owner who does not occupy the unit with a  
971 non-hearing-impaired or sighted person, or any unit owner  
972 receiving supplemental security income under Title XVI of the  
973 Social Security Act or food stamps as administered by the  
974 Department of Children and Family Services pursuant to s.  
975 414.31, may discontinue the cable or video service without  
976 incurring disconnect fees, penalties, or subsequent service  
977 charges, and, as to such units, the owners shall not be required  
978 to pay any common expenses charge related to such service. If  
979 fewer ~~less~~ than all members of an association share the expenses  
980 of cable or video service ~~television~~, the expense shall be

CS/CS/CS/HB 27, Engrossed 2

2009

981 shared equally by all participating unit owners. The association  
982 may use the provisions of s. 718.116 to enforce payment of the  
983 shares of such costs by the unit owners receiving cable or video  
984 service ~~television~~.

985 Section 7. Subsection (2) of section 718.1265, Florida  
986 Statutes, is amended to read:

987 718.1265 Association emergency powers.--

988 (2) The special powers authorized under subsection (1)  
989 shall be limited to that time reasonably necessary to protect  
990 the health, safety, and welfare of the association and the unit  
991 owners and the unit owners' family members, tenants, guests,  
992 agents, or invitees and shall be reasonably necessary to  
993 mitigate further damage and make emergency repairs.

994 Additionally, unless 20 percent or more of the units are made  
995 uninhabitable by the emergency, the special powers authorized  
996 under subsection (1) shall only be exercised during the term of  
997 the Governor's executive order or proclamation declaring the  
998 state of emergency in the locale in which the condominium is  
999 located.

1000 Section 8. Subsection (3) of section 718.303, Florida  
1001 Statutes, is amended, and subsections (4) and (5) are added to  
1002 that section, to read:

1003 718.303 Obligations of owners; waiver; levy of fine  
1004 against unit by association.--

1005 (3) If a unit owner is delinquent for more than 90 days in  
1006 the payment of regular or special assessments or the declaration  
1007 or bylaws so provide, the association may suspend, for a  
1008 reasonable time, the right of a unit owner or a unit's occupant,

1009 licensee, or invitee to use common elements, common facilities,  
1010 or any other association property. This subsection does not  
1011 apply to limited common elements intended to be used only by  
1012 that unit, common elements that must be used to access the unit,  
1013 utility services provided to the unit, parking spaces, or  
1014 elevators. The association may also levy reasonable fines  
1015 ~~against a unit~~ for the failure of the owner of the unit, or its  
1016 occupant, licensee, or invitee, to comply with any provision of  
1017 the declaration, the association bylaws, or reasonable rules of  
1018 the association. No fine will become a lien against a unit. A ~~No~~  
1019 fine may not exceed \$100 per violation. However, a fine may be  
1020 levied on the basis of each day of a continuing violation, with  
1021 a single notice and opportunity for hearing, provided that no  
1022 such fine shall in the aggregate exceed \$1,000. A ~~No~~ fine may  
1023 not be levied and a suspension may not be imposed unless the  
1024 association first gives ~~except after giving~~ reasonable notice  
1025 and opportunity for a hearing to the unit owner and, if  
1026 applicable, its occupant, licensee, or invitee. The hearing must  
1027 be held before a committee of other unit owners who are neither  
1028 board members nor persons residing in a board member's  
1029 household. If the committee does not agree with the fine or  
1030 suspension, the fine or suspension may not be levied or imposed.  
1031 ~~The provisions of this subsection do not apply to unoccupied~~  
1032 ~~units.~~

1033 (4) The notice and hearing requirements of subsection (3)  
1034 do not apply to the imposition of suspensions or fines against a  
1035 unit owner or a unit's occupant, licensee, or invitee because of  
1036 the failure to pay any amounts due the association. If such a

CS/CS/CS/HB 27, Engrossed 2

2009

1037 fine or suspension is imposed, the association must levy the  
1038 fine or impose a reasonable suspension at a properly noticed  
1039 board meeting, and after the imposition of such fine or  
1040 suspension, the association must notify the unit owner and, if  
1041 applicable, the unit's occupant, licensee, or invitee by mail or  
1042 hand delivery.

1043 (5) If the declaration or bylaws so provide, an  
1044 association may also suspend the voting rights of a member due  
1045 to nonpayment of assessments, fines, or other charges payable to  
1046 the association which are delinquent in excess of 90 days

1047 Section 9. Subsection (4) of section 718.5012, Florida  
1048 Statutes, is amended to read:

1049 718.5012 Ombudsman; powers and duties.--The ombudsman  
1050 shall have the powers that are necessary to carry out the duties  
1051 of his or her office, including the following specific powers:

1052 (4) To act as liaison between the division, unit owners,  
1053 boards of directors, board members, community association  
1054 managers, and other affected parties. The ombudsman shall  
1055 develop policies and procedures to assist unit owners, boards of  
1056 directors, board members, community association managers, and  
1057 other affected parties to understand their rights and  
1058 responsibilities as set forth in this chapter and the  
1059 condominium documents governing their respective association.  
1060 The ombudsman shall coordinate and assist in the preparation and  
1061 adoption of educational and reference material, and shall  
1062 endeavor to coordinate with private or volunteer providers of  
1063 these services, so that the availability of these resources is  
1064 made known to the largest possible audience. In conjunction with

CS/CS/CS/HB 27, Engrossed 2

2009

1065 the division, included in the preparation and adoption of  
1066 educational and reference materials shall be the publishing and  
1067 updating of a "Florida Condominium Handbook" to facilitate  
1068 understanding of chapter 718, the contents of which are stated  
1069 in a clear, conspicuous, and easily understandable manner. The  
1070 handbook shall be made publicly available on the ombudsman's  
1071 Internet website.

1072 Section 10. Paragraph (b) of subsection (2), paragraphs  
1073 (a) and (c) of subsection (5), paragraphs (b), (c), (d), (f),  
1074 and (g) of subsection (6), and paragraph (d) of subsection (10)  
1075 of section 720.303, Florida Statutes, are amended, and  
1076 subsections (12), (13), and (14) are added to that section, to  
1077 read:

1078 720.303 Association powers and duties; meetings of board;  
1079 official records; budgets; financial reporting; association  
1080 funds; recalls.--

1081 (2) BOARD MEETINGS.--

1082 (b) Members have the right to attend all meetings of the  
1083 board and to speak on any matter placed on the agenda by  
1084 petition of the voting interests for at least 3 minutes. The  
1085 association may adopt written reasonable rules expanding the  
1086 right of members to speak and governing the frequency, duration,  
1087 and other manner of member statements, which rules must be  
1088 consistent with this paragraph and may include a sign-up sheet  
1089 for members wishing to speak. Notwithstanding any other law, ~~the~~  
1090 ~~requirement that board meetings and committee meetings be open~~  
1091 ~~to the members is inapplicable to~~ meetings between the board or  
1092 a committee to discuss proposed or pending litigation with and

1093 the association's attorney, or ~~with respect to~~ meetings of the  
1094 board held for the purpose of discussing personnel matters are  
1095 not required to be open to the members.

1096 (5) INSPECTION AND COPYING OF RECORDS.--The official  
1097 records shall be maintained within the state and must be open to  
1098 inspection and available for photocopying by members or their  
1099 authorized agents at reasonable times and places within 10  
1100 business days after receipt of a written request for access.  
1101 This subsection may be complied with by having a copy of the  
1102 official records available for inspection or copying in the  
1103 community. If the association has a photocopy machine available  
1104 where the records are maintained, it must provide parcel owners  
1105 with copies on request during the inspection if the entire  
1106 request is limited to no more than 25 pages.

1107 (a) The failure of an association to provide access to the  
1108 records within 10 business days after receipt of a written  
1109 request submitted by certified mail, return receipt requested,  
1110 creates a rebuttable presumption that the association willfully  
1111 failed to comply with this subsection.

1112 (c) The association may adopt reasonable written rules  
1113 governing the frequency, time, location, notice, records to be  
1114 inspected, and manner of inspections, but may not require ~~impose~~  
1115 ~~a requirement that~~ a parcel owner to demonstrate any proper  
1116 purpose for the inspection, state any reason for the inspection,  
1117 or limit a parcel owner's right to inspect records to less than  
1118 one 8-hour business day per month. The association may impose  
1119 fees to cover the costs of providing copies of the official  
1120 records, including, without limitation, the costs of copying.



1121 The association may charge up to 50 cents per page for copies  
1122 made on the association's photocopier. If the association does  
1123 not have a photocopy machine available where the records are  
1124 kept, or if the records requested to be copied exceed 25 pages  
1125 in length, the association may have copies made by an outside  
1126 vendor or association management company personnel and may  
1127 charge the actual cost of copying, including any reasonable  
1128 costs involving personnel fees and charges at an hourly rate for  
1129 employee time to cover administrative costs to the association.

1130 The association shall maintain an adequate number of copies of  
1131 the recorded governing documents, to ensure their availability  
1132 to members and prospective members. Notwithstanding the  
1133 provisions of this paragraph, the following records are ~~shall~~  
1134 not ~~be~~ accessible to members or parcel owners:

1135       1. Any record protected by the lawyer-client privilege as  
1136 described in s. 90.502 and any record protected by the work-  
1137 product privilege, including, but not limited to, any record  
1138 prepared by an association attorney or prepared at the  
1139 attorney's express direction which reflects a mental impression,  
1140 conclusion, litigation strategy, or legal theory of the attorney  
1141 or the association and which was prepared exclusively for civil  
1142 or criminal litigation or for adversarial administrative  
1143 proceedings or which was prepared in anticipation of imminent  
1144 civil or criminal litigation or imminent adversarial  
1145 administrative proceedings until the conclusion of the  
1146 litigation or ~~adversarial~~ administrative proceedings.

CS/CS/CS/HB 27, Engrossed 2

2009

1147           2. Information obtained by an association in connection  
1148 with the approval of the lease, sale, or other transfer of a  
1149 parcel.

1150           3. Disciplinary, health, insurance, and personnel records  
1151 of the association's employees.

1152           4. Medical records of parcel owners or community  
1153 residents.

