

By Senator Dockery

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1 A bill to be entitled
2 An act relating to residential properties; amending s.
3 34.01, F.S.; correcting a cross-reference to conform
4 to changes made by the act; amending s. 468.436, F.S.;
5 revising a ground for disciplinary action relating to
6 misconduct or negligence; requiring the Department of
7 Business and Professional Regulation to enter an order
8 permanently revoking the license of a community
9 association manager under certain circumstances;
10 amending s. 718.103, F.S.; revising the definition of
11 the term "developer" to exclude a bulk assignee or
12 bulk buyer; amending s. 718.111, F.S.; providing
13 requirements for an association to borrow funds or
14 commit to a line of credit, including a meeting of the
15 board of administration and prior notice; providing
16 requirements for association access to a unit,
17 including prior notice; providing an exception for
18 emergencies; amending s. 718.112, F.S.; revising
19 notice requirements for board of administration
20 meetings; revising requirements for the reappointment
21 of certain board members; providing an exception to
22 the expiration of the terms of members of certain
23 boards; revising board eligibility requirements;
24 revising notice requirements for board candidates;
25 establishing requirements for newly elected board
26 members; providing requirements for bylaw amendments
27 by a board of administration; amending s. 718.115,
28 F.S.; requiring that certain services obtained
29 pursuant to a bulk contract as provided in the

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30 declaration be deemed a common expense; requiring that
31 such contracts contain certain provisions; authorizing
32 the cancellation of certain contracts; amending s.
33 718.116, F.S.; authorizing association demands for
34 assessment payments from tenants of delinquent owners
35 during pendency of a foreclosure action of a
36 condominium unit; providing for notice; providing for
37 credits against rent for assessment payments by
38 tenants; providing for eviction proceedings for
39 nonpayment; providing for effect of provisions on
40 rights and duties of the tenant and association;
41 amending s. 718.1265, F.S.; limiting the exercise of
42 specified special powers under a declared state of
43 emergency unless a certain number of units are
44 rendered uninhabitable by the emergency; amending s.
45 718.301, F.S.; revising conditions under which unit
46 owners other than the developer may elect not less
47 than a majority of the members of the board of
48 administration of an association; amending s. 718.303,
49 F.S.; revising provisions relating to levy of fines;
50 providing for suspension of certain rights of access
51 and voting rights under certain circumstances relating
52 to nonpayment of assessments, fines, or other charges
53 payable to the association; amending s. 718.501, F.S.;
54 providing for jurisdiction of the Division of Florida
55 Condominiums, Timeshares, and Mobile Homes of the
56 department to investigate complaints concerning
57 failure to maintain common elements; prohibiting an
58 officer or director from acting as such for a

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59 specified period after having been found to have
60 committed specified violations; providing for payment
61 of restitution and costs of investigation and
62 prosecution in certain circumstances; amending s.
63 718.5012, F.S.; providing a responsibility of the
64 ombudsman to prepare and adopt a "Florida Condominium
65 Handbook"; requiring the publishing and updating of
66 the handbook to be done in conjunction with the
67 division; providing the purpose of the handbook;
68 requiring the handbook to be published on the
69 ombudsman's Internet website; creating part VII of ch.
70 718, F.S., relating to distressed condominium relief;
71 creating s. 718.701, F.S.; providing a short title;
72 creating s. 718.702, F.S.; providing legislative
73 findings and intent; creating s. 718.703, F.S.;
74 defining the terms "bulk assignee" and "bulk buyer";
75 creating s. 718.704, F.S.; providing for the
76 assignment of developer rights to and the assumption
77 of developer rights by a bulk assignee; specifying
78 liabilities of bulk assignees and bulk buyers;
79 providing exceptions; providing additional
80 responsibilities of bulk assignees and bulk buyers;
81 authorizing certain entities to assign developer
82 rights to a bulk assignee; limiting the number of bulk
83 assignees at any given time; creating s. 718.705,
84 F.S.; providing for the transfer of control of a board
85 of administration; providing effects of such transfer
86 on parcels acquired by a bulk assignee; providing
87 obligations of a bulk assignee upon the transfer of

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88 control of a board of administration; requiring that a
89 bulk assignee certify certain information in writing;
90 providing for the resolution of a conflict between
91 specified provisions of state law; providing that the
92 failure of a bulk assignee or bulk buyer to comply
93 with specified provisions of state law results in the
94 loss of certain protections and exemptions; creating
95 s. 718.706, F.S.; requiring that a bulk assignee or
96 bulk buyer file certain information with the division
97 before offering any units for sale or lease in excess
98 of a specified term; requiring that a copy of such
99 information be provided to a prospective purchaser;
100 requiring that certain contracts and disclosure
101 statements contain specified statements; requiring
102 that a bulk assignee or bulk buyer comply with certain
103 disclosure requirements; prohibiting a bulk assignee
104 from taking certain actions on behalf of an
105 association while the bulk assignee is in control of
106 the board of administration of the association and
107 requiring that such bulk assignee comply with certain
108 requirements; requiring that a bulk assignee or bulk
109 buyer comply with certain requirements regarding
110 certain contracts; providing unit owners with
111 specified protections regarding certain contracts;
112 requiring that a bulk buyer comply with certain
113 requirements regarding the transfer of a unit;
114 creating s. 718.707, F.S.; prohibiting a person from
115 being classified as a bulk assignee or bulk buyer
116 unless condominium parcels were acquired before a

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117 specified date; providing for the determination of the
118 date of acquisition of a parcel; creating s. 718.708,
119 F.S.; providing that the assignment of developer
120 rights to a bulk assignee or bulk buyer does not
121 release a developer from certain liabilities;
122 preserving certain liabilities for certain parties;
123 amending s. 720.302, F.S.; correcting a cross-
124 reference to conform to changes made by the act;
125 establishing legislative intent; amending s. 720.303,
126 F.S.; revising provisions relating to homeowners'
127 association board meetings, inspection and copying of
128 records, reserve accounts of budgets, and recall of
129 directors; prohibiting a salary or compensation for
130 certain association personnel; providing exceptions;
131 providing requirements for the borrowing of funds or
132 committing to a line of credit by the board; providing
133 requirements relating to transfer fees; amending s.
134 720.304, F.S.; revising requirements with respect to
135 the display of flags; amending s. 720.305, F.S.;
136 authorizing fines assessed against members which
137 exceed a certain amount to become a lien against a
138 parcel; amending s. 720.306, F.S.; providing
139 requirements for secret ballots; requiring newly
140 elected members of a board of directors to make
141 certain certifications in writing to the association;
142 providing for disqualification for failure to make
143 such certifications; requiring an association to
144 retain certifications for a specified time; amending
145 s. 720.3085, F.S.; requiring a tenant in a unit in

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146 which the regular assessments are delinquent to pay
147 future regular assessments to the association;
148 requiring notice; providing for eviction by the
149 association; specifying rights of the tenant; creating
150 s. 720.3095, F.S.; providing requirements of
151 maintenance and management contracts of a homeowners'
152 association; requiring disclosures; providing a
153 penalty; providing exceptions; creating s. 720.3096,
154 F.S.; limiting contracts entered into by a homeowners'
155 association; providing requirements for such
156 contracts; repealing s. 720.311, F.S., relating to a
157 procedure for dispute resolution in homeowners'
158 associations; amending s. 720.401, F.S.; requiring
159 that the disclosure summary to prospective parcel
160 owners include additional provisions; creating part IV
161 of ch. 720, F.S., relating to dispute resolution;
162 creating s. 720.501, F.S.; providing a short title;
163 creating s. 720.502, F.S.; providing legislative
164 findings; creating s. 720.503, F.S.; specifying
165 applicability of provisions for mediation and
166 arbitration of disputes in homeowners' associations;
167 providing exceptions; providing for injunctive relief;
168 providing for the tolling of applicable statutes of
169 limitations; creating s. 720.504, F.S.; requiring that
170 the notice of dispute be delivered before referral to
171 mediation or arbitration; providing notice
172 requirements; creating s. 720.505, F.S.; creating a
173 statutory notice form for referral to mediation;
174 providing delivery requirements; requiring parties to

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175 share costs; requiring the selection of a mediator and
176 times to meet; providing penalties for failure to
177 mediate; creating s. 720.506, F.S.; creating an opt-
178 out provision and procedures; creating s. 720.507,
179 F.S.; creating a statutory notice form for referral to
180 arbitration; providing delivery requirements;
181 requiring parties to share costs; requiring the
182 selection of an arbitrator and times to meet;
183 providing penalties for failure to arbitrate;
184 providing subpoena powers and requirements; providing
185 requirements for and repercussions of subsequent
186 judicial resolution of the dispute; creating s.
187 720.508, F.S.; providing for rules of procedure;
188 providing for confidentiality; providing applicability
189 to other rules of procedure and provisions of law;
190 specifying that arbitration awards have certain
191 precedential value; creating s. 720.509, F.S.;
192 specifying qualifications for mediators and
193 arbitrators; creating s. 720.510, F.S.; providing for
194 enforcement of mediation agreements and arbitration
195 awards; requiring all new residential construction in
196 a deed-restricted community that requires mandatory
197 membership in the association under specified
198 provisions of Florida law to comply with specified
199 provisions of federal law; providing an effective
200 date.

201

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

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204 Section 1. Paragraph (d) of subsection (1) of section
205 34.01, Florida Statutes, is amended to read:

206 34.01 Jurisdiction of county court.—

207 (1) County courts shall have original jurisdiction:

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

211 Section 2. Paragraph (b) of subsection (2) of section
212 468.436, Florida Statutes, is amended, and subsection (6) is
213 added to that section, to read:

214 468.436 Disciplinary proceedings.—

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

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

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

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

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

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

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

230 (6) Upon the fifth or later finding that a community
231 association manager is guilty of any of the grounds set forth in
232 subsection (2), or upon the third or later finding that a

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233 community association manager is guilty of a specific ground for
234 which the disciplinary actions set forth in subsection (2) may
235 be taken, the department's discretion under subsection (4) shall
236 not apply and the division shall enter an order permanently
237 revoking the license.