1154           (6) BUDGETS.--

1155           (b) In addition to annual operating expenses, the budget  
1156 may include reserve accounts for capital expenditures and  
1157 deferred maintenance for which the association is responsible.  
1158 If reserve accounts are not established pursuant to paragraph  
1159 (d), funding of such reserves shall be limited to the extent  
1160 that the governing documents do not limit increases in  
1161 assessments, including reserves. If the budget of the  
1162 association includes reserve accounts established pursuant to  
1163 paragraph (d), such reserves shall be determined, maintained,  
1164 and waived in the manner provided in this subsection. Once an  
1165 association provides for reserve accounts pursuant to paragraph  
1166 (d) in the budget, the association shall thereafter determine,  
1167 maintain, and waive reserves in compliance with this subsection.  
1168 The provisions of this section do not preclude the termination  
1169 of a reserve account established pursuant to this paragraph upon  
1170 approval of a majority of the voting interests of the  
1171 association. Upon such approval, the terminating reserve account  
1172 shall be removed from the budget.

1173           (c)1. If the budget of the association does not provide  
1174 for reserve accounts pursuant to paragraph (d) ~~governed by this~~

CS/CS/CS/HB 27, Engrossed 2

2009

1175 ~~subsection~~ and the association is responsible for the repair and  
1176 maintenance of capital improvements that may result in a special  
1177 assessment if reserves are not provided, each financial report  
1178 for the preceding fiscal year required by subsection (7) shall  
1179 contain the following statement in conspicuous type: THE BUDGET  
1180 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR  
1181 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN  
1182 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE  
1183 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),  
1184 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN~~ A  
1185 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY  
1186 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

1187 2. If the budget of the association does provide for  
1188 funding accounts for deferred expenditures, including, but not  
1189 limited to, funds for capital expenditures and deferred  
1190 maintenance, but such accounts are not created or established  
1191 pursuant to paragraph (d), each financial report for the  
1192 preceding fiscal year required under subsection (7) must also  
1193 contain the following statement in conspicuous type: THE BUDGET  
1194 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED  
1195 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND  
1196 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN  
1197 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO  
1198 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),  
1199 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE  
1200 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR  
1201 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

1202           (d) An association shall be deemed to have provided for  
1203 reserve accounts if ~~when~~ reserve accounts have been initially  
1204 established by the developer or if ~~when~~ the membership of the  
1205 association affirmatively elects to provide for reserves. If  
1206 reserve accounts are not initially provided for by the  
1207 developer, the membership of the association may elect to do so  
1208 upon the affirmative approval of ~~not less than~~ a majority of the  
1209 total voting interests of the association. Such approval may be  
1210 obtained ~~attained~~ by vote of the members at a duly called  
1211 meeting of the membership or by the ~~upon a~~ written consent of  
1212 ~~executed by not less than~~ a majority of the total voting  
1213 interests in the community. The approval action of the  
1214 membership shall state that reserve accounts shall be provided  
1215 for in the budget and shall designate the components for which  
1216 the reserve accounts are to be established. Upon approval by the  
1217 membership, the board of directors shall include ~~provide for~~ the  
1218 required reserve accounts ~~for inclusion~~ in the budget in the  
1219 next fiscal year following the approval and ~~in~~ each year  
1220 thereafter. Once established as provided in this subsection, the  
1221 reserve accounts shall be funded or maintained or shall have  
1222 their funding waived in the manner provided in paragraph (f).

1223           (f) After one or more ~~Once a reserve account or~~ reserve  
1224 accounts are established, the membership of the association,  
1225 upon a majority vote at a meeting at which a quorum is present,  
1226 may provide for no reserves or less reserves than required by  
1227 this section. If a meeting of the unit owners has been called to  
1228 determine whether to waive or reduce the funding of reserves and  
1229 no such result is achieved or a quorum is not present, the

reserves as included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves. Any vote taken pursuant to this subsection to waive or reduce reserves is ~~shall be~~ applicable only to one budget year.

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

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

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

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

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

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

1258 contribution to the pooled reserve account as disclosed on the  
1259 proposed budget may ~~shall~~ not be less than that required to  
1260 ensure that the balance on hand at the beginning of the period  
1261 ~~for which~~ the budget will go into effect plus the projected  
1262 annual cash inflows over the remaining estimated useful life of  
1263 all of the assets that make up the reserve pool are equal to or  
1264 greater than the projected annual cash outflows over the  
1265 remaining estimated useful lives of all ~~of~~ the assets that make  
1266 up the reserve pool, based on the current reserve analysis. The  
1267 projected annual cash inflows may include estimated earnings  
1268 from investment of principal and accounts receivable minus the  
1269 allowance for doubtful accounts. The reserve funding formula may  
1270 ~~shall~~ not include any type of balloon payments.

1271 (10) RECALL OF DIRECTORS.--

1272 (d) If the board determines not to certify the written  
1273 agreement or written ballots to recall a director or directors  
1274 of the board or does not certify the recall by a vote at a  
1275 meeting, the board shall, within 5 full business days after the  
1276 meeting, initiate ~~file with the department a petition for~~  
1277 binding arbitration pursuant to the applicable procedures in s.  
1278 720.507 ~~ss. 718.112(2)(j) and 718.1255 and the rules adopted~~  
1279 ~~thereunder~~. For the purposes of this section, the members who  
1280 voted at the meeting or who executed the agreement in writing  
1281 shall constitute one party under the petition for arbitration.  
1282 If the arbitrator certifies the recall as to any director or  
1283 directors of the board, the recall will be effective upon  
1284 mailing of the final order of arbitration to the association.  
1285 The director or directors so recalled shall deliver to the board

1286 any and all records of the association in their possession  
1287 within 5 full business days after the effective date of the  
1288 recall.

1289 (12) COMPENSATION PROHIBITED.--A director, officer, or  
1290 committee member of the association may not receive directly or  
1291 indirectly any salary or compensation from the association for  
1292 the performance of duties as a director, officer, or committee  
1293 member and may not in any other way benefit financially from  
1294 service to the association. This subsection does not preclude:

1295 (a) Participation by such person in a financial benefit  
1296 accruing to all or a significant number of members as a result  
1297 of actions lawfully taken by the board or a committee of which  
1298 he or she is a member, including, but not limited to, routine  
1299 maintenance, repair, or replacement of community assets.

1300 (b) Reimbursement for out-of-pocket expenses incurred by  
1301 such person on behalf of the association, subject to approval in  
1302 accordance with procedures established by the association's  
1303 governing documents or, in the absence of such procedures, in  
1304 accordance with an approval process established by the board.

1305 (c) Any recovery of insurance proceeds derived from a  
1306 policy of insurance maintained by the association for the  
1307 benefit of its members.

1308 (d) Any fee or compensation authorized in the governing  
1309 documents.

1310 (e) Any fee or compensation authorized in advance by a  
1311 vote of a majority of the voting interests voting in person or  
1312 by proxy at a meeting of the members.

1313        (f) A developer or its representative from serving as a  
1314 director, officer, or committee member of the association and  
1315 benefiting financially from service to the association.

1316        (13) BORROWING.--The borrowing of funds or committing to a  
1317 line of credit by the board of administration shall be  
1318 considered a special assessment, and any meeting of the board of  
1319 administration to discuss such matters shall be noticed as  
1320 provided in paragraph (2)(c). The board shall not have the  
1321 authority to enter into a line of credit or borrow funds for any  
1322 purpose unless the specific use of the funds from the line of  
1323 credit or loan is set forth in the notice of meeting with the  
1324 same specificity as required for a special assessment or unless  
1325 the borrowing or line of credit has received the prior approval  
1326 of not less than two-thirds of the voting interests of the  
1327 association.

1328        (14) TRANSFER FEES.--No charge may be made by the  
1329 association or anybody thereof in connection with the sale,  
1330 mortgage, lease, sublease, or other transfer of a parcel.  
1331 Nothing in this subsection shall be construed to prohibit an  
1332 association from requiring as a condition to permitting the  
1333 letting or renting of a parcel, when the association has such  
1334 authority in the documents, the depositing into an escrow  
1335 account maintained by the association a security deposit in an  
1336 amount not to exceed the equivalent of one month's rent. The  
1337 security deposit shall protect against damages to the common  
1338 areas or association property. Within 15 days after a tenant  
1339 vacates the premises, the association shall refund the full  
1340 security deposit or give written notice to the tenant of any



CS/CS/CS/HB 27, Engrossed 2

2009

1341 claim made against the security. Disputes under this subsection  
1342 shall be handled in the same fashion as disputes concerning  
1343 security deposits under s. 83.49.

1344 Section 11. Paragraph (a) of subsection (2) of section  
1345 720.304, Florida Statutes, is amended to read:

1346 720.304 Right of owners to peaceably assemble; display of  
1347 flag; SLAPP suits prohibited.--

1348 (2) (a) Any homeowner may display within the boundaries of  
1349 the homeowner's parcel one portable, removable United States  
1350 ~~flag or official flag of the State of Florida in a respectful~~  
1351 ~~manner, and one portable, removable official flag,~~ in a  
1352 respectful way and, on Armed Forces Day, Memorial Day, Flag Day,  
1353 Independence Day, and Veterans' Day, may display in a respectful  
1354 way portable, removable official flags ~~manner,~~ not larger than 4  
1355 1/2 feet by 6 feet, that represent ~~which represents~~ the United  
1356 States Army, Navy, Air Force, Marine Corps, or Coast Guard, ~~or a~~  
1357 ~~POW-MIA flag,~~ regardless of any declaration ~~covenants,~~  
1358 ~~restrictions, bylaws, rules,~~ or requirements dealing with flags  
1359 or decorations ~~of the association.~~

1360 Section 12. Subsection (2) of section 720.305, Florida  
1361 Statutes, is amended to read:

1362 720.305 Obligations of members; remedies at law or in  
1363 equity; levy of fines and suspension of use rights.--

1364 (2) If the governing documents so provide, an association  
1365 may suspend, for a reasonable period of time, the rights of a  
1366 member or a member's tenants, guests, or invitees, or both, to  
1367 use common areas and facilities and may levy reasonable fines of  
1368 up to, ~~not to exceed~~ \$100 per violation, against any member or

1369 any tenant, guest, or invitee. A fine may be levied on the basis  
1370 of each day of a continuing violation, with a single notice and  
1371 opportunity for hearing, except that no ~~such~~ fine may ~~shall~~  
1372 exceed \$1,000 in the aggregate unless otherwise provided in the  
1373 governing documents. A fine of less than \$1,000 may ~~shall~~ not  
1374 become a lien against a parcel. In any action to recover a fine,  
1375 the prevailing party is entitled to collect its reasonable  
1376 attorney's fees and costs from the nonprevailing party as  
1377 determined by the court.

1378 (a) A fine or suspension may not be imposed without ~~notice~~  
1379 ~~of~~ at least 14 days' notice ~~days~~ to the person sought to be  
1380 fined or suspended and an opportunity for a hearing before a  
1381 committee of at least three members appointed by the board who  
1382 are not officers, directors, or employees of the association, or  
1383 the spouse, parent, child, brother, or sister of an officer,  
1384 director, or employee. If the committee, by majority vote, does  
1385 not approve a proposed fine or suspension, it may not be  
1386 imposed.

1387 (b) The requirements of this subsection do not apply to  
1388 the imposition of suspensions or fines upon any member because  
1389 of the failure of the member to pay assessments or other charges  
1390 when due if such action is authorized by the governing  
1391 documents.

1392 (c) Suspension of common-area-use rights do ~~shall~~ not  
1393 impair the right of an owner or tenant of a parcel to have  
1394 vehicular and pedestrian ingress to and egress from the parcel,  
1395 including, but not limited to, the right to park.

1396 Section 13. Subsections (8) and (9) of section 720.306,  
1397 Florida Statutes, are amended to read:

1398 720.306 Meetings of members; voting and election  
1399 procedures; amendments.--

1400 (8) PROXY VOTING.--The members have the right, unless  
1401 otherwise provided in this subsection or in the governing  
1402 documents, to vote in person or by proxy.

1403 (a) To be valid, a proxy must be dated, must state the  
1404 date, time, and place of the meeting for which it was given, and  
1405 must be signed by the authorized person who executed the proxy.  
1406 A proxy is effective only for the specific meeting for which it  
1407 was originally given, as the meeting may lawfully be adjourned  
1408 and reconvened from time to time, and automatically expires 90  
1409 days after the date of the meeting for which it was originally  
1410 given. A proxy is revocable at any time at the pleasure of the  
1411 person who executes it. If the proxy form expressly so provides,  
1412 any proxy holder may appoint, in writing, a substitute to act in  
1413 his or her place.

1414 (b) If the governing documents permit voting by secret  
1415 ballot by members who are not in attendance at a meeting of the  
1416 members for the election of directors, such ballots shall be  
1417 placed in an inner envelope with no identifying markings and  
1418 mailed or delivered to the association in an outer envelope  
1419 bearing identifying information reflecting the name of the  
1420 member, the lot or parcel for which the vote is being cast, and  
1421 the signature of the lot or parcel owner casting that ballot.  
1422 After the eligibility of the member to vote and confirmation  
1423 that no other ballot has been submitted for that lot or parcel,

1424 the inner envelope shall be removed from the outer envelope  
1425 bearing the identification information, placed with the ballots  
1426 which were personally cast, and opened when the ballots are  
1427 counted. If more than one ballot is submitted for a lot or  
1428 parcel, the ballots for that lot or parcel shall be  
1429 disqualified. Any vote by ballot received after the closing of  
1430 the balloting may not be considered.

1431 (9) ELECTIONS; BOARD MEMBER CERTIFICATION.--

1432 (a) Elections of directors must be conducted in accordance  
1433 with the procedures set forth in the governing documents of the  
1434 association. All members of the association are ~~shall be~~  
1435 eligible to serve on the board of directors, and a member may  
1436 nominate himself or herself as a candidate for the board at a  
1437 meeting where the election is to be held or, if the election  
1438 process allows voting by absentee ballot, in advance of the  
1439 balloting. Except as otherwise provided in the governing  
1440 documents, boards of directors must be elected by a plurality of  
1441 the votes cast by eligible voters. Any election dispute between  
1442 a member and an association must be submitted to mandatory  
1443 binding arbitration with the division. Such proceedings shall be  
1444 conducted in the manner provided by s. 720.507 ~~718.1255~~ and the  
1445 ~~procedural rules adopted by the division.~~

1446 (b) Within 30 days after being elected to the board of  
1447 directors, a new director shall certify in writing to the  
1448 secretary of the association that he or she has read the  
1449 association's declarations of covenants and restrictions,  
1450 articles of incorporation, bylaws, and current written policies  
1451 and that he or she will work to uphold each to the best of his

1452 or her ability and will faithfully discharge his or her  
1453 fiduciary responsibility to the association's members. Failure  
1454 to timely file such statement shall automatically disqualify the  
1455 director from service on the association's board of directors.  
1456 The secretary shall cause the association to retain a director's  
1457 certification for inspection by the members for 5 years after a  
1458 director's election. Failure to have such certification on file  
1459 does not affect the validity of any appropriate action.

1460 Section 14. Section (8) is added to section 720.3085,  
1461 Florida Statutes, to read:

1462 720.3085 Payment for assessments; lien claims.--

1463 (8) During the pendency of any foreclosure action of a  
1464 parcel within a homeowners' association, if the home is occupied  
1465 by a tenant and the parcel owner is delinquent in the payment of  
1466 regular assessments, the association may demand that the tenant  
1467 pay to the association the future regular assessments related to  
1468 the parcel. The demand shall be continuing in nature, and upon  
1469 demand the tenant shall continue to pay the regular assessments  
1470 to the association until the association releases the tenant or  
1471 the tenant discontinues tenancy in the unit. The association  
1472 shall mail written notice to the parcel owner of the  
1473 association's demand that the tenant pay regular assessments to  
1474 the association. The tenant shall not be liable for increases in  
1475 the amount of the regular assessment due unless the tenant was  
1476 reasonably notified of the increase prior to the day that the  
1477 rent is due. The tenant shall be given a credit against rents  
1478 due to the parcel owner in the amount of assessments paid to the  
1479 association. The association shall, upon request, provide the

1480 tenant with written receipts for payments made. The association  
1481 may issue notices under s. 83.56 and may sue for eviction under  
1482 ss. 83.59-83.625 as if the association were a landlord under  
1483 part II of chapter 83 should the tenant fail to pay an  
1484 assessment. However, the association shall not otherwise be  
1485 considered a landlord under chapter 83 and shall specifically  
1486 not have any duty under s. 83.51. The tenant shall not, by  
1487 virtue of payment of assessments, have any of the rights of a  
1488 unit owner to vote in any election or to examine the books and  
1489 records of the association. A court may supersede the effect of  
1490 this subsection by appointing a receiver.

1491 Section 15. Section 720.3095, Florida Statutes, is created  
1492 to read:

1493 720.3095 Management and maintenance agreements entered  
1494 into by the association.--

1495 (1) A written contract between a party contracting to  
1496 provide maintenance or management services and an association  
1497 which provides for operation, maintenance, or management of a  
1498 homeowners' association is not valid or enforceable unless the  
1499 contract:

1500 (a) Specifies the services, obligations, and  
1501 responsibilities of the party contracting to provide maintenance  
1502 or management services to the unit owners.

1503 (b) Specifies those costs incurred in the performance of  
1504 those services, obligations, or responsibilities which are to be  
1505 reimbursed by the association to the party contracting to  
1506 provide maintenance or management services.

1507 (c) Provides an indication of how often each service,

1508 obligation, or responsibility is to be performed, whether stated  
1509 for each service, obligation, or responsibility or in categories  
1510 thereof.

1511 (d) Specifies a minimum number of personnel to be employed  
1512 by the party contracting to provide maintenance or management  
1513 services for the purpose of providing service to the  
1514 association.

1515 (e) Discloses any financial or ownership interest which  
1516 the developer, if the developer is in control of the  
1517 association, holds with regard to the party contracting to  
1518 provide maintenance or management services.

1519 (f) Discloses any financial or ownership interest a board  
1520 member or any party providing maintenance or management services  
1521 to the association holds with the contracting party.

1522 (2) In any case in which the party contracting to provide  
1523 maintenance or management services fails to provide such  
1524 services in accordance with the contract, the association is  
1525 authorized to procure such services from some other party and  
1526 shall be entitled to collect any fees or charges paid for  
1527 services performed by another party from the party contracting  
1528 to provide maintenance or management services.

1529 (3) Any services or obligations not stated on the face of  
1530 the contract shall be unenforceable.

1531 (4) Notwithstanding the fact that certain vendors contract  
1532 with associations to maintain equipment or property which is  
1533 made available to serve unit owners, it is the intent of the  
1534 Legislature that this section applies to contracts for  
1535 maintenance or management services for which the association

1536 pays compensation. This section does not apply to contracts for  
1537 services or property made available for the convenience of unit  
1538 owners by lessees or licensees of the association, such as coin-  
1539 operated laundry, food, soft drink, or telephone vendors; cable  
1540 television operators; retail store operators; businesses;  
1541 restaurants; or similar vendors.

1542 Section 16. Section 720.3096, Florida Statutes, is created  
1543 to read:

1544 720.3096 Limitation on agreements entered into by the  
1545 association.--As to any contract or other transaction between an  
1546 association and one or more of its directors or any other  
1547 corporation, firm, association, or entity in which one or more  
1548 of its directors are directors or officers or are financially  
1549 interested:

1550 (1) The association shall comply with the requirements of  
1551 s. 617.0832.

1552 (2) The disclosures required by s. 617.0832 shall be  
1553 entered into the written minutes of the meeting.

1554 (3) Approval of the contract or other transaction shall  
1555 require an affirmative vote of two-thirds of the directors  
1556 present.

1557 (4) At the next regular or special meeting of the members,  
1558 the existence of the contract or other transaction shall be  
1559 disclosed to the members. Upon motion of any member, the  
1560 contract or transaction shall be brought up for a vote and may  
1561 be canceled by a majority vote of the members present. If the  
1562 members cancel the contract, the association shall be liable for  
1563 only the reasonable value of goods and services provided up to



1564 the time of cancellation and shall not be liable for any  
1565 termination fee, liquidated damages, or other form of penalty  
1566 for such cancellation.