238 Section 3. Subsection (16) of section 718.103, Florida
239 Statutes, is amended to read:

240 718.103 Definitions.—As used in this chapter, the term:

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

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

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

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

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

260 Section 4. Subsections (3) and (5) of section 718.111,
261 Florida Statutes, are amended to read:

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262 718.111 The association.—

263 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,
264 SUE, AND BE SUED.—

265 (a) The association may contract, sue, or be sued with
266 respect to the exercise or nonexercise of its powers. For these
267 purposes, the powers of the association include, but are not
268 limited to, the maintenance, management, and operation of the
269 condominium property.

270 (b) After control of the association is obtained by unit
271 owners other than the developer, the association may institute,
272 maintain, settle, or appeal actions or hearings in its name on
273 behalf of all unit owners concerning matters of common interest
274 to most or all unit owners, including, but not limited to, the
275 common elements; the roof and structural components of a
276 building or other improvements; mechanical, electrical, and
277 plumbing elements serving an improvement or a building;
278 representations of the developer pertaining to any existing or
279 proposed commonly used facilities; and protesting ad valorem
280 taxes on commonly used facilities and on units; and may defend
281 actions in eminent domain or bring inverse condemnation actions.

282 (c) If the association has the authority to maintain a
283 class action, the association may be joined in an action as
284 representative of that class with reference to litigation and
285 disputes involving the matters for which the association could
286 bring a class action. Nothing herein limits any statutory or
287 common-law right of any individual unit owner or class of unit
288 owners to bring any action without participation by the
289 association which may otherwise be available.

290 (d) The borrowing of funds or committing to a line of

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291 credit by the board of administration shall be considered a
292 special assessment, and any meeting of the board of
293 administration to discuss such matters must be noticed as
294 provided in s. 718.112(2)(c). The board may not borrow funds or
295 enter into a line of credit for any purpose unless the specific
296 use of the funds from the loan or line of credit is set forth in
297 the notice of meeting with the same specificity as required for
298 a special assessment or unless the borrowing or line of credit
299 has received the prior approval of at least two-thirds of the
300 voting interests of the association.

301 (5) RIGHT OF ACCESS TO UNITS.—The association has the
302 irrevocable right of access to each unit during reasonable
303 hours, when necessary for the maintenance, repair, or
304 replacement of any common elements or of any portion of a unit
305 to be maintained by the association pursuant to the declaration
306 or as necessary to prevent damage to the common elements or to a
307 unit or units. Except in cases of emergency, the association
308 must give the unit owner advance written notice of not less than
309 24 hours of its intent to access the unit and such access must
310 be by two persons, one of whom must be a member of the board of
311 administration or a manager or employee of the association and
312 one of whom must be an authorized representative of the
313 association. The identity of the authorized representative
314 seeking access to the unit shall be provided to the unit owner
315 prior to entering the unit.

316 Section 5. Paragraphs (b), (c), (d), and (h) of subsection
317 (2) of section 718.112, Florida Statutes, are amended to read:
318 718.112 Bylaws.—

319 (2) REQUIRED PROVISIONS.—The bylaws shall provide for the

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320 following and, if they do not do so, shall be deemed to include
321 the following:

322 (b) *Quorum; voting requirements; proxies.*—

323 1. Unless a lower number is provided in the bylaws, the
324 percentage of voting interests required to constitute a quorum
325 at a meeting of the members shall be a majority of the voting
326 interests. Unless otherwise provided in this chapter or in the
327 declaration, articles of incorporation, or bylaws, and except as
328 provided in sub-subparagraph ~~subparagraph~~ (d)3.a., decisions
329 shall be made by owners of a majority of the voting interests
330 represented at a meeting at which a quorum is present.

331 2. Except as specifically otherwise provided herein, after
332 January 1, 1992, unit owners may not vote by general proxy, but
333 may vote by limited proxies substantially conforming to a
334 limited proxy form adopted by the division. No voting interest
335 or consent right allocated to a unit owned by the association
336 shall be exercised or considered for any purpose, whether for a
337 quorum, an election, or otherwise. Limited proxies and general
338 proxies may be used to establish a quorum. Limited proxies shall
339 be used for votes taken to waive or reduce reserves in
340 accordance with subparagraph (f)2.; for votes taken to waive the
341 financial reporting requirements of s. 718.111(13); for votes
342 taken to amend the declaration pursuant to s. 718.110; for votes
343 taken to amend the articles of incorporation or bylaws pursuant
344 to this section; and for any other matter for which this chapter
345 requires or permits a vote of the unit owners. Except as
346 provided in paragraph (d), after January 1, 1992, no proxy,
347 limited or general, shall be used in the election of board
348 members. General proxies may be used for other matters for which

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349 limited proxies are not required, and may also be used in voting
350 for nonsubstantive changes to items for which a limited proxy is
351 required and given. Notwithstanding the provisions of this
352 subparagraph, unit owners may vote in person at unit owner
353 meetings. Nothing contained herein shall limit the use of
354 general proxies or require the use of limited proxies for any
355 agenda item or election at any meeting of a timeshare
356 condominium association.

357 3. Any proxy given shall be effective only for the specific
358 meeting for which originally given and any lawfully adjourned
359 meetings thereof. In no event shall any proxy be valid for a
360 period longer than 90 days after the date of the first meeting
361 for which it was given. Every proxy is revocable at any time at
362 the pleasure of the unit owner executing it.

363 4. A member of the board of administration or a committee
364 may submit in writing his or her agreement or disagreement with
365 any action taken at a meeting that the member did not attend.
366 This agreement or disagreement may not be used as a vote for or
367 against the action taken and may not be used for the purposes of
368 creating a quorum.

369 5. When any of the board or committee members meet by
370 telephone conference, those board or committee members attending
371 by telephone conference may be counted toward obtaining a quorum
372 and may vote by telephone. A telephone speaker must be used so
373 that the conversation of those board or committee members
374 attending by telephone may be heard by the board or committee
375 members attending in person as well as by any unit owners
376 present at a meeting.

377 (c) *Board of administration meetings.*—Meetings of the board

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378 of administration at which a quorum of the members is present
379 shall be open to all unit owners. Any unit owner may tape record
380 or videotape meetings of the board of administration. The right
381 to attend such meetings includes the right to speak at such
382 meetings with reference to all designated agenda items. The
383 division shall adopt reasonable rules governing the tape
384 recording and videotaping of the meeting. The association may
385 adopt written reasonable rules governing the frequency,
386 duration, and manner of unit owner statements. Adequate notice
387 of all meetings, which notice shall specifically incorporate an
388 identification of agenda items, shall be posted conspicuously on
389 the condominium property at least 48 continuous hours preceding
390 the meeting except in an emergency. If 20 percent of the voting
391 interests petition the board to address an item of business, the
392 board shall at its next regular board meeting or at a special
393 meeting of the board, but not later than 60 days after the
394 receipt of the petition, place the item on the agenda. Any item
395 not included on the notice may be taken up on an emergency basis
396 by at least a majority plus one of the members of the board.
397 Such emergency action shall be noticed and ratified at the next
398 regular meeting of the board. However, written notice of any
399 meeting at which nonemergency special assessments, or at which
400 amendment to rules regarding unit use, will be considered shall
401 be mailed, delivered, or electronically transmitted to the unit
402 owners and posted conspicuously on the condominium property not
403 less than 14 days prior to the meeting. Evidence of compliance
404 with this 14-day notice shall be made by an affidavit executed
405 by the person providing the notice and filed among the official
406 records of the association. Upon notice to the unit owners, the

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407 board shall by duly adopted rule designate a specific location
408 on the condominium property or association property upon which
409 all notices of board meetings shall be posted. If there is no
410 condominium property or association property upon which notices
411 can be posted, notices of board meetings shall be mailed,
412 delivered, or electronically transmitted at least 14 days before
413 the meeting to the owner of each unit. In lieu of or in addition
414 to the physical posting of notice of any meeting of the board of
415 administration on the condominium property, the association may,
416 by reasonable rule, adopt a procedure for conspicuously posting
417 and repeatedly broadcasting the notice and the agenda on a
418 closed-circuit cable television system serving the condominium
419 association. However, if broadcast notice is used in lieu of a
420 notice posted physically on the condominium property, the notice
421 and agenda must be broadcast at least four times every broadcast
422 hour of each day that a posted notice is otherwise required
423 under this section. When broadcast notice is provided, the
424 notice and agenda must be broadcast in a manner and for a
425 sufficient continuous length of time so as to allow an average
426 reader to observe the notice and read and comprehend the entire
427 content of the notice and the agenda. Notice of any meeting in
428 which regular or special assessments against unit owners are to
429 be considered for any reason shall specifically state that
430 assessments will be considered and the nature of, the actual
431 ~~estimated~~ cost of, and a description of the purposes for such
432 assessments. Meetings of a committee to take final action on
433 behalf of the board or make recommendations to the board
434 regarding the association budget are subject to the provisions
435 of this paragraph. Meetings of a committee that does not take

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436 final action on behalf of the board or make recommendations to
437 the board regarding the association budget are subject to the
438 provisions of this section, unless those meetings are exempted
439 from this section by the bylaws of the association.

440 Notwithstanding any other law, the requirement that board
441 meetings and committee meetings be open to the unit owners is
442 inapplicable to meetings between the board or a committee and
443 the association's attorney, with respect to proposed or pending
444 litigation, when the meeting is held for the purpose of seeking
445 or rendering legal advice.

446 (d) *Unit owner meetings.*—

447 1. There shall be an annual meeting of the unit owners held
448 at the location provided in the association bylaws and, if the
449 bylaws are silent as to the location, the meeting shall be held
450 within 45 miles of the condominium property. However, such
451 distance requirement does not apply to an association governing
452 a timeshare condominium. Unless the bylaws provide otherwise, a
453 vacancy on the board caused by the expiration of a director's
454 term shall be filled by electing a new board member, and the
455 election shall be by secret ballot; however, if the number of
456 vacancies equals ~~or exceeds~~ the number of candidates, no
457 election is required. Except in an association governing a
458 timeshare condominium, the terms of all members of the board
459 shall expire at the annual meeting and such board members may
460 stand for reelection unless otherwise permitted by the bylaws.
461 In the event that the bylaws permit staggered terms of no more
462 than 2 years and upon approval of a majority of the total voting
463 interests, the association board members may serve 2-year
464 staggered terms. If the number ~~no person is interested in or~~

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465 ~~demonstrates an intention to run for the position~~ of a board
466 members member whose terms have ~~term has~~ expired according to
467 the provisions of this subparagraph exceeds the number of
468 eligible association members showing interest in or
469 demonstrating an intention to run for the vacant positions, each
470 ~~such~~ board member whose term has expired shall become eligible
471 for reappointment ~~be automatically reappointed~~ to the board of
472 administration and need not stand for reelection. In a
473 condominium association of more than 10 units, or in a
474 condominium association that does not include timeshare units,
475 coowners of a unit may not serve as members of the board of
476 directors at the same time unless they own more than one unit
477 and are not co-occupants of a unit or unless there is an
478 insufficient number of eligible association members showing
479 interest in or demonstrating an intention to run for the vacant
480 positions on the board. Any unit owner desiring to be a
481 candidate for board membership must ~~shall~~ comply with sub-
482 subparagraph ~~subparagraph~~ 3.a. A person who has been suspended
483 or removed by the division under this chapter, or who is
484 delinquent in the payment of any fee, fine, or special or
485 regular assessment as provided in paragraph (n), is not eligible
486 for board membership. A person who has been convicted of any
487 felony in this state or in a United States District or
488 Territorial Court, or who has been convicted of any offense in
489 another jurisdiction that would be considered a felony if
490 committed in this state, is not eligible for board membership
491 unless such felon's civil rights have been restored for a period
492 of no less than 5 years as of the date on which such person
493 seeks election to the board. The validity of an action by the

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494 board is not affected if it is later determined that a member of
495 the board is ineligible for board membership due to having been
496 convicted of a felony.

497 2. The bylaws shall provide the method of calling meetings
498 of unit owners, including annual meetings. Written notice, which
499 notice must include an agenda, shall be mailed, hand delivered,
500 or electronically transmitted to each unit owner at least 14
501 days prior to the annual meeting and shall be posted in a
502 conspicuous place on the condominium property at least 14
503 continuous days preceding the annual meeting. Upon notice to the
504 unit owners, the board shall by duly adopted rule designate a
505 specific location on the condominium property or association
506 property upon which all notices of unit owner meetings shall be
507 posted; however, if there is no condominium property or
508 association property upon which notices can be posted, this
509 requirement does not apply. In lieu of or in addition to the
510 physical posting of notice of any meeting of the unit owners on
511 the condominium property, the association may, by reasonable
512 rule, adopt a procedure for conspicuously posting and repeatedly
513 broadcasting the notice and the agenda on a closed-circuit cable
514 television system serving the condominium association. However,
515 if broadcast notice is used in lieu of a notice posted
516 physically on the condominium property, the notice and agenda
517 must be broadcast at least four times every broadcast hour of
518 each day that a posted notice is otherwise required under this
519 section. When broadcast notice is provided, the notice and
520 agenda must be broadcast in a manner and for a sufficient
521 continuous length of time so as to allow an average reader to
522 observe the notice and read and comprehend the entire content of

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523 the notice and the agenda. Unless a unit owner waives in writing
524 the right to receive notice of the annual meeting, such notice
525 shall be hand delivered, mailed, or electronically transmitted
526 to each unit owner. Notice for meetings and notice for all other
527 purposes shall be mailed to each unit owner at the address last
528 furnished to the association by the unit owner, or hand
529 delivered to each unit owner. However, if a unit is owned by
530 more than one person, the association shall provide notice, for
531 meetings and all other purposes, to that one address which the
532 developer initially identifies for that purpose and thereafter
533 as one or more of the owners of the unit shall so advise the
534 association in writing, or if no address is given or the owners
535 of the unit do not agree, to the address provided on the deed of
536 record. An officer of the association, or the manager or other
537 person providing notice of the association meeting, shall
538 provide an affidavit or United States Postal Service certificate
539 of mailing, to be included in the official records of the
540 association affirming that the notice was mailed or hand
541 delivered, in accordance with this provision.

542 3.a. The members of the board shall be elected by written
543 ballot or voting machine. Proxies shall in no event be used in
544 electing the board, either in general elections or elections to
545 fill vacancies caused by recall, resignation, or otherwise,
546 unless otherwise provided in this chapter. Not less than 60 days
547 before a scheduled election, the association shall mail,
548 deliver, or electronically transmit, whether by separate
549 association mailing or included in another association mailing,
550 delivery, or transmission, including regularly published
551 newsletters, to each unit owner entitled to a vote, a first

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552 notice of the date of the election along ~~with a certification~~
553 ~~form provided by the division attesting that he or she has read~~
554 ~~and understands, to the best of his or her ability, the~~
555 ~~governing documents of the association and the provisions of~~
556 ~~this chapter and any applicable rules.~~ Any unit owner or other
557 eligible person desiring to be a candidate for the board must
558 give written notice of his or her intent to be a candidate to
559 the association not less than 40 days before a scheduled
560 election. Together with the written notice and agenda as set
561 forth in subparagraph 2., the association shall mail, deliver,
562 or electronically transmit a second notice of the election to
563 all unit owners entitled to vote therein, together with a ballot
564 which shall list all candidates. Upon request of a candidate,
565 ~~the association shall include~~ an information sheet, no larger
566 than 8 1/2 inches by 11 inches, which must be furnished by the
567 candidate not less than 35 days before the election, shall ~~along~~
568 ~~with the signed certification form provided for in this~~
569 ~~subparagraph,~~ to be included with the mailing, delivery, or
570 transmission of the ballot, with the costs of mailing, delivery,
571 or electronic transmission and copying to be borne by the
572 association. The association is not liable for the contents of
573 the information sheets prepared by the candidates. In order to
574 reduce costs, the association may print or duplicate the
575 information sheets on both sides of the paper. The division
576 shall by rule establish voting procedures consistent with the
577 provisions contained herein, including rules establishing
578 procedures for giving notice by electronic transmission and
579 rules providing for the secrecy of ballots. Elections shall be
580 decided by a plurality of those ballots cast. There shall be no

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581 quorum requirement; however, at least 20 percent of the eligible
582 voters must cast a ballot in order to have a valid election of
583 members of the board. No unit owner shall permit any other
584 person to vote his or her ballot, and any such ballots
585 improperly cast shall be deemed invalid, provided any unit owner
586 who violates this provision may be fined by the association in
587 accordance with s. 718.303. A unit owner who needs assistance in
588 casting the ballot for the reasons stated in s. 101.051 may
589 obtain assistance in casting the ballot. The regular election
590 shall occur on the date of the annual meeting. The provisions of
591 this sub-subparagraph ~~subparagraph~~ shall not apply to timeshare
592 condominium associations. Notwithstanding the provisions of this
593 sub-subparagraph ~~subparagraph~~, an election is not required
594 unless more candidates file notices of intent to run or are
595 nominated than board vacancies exist.

596 b. Within 90 days after being elected to the board, each
597 newly elected director shall certify in writing to the secretary
598 of the association that he or she has read the association's
599 declarations of covenants and restrictions, articles of
600 incorporation, bylaws, and current written policies; that he or
601 she will work to uphold such documents and policies to the best
602 of his or her ability; and that he or she will faithfully
603 discharge his or her fiduciary responsibility to the
604 association's members. In lieu of this written certification,
605 the newly elected director may submit a certificate of
606 satisfactory completion of the educational curriculum
607 administered by a division-approved condominium education
608 provider. Failure to timely file the written certification or
609 educational certificate automatically disqualifies the director

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610 from service on the board. The secretary shall cause the
611 association to retain a director's written certification or
612 educational certificate for inspection by the members for 5
613 years after a director's election. Failure to have such written
614 certification or educational certificate on file does not affect
615 the validity of any appropriate action.

616 4. Any approval by unit owners called for by this chapter
617 or the applicable declaration or bylaws, including, but not
618 limited to, the approval requirement in s. 718.111(8), shall be
619 made at a duly noticed meeting of unit owners and shall be
620 subject to all requirements of this chapter or the applicable
621 condominium documents relating to unit owner decisionmaking,
622 except that unit owners may take action by written agreement,
623 without meetings, on matters for which action by written
624 agreement without meetings is expressly allowed by the
625 applicable bylaws or declaration or any statute that provides
626 for such action.

627 5. Unit owners may waive notice of specific meetings if
628 allowed by the applicable bylaws or declaration or any statute.
629 If authorized by the bylaws, notice of meetings of the board of
630 administration, unit owner meetings, except unit owner meetings
631 called to recall board members under paragraph (j), and
632 committee meetings may be given by electronic transmission to
633 unit owners who consent to receive notice by electronic
634 transmission.

635 6. Unit owners shall have the right to participate in
636 meetings of unit owners with reference to all designated agenda
637 items. However, the association may adopt reasonable rules
638 governing the frequency, duration, and manner of unit owner

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639 participation.

640 7. Any unit owner may tape record or videotape a meeting of
641 the unit owners subject to reasonable rules adopted by the
642 division.

643 8. Unless otherwise provided in the bylaws, any vacancy
644 occurring on the board before the expiration of a term may be
645 filled by the affirmative vote of the majority of the remaining
646 directors, even if the remaining directors constitute less than
647 a quorum, or by the sole remaining director. In the alternative,
648 a board may hold an election to fill the vacancy, in which case
649 the election procedures must conform to the requirements of sub-
650 subparagraph ~~subparagraph~~ 3.a. unless the association governs 10
651 units or fewer ~~less~~ and has opted out of the statutory election
652 process, in which case the bylaws of the association control.
653 Unless otherwise provided in the bylaws, a board member
654 appointed or elected under this section shall fill the vacancy
655 for the unexpired term of the seat being filled. Filling
656 vacancies created by recall is governed by paragraph (j) and
657 rules adopted by the division.