1567 Section 17. Paragraph (a) of subsection (1) of section  
1568 720.401, Florida Statutes, is amended to read:

1569 720.401 Prospective purchasers subject to association  
1570 membership requirement; disclosure required; covenants;  
1571 assessments; contract cancellation.--

1572 (1) (a) A prospective parcel owner in a community must be  
1573 presented a disclosure summary before executing the contract for  
1574 sale. The disclosure summary must be in a form substantially  
1575 similar to the following form:

1576  
1577 DISCLOSURE SUMMARY

1578 FOR

1579 (NAME OF COMMUNITY)  
1580

1581 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL  
1582 BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

1583 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE  
1584 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS  
1585 COMMUNITY.

1586 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE  
1587 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF  
1588 APPLICABLE, THE CURRENT AMOUNT IS \$\_\_\_\_\_ PER \_\_\_\_\_. YOU WILL  
1589 ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE  
1590 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.  
1591 IF APPLICABLE, THE CURRENT AMOUNT IS \$\_\_\_\_\_ PER \_\_\_\_\_.

1592 4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE  
1593 RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL  
1594 ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

1595 5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS  
1596 LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION MAY ~~COULD~~ RESULT  
1597 IN A LIEN ON YOUR PROPERTY.

1598 6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES  
1599 FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN  
1600 OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF  
1601 APPLICABLE, THE CURRENT AMOUNT IS \$\_\_\_\_\_ PER \_\_\_\_\_.

1602 7. IF THE ASSOCIATION IS STILL UNDER THE CONTROL OF THE  
1603 DEVELOPER, THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE  
1604 RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION  
1605 MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

1606 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE  
1607 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU  
1608 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING  
1609 DOCUMENTS BEFORE PURCHASING PROPERTY.

1610 9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND  
1611 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE  
1612 PROPERTY IS LOCATED, OR, IF ARE NOT RECORDED, ~~AND~~ CAN BE  
1613 OBTAINED FROM THE DEVELOPER.

1614 10. THERE MAY BE AN OBLIGATION TO PAY ASSESSMENTS (TAXES  
1615 OR FEES) TO A RESIDENTIAL COMMUNITY DEVELOPMENT DISTRICT FOR THE  
1616 PURPOSE OF RETIRING BOND OBLIGATIONS USED TO CONSTRUCT  
1617 INFRASTRUCTURE OR OTHER IMPROVEMENTS.

CS/CS/CS/HB 27, Engrossed 2

2009

1618        11. YOU ARE JOINTLY AND SEVERALLY LIABLE WITH THE PREVIOUS  
1619 OWNER OF YOUR PROPERTY FOR ALL UNPAID ASSESSMENTS THAT CAME DUE  
1620 UP TO THE TIME OF TRANSFER OF TITLE.

DATE:

PURCHASER:

PURCHASER:

1625 The disclosure must be supplied by the developer, or by the  
1626 parcel owner if the sale is by an owner that is not the  
1627 developer. Any contract or agreement for sale shall refer to and  
1628 incorporate the disclosure summary and shall include, in  
1629 prominent language, a statement that the potential buyer should  
1630 not execute the contract or agreement until he or she has ~~they~~  
1631 ~~have~~ received and read the disclosure summary required by this  
1632 section.

1633        Section 18. Paragraph (d) of subsection (1) of section  
1634 34.01, Florida Statutes, is amended to read:

1635        34.01 Jurisdiction of county court.--

1636        (1) County courts shall have original jurisdiction:

1637        (d) Of disputes occurring in the homeowners' associations  
1638 as described in part IV of chapter 720 ~~s. 720.311(2)(a)~~, which  
1639 shall be concurrent with jurisdiction of the circuit courts.

1640        Section 19. Subsection (2) of section 720.302, Florida  
1641 Statutes, is amended to read:

1642        720.302 Purposes, scope, and application.--

1643        (2) The Legislature recognizes that it is not in the best  
1644 interest of homeowners' associations or the individual  
1645 association members thereof to create or impose a bureau or

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

Section 20. Section 720.311, Florida Statutes, is repealed.

Section 21. Part IV of chapter 720, Florida Statutes, to be entitled "Dispute Resolution," consisting of sections 720.501, 720.502, 720.503, 720.504, 720.505, 720.506, 720.507, 720.508, 720.509, and 720.510, is created to read:

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

720.502 Legislative findings.--The Legislature finds that alternative dispute resolution has made progress in reducing

1674 court dockets and trials and in offering a more efficient, cost-  
1675 effective option to litigation.

1676 720.503 Applicability of this part.--

1677 (1) Unless otherwise provided in this part, before a  
1678 dispute described in this part between a homeowners' association  
1679 and a parcel owner or owners, or a dispute between parcel owners  
1680 within the same homeowners' association, may be filed in court,  
1681 the dispute is subject to presuit mediation pursuant to s.  
1682 720.505 or presuit arbitration pursuant to s. 720.507, at the  
1683 option of the aggrieved party who initiates the first formal  
1684 action of alternative dispute resolution under this part. The  
1685 parties may mutually agree to participate in both presuit  
1686 mediation and presuit arbitration prior to suit being filed by  
1687 either party.

1688 (2) Unless otherwise provided in this part, the mediation  
1689 and arbitration provisions of this part are limited to disputes  
1690 between an association and a parcel owner or owners or between  
1691 parcel owners regarding the use of or changes to the parcel or  
1692 the common areas under the governing documents and other  
1693 disputes involving violations of the recorded declaration of  
1694 covenants or other governing documents, disputes arising  
1695 concerning enforcement of the governing documents or any  
1696 amendments thereto, and disputes involving access to the  
1697 official records of the association. A dispute concerning title  
1698 to any parcel or common area, interpretation or enforcement of  
1699 any warranty, the levy of a fee or assessment, the collection of  
1700 an assessment levied against a party, the eviction or other  
1701 removal of a tenant from a parcel, alleged breaches of fiduciary

1702 duty by one or more directors, or any action to collect mortgage  
1703 indebtedness or to foreclosure a mortgage shall not be subject  
1704 to the provisions of this part.

1705 (3) All disputes arising after the effective date of this  
1706 part involving the election of the board of directors for an  
1707 association or the recall of any member of the board or officer  
1708 of the association shall not be eligible for presuit mediation  
1709 under s. 720.505, but shall be subject to the provisions  
1710 concerning presuit arbitration under s. 720.507.

1711 (4) In any dispute subject to presuit mediation or presuit  
1712 arbitration under this part for which emergency relief is  
1713 required, a motion for temporary injunctive relief may be filed  
1714 with the court without first complying with the presuit  
1715 mediation or presuit arbitration requirements of this part.  
1716 After any issues regarding emergency or temporary relief are  
1717 resolved, the court may refer the parties to a mediation program  
1718 administered by the courts or require mediation or arbitration  
1719 under this part.

1720 (5) The mailing of a statutory notice of presuit mediation  
1721 or presuit arbitration as provided in this part shall toll the  
1722 applicable statute of limitations during the pendency of the  
1723 mediation or arbitration and for a period of 30 days following  
1724 the conclusion of either proceeding. The 30-day period shall  
1725 start upon the filing of the mediator's notice of impasse or the  
1726 arbitrator's written arbitration award. If the parties mutually  
1727 agree to participate in both presuit mediation and presuit  
1728 arbitration under this part, the tolling of the applicable

1729 statute of limitations for each such alternative dispute  
1730 resolution proceeding shall be consecutive.

1731 720.504 Notice of dispute.--Prior to giving the statutory  
1732 notice to proceed under presuit mediation or presuit arbitration  
1733 under this part, the aggrieved association or parcel owner shall  
1734 first provide written notice of the dispute to the responding  
1735 party in the manner provided by this section.

1736 (1) The notice of dispute shall be delivered to the  
1737 responding party by certified mail, return receipt requested, or  
1738 the notice of dispute may be hand delivered, and the person  
1739 making delivery shall file with their notice of mediation either  
1740 the proof of receipt of mailing or an affidavit stating the date  
1741 and time of the delivery of the notice of dispute. If the notice  
1742 is delivered by certified mail, return receipt requested, and  
1743 the responding party fails or refuses to accept delivery, notice  
1744 shall be considered properly delivered for purposes of this  
1745 section on the date of the first attempted delivery.

1746 (2) The notice of dispute shall state with specificity the  
1747 nature of the dispute, including the date, time, and location of  
1748 each event that is the subject of the dispute and the action  
1749 requested to resolve the dispute. The notice shall also include  
1750 the text of any provision in the governing documents, including  
1751 the rules and regulations, of the association which form the  
1752 basis of the dispute.

1753 (3) Unless the parties otherwise agree in writing to a  
1754 longer time period, the party receiving the notice of dispute  
1755 shall have 10 days following the date of receipt of notice to  
1756 resolve the dispute. If the alleged dispute has not been

resolved within the 10-day period, the aggrieved party may proceed under this part at any time thereafter within the applicable statute of limitations.

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

720.505 Presuit mediation.--

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

STATUTORY NOTICE OF PRESUIT MEDIATION

THE ALLEGED AGGRIEVED PARTY, \_\_\_\_\_,  
HEREBY DEMANDS THAT \_\_\_\_\_, AS THE  
RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT  
MEDIATION IN CONNECTION WITH THE FOLLOWING DISPUTE(S)



1784 WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT ARE  
1785 SUBJECT TO PRESUIT MEDIATION:

1786  
1787 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION  
1788 WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO  
1789 BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF  
1790 A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT  
1791 LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING  
1792 DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE  
1793 DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE  
1794 YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN  
1795 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

1796  
1797 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,  
1798 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT  
1799 MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED  
1800 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,  
1801 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT  
1802 MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER  
1803 TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT  
1804 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU  
1805 PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO  
1806 THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A  
1807 NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER  
1808 S. 720.506, FLORIDA STATUTES, YOUR FAILURE TO  
1809 PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A  
1810 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT  
1811 FURTHER NOTICE.

1812  
1813 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED  
1814 NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-  
1815 PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS  
1816 THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING  
1817 PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE  
1818 IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO  
1819 CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO  
1820 AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO  
1821 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A  
1822 FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE  
1823 POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR  
1824 REASONABLE SETTLEMENT ARE FULLY EXPLORED.