658

659 Notwithstanding subparagraph ~~subparagraphs~~ (b)2. and sub-
660 subparagraph (d)3.a., an association of 10 or fewer units may,
661 by the affirmative vote of a majority of the total voting
662 interests, provide for different voting and election procedures
663 in its bylaws, which vote may be by a proxy specifically
664 delineating the different voting and election procedures. The
665 different voting and election procedures may provide for
666 elections to be conducted by limited or general proxy.

667 (h) *Amendment of bylaws.*—

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668 1. The method by which the bylaws may be amended consistent
669 with the provisions of this chapter shall be stated. If the
670 bylaws fail to provide a method of amendment, the bylaws may be
671 amended if the amendment is approved by the owners of not less
672 than two-thirds of the voting interests.

673 2. No bylaw shall be revised or amended by reference to its
674 title or number only. Proposals to amend existing bylaws shall
675 contain the full text of the bylaws to be amended; new words
676 shall be inserted in the text underlined, and words to be
677 deleted shall be lined through with hyphens. However, if the
678 proposed change is so extensive that this procedure would
679 hinder, rather than assist, the understanding of the proposed
680 amendment, it is not necessary to use underlining and hyphens as
681 indicators of words added or deleted, but, instead, a notation
682 must be inserted immediately preceding the proposed amendment in
683 substantially the following language: "Substantial rewording of
684 bylaw. See bylaw for present text."

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

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

691 Section 6. Paragraph (d) of subsection (1) of section
692 718.115, Florida Statutes, is amended to read:

693 718.115 Common expenses and common surplus.—

694 (1)

695 (d) If so provided in the declaration, the cost of
696 communications services as defined in chapter 202, information

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697 services, or Internet services ~~a master antenna television~~
698 ~~system or duly franchised cable television service~~ obtained
699 pursuant to a bulk contract shall be deemed a common expense. If
700 the declaration does not provide for the cost of communications
701 services as defined in chapter 202, information services, or
702 Internet services ~~a master antenna television system or duly~~
703 ~~franchised cable television service~~ obtained under a bulk
704 contract as a common expense, the board may enter into such a
705 contract, and the cost of the service will be a common expense
706 but allocated on a per-unit basis rather than a percentage basis
707 if the declaration provides for other than an equal sharing of
708 common expenses, and any contract entered into before July 1,
709 1998, in which the cost of the service is not equally divided
710 among all unit owners, may be changed by vote of a majority of
711 the voting interests present at a regular or special meeting of
712 the association, to allocate the cost equally among all units.
713 The contract shall be for a term of not less than 2 years.

714 1. Any contract made by the board after the effective date
715 hereof for communications services as defined in chapter 202,
716 information services, or Internet services ~~a community antenna~~
717 ~~system or duly franchised cable television service~~ may be
718 canceled by a majority of the voting interests present at the
719 next regular or special meeting of the association. Any member
720 may make a motion to cancel the ~~said~~ contract, but if no motion
721 is made or if such motion fails to obtain the required majority
722 at the next regular or special meeting, whichever occurs ~~is~~
723 sooner, following the making of the contract, ~~then~~ such contract
724 shall be deemed ratified for the term therein expressed.

725 2. Any such contract shall provide, and shall be deemed to

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726 provide if not expressly set forth, that any hearing-impaired or
727 legally blind unit owner who does not occupy the unit with a
728 non-hearing-impaired or sighted person, or any unit owner
729 receiving supplemental security income under Title XVI of the
730 Social Security Act or food stamps as administered by the
731 Department of Children and Family Services pursuant to s.
732 414.31, may discontinue the cable or video service without
733 incurring disconnect fees, penalties, or subsequent service
734 charges, and, as to such units, the owners shall not be required
735 to pay any common expenses charge related to such service. If
736 fewer ~~less~~ than all members of an association share the expenses
737 of cable or video service ~~television~~, the expense shall be
738 shared equally by all participating unit owners. The association
739 may use the provisions of s. 718.116 to enforce payment of the
740 shares of such costs by the unit owners receiving cable or video
741 service ~~television~~.

742 Section 7. Subsection (11) is added to section 718.116,
743 Florida Statutes, to read:

744 718.116 Assessments; liability; lien and priority;
745 interest; collection.-

746 (11) During the pendency of any foreclosure action of a
747 condominium unit, if the unit is occupied by a tenant and the
748 unit owner is delinquent in the payment of regular assessments,
749 the association may demand that the tenant pay to the
750 association the future regular assessments related to the
751 condominium unit. The demand shall be continuing in nature, and
752 upon demand the tenant shall continue to pay the regular
753 assessments to the association until the association releases
754 the tenant or the tenant discontinues tenancy in the unit. The

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755 association shall mail written notice to the unit owner of the
756 association's demand that the tenant pay regular assessments to
757 the association. The tenant shall not be liable for increases in
758 the amount of the regular assessment due unless the tenant was
759 reasonably notified of the increase prior to the day that the
760 rent is due. The tenant shall be given a credit against rents
761 due to the unit owner in the amount of assessments paid to the
762 association. The association shall, upon request, provide the
763 tenant with written receipts for payments made. The association
764 may issue notices under s. 83.56 and may sue for eviction under
765 ss. 83.59-83.625 as if the association were a landlord under
766 part II of chapter 83 should the tenant fail to pay an
767 assessment. However, the association shall not otherwise be
768 considered a landlord under chapter 83 and shall specifically
769 not have any duty under s. 83.51. The tenant shall not, by
770 virtue of payment of assessments, have any of the rights of a
771 unit owner to vote in any election or to examine the books and
772 records of the association. A court may supersede the effect of
773 this subsection by appointing a receiver.

774 Section 8. Subsection (2) of section 718.1265, Florida
775 Statutes, is amended to read:

776 718.1265 Association emergency powers.—

777 (2) The special powers authorized under subsection (1)
778 shall be limited to that time reasonably necessary to protect
779 the health, safety, and welfare of the association and the unit
780 owners and the unit owners' family members, tenants, guests,
781 agents, or invitees and shall be reasonably necessary to
782 mitigate further damage and make emergency repairs.

783 Additionally, unless 20 percent or more of the units are made

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784 uninhabitable by the emergency, the special powers authorized
785 under subsection (1) may only be exercised during the term of
786 the Governor's executive order or proclamation declaring the
787 state of emergency in the locale in which the condominium is
788 located.

789 Section 9. Subsection (1) of section 718.301, Florida
790 Statutes, is amended to read:

791 718.301 Transfer of association control; claims of defect
792 by association.—

793 (1) When unit owners other than the developer own 15
794 percent or more of the units in a condominium that will be
795 operated ultimately by an association, the unit owners other
796 than the developer shall be entitled to elect no less than one-
797 third of the members of the board of administration of the
798 association. Unit owners other than the developer are entitled
799 to elect not less than a majority of the members of the board of
800 administration of an association:

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

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

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

811 (d) When some of the units have been conveyed to purchasers
812 and none of the others are being constructed or offered for sale

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813 by the developer in the ordinary course of business;

814 (e) When the developer files a petition seeking protection
815 in bankruptcy;

816 (f) When a receiver for the developer is appointed by a
817 circuit court and is not discharged within 30 days after such
818 appointment, unless the court determines within 30 days after
819 appointment of the receiver that transfer of control would be
820 detrimental to the association or its members; or

821 (g) Seven years after recordation of the declaration of
822 condominium; or, in the case of an association which may
823 ultimately operate more than one condominium, 7 years after
824 recordation of the declaration for the first condominium it
825 operates; or, in the case of an association operating a phase
826 condominium created pursuant to s. 718.403, 7 years after
827 recordation of the declaration creating the initial phase,
828
829 whichever occurs first. The developer is entitled to elect at
830 least one member of the board of administration of an
831 association as long as the developer holds for sale in the
832 ordinary course of business at least 5 percent, in condominiums
833 with fewer than 500 units, and 2 percent, in condominiums with
834 more than 500 units, of the units in a condominium operated by
835 the association. Following the time the developer relinquishes
836 control of the association, the developer may exercise the right
837 to vote any developer-owned units in the same manner as any
838 other unit owner except for purposes of reacquiring control of
839 the association or selecting the majority members of the board
840 of administration.

841 Section 10. Section 718.303, Florida Statutes, is amended

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842 to read:

843 718.303 Obligations of owners; waiver; suspension of access
844 or voting rights or levy of fine against unit by association.-

845 (1) Each unit owner, each tenant and other invitee, and
846 each association shall be governed by, and shall comply with the
847 provisions of, this chapter, the declaration, the documents
848 creating the association, and the association bylaws and the
849 provisions thereof shall be deemed expressly incorporated into
850 any lease of a unit. Actions for damages or for injunctive
851 relief, or both, for failure to comply with these provisions may
852 be brought by the association or by a unit owner against:

853 (a) The association.

854 (b) A unit owner.

855 (c) Directors designated by the developer, for actions
856 taken by them prior to the time control of the association is
857 assumed by unit owners other than the developer.

858 (d) Any director who willfully and knowingly fails to
859 comply with these provisions.

860 (e) Any tenant leasing a unit, and any other invitee
861 occupying a unit.

862
863 The prevailing party in any such action or in any action in
864 which the purchaser claims a right of voidability based upon
865 contractual provisions as required in s. 718.503(1)(a) is
866 entitled to recover reasonable attorney's fees. A unit owner
867 prevailing in an action between the association and the unit
868 owner under this section, in addition to recovering his or her
869 reasonable attorney's fees, may recover additional amounts as
870 determined by the court to be necessary to reimburse the unit

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871 owner for his or her share of assessments levied by the
872 association to fund its expenses of the litigation. This relief
873 does not exclude other remedies provided by law. Actions arising
874 under this subsection shall not be deemed to be actions for
875 specific performance.

876 (2) A provision of this chapter may not be waived if the
877 waiver would adversely affect the rights of a unit owner or the
878 purpose of the provision, except that unit owners or members of
879 a board of administration may waive notice of specific meetings
880 in writing if provided by the bylaws. Any instruction given in
881 writing by a unit owner or purchaser to an escrow agent may be
882 relied upon by an escrow agent, whether or not such instruction
883 and the payment of funds thereunder might constitute a waiver of
884 any provision of this chapter.

885 (3) If a unit owner is delinquent for more than 90 days in
886 the payment of regular or special assessments or the declaration
887 or bylaws so provide, the association may suspend, for a
888 reasonable time, the right of a unit owner or a unit's occupant,
889 licensee, or invitee to use common elements, common facilities,
890 or any other association property. This subsection does not
891 apply to limited common elements intended to be used only by
892 that unit, common elements that must be used to access the unit,
893 utility services provided to the unit, parking spaces, or
894 elevators. The association may also levy reasonable fines
895 against a unit for the failure of the owner of the unit, or its
896 occupant, licensee, or invitee, to comply with any provision of
897 the declaration, the association bylaws, or reasonable rules of
898 the association. No fine will become a lien against a unit. A ~~No~~
899 fine may not exceed \$100 per violation. However, a fine may be

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900 levied on the basis of each day of a continuing violation, with
901 a single notice and opportunity for hearing, provided that no
902 such fine shall in the aggregate exceed \$1,000. A ~~No~~ fine may
903 not be levied and a suspension may not be imposed unless the
904 association first gives ~~except after giving~~ reasonable notice
905 and opportunity for a hearing to the unit owner and, if
906 applicable, its occupant, licensee, or invitee. The hearing must
907 be held before a committee of other unit owners who are neither
908 board members nor persons residing in a board member's
909 household. If the committee does not agree with the fine or
910 suspension, the fine or suspension may not be levied or imposed.
911 ~~The provisions of this subsection do not apply to unoccupied~~
912 ~~units.~~

913 (4) The notice and hearing requirements of subsection (3)
914 do not apply to the imposition of suspensions or fines against a
915 unit owner or a unit's occupant, licensee, or invitee because of
916 the failure to pay any amounts due the association. If such a
917 fine or suspension is imposed, the association must levy the
918 fine or impose a reasonable suspension at a properly noticed
919 board meeting, and after the imposition of such fine or
920 suspension, the association must notify the unit owner and, if
921 applicable, the unit's occupant, licensee, or invitee by mail or
922 hand delivery.

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

927 Section 11. Subsection (1) of section 718.501, Florida
928 Statutes, is amended to read:

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929 718.501 Authority, responsibility, and duties of Division
930 of Florida Condominiums, Timeshares, and Mobile Homes.—

931 (1) The Division of Florida Condominiums, Timeshares, and
932 Mobile Homes of the Department of Business and Professional
933 Regulation, referred to as the "division" in this part, has the
934 power to enforce and ensure compliance with the provisions of
935 this chapter and rules relating to the development,
936 construction, sale, lease, ownership, operation, and management
937 of residential condominium units. In performing its duties, the
938 division has complete jurisdiction to investigate complaints and
939 enforce compliance with the provisions of this chapter with
940 respect to associations that are still under developer control
941 and complaints against developers involving improper turnover or
942 failure to turnover, pursuant to s. 718.301. However, after
943 turnover has occurred, the division shall only have jurisdiction
944 to investigate complaints related to financial issues, failure
945 to maintain common elements, elections, and unit owner access to
946 association records pursuant to s. 718.111(12).

947 (a)1. The division may make necessary public or private
948 investigations within or outside this state to determine whether
949 any person has violated this chapter or any rule or order
950 hereunder, to aid in the enforcement of this chapter, or to aid
951 in the adoption of rules or forms hereunder.

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

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958 and attests under oath that such documents were prepared as a
959 result of an examination or inspection conducted pursuant to
960 this chapter.

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

965 (c) For the purpose of any investigation under this
966 chapter, the division director or any officer or employee
967 designated by the division director may administer oaths or
968 affirmations, subpoena witnesses and compel their attendance,
969 take evidence, and require the production of any matter which is
970 relevant to the investigation, including the existence,
971 description, nature, custody, condition, and location of any
972 books, documents, or other tangible things and the identity and
973 location of persons having knowledge of relevant facts or any
974 other matter reasonably calculated to lead to the discovery of
975 material evidence. Upon the failure by a person to obey a
976 subpoena or to answer questions propounded by the investigating
977 officer and upon reasonable notice to all persons affected
978 thereby, the division may apply to the circuit court for an
979 order compelling compliance.

980 (d) Notwithstanding any remedies available to unit owners
981 and associations, if the division has reasonable cause to
982 believe that a violation of any provision of this chapter or
983 related rule has occurred, the division may institute
984 enforcement proceedings in its own name against any developer,
985 association, officer, or member of the board of administration,
986 or its assignees or agents, as follows:

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987 1. The division may permit a person whose conduct or
988 actions may be under investigation to waive formal proceedings
989 and enter into a consent proceeding whereby orders, rules, or
990 letters of censure or warning, whether formal or informal, may
991 be entered against the person.

992 2. The division may issue an order requiring the developer,
993 association, developer-designated officer, or developer-
994 designated member of the board of administration, developer-
995 designated assignees or agents, community association manager,
996 or community association management firm to cease and desist
997 from the unlawful practice and take such affirmative action as
998 in the judgment of the division will carry out the purposes of
999 this chapter. If the division finds that a developer,
1000 association, officer, or member of the board of administration,
1001 or its assignees or agents, is violating or is about to violate
1002 any provision of this chapter, any rule adopted or order issued
1003 by the division, or any written agreement entered into with the
1004 division, and presents an immediate danger to the public
1005 requiring an immediate final order, it may issue an emergency
1006 cease and desist order reciting with particularity the facts
1007 underlying such findings. The emergency cease and desist order
1008 is effective for 90 days. If the division begins nonemergency
1009 cease and desist proceedings, the emergency cease and desist
1010 order remains effective until the conclusion of the proceedings
1011 under ss. 120.569 and 120.57.

1012 3. If a developer fails to pay any restitution determined
1013 by the division to be owed, plus any accrued interest at the
1014 highest rate permitted by law, within 30 days after expiration
1015 of any appellate time period of a final order requiring payment

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1016 of restitution or the conclusion of any appeal thereof,
1017 whichever is later, the division shall bring an action in
1018 circuit or county court on behalf of any association, class of
1019 unit owners, lessees, or purchasers for restitution, declaratory
1020 relief, injunctive relief, or any other available remedy. The
1021 division may also temporarily revoke its acceptance of the
1022 filing for the developer to which the restitution relates until
1023 payment of restitution is made.

1024 4. The division may petition the court for the appointment
1025 of a receiver or conservator. If appointed, the receiver or
1026 conservator may take action to implement the court order to
1027 ensure the performance of the order and to remedy any breach
1028 thereof. In addition to all other means provided by law for the
1029 enforcement of an injunction or temporary restraining order, the
1030 circuit court may impound or sequester the property of a party
1031 defendant, including books, papers, documents, and related
1032 records, and allow the examination and use of the property by
1033 the division and a court-appointed receiver or conservator.

1034 5. The division may apply to the circuit court for an order
1035 of restitution whereby the defendant in an action brought
1036 pursuant to subparagraph 4. shall be ordered to make restitution
1037 of those sums shown by the division to have been obtained by the
1038 defendant in violation of this chapter. Such restitution shall,
1039 at the option of the court, be payable to the conservator or
1040 receiver appointed pursuant to subparagraph 4. or directly to
1041 the persons whose funds or assets were obtained in violation of
1042 this chapter.

1043 6. The division may impose a civil penalty against a
1044 developer or association, or its assignee or agent, for any

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1045 violation of this chapter or a rule adopted under this chapter.
1046 The division may impose a civil penalty individually against any
1047 officer or board member who willfully and knowingly violates a
1048 provision of this chapter, adopted rule, or a final order of the
1049 division; may order the removal of such individual as an officer
1050 or from the board of administration or as an officer of the
1051 association; and may prohibit such individual from serving as an
1052 officer or on the board of a community association for a period
1053 of time. The term "willfully and knowingly" means that the
1054 division informed the officer or board member that his or her
1055 action or intended action violates this chapter, a rule adopted
1056 under this chapter, or a final order of the division and that
1057 the officer or board member refused to comply with the
1058 requirements of this chapter, a rule adopted under this chapter,
1059 or a final order of the division. The division, prior to
1060 initiating formal agency action under chapter 120, shall afford
1061 the officer or board member an opportunity to voluntarily comply
1062 with this chapter, a rule adopted under this chapter, or a final
1063 order of the division. An officer or board member who complies
1064 within 10 days is not subject to a civil penalty. A penalty may
1065 be imposed on the basis of each day of continuing violation, but
1066 in no event shall the penalty for any offense exceed \$5,000. By
1067 January 1, 1998, the division shall adopt, by rule, penalty
1068 guidelines applicable to possible violations or to categories of
1069 violations of this chapter or rules adopted by the division. The
1070 guidelines must specify a meaningful range of civil penalties
1071 for each such violation of the statute and rules and must be
1072 based upon the harm caused by the violation, the repetition of
1073 the violation, and upon such other factors deemed relevant by

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1074 the division. For example, the division may consider whether the
1075 violations were committed by a developer or owner-controlled
1076 association, the size of the association, and other factors. The
1077 guidelines must designate the possible mitigating or aggravating
1078 circumstances that justify a departure from the range of
1079 penalties provided by the rules. It is the legislative intent
1080 that minor violations be distinguished from those which endanger
1081 the health, safety, or welfare of the condominium residents or
1082 other persons and that such guidelines provide reasonable and
1083 meaningful notice to the public of likely penalties that may be
1084 imposed for proscribed conduct. This subsection does not limit
1085 the ability of the division to informally dispose of
1086 administrative actions or complaints by stipulation, agreed
1087 settlement, or consent order. All amounts collected shall be
1088 deposited with the Chief Financial Officer to the credit of the
1089 Division of Florida Condominiums, Timeshares, and Mobile Homes
1090 Trust Fund. If a developer fails to pay the civil penalty and
1091 the amount deemed to be owed to the association, the division
1092 shall issue an order directing that such developer cease and
1093 desist from further operation until such time as the civil
1094 penalty is paid or may pursue enforcement of the penalty in a
1095 court of competent jurisdiction. If an association fails to pay
1096 the civil penalty, the division shall pursue enforcement in a
1097 court of competent jurisdiction, and the order imposing the
1098 civil penalty or the cease and desist order will not become
1099 effective until 20 days after the date of such order. Any action
1100 commenced by the division shall be brought in the county in
1101 which the division has its executive offices or in the county
1102 where the violation occurred.