1825  
1826 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO  
1827 WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT  
1828 BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE  
1829 DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE  
1830 THESE ISSUES IN COURT. THE FAILURE TO REACH AN  
1831 AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN  
1832 THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN  
1833 IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED  
1834 PARTY MAY PROCEED TO FILE A LAWSUIT ON ALL  
1835 OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR  
1836 REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION  
1837 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER  
1838 ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT  
1839 PROCEEDING INVOLVING THE SAME DISPUTE.

1840  
1841 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF  
1842 ELIGIBLE, QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED  
1843 MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE  
1844 NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE  
1845 THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE  
1846 FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE  
1847 OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE  
1848 MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL  
1849 FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE  
1850 AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU  
1851 MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE  
1852 NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

1853  
1854 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND  
1855 HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT  
1856 INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY  
1857 BE INCLUDED AS AN ATTACHMENT.)

1858  
1859 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO  
1860 CONFIRM THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL  
1861 BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD  
1862 EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE  
1863 PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES,  
1864 REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT  
1865 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE  
1866 MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4  
1867 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME

1868        PREPARATION TIME, AND THE PARTIES WOULD NEED TO  
1869        EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE  
1870        RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF  
1871        THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH  
1872        THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT  
1873        REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE  
1874        MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR  
1875        ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY  
1876        HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE  
1877        SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS  
1878        AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS  
1879        THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE  
1880        SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE  
1881        RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR  
1882        SHARE OF THE MEDIATOR FEES INCURRED.

1883  
1884        TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO  
1885        TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER  
1886        LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE  
1887        WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE  
1888        MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.

1889  
1890        YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE  
1891        OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE  
1892        YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND  
1893        TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE  
1894        MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED  
1895        DATE OF THE MAILING OF THIS NOTICE OF PRESUIT

1896 MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE  
1897 SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY  
1898 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY  
1899 CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE  
1900 TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE  
1901 DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO  
1902 SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR  
1903 SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO  
1904 EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90  
1905 DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST  
1906 SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN  
1907 THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS  
1908 AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE  
1909 MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE  
1910 AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE  
1911 TO AT LEAST ONE OF THE MEDIATORS THAT THE AGGRIEVED  
1912 PARTY HAS LISTED, FAIL TO PAY OR PREPAY TO THE  
1913 MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL TO  
1914 APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE  
1915 AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE  
1916 FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER  
1917 NOTICE. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED  
1918 PARTY MAY SEEK AN AWARD OF REASONABLE ATTORNEY'S FEES  
1919 AND COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.  
1920  
1921 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY  
1922 LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-  
1923 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED

CS/CS/CS/HB 27, Engrossed 2

2009

PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE  
AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF  
THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS  
AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY  
OF THIS NOTICE.

\_\_\_\_\_  
SIGNATURE OF AGGRIEVED PARTY

\_\_\_\_\_  
PRINTED NAME OF AGGRIEVED PARTY

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

AGREEMENT TO MEDIATE

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

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

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

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

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

SIGNATURE OF RESPONDING PARTY #1

TELEPHONE CONTACT INFORMATION

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

(2) (a) Service of the 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

1980 property appraiser where the parcel in dispute is located. The  
1981 responding party has either 20 days after the postmarked date of  
1982 the mailing of the statutory notice or 20 days after the date  
1983 the responding party is served with a copy of the notice to  
1984 serve a written response to the aggrieved party. The response  
1985 shall be served by certified mail, return receipt requested,  
1986 with an additional copy being sent by regular first-class mail,  
1987 to the address shown on the statutory notice. The date of the  
1988 postmark on the envelope for the response shall constitute the  
1989 date that the response is served. Once the parties have agreed  
1990 on a mediator, the mediator may schedule or reschedule the  
1991 mediation for a date and time mutually convenient to the parties  
1992 within 90 days after the date of service of the statutory  
1993 notice. After such 90-day period, the mediator may reschedule  
1994 the mediation only upon the mutual written agreement of all the  
1995 parties.

1996 (b) The parties shall share the costs of presuit mediation  
1997 equally, including the fee charged by the mediator, if any,  
1998 unless the parties agree otherwise, and the mediator may require  
1999 advance payment of his or her reasonable fees and costs. Each  
2000 party shall be responsible for that party's own attorney's fees  
2001 if a party chooses to be represented by an attorney at the  
2002 mediation.

2003 (c) The party responding to the aggrieved party may  
2004 provide a notice of opting out under s. 720.506 and demand  
2005 arbitration or may sign the agreement to mediate included in the  
2006 notice of presuit mediation. A responding party signing the  
2007 agreement to mediate must clearly indicate the name of the



mediator who is acceptable from the five names provided by the aggrieved party and must provide a list of dates and times in which the responding party is available to participate in the mediation within 90 days after the date the responding party was served, either by process server or by certified mail, with the statutory notice of presuit mediation.

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

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

(f) If the responding party fails to respond within 30 days after the date of service of the statutory notice of presuit mediation, fails to agree to at least one of the

2036 mediators listed by the aggrieved party in the notice, fails to  
2037 pay or prepay to the mediator one-half of the costs of the  
2038 mediator, or fails to appear and participate at the scheduled  
2039 mediation, the aggrieved party shall be authorized to proceed  
2040 with the filing of a lawsuit without further notice.

2041 (g)1. The failure of any party to respond to the statutory  
2042 notice of presuit mediation within 20 days, the failure to agree  
2043 upon a mediator, the failure to provide a listing of dates and  
2044 times in which the responding party is available to participate  
2045 in the mediation within 90 days after the date the responding  
2046 party was served with the statutory notice of presuit mediation,  
2047 the failure to make payment of fees and costs within the time  
2048 established by the mediator, or the failure to appear for a  
2049 scheduled mediation session without the approval of the  
2050 mediator, shall in each instance constitute a failure or refusal  
2051 to participate in the mediation process and shall operate as an  
2052 impasse in the presuit mediation by such party, entitling the  
2053 other party to file a lawsuit in court and to seek an award of  
2054 the costs and attorney's fees associated with the mediation.

2055 2. Persons who fail or refuse to participate in the entire  
2056 mediation process may not recover attorney's fees and costs in  
2057 subsequent litigation relating to the same dispute between the  
2058 same parties. If any presuit mediation session cannot be  
2059 scheduled and conducted within 90 days after the offer to  
2060 participate in mediation was filed, through no fault of either  
2061 party, then an impasse shall be deemed to have occurred unless  
2062 the parties mutually agree in writing to extend this deadline.  
2063 In the event of such impasse, each party shall be responsible

2064 for its own costs and attorney's fees and one-half of any  
2065 mediator fees and filing fees, and either party may file a  
2066 lawsuit in court regarding the dispute.

2067 720.506 Opt-out of presuit mediation.--A party served with  
2068 a notice of presuit mediation under s. 720.505 may opt out of  
2069 presuit mediation and demand that the dispute proceed under  
2070 nonbinding arbitration as follows:

2071 (1) In lieu of a response to the notice of presuit  
2072 mediation as required under s. 720.505, the responding party may  
2073 serve upon the aggrieved party, in the same manner as the  
2074 response to a notice for presuit mediation under s. 720.505, a  
2075 notice of opting out of mediation and demand that the dispute  
2076 instead proceed to presuit arbitration under s. 720.507.

2077 (2) The aggrieved party shall be relieved from having to  
2078 satisfy the requirements of s. 720.504 as a condition precedent  
2079 to filing the demand for presuit arbitration.

2080 (3) Except as otherwise provided in this part, the choice  
2081 of which presuit alternative dispute resolution procedure is  
2082 used shall be at the election of the aggrieved party who first  
2083 initiated such proceeding after complying with the provisions of  
2084 s. 720.504.

2085 720.507 Presuit arbitration.--

2086 (1) Disputes between an association and a parcel owner or  
2087 owners and disputes between parcel owners are subject to a  
2088 demand for presuit arbitration pursuant to this section before  
2089 the dispute may be filed in court. A party who elects to use the  
2090 presuit arbitration procedure under this part shall serve on the

2091 responding party a written notice of presuit arbitration in  
2092 substantially the following form:

2094 STATUTORY NOTICE OF PRESUIT ARBITRATION

2096 THE ALLEGED AGGRIEVED PARTY, \_\_\_\_\_,  
2097 HEREBY DEMANDS THAT \_\_\_\_\_, AS THE  
2098 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT  
2099 ARBITRATION IN CONNECTION WITH THE FOLLOWING  
2100 DISPUTE(S) WITH YOU, WHICH BY STATUTE ARE OF A TYPE  
2101 THAT ARE SUBJECT TO PRESUIT ARBITRATION:

2103 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE  
2104 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A  
2105 VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT  
2106 LIMITED TO, ALL APPLICABLE PROVISIONS OF THE GOVERNING  
2107 DOCUMENTS BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE  
2108 PARTIES.)

2110 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,  
2111 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT  
2112 ARBITRATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED  
2113 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,  
2114 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT  
2115 ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN  
2116 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT  
2117 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU  
2118 PARTICIPATE IN THIS PROCESS. IF YOU FAIL TO

2119 PARTICIPATE IN THE ARBITRATION PROCESS, A LAWSUIT MAY  
2120 BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER  
2121 WARNING.

2122  
2123 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD  
2124 PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY  
2125 THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN  
2126 "ARBITRATION AWARD." PURSUANT TO S. 720.507, FLORIDA  
2127 STATUTES, THE ARBITRATION AWARD SHALL BE FINAL UNLESS  
2128 A LAWSUIT IS FILED IN A COURT OF COMPETENT  
2129 JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE  
2130 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION  
2131 IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE OF THE  
2132 ARBITRATION AWARD.

2133  
2134 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE  
2135 ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND  
2136 BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE  
2137 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS  
2138 FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR  
2139 TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE  
2140 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE  
2141 PARTIES UNDER S. 720.505, FLORIDA STATUTES. THE  
2142 FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION  
2143 PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN  
2144 ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF  
2145 YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE  
2146 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED

2147 TO RECOVER ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A  
2148 SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE  
2149 BETWEEN THE SAME PARTIES.

2150  
2151 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE  
2152 ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE  
2153 NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU  
2154 HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS.  
2155 THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR  
2156 MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE  
2157 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL  
2158 ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS  
2159 CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT  
2160 ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE  
2161 AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT  
2162 ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS,  
2163 AND HOURLY RATES, ARE AS FOLLOWS:

2164  
2165 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND  
2166 HOURLY RATES OF AT LEAST FIVE ARBITRATORS.