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1103 7. If a unit owner presents the division with proof that
1104 the unit owner has requested access to official records in
1105 writing by certified mail, and that after 10 days the unit owner
1106 again made the same request for access to official records in
1107 writing by certified mail, and that more than 10 days has
1108 elapsed since the second request and the association has still
1109 failed or refused to provide access to official records as
1110 required by this chapter, the division shall issue a subpoena
1111 requiring production of the requested records where the records
1112 are kept pursuant to s. 718.112.

1113 8. In addition to subparagraph 6., the division may seek
1114 the imposition of a civil penalty through the circuit court for
1115 any violation for which the division may issue a notice to show
1116 cause under paragraph (r). The civil penalty shall be at least
1117 \$500 but no more than \$5,000 for each violation. The court may
1118 also award to the prevailing party court costs and reasonable
1119 attorney's fees and, if the division prevails, may also award
1120 reasonable costs of investigation.

1121 9. Notwithstanding subparagraph 6., when the division finds
1122 that an officer or director has intentionally falsified
1123 association records with the intent to conceal material facts
1124 from the division, the board, or unit owners, the division shall
1125 prohibit the officer or director from acting as an officer or
1126 director of any condominium, cooperative, or homeowners'
1127 association for at least 1 year.

1128 10. When the division finds that any person has derived an
1129 improper personal benefit from a condominium association, the
1130 division shall order the person to pay restitution to the
1131 association and shall order the person to pay to the division

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1132 the costs of investigation and prosecution.

1133 (e) The division may prepare and disseminate a prospectus
1134 and other information to assist prospective owners, purchasers,
1135 lessees, and developers of residential condominiums in assessing
1136 the rights, privileges, and duties pertaining thereto.

1137 (f) The division has authority to adopt rules pursuant to
1138 ss. 120.536(1) and 120.54 to implement and enforce the
1139 provisions of this chapter.

1140 (g) The division shall establish procedures for providing
1141 notice to an association and the developer during the period
1142 where the developer controls the association when the division
1143 is considering the issuance of a declaratory statement with
1144 respect to the declaration of condominium or any related
1145 document governing in such condominium community.

1146 (h) The division shall furnish each association which pays
1147 the fees required by paragraph (2)(a) a copy of this act,
1148 subsequent changes to this act on an annual basis, an amended
1149 version of this act as it becomes available from the Secretary
1150 of State's office on a biennial basis, and the rules adopted
1151 thereto on an annual basis.

1152 (i) The division shall annually provide each association
1153 with a summary of declaratory statements and formal legal
1154 opinions relating to the operations of condominiums which were
1155 rendered by the division during the previous year.

1156 (j) The division shall provide training and educational
1157 programs for condominium association board members and unit
1158 owners. The training may, in the division's discretion, include
1159 web-based electronic media, and live training and seminars in
1160 various locations throughout the state. The division shall have

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1161 the authority to review and approve education and training
1162 programs for board members and unit owners offered by providers
1163 and shall maintain a current list of approved programs and
1164 providers and shall make such list available to board members
1165 and unit owners in a reasonable and cost-effective manner.

1166 (k) The division shall maintain a toll-free telephone
1167 number accessible to condominium unit owners.

1168 (l) The division shall develop a program to certify both
1169 volunteer and paid mediators to provide mediation of condominium
1170 disputes. The division shall provide, upon request, a list of
1171 such mediators to any association, unit owner, or other
1172 participant in arbitration proceedings under s. 718.1255
1173 requesting a copy of the list. The division shall include on the
1174 list of volunteer mediators only the names of persons who have
1175 received at least 20 hours of training in mediation techniques
1176 or who have mediated at least 20 disputes. In order to become
1177 initially certified by the division, paid mediators must be
1178 certified by the Supreme Court to mediate court cases in county
1179 or circuit courts. However, the division may adopt, by rule,
1180 additional factors for the certification of paid mediators,
1181 which factors must be related to experience, education, or
1182 background. Any person initially certified as a paid mediator by
1183 the division must, in order to continue to be certified, comply
1184 with the factors or requirements imposed by rules adopted by the
1185 division.

1186 (m) When a complaint is made, the division shall conduct
1187 its inquiry with due regard to the interests of the affected
1188 parties. Within 30 days after receipt of a complaint, the
1189 division shall acknowledge the complaint in writing and notify

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1190 the complainant whether the complaint is within the jurisdiction
1191 of the division and whether additional information is needed by
1192 the division from the complainant. The division shall conduct
1193 its investigation and shall, within 90 days after receipt of the
1194 original complaint or of timely requested additional
1195 information, take action upon the complaint. However, the
1196 failure to complete the investigation within 90 days does not
1197 prevent the division from continuing the investigation,
1198 accepting or considering evidence obtained or received after 90
1199 days, or taking administrative action if reasonable cause exists
1200 to believe that a violation of this chapter or a rule of the
1201 division has occurred. If an investigation is not completed
1202 within the time limits established in this paragraph, the
1203 division shall, on a monthly basis, notify the complainant in
1204 writing of the status of the investigation. When reporting its
1205 action to the complainant, the division shall inform the
1206 complainant of any right to a hearing pursuant to ss. 120.569
1207 and 120.57.

1208 (n) Condominium association directors, officers, and
1209 employees; condominium developers; community association
1210 managers; and community association management firms have an
1211 ongoing duty to reasonably cooperate with the division in any
1212 investigation pursuant to this section. The division shall refer
1213 to local law enforcement authorities any person whom the
1214 division believes has altered, destroyed, concealed, or removed
1215 any record, document, or thing required to be kept or maintained
1216 by this chapter with the purpose to impair its verity or
1217 availability in the department's investigation.

1218 (o) The division may:

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1219 1. Contract with agencies in this state or other
1220 jurisdictions to perform investigative functions; or

1221 2. Accept grants-in-aid from any source.

1222 (p) The division shall cooperate with similar agencies in
1223 other jurisdictions to establish uniform filing procedures and
1224 forms, public offering statements, advertising standards, and
1225 rules and common administrative practices.

1226 (q) The division shall consider notice to a developer to be
1227 complete when it is delivered to the developer's address
1228 currently on file with the division.

1229 (r) In addition to its enforcement authority, the division
1230 may issue a notice to show cause, which shall provide for a
1231 hearing, upon written request, in accordance with chapter 120.

1232 (s) The division shall submit to the Governor, the
1233 President of the Senate, the Speaker of the House of
1234 Representatives, and the chairs of the legislative
1235 appropriations committees an annual report that includes, but
1236 need not be limited to, the number of training programs provided
1237 for condominium association board members and unit owners, the
1238 number of complaints received by type, the number and percent of
1239 complaints acknowledged in writing within 30 days and the number
1240 and percent of investigations acted upon within 90 days in
1241 accordance with paragraph (m), and the number of investigations
1242 exceeding the 90-day requirement. The annual report shall also
1243 include an evaluation of the division's core business processes
1244 and make recommendations for improvements, including statutory
1245 changes. The report shall be submitted by September 30 following
1246 the end of the fiscal year.

1247 Section 12. Subsection (4) of section 718.5012, Florida

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1248 Statutes, is amended to read:

1249 718.5012 Ombudsman; powers and duties.—The ombudsman shall
1250 have the powers that are necessary to carry out the duties of
1251 his or her office, including the following specific powers:

1252 (4) To act as liaison between the division, unit owners,
1253 boards of directors, board members, community association
1254 managers, and other affected parties. The ombudsman shall
1255 develop policies and procedures to assist unit owners, boards of
1256 directors, board members, community association managers, and
1257 other affected parties to understand their rights and
1258 responsibilities as set forth in this chapter and the
1259 condominium documents governing their respective association.
1260 The ombudsman shall coordinate and assist in the preparation and
1261 adoption of educational and reference material, and shall
1262 endeavor to coordinate with private or volunteer providers of
1263 these services, so that the availability of these resources is
1264 made known to the largest possible audience. In conjunction with
1265 the division, included in the preparation and adoption of
1266 educational and reference materials shall be the publishing and
1267 updating of a "Florida Condominium Handbook" to facilitate
1268 understanding of this chapter, the contents of which are stated
1269 in a clear, conspicuous, and easily understandable manner. The
1270 handbook shall be made publicly available on the ombudsman's
1271 Internet website.

1272 Section 13. Part VII of chapter 718, Florida Statutes,
1273 consisting of sections 718.701, 718.702, 718.703, 718.704,
1274 718.705, 718.706, 718.707, and 718.708, is created to read:

1275 PART VII

1276 DISTRESSED CONDOMINIUM RELIEF

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1277 718.701 Short title.—This part may be cited as the
1278 “Distressed Condominium Relief Act.”

1279 718.702 Legislative intent.—

1280 (1) The Legislature acknowledges the massive downturn in
1281 the condominium market which has transpired throughout the state
1282 and the impact of such downturn on developers, lenders, unit
1283 owners, and condominium associations. Numerous condominium
1284 projects have either failed or are in the process of failing,
1285 whereby the condominium has a small percentage of third-party
1286 unit owners as compared to the unsold inventory of units. As a
1287 result of the inability to find purchasers for this inventory of
1288 units, which results in part from the devaluing of real estate
1289 in this state, developers are unable to satisfy the requirements
1290 of their lenders, leading to defaults on mortgages.

1291 Consequently, lenders are faced with the task of finding a
1292 solution to the problem in order to be paid for their
1293 investments.

1294 (2) The Legislature recognizes that all of the factors
1295 listed in this section lead to condominiums becoming distressed,
1296 resulting in detriment to the unit owners and the condominium
1297 association on account of the resulting shortage of assessment
1298 moneys available to support the financial requirements for
1299 proper maintenance of the condominium. Such shortage and the
1300 resulting lack of proper maintenance further erode property
1301 values. The Legislature finds that individuals and entities
1302 within Florida and in other states have expressed interest in
1303 purchasing unsold inventory in one or more condominium projects,
1304 but are reticent to do so because of accompanying liabilities
1305 inherited from the original developer, which are by definition

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1306 imputed to the successor purchaser, including a foreclosing
1307 mortgagee. This results in the potential purchaser having
1308 unknown and unquantifiable risks, and potential successor
1309 purchasers are unwilling to accept such risks. The result is
1310 that condominium projects stagnate, leaving all parties involved
1311 at an impasse without the ability to find a solution.

1312 (3) The Legislature finds and declares that it is the
1313 public policy of this state to protect the interests of
1314 developers, lenders, unit owners, and condominium associations
1315 with regard to distressed condominiums, and that there is a need
1316 for relief from certain provisions of the Florida Condominium
1317 Act geared toward enabling economic opportunities within these
1318 condominiums for successor purchasers, including foreclosing
1319 mortgagees. Such relief would benefit existing unit owners and
1320 condominium associations. The Legislature further finds and
1321 declares that this situation cannot be open-ended without
1322 potentially prejudicing the rights of unit owners and
1323 condominium associations, and thereby declares that the
1324 provisions of this part shall be used by purchasers of
1325 condominium inventory for a specific and defined period.

1326 718.703 Definitions.—As used in this part, the term:

1327 (1) "Bulk assignee" means a person who:

1328 (a) Acquires more than seven condominium parcels as set
1329 forth in s. 718.707; and

1330 (b) Receives an assignment of some or all of the rights of
1331 the developer as are set forth in the declaration of condominium
1332 or in this chapter by a written instrument recorded as an
1333 exhibit to the deed or as a separate instrument in the public
1334 records of the county in which the condominium is located.

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1335 (2) "Bulk buyer" means a person who acquires more than
1336 seven condominium parcels as set forth in s. 718.707 but who
1337 does not receive an assignment of any developer rights other
1338 than the right to conduct sales, leasing, and marketing
1339 activities within the condominium.

1340 718.704 Assignment of developer rights to and assumption of
1341 developer rights by bulk assignee; bulk buyer.—

1342 (1) A bulk assignee shall be deemed to have assumed and is
1343 liable for all duties and responsibilities of the developer
1344 under the declaration and this chapter, except:

1345 (a) Warranties of the developer under s. 718.203(1) or s.
1346 718.618, except for design, construction, development, or repair
1347 work performed by or on behalf of such bulk assignee.

1348 (b) The obligation to:

1349 1. Fund converter reserves under s. 718.618 for a unit that
1350 was not acquired by the bulk assignee; or

1351 2. Provide converter warranties on any portion of the
1352 condominium property except as may be expressly provided by the
1353 bulk assignee in the contract for purchase and sale executed
1354 with a purchaser and pertaining to any design, construction,
1355 development, or repair work performed by or on behalf of the
1356 bulk assignee.

1357 (c) The requirement to provide the association with a
1358 cumulative audit of the association's finances from the date of
1359 formation of the condominium association as required by s.
1360 718.301. However, the bulk assignee shall provide an audit for
1361 the period for which the bulk assignee elects a majority of the
1362 members of the board of administration.

1363 (d) Any liability arising out of or in connection with

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1364 actions taken by the board of administration or the developer-
1365 appointed directors before the bulk assignee elects a majority
1366 of the members of the board of administration.

1367 (e) Any liability for or arising out of the developer's
1368 failure to fund previous assessments or to resolve budgetary
1369 deficits in relation to a developer's right to guarantee
1370 assessments, except as otherwise provided in subsection (2).

1371
1372 Further, the bulk assignee is responsible for delivering
1373 documents and materials in accordance with s. 718.705(3). A bulk
1374 assignee may expressly assume some or all of the obligations of
1375 the developer described in paragraphs (a)-(e).

1376 (2) A bulk assignee receiving the assignment of the rights
1377 of the developer to guarantee the level of assessments and fund
1378 budgetary deficits pursuant to s. 718.116 shall be deemed to
1379 have assumed and is liable for all obligations of the developer
1380 with respect to such guarantee, including any applicable funding
1381 of reserves to the extent required by law, for as long as the
1382 guarantee remains in effect. A bulk assignee not receiving an
1383 assignment of the right of the developer to guarantee the level
1384 of assessments and fund budgetary deficits pursuant to s.
1385 718.116 or a bulk buyer is not deemed to have assumed and is not
1386 liable for the obligations of the developer with respect to such
1387 guarantee, but is responsible for payment of assessments in the
1388 same manner as all other owners of condominium parcels.

1389 (3) A bulk buyer is liable for the duties and
1390 responsibilities of the developer under the declaration and this
1391 chapter only to the extent provided in this part, together with
1392 any other duties or responsibilities of the developer expressly

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1393 assumed in writing by the bulk buyer.

1394 (4) An acquirer of condominium parcels is not considered a
1395 bulk assignee or a bulk buyer if the transfer to such acquirer
1396 was made with the intent to hinder, delay, or defraud any
1397 purchaser, unit owner, or the association, or if the acquirer is
1398 a person who would constitute an insider under s. 726.102(7).

1399 (5) An assignment of developer rights to a bulk assignee
1400 may be made by the developer, a previous bulk assignee, or a
1401 court of competent jurisdiction acting on behalf of the
1402 developer or the previous bulk assignee. At any particular time,
1403 there may be no more than one bulk assignee within a
1404 condominium, but there may be more than one bulk buyer. If more
1405 than one acquirer of condominium parcels receives an assignment
1406 of developer rights from the same person, the bulk assignee is
1407 the acquirer whose instrument of assignment is recorded first in
1408 applicable public records.

1409 718.705 Board of administration; transfer of control.—

1410 (1) For purposes of determining the timing for transfer of
1411 control of the board of administration of the association to
1412 unit owners other than the developer under s. 718.301(1)(a) or
1413 (b), if a bulk assignee is entitled to elect a majority of the
1414 members of the board, a condominium parcel acquired by the bulk
1415 assignee shall not be deemed to be conveyed to a purchaser, or
1416 to be owned by an owner other than the developer, until such
1417 condominium parcel is conveyed to an owner who is not a bulk
1418 assignee.

1419 (2) Unless control of the board of administration of the
1420 association has already been relinquished pursuant to s.
1421 718.301(1), the bulk assignee is obligated to relinquish control

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1422 of the association in accordance with s. 718.301 and this part.

1423 (3) When a bulk assignee relinquishes control of the board
1424 of administration as set forth in s. 718.301, the bulk assignee
1425 shall deliver all of those items required by s. 718.301(4).
1426 However, the bulk assignee is not required to deliver items and
1427 documents not in the possession of the bulk assignee during the
1428 period during which the bulk assignee was the owner of
1429 condominium parcels. In conjunction with the acquisition of
1430 condominium parcels, a bulk assignee shall undertake a good
1431 faith effort to obtain the documents and materials required to
1432 be provided to the association pursuant to s. 718.301(4). To the
1433 extent the bulk assignee is not able to obtain all of such
1434 documents and materials, the bulk assignee shall certify in
1435 writing to the association the names or descriptions of the
1436 documents and materials that were not obtainable by the bulk
1437 assignee. Delivery of the certificate relieves the bulk assignee
1438 of responsibility for the delivery of the documents and
1439 materials referenced in the certificate as otherwise required
1440 under ss. 718.112 and 718.301 and this part. The responsibility
1441 of the bulk assignee for the audit required by s. 718.301(4)
1442 shall commence as of the date on which the bulk assignee elected
1443 a majority of the members of the board of administration.

1444 (4) If a conflict arises between the provisions or
1445 application of this section and s. 718.301, this section shall
1446 prevail.

1447 (5) Failure of a bulk assignee or bulk buyer to comply with
1448 all the requirements contained in this part shall result in the
1449 loss of any and all protections or exemptions provided under
1450 this part.

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1451 718.706 Specific provisions pertaining to offering of units
1452 by a bulk assignee or bulk buyer.-

1453 (1) Before offering any units for sale or for lease for a
1454 term exceeding 5 years, a bulk assignee or bulk buyer must file
1455 the following documents with the division and provide such
1456 documents to a prospective purchaser:

1457 (a) An updated prospectus or offering circular, or a
1458 supplement to the prospectus or offering circular, filed by the
1459 creating developer prepared in accordance with s. 718.504, which
1460 shall include the form of contract for purchase and sale in
1461 compliance with s. 718.503(2).

1462 (b) An updated Frequently Asked Questions and Answers
1463 sheet.

1464 (c) The executed escrow agreement if required under s.
1465 718.202.

1466 (d) The financial information required by s. 718.111(13).
1467 However, if a financial information report does not exist for
1468 the fiscal year before acquisition of title by the bulk assignee
1469 or bulk buyer, or accounting records cannot be obtained in good
1470 faith by the bulk assignee or bulk buyer which would permit
1471 preparation of the required financial information report, the
1472 bulk assignee or bulk buyer is excused from the requirement of
1473 this paragraph. However, the bulk assignee or bulk buyer must
1474 include in the purchase contract the following statement in
1475 conspicuous type:

1476
1477 THE FINANCIAL INFORMATION REPORT REQUIRED UNDER
1478 SECTION 718.111(13), FLORIDA STATUTES, FOR THE
1479 IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION

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1480 IS NOT AVAILABLE OR CANNOT BE CREATED BY THE SELLER AS
1481 A RESULT OF INSUFFICIENT ACCOUNTING RECORDS OF THE
1482 ASSOCIATION.

1483
1484 (2) Before offering any units for sale or for lease for a
1485 term exceeding 5 years, a bulk assignee must file with the
1486 division and provide to a prospective purchaser a disclosure
1487 statement that must include, but is not limited to:

1488 (a) A description to the purchaser of any rights of the
1489 developer which have been assigned to the bulk assignee.