2167  
2168 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO  
2169 CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL  
2170 AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.

2171  
2172 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF  
2173 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE  
2174 PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION

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

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

YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE  
WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF  
PRESUIT ARBITRATION WAS EITHER PERSONALLY SERVED ON  
YOU OR 20 DAYS AFTER THE POSTMARKED DATE THAT THIS  
NOTICE OF PRESUIT ARBITRATION WAS SENT TO YOU BY  
CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT  
LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE  
TO PARTICIPATE IN THE ARBITRATION THAT ARE WITHIN 90

2203        DAYS AFTER THE DATE YOU WERE PERSONALLY SERVED OR  
2204        WITHIN 90 DAYS AFTER THE POSTMARKED DATE OF THE  
2205        CERTIFIED MAILING OF THIS STATUTORY NOTICE OF PRESUIT  
2206        ARBITRATION. A COPY OF THIS NOTICE AND YOUR RESPONSE  
2207        WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE  
2208        ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE  
2209        A MUTUALLY CONVENIENT TIME AND PLACE FOR THE  
2210        ARBITRATION CONFERENCE TO BE HELD. IF YOU DO NOT  
2211        PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE  
2212        ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION  
2213        CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND  
2214        CONVENIENCE INTO CONSIDERATION. THE ARBITRATION  
2215        CONFERENCE MUST BE HELD ON THE SCHEDULED DATE, OR ANY  
2216        RESCHEDULED DATE APPROVED BY THE ARBITRATOR. IN NO  
2217        EVENT SHALL THE ARBITRATION CONFERENCE BE LATER THAN  
2218        90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS  
2219        FIRST SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN  
2220        WRITING OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED  
2221        WITHIN THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL  
2222        ISSUE AN ARBITRATION AWARD, UNLESS THE HEARING IS  
2223        EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES  
2224        AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU  
2225        FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE  
2226        SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE  
2227        ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE  
2228        AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO  
2229        AGREE EITHER TO ONE OF THE ARBITRATORS THAT THE  
2230        AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO



2231        THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS  
2232        REQUIRED, OR FAIL TO APPEAR AND PARTICIPATE AT THE  
2233        SCHEDULED ARBITRATION CONFERENCE, THE AGGRIEVED PARTY  
2234        MAY REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION  
2235        AWARD. IN THE SUBSEQUENT COURT ACTION, THE AGGRIEVED  
2236        PARTY SHALL BE ENTITLED TO RECOVER AN AWARD OF  
2237        REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ANY  
2238        FEES PAID TO THE ARBITRATOR, INCURRED IN OBTAINING AN  
2239        ARBITRATION AWARD PURSUANT TO S. 720.507, FLORIDA  
2240        STATUTES.

2241  
2242        PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY  
2243        LAW, YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY  
2244        CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED,  
2245        TO THE ADDRESS SHOWN ON THIS NOTICE OF PRESUIT  
2246        ARBITRATION.

2247  
2248        \_\_\_\_\_  
2249        SIGNATURE OF AGGRIEVED PARTY

2250  
2251        \_\_\_\_\_  
2252        PRINTED NAME OF AGGRIEVED PARTY

2253  
2254        RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR  
2255        ACCEPTANCE OF THE AGREEMENT TO ARBITRATE.

2256  
2257                    AGREEMENT TO ARBITRATE  
2258

CS/CS/CS/HB 27, Engrossed 2

2009

2259 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN  
2260 PRESUIT ARBITRATION AND AGREES TO ATTEND AN  
2261 ARBITRATION CONDUCTED BY THE FOLLOWING ARBITRATOR  
2262 LISTED BELOW AS SOMEONE WHO WOULD BE ACCEPTABLE TO  
2263 ARBITRATE THIS DISPUTE:

2264  
2265 (IN YOUR RESPONSE, SELECT THE NAME OF ONE ARBITRATOR  
2266 THAT IS ACCEPTABLE TO YOU FROM THOSE ARBITRATORS  
2267 LISTED BY THE AGGRIEVED PARTY.)

2268  
2269 THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS  
2270 AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE  
2271 PRESUIT ARBITRATION CONFERENCE AT THE FOLLOWING DATES  
2272 AND TIMES:

2273  
2274 (LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE  
2275 MUST BE AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE  
2276 ON WHICH YOU WERE SERVED, EITHER BY PROCESS SERVER OR  
2277 BY CERTIFIED MAIL, WITH THE NOTICE OF PRESUIT  
2278 ARBITRATION.)

2279  
2280 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE  
2281 ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS  
2282 AS THE ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

2283  
2284 \_\_\_\_\_  
2285 SIGNATURE OF RESPONDING PARTY #1  
2286 \_\_\_\_\_

2287        TELEPHONE CONTACT INFORMATION

2288  
2289  
2290        SIGNATURE AND TELEPHONE CONTACT INFORMATION OF  
2291        RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS  
2292        OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,  
2293        OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF  
2294        A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

2295  
2296        (2)(a) Service of the statutory notice of presuit  
2297        arbitration shall be effected either by personal service, as  
2298        provided in chapter 48, or by certified mail, return receipt  
2299        requested, in a letter in substantial conformity with the form  
2300        provided in subsection (1), with an additional copy being sent  
2301        by regular first-class mail, to the address of the responding  
2302        party as it last appears on the books and records of the  
2303        association, or if not available, the last address as it appears  
2304        on the official records of the county property appraiser for the  
2305        county in which the property is situated that is subject to the  
2306        association documents. The responding party has 20 days after  
2307        the postmarked date of the certified mailing of the statutory  
2308        notice of presuit arbitration or 20 days after the date the  
2309        responding party is personally served with the statutory notice  
2310        of presuit arbitration by to serve a written response to the  
2311        aggrieved party. The response shall be served by certified mail,  
2312        return receipt requested, with an additional copy being sent by  
2313        regular first-class mail, to the address shown on the statutory  
2314        notice of presuit arbitration. The postmarked date on the

2315 envelope of the response shall constitute the date the response  
2316 was served.

2317 (b) The parties shall share the costs of presuit  
2318 arbitration equally, including the fee charged by the  
2319 arbitrator, if any, unless the parties agree otherwise, and the  
2320 arbitrator may require advance payment of his or her reasonable  
2321 fees and costs. Each party shall be responsible for all of their  
2322 own attorney's fees if a party chooses to be represented by an  
2323 attorney for the arbitration proceedings.

2324 (c)1. The party responding to the aggrieved party must  
2325 sign the agreement to arbitrate included in the notice of  
2326 presuit arbitration and clearly indicate the name of the  
2327 arbitrator who is acceptable of those arbitrators listed by the  
2328 aggrieved party. The responding party must provide a list of at  
2329 least three dates and times in which the responding party is  
2330 available to participate in the arbitration conference within 90  
2331 days after the date the responding party was served with the  
2332 statutory notice of presuit arbitration.

2333 2. The arbitrator must schedule the arbitration conference  
2334 at a mutually convenient time and place, but if the responding  
2335 party does not provide a list of available dates and times, the  
2336 arbitrator is authorized to schedule an arbitration conference  
2337 without taking the responding party's schedule and convenience  
2338 into consideration. Within 10 days after the designation of the  
2339 arbitrator, the arbitrator shall notify the parties in writing  
2340 of the date, time, and place of the arbitration conference.

2341 3. The arbitration conference must be held on the  
2342 scheduled date and may be rescheduled if approved by the

2343 arbitrator. However, in no event shall the arbitration hearing  
2344 be later than 90 days after the notice of presuit arbitration  
2345 was first served, unless all parties mutually agree in writing  
2346 otherwise. If the arbitration hearing is not completed within  
2347 the required time limits, the arbitrator may issue an  
2348 arbitration award unless the time for the hearing is extended as  
2349 provided herein. If the responding party fails to respond within  
2350 20 days after the date of statutory notice of presuit  
2351 arbitration, fails to agree to at least one of the arbitrators  
2352 that have been listed by the aggrieved party in the presuit  
2353 notice of arbitration, fails to pay or prepay to the arbitrator  
2354 one-half of the costs involved, or fails to appear and  
2355 participate at the scheduled arbitration, the aggrieved party is  
2356 authorized to proceed with a request that the arbitrator issue  
2357 an arbitration award.

2358 (d)1. The failure of any party to respond to the statutory  
2359 notice of presuit arbitration within 20 days, the failure to  
2360 either select one of the five arbitrators listed by the  
2361 aggrieved party, the failure to provide a listing of dates and  
2362 times in which the responding party is available to participate  
2363 in the arbitration conference within 90 days after the date of  
2364 the responding party being served with the statutory notice of  
2365 presuit arbitration, the failure to make payment of fees and  
2366 costs as required within the time established by the arbitrator,  
2367 or the failure to appear for an arbitration conference without  
2368 the approval of the arbitrator, shall entitle the other party to  
2369 request the arbitrator to enter an arbitration award, including

2370 an award of the reasonable costs and attorney's fees associated  
2371 with the arbitration.

2372 2. Persons who fail or refuse to participate in the entire  
2373 arbitration process may not recover attorney's fees and costs in  
2374 any subsequent litigation proceeding relating to the same  
2375 dispute involving the same parties.

2376 (3) (a) In an arbitration proceeding, the arbitrator may  
2377 not consider any unsuccessful mediation of the dispute.

2378 (b) An arbitrator in a proceeding initiated pursuant to  
2379 the provisions of this part may shorten the time for discovery  
2380 or otherwise limit discovery in a manner consistent with the  
2381 policy goals of this part to reduce the time and expense of  
2382 litigating homeowners' association disputes initiated pursuant  
2383 to this chapter and promoting an expeditious alternative dispute  
2384 resolution procedure for parties to such actions.

2385 (4) At the request of any party to the arbitration, the  
2386 arbitrator may issue subpoenas for the attendance of witnesses  
2387 and the production of books, records, documents, and other  
2388 evidence, and any party on whose behalf a subpoena is issued may  
2389 apply to the court for orders compelling such attendance and  
2390 production. Subpoenas shall be served and are enforceable in the  
2391 manner provided by the Florida Rules of Civil Procedure.  
2392 Discovery may, at the discretion of the arbitrator, be permitted  
2393 in the manner provided by the Florida Rules of Civil Procedure.

2394 (5) The final arbitration award shall be sent to the  
2395 parties in writing no later than 30 days after the date of the  
2396 arbitration hearing, absent extraordinary circumstances  
2397 necessitating a later filing the reasons for which shall be

2398 stated in the final award if filed more than 30 days after the  
2399 date of the final session of the arbitration conference. An  
2400 agreed arbitration award is final in those disputes in which the  
2401 parties have mutually agreed to be bound. An arbitration award  
2402 decided by the arbitrator is final unless a lawsuit seeking a  
2403 trial de novo is filed in a court of competent jurisdiction  
2404 within 30 days after the date of the arbitration award. The  
2405 right to file for a trial de novo entitles the parties to file a  
2406 complaint in the appropriate trial court for a judicial  
2407 resolution of the dispute. The prevailing party in an  
2408 arbitration proceeding shall be awarded the costs of the  
2409 arbitration and reasonable attorney's fees in an amount  
2410 determined by the arbitrator.

2411 (6) The party filing a motion for a trial de novo shall be  
2412 assessed the other party's arbitration costs, court costs, and  
2413 other reasonable costs, including attorney's fees, investigation  
2414 expenses, and expenses for expert or other testimony or evidence  
2415 incurred after the arbitration hearing, if the judgment upon the  
2416 trial de novo is not more favorable than the final arbitration  
2417 award.

2418 720.508 Rules of procedure.--

2419 (1) Presuit mediation and presuit arbitration proceedings  
2420 under this part must be conducted in accordance with the  
2421 applicable Florida Rules of Civil Procedure and rules governing  
2422 mediations and arbitrations under chapter 44, except that this  
2423 part shall be controlling to the extent of any conflict with  
2424 other applicable rules or statutes. The arbitrator may shorten  
2425 any applicable time period and otherwise limit the scope of

2426 discovery on request of the parties or within the discretion of  
2427 the arbitrator exercised consistent with the purpose and  
2428 objective of reducing the expense and expeditiously concluding  
2429 proceedings under this part.

2430 (2) Presuit mediation proceedings under s. 720.505 are  
2431 privileged and confidential to the same extent as court-ordered  
2432 mediation under chapter 44. An arbitrator or judge may not  
2433 consider any information or evidence arising from the presuit  
2434 mediation proceeding except in a proceeding to impose sanctions  
2435 for failure to attend a presuit mediation session or to enforce  
2436 a mediated settlement agreement.

2437 (3) Persons who are not parties to the dispute may not  
2438 attend the presuit mediation conference without consent of all  
2439 parties, with the exception of counsel for the parties and a  
2440 corporate representative designated by the association. Presuit  
2441 mediations under this part are not a board meeting for purposes  
2442 of notice and participation set forth in this chapter.

2443 (4) Attendance at a mediation conference by the board of  
2444 directors shall not require notice or participation by nonboard  
2445 members as otherwise required by this chapter for meetings of  
2446 the board.

2447 (5) Settlement agreements resulting from a mediation or  
2448 arbitration proceeding do not have precedential value in  
2449 proceedings involving parties other than those participating in  
2450 the mediation or arbitration.

2451 (6) Arbitration awards by an arbitrator shall have  
2452 precedential value in other proceedings involving the same  
2453 association or with respect to the same parcel owner.



2454        720.509 Mediators and arbitrators; qualifications and  
2455 registration.--A person is authorized to conduct mediation or  
2456 arbitration under this part if he or she has been certified as a  
2457 circuit court civil mediator under the requirements adopted  
2458 pursuant to s. 44.106, is a member in good standing with The  
2459 Florida Bar, and otherwise meets all other requirements imposed  
2460 by chapter 44.

2461        720.510 Enforcement of mediation agreement or arbitration  
2462 award.--

2463        (1) A mediation settlement may be enforced through the  
2464 county or circuit court, as applicable, and any costs and  
2465 attorney's fees incurred in the enforcement of a settlement  
2466 agreement reached at mediation shall be awarded to the  
2467 prevailing party in any enforcement action.

2468        (2) Any party to an arbitration proceeding may enforce an  
2469 arbitration award by filing a petition in a court of competent  
2470 jurisdiction in which the homeowners' association is located.  
2471 The prevailing party in such proceeding shall be awarded  
2472 reasonable attorney's fees and costs incurred in such  
2473 proceeding.

2474        (3) If a complaint is filed seeking a trial de novo, the  
2475 arbitration award shall be stayed and a petition to enforce the  
2476 award may not be granted. Such award, however, shall be  
2477 admissible in the court proceeding seeking a trial de novo.

2478        Section 22. Subsection (16) of section 718.103, Florida  
2479 Statutes, is amended to read:

2480        718.103 Definitions.--As used in this chapter, the term:

2481        (16) "Developer" means a person who creates a condominium

CS/CS/CS/HB 27, Engrossed 2

2009

or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

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

(b) A cooperative association which creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;~~;~~

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

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

Section 23. Subsection (1) of section 718.301, Florida Statutes, is amended to read:

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

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled

2510 to elect not less than a majority of the members of the board of  
2511 administration of an association:

2512 (a) Three years after 50 percent of the units that will be  
2513 operated ultimately by the association have been conveyed to  
2514 purchasers;

2515 (b) Three months after 90 percent of the units that will  
2516 be operated ultimately by the association have been conveyed to  
2517 purchasers;

2518 (c) When all the units that will be operated ultimately by  
2519 the association have been completed, some of them have been  
2520 conveyed to purchasers, and none of the others are being offered  
2521 for sale by the developer in the ordinary course of business;

2522 (d) When some of the units have been conveyed to  
2523 purchasers and none of the others are being constructed or  
2524 offered for sale by the developer in the ordinary course of  
2525 business;

2526 (e) When the developer files a petition seeking protection  
2527 in bankruptcy;

2528 (f) When a receiver for the developer is appointed by a  
2529 circuit court and is not discharged within 30 days after such  
2530 appointment, unless the court determines within 30 days after  
2531 appointment of the receiver that transfer of control would be  
2532 detrimental to the association or its members; or

2533 (g) Seven years after recordation of the declaration of  
2534 condominium; or, in the case of an association which may  
2535 ultimately operate more than one condominium, 7 years after  
2536 recordation of the declaration for the first condominium it  
2537 operates; or, in the case of an association operating a phase

condominium created pursuant to s. 718.403, 7 years after recordation of the declaration creating the initial phase, whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

Section 24. Part VII of chapter 718, Florida Statutes, consisting of sections 718.701, 718.702, 718.703, 718.704, 718.705, 718.706, 718.707, and 718.708, is created to read:

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

718.702 Legislative intent.--

(1) The Legislature acknowledges the massive downturn in the condominium market which has transpired throughout the state and the impact of such downturn on developers, lenders, unit owners, and condominium associations. Numerous condominium projects have either failed or are in the process of failing, whereby the condominium has a small percentage of third-party unit owners as compared to the unsold inventory of units. As a

2566 result of the inability to find purchasers for this inventory of  
2567 units, which results in part from the devaluing of real estate  
2568 in this state, developers are unable to satisfy the requirements  
2569 of their lenders, leading to defaults on mortgages.  
2570 Consequently, lenders are faced with the task of finding a  
2571 solution to the problem in order to be paid for their  
2572 investments.

2573 (2) The Legislature recognizes that all of the factors  
2574 listed in this section lead to condominiums becoming distressed,  
2575 resulting in detriment to the unit owners and the condominium  
2576 association on account of the resulting shortage of assessment  
2577 moneys available to support the financial requirements for  
2578 proper maintenance of the condominium. Such shortage and the  
2579 resulting lack of proper maintenance further erodes property  
2580 values. The Legislature finds that individuals and entities  
2581 within Florida and in other states have expressed interest in  
2582 purchasing unsold inventory in one or more condominium projects,  
2583 but are reticent to do so because of accompanying liabilities  
2584 inherited from the original developer, which are by definition  
2585 imputed to the successor purchaser, including a foreclosing  
2586 mortgagee. This results in the potential purchaser having  
2587 unknown and unquantifiable risks, and potential successor  
2588 purchasers are unwilling to accept such risks. The result is  
2589 that condominium projects stagnate, leaving all parties involved  
2590 at an impasse without the ability to find a solution.

2591 (3) The Legislature finds and declares that it is the  
2592 public policy of this state to protect the interests of  
2593 developers, lenders, unit owners, and condominium associations

2594 with regard to distressed condominiums, and that there is a need  
2595 for relief from certain provisions of the Florida Condominium  
2596 Act geared toward enabling economic opportunities within these  
2597 condominiums for successor purchasers, including foreclosing  
2598 mortgagees. Such relief would benefit existing unit owners and  
2599 condominium associations. The Legislature further finds and  
2600 declares that this situation cannot be open-ended without  
2601 potentially prejudicing the rights of unit owners and  
2602 condominium associations, and thereby declares that the  
2603 provisions of this part shall be used by purchasers of  
2604 condominium inventory for a specific and defined period.

2605 718.703 Definitions.--As used in this part, the term:

2606 (1) "Bulk assignee" means a person who:

2607 (a) Acquires more than seven condominium parcels as set  
2608 forth in s. 718.707; and

2609 (b) Receives an assignment of some or all of the rights of  
2610 the developer as are set forth in the declaration of condominium  
2611 or in this chapter by a written instrument recorded as an  
2612 exhibit to the deed or as a separate instrument in the public  
2613 records of the county in which the condominium is located.

2614 (2) "Bulk buyer" means a person who acquires more than  
2615 seven condominium parcels as set forth in s. 718.707 but who  
2616 does not receive an assignment of any developer rights other  
2617 than the right to conduct sales, leasing, and marketing  
2618 activities within the condominium.

2619 718.704 Assignment and assumption of developer rights by  
2620 bulk assignee; bulk buyer.--

2621 (1) A bulk assignee shall be deemed to have assumed and is

2622 liable for all duties and responsibilities of the developer  
2623 under the declaration and this chapter, except:

2624 (a) Warranties of the developer under s. 718.203(1) or s.  
2625 718.618, except for design, construction, development, or repair  
2626 work performed by or on behalf of such bulk assignee;

2627 (b) The obligation to:

2628 1. Fund converter reserves under s. 718.618 for a unit  
2629 which was not acquired by the bulk assignee; or

2630 2. Provide converter warranties on any portion of the  
2631 condominium property except as may be expressly provided by the  
2632 bulk assignee in the contract for purchase and sale executed  
2633 with a purchaser and pertaining to any design, construction,  
2634 development, or repair work performed by or on behalf of the  
2635 bulk assignee;

2636 (c) The requirement to provide the association with a  
2637 cumulative audit of the association's finances from the date of  
2638 formation of the condominium association as required by s.  
2639 718.301. However, the bulk assignee shall provide an audit for  
2640 the period for which the bulk assignee elects a majority of the  
2641 members of the board of administration;

2642 (d) Any liability arising out of or in connection with  
2643 actions taken by the board of administration or the developer-  
2644 appointed directors before the bulk assignee elects a majority  
2645 of the members of the board of administration; and

2646 (e) Any liability for or arising out of the developer's  
2647 failure to fund previous assessments or to resolve budgetary  
2648 deficits in relation to a developer's right to guarantee  
2649 assessments, except as otherwise provided in subsection (2).

2650  
2651 Further, the bulk assignee is responsible for delivering  
2652 documents and materials in accordance with s. 718.705(3). A bulk  
2653 assignee may expressly assume some or all of the obligations of  
2654 the developer described in paragraphs (a)-(e).

2655 (2) A bulk assignee receiving the assignment of the rights  
2656 of the developer to guarantee the level of assessments and fund  
2657 budgetary deficits pursuant to s. 718.116 shall be deemed to  
2658 have assumed and is liable for all obligations of the developer  
2659 with respect to such guarantee, including any applicable funding  
2660 of reserves to the extent required by law, for as long as the  
2661 guarantee remains in effect. A bulk assignee not receiving an  
2662 assignment of the right of the developer to guarantee the level  
2663 of assessments and fund budgetary deficits pursuant to s.  
2664 718.116 or a bulk buyer is not deemed to have assumed and is not  
2665 liable for the obligations of the developer with respect to such  
2666 guarantee, but is responsible for payment of assessments in the  
2667 same manner as all other owners of condominium parcels.

2668 (3) A bulk buyer is liable for the duties and  
2669 responsibilities of the developer under the declaration and this  
2670 chapter only to the extent provided in this part, together with  
2671 any other duties or responsibilities of the developer expressly  
2672 assumed in writing by the bulk buyer.

2673 (4) An acquirer of condominium parcels is not considered a  
2674 bulk assignee or a bulk buyer if the transfer to such acquirer  
2675 was made with the intent to hinder, delay, or defraud any  
2676 purchaser, unit owner, or the association, or if the acquirer is  
2677 a person who would constitute an insider under s. 726.102(7).



2678       (5) An assignment of developer rights to a bulk assignee  
2679 may be made by the developer, a previous bulk assignee, or a  
2680 court of competent jurisdiction acting on behalf of the  
2681 developer or the previous bulk assignee. At any particular time,  
2682 there may be no more than one bulk assignee within a  
2683 condominium, but there may be more than one bulk buyer. If more  
2684 than one acquirer of condominium parcels receives an assignment  
2685 of developer rights from the same person, the bulk assignee is  
2686 the acquirer whose instrument of assignment is recorded first in  
2687 applicable public records.

2688       718.705 Board of administration; transfer of control.--

2689       (1) For purposes of determining the timing for transfer of  
2690 control of the board of administration of the association to  
2691 unit owners other than the developer under ss. 718.301(1)(a) and  
2692 (b), if a bulk assignee is entitled to elect a majority of the  
2693 members of the board, a condominium parcel acquired by the bulk  
2694 assignee shall not be deemed to be conveyed to a purchaser, or  
2695 to be owned by an owner other than the developer, until such  
2696 condominium parcel is conveyed to an owner who is not a bulk  
2697 assignee.

2698       (2) Unless control of the board of administration of the  
2699 association has already been relinquished pursuant to s.  
2700 718.301(1), the bulk assignee is obligated to relinquish control  
2701 of the association in accordance with s. 718.301 and this part.

2702       (3) When a bulk assignee relinquishes control of the board  
2703 of administration as set forth in s. 718.301, the bulk assignee  
2704 shall deliver all of those items required by s. 718.301(4).  
2705 However, the bulk assignee is not required to deliver items and

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

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

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

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

(1) Before offering any units for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer shall

2734 file the following documents with the division and provide such  
2735 documents to a prospective purchaser:

2736 (a) An updated prospectus or offering circular, or a  
2737 supplement to the prospectus or offering circular, filed by the  
2738 creating developer prepared in accordance with s. 718.504, which  
2739 shall include the form of contract for purchase and sale in  
2740 compliance with s. 718.503(2);

2741 (b) An updated Frequently Asked Questions and Answers  
2742 sheet;

2743 (c) The executed escrow agreement if required under s.  
2744 718.202; and

2745 (d) The financial information required by s. 718.111(13).  
2746 However, if a financial information report does not exist for  
2747 the fiscal year before acquisition of title by the bulk assignee  
2748 or bulk buyer, or accounting records cannot be obtained in good  
2749 faith by the bulk assignee or the bulk buyer which would permit  
2750 preparation of the required financial information report, the  
2751 bulk assignee or bulk buyer is excused from the requirement of  
2752 this paragraph. However, the bulk assignee or bulk buyer must  
2753 include in the purchase contract the following statement in  
2754 conspicuous type:

2755 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S.  
2756 718.111(13) FOR THE IMMEDIATELY PRECEDING FISCAL YEAR OF THE  
2757 ASSOCIATION IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER  
2758 AS A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE  
2759 ASSOCIATION.

2760 (2) Before offering any units for sale or for lease for a  
2761 term exceeding 5 years, a bulk assignee shall file with the

2762 division and provide to a prospective purchaser a disclosure  
2763 statement that must include, but is not limited to:

2764 (a) A description to the purchaser of any rights of the  
2765 developer which have been assigned to the bulk assignee;

2766 (b) The following statement in conspicuous type:

2767 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER  
2768 UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR  
2769 DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY  
2770 OR ON BEHALF OF SELLER; and

2771 (c) If the condominium is a conversion subject to part VI,  
2772 the following statement in conspicuous type:

2773 SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO  
2774 PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF  
2775 THE CONDOMINIUM PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF  
2776 THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE  
2777 SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN,  
2778 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON  
2779 BEHALF OF THE SELLER.

2780 (3) In addition to the requirements set forth in  
2781 subsection (1), a bulk assignee or bulk buyer must comply with  
2782 the nondeveloper disclosure requirements set forth in s.  
2783 718.503(2) before offering any units for sale or for lease for a  
2784 term exceeding 5 years.

2785 (4) A bulk assignee, while it is in control of the board  
2786 of administration of the association, may not authorize, on  
2787 behalf of the association:

2788 (a) The waiver of reserves or the reduction of funding of  
2789 the reserves in accordance with s. 718.112(2)(f)2., unless

2790 approved by a majority of the voting interests not controlled by  
2791 the developer, bulk assignee, and bulk buyer; or

2792 (b) The use of reserve expenditures for other purposes in  
2793 accordance with s. 718.112(2)(f)3., unless approved by a  
2794 majority of the voting interests not controlled by the  
2795 developer, bulk assignee, and bulk buyer.

2796 (5) A bulk assignee, while it is in control of the board  
2797 of administration of the association, shall comply with the  
2798 requirements imposed upon developers to transfer control of the  
2799 association to the unit owners in accordance with s. 718.301.

2800 (6) A bulk assignee or a bulk buyer shall comply with all  
2801 the requirements of s. 718.302 regarding any contracts entered  
2802 into by the association during the period the bulk assignee or  
2803 bulk buyer maintains control of the board of administration.  
2804 Unit owners shall be afforded all the protections contained in  
2805 s. 718.302 regarding agreements entered into by the association  
2806 before unit owners other than the developer, bulk assignee, or  
2807 bulk buyer elected a majority of the board of administration.

2808 (7) A bulk buyer shall comply with the requirements  
2809 contained in the declaration regarding any transfer of a unit,  
2810 including sales, leases, and subleases. A bulk buyer is not  
2811 entitled to any exemptions afforded a developer or successor  
2812 developer under this chapter regarding any transfer of a unit,  
2813 including sales, leases, or subleases.

2814 718.707 Time limitation for classification as bulk  
2815 assignee or bulk buyer.--A person acquiring condominium parcels  
2816 may not be classified as a bulk assignee or bulk buyer unless  
2817 the condominium parcels were acquired before July 1, 2011. The

CS/CS/CS/HB 27, Engrossed 2

2009

2818 date of such acquisition shall be determined by the date of  
2819 recording of a deed or other instrument of conveyance for such  
2820 parcels in the public records of the county in which the  
2821 condominium is located, or by the date of issuance of a  
2822 certificate of title in a foreclosure proceeding with respect to  
2823 such condominium parcels.

2824 718.708 Liability of developers and others.--An assignment  
2825 of developer rights to a bulk assignee or bulk buyer does not  
2826 release the developer from any liabilities under the declaration  
2827 or this chapter. This part does not limit the liability of the  
2828 developer for claims brought by unit owners, bulk assignees, or  
2829 bulk buyers for violations of this chapter by the developer,  
2830 unless specifically excluded in this part. Nothing contained  
2831 within this part waives, releases, compromises, or limits the  
2832 liability of contractors, subcontractors, materialmen,  
2833 manufacturers, architects, engineers, or any participant in the  
2834 design or construction of a condominium for any claim brought by  
2835 an association, unit owners, bulk assignees, or bulk buyers  
2836 arising from the design of the condominium, construction  
2837 defects, misrepresentations associated with condominium  
2838 property, or violations of this chapter, unless specifically  
2839 excluded in this part.

2840 Section 25. All new residential construction in any deed-  
2841 restricted community that requires mandatory membership in the  
2842 association under chapter 718, chapter 719, or chapter 720,  
2843 Florida Statutes, must comply with the provisions of Pub. L. No.  
2844 110-140, Title XIV, ss. 1402 to 1406, 15 U.S.C. ss. 8001-8005

2845 Section 26. This act shall take effect July 1, 2009.