1490 (b) The following statement in conspicuous type:

1491
1492 SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE
1493 DEVELOPER UNDER SECTION 718.203(1) OR SECTION 718.618,
1494 FLORIDA STATUTES, AS APPLICABLE, EXCEPT FOR DESIGN,
1495 CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY
1496 OR ON BEHALF OF SELLER.

1497
1498 (c) If the condominium is a conversion subject to part VI,
1499 the following statement in conspicuous type:

1500
1501 SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR
1502 TO PROVIDE CONVERTER WARRANTIES UNDER SECTION 718.618,
1503 FLORIDA STATUTES, ON ANY PORTION OF THE CONDOMINIUM
1504 PROPERTY EXCEPT AS MAY BE EXPRESSLY REQUIRED OF THE
1505 SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED
1506 BY THE SELLER AND THE PREVIOUS DEVELOPER AND
1507 PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT,
1508 OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE

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1509 SELLER.

1510
1511 (3) In addition to the requirements set forth in subsection
1512 (1), a bulk assignee or bulk buyer must comply with the
1513 nondeveloper disclosure requirements set forth in s. 718.503(2)
1514 before offering any units for sale or for lease for a term
1515 exceeding 5 years.

1516 (4) A bulk assignee, while in control of the board of
1517 administration of the association, may not authorize, on behalf
1518 of the association:

1519 (a) The waiver of reserves or the reduction of funding of
1520 the reserves in accordance with s. 718.112(2)(f)2., unless
1521 approved by a majority of the voting interests not controlled by
1522 the developer, bulk assignee, or bulk buyer; or

1523 (b) The use of reserve expenditures for other purposes in
1524 accordance with s. 718.112(2)(f)3., unless approved by a
1525 majority of the voting interests not controlled by the
1526 developer, bulk assignee, or bulk buyer.

1527 (5) A bulk assignee, while in control of the board of
1528 administration of the association, must comply with the
1529 requirements imposed upon developers to transfer control of the
1530 association to the unit owners in accordance with s. 718.301.

1531 (6) A bulk assignee or bulk buyer must comply with all the
1532 requirements of s. 718.302 regarding any contracts entered into
1533 by the association during the period the bulk assignee or bulk
1534 buyer maintains control of the board of administration. Unit
1535 owners shall be afforded all the protections contained in s.
1536 718.302 regarding agreements entered into by the association
1537 before unit owners other than the developer, bulk assignee, or

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1538 bulk buyer elected a majority of the board of administration.

1539 (7) A bulk buyer must comply with the requirements
1540 contained in the declaration regarding any transfer of a unit,
1541 including sales, leases, and subleases. A bulk buyer is not
1542 entitled to any exemptions afforded a developer or successor
1543 developer under this chapter regarding any transfer of a unit,
1544 including sales, leases, or subleases.

1545 718.707 Time limitation for classification as bulk assignee
1546 or bulk buyer.—A person acquiring condominium parcels may not be
1547 classified as a bulk assignee or bulk buyer unless the
1548 condominium parcels were acquired before July 1, 2012. The date
1549 of such acquisition shall be determined by the date of recording
1550 of a deed or other instrument of conveyance for such parcels in
1551 the public records of the county in which the condominium is
1552 located or by the date of issuance of a certificate of title in
1553 a foreclosure proceeding with respect to such condominium
1554 parcels.

1555 718.708 Liability of developers and others.—An assignment
1556 of developer rights to a bulk assignee or bulk buyer does not
1557 release the developer from any liabilities under the declaration
1558 or this chapter. This part does not limit the liability of the
1559 developer for claims brought by unit owners, bulk assignees, or
1560 bulk buyers for violations of this chapter by the developer,
1561 unless specifically excluded in this part. Nothing contained
1562 within this part waives, releases, compromises, or limits the
1563 liability of contractors, subcontractors, materialmen,
1564 manufacturers, architects, engineers, or any participant in the
1565 design or construction of a condominium for any claim brought by
1566 an association, unit owners, bulk assignees, or bulk buyers

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1567 arising from the design of the condominium, construction
1568 defects, misrepresentations associated with condominium
1569 property, or violations of this chapter, unless specifically
1570 excluded in this part.

1571 Section 14. Subsection (2) of section 720.302, Florida
1572 Statutes, is amended to read:

1573 720.302 Purposes, scope, and application.—

1574 (2) The Legislature recognizes that it is not in the best
1575 interest of homeowners' associations or the individual
1576 association members thereof to create or impose a bureau or
1577 other agency of state government to regulate the affairs of
1578 homeowners' associations. However, in accordance with part IV of
1579 this chapter ~~s. 720.311~~, the Legislature finds that homeowners'
1580 associations and their individual members will benefit from an
1581 expedited alternative process for resolution of ~~election and~~
1582 ~~recall disputes and presuit mediation of other~~ disputes
1583 involving covenant enforcement in homeowners' associations and
1584 deed-restricted communities using the procedures provided in
1585 part IV of ~~and authorizes the department to hear, administer,~~
1586 ~~and determine these disputes as more fully set forth in this~~
1587 chapter. Further, the Legislature recognizes that certain
1588 contract rights have been created for the benefit of homeowners'
1589 associations and members thereof as well as deed-restricted
1590 communities before the effective date of this act and that part
1591 IV of this chapter is ~~ss. 720.301-720.407~~ are not intended to
1592 impair such contract rights, including, but not limited to, the
1593 rights of the developer to complete the community as initially
1594 contemplated.

1595 Section 15. Paragraph (b) of subsection (2), paragraphs (a)

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1596 and (c) of subsection (5), paragraphs (b), (c), (d), (f), and
1597 (g) of subsection (6), and paragraphs (c) and (d) of subsection
1598 (10) of section 720.303, Florida Statutes, are amended, and
1599 subsections (12), (13), and (14) are added to that section, to
1600 read:

1601 720.303 Association powers and duties; meetings of board;
1602 official records; budgets; financial reporting; association
1603 funds; recalls; prohibited compensation; borrowing; transfer
1604 fees.—

1605 (2) BOARD MEETINGS.—

1606 (b) Members have the right to attend all meetings of the
1607 board and to speak on any matter placed on the agenda by
1608 petition of the voting interests for at least 3 minutes. The
1609 association may adopt written reasonable rules expanding the
1610 right of members to speak and governing the frequency, duration,
1611 and other manner of member statements, which rules must be
1612 consistent with this paragraph and may include a sign-up sheet
1613 for members wishing to speak. Notwithstanding any other law, ~~the~~
1614 ~~requirement that board meetings and committee meetings be open~~
1615 ~~to the members is inapplicable to~~ meetings between the board or
1616 a committee and the association's attorney to discuss proposed
1617 or pending litigation or, with respect to meetings of the board
1618 held for the purpose of discussing personnel matters are not
1619 required to be open to the members.

1620 (5) INSPECTION AND COPYING OF RECORDS.—The official records
1621 shall be maintained within the state and must be open to
1622 inspection and available for photocopying by members or their
1623 authorized agents at reasonable times and places within 10
1624 business days after receipt of a written request for access.

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1625 This subsection may be complied with by having a copy of the
1626 official records available for inspection or copying in the
1627 community. If the association has a photocopy machine available
1628 where the records are maintained, it must provide parcel owners
1629 with copies on request during the inspection if the entire
1630 request is limited to no more than 25 pages.

1631 (a) The failure of an association to provide access to the
1632 records within 10 business days after receipt of a written
1633 request submitted by certified mail, return receipt requested,
1634 creates a rebuttable presumption that the association willfully
1635 failed to comply with this subsection.

1636 (c) The association may adopt reasonable written rules
1637 governing the frequency, time, location, notice, records to be
1638 inspected, and manner of inspections, but may not require ~~impose~~
1639 ~~a requirement that~~ a parcel owner to demonstrate any proper
1640 purpose for the inspection, state any reason for the inspection,
1641 or limit a parcel owner's right to inspect records to less than
1642 one 8-hour business day per month. The association may impose
1643 fees to cover the costs of providing copies of the official
1644 records, including, without limitation, the costs of copying.
1645 The association may charge up to 50 cents per page for copies
1646 made on the association's photocopier. If the association does
1647 not have a photocopy machine available where the records are
1648 kept, or if the records requested to be copied exceed 25 pages
1649 in length, the association may have copies made by an outside
1650 vendor or association management company personnel and may
1651 charge the actual cost of copying, including any reasonable
1652 costs involving personnel fees and charges at an hourly rate for
1653 employee time to cover administrative costs to the association.

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1654 The association shall maintain an adequate number of copies of
1655 the recorded governing documents, to ensure their availability
1656 to members and prospective members. Notwithstanding the
1657 provisions of this paragraph, the following records are ~~shall~~
1658 not ~~be~~ accessible to members or parcel owners:

1659 1. Any record protected by the lawyer-client privilege as
1660 described in s. 90.502 and any record protected by the work-
1661 product privilege, including, but not limited to, any record
1662 prepared by an association attorney or prepared at the
1663 attorney's express direction which reflects a mental impression,
1664 conclusion, litigation strategy, or legal theory of the attorney
1665 or the association and which was prepared exclusively for civil
1666 or criminal litigation or for adversarial administrative
1667 proceedings or which was prepared in anticipation of imminent
1668 civil or criminal litigation or imminent adversarial
1669 administrative proceedings until the conclusion of the
1670 litigation or ~~adversarial~~ administrative proceedings.

1671 2. Information obtained by an association in connection
1672 with the approval of the lease, sale, or other transfer of a
1673 parcel.

1674 3. Disciplinary, health, insurance, and personnel records
1675 of the association's employees.

1676 4. Medical records of parcel owners or community residents.

1677 (6) BUDGETS.—

1678 (b) In addition to annual operating expenses, the budget
1679 may include reserve accounts for capital expenditures and
1680 deferred maintenance for which the association is responsible.
1681 If reserve accounts are not established pursuant to paragraph
1682 (d), funding of such reserves shall be limited to the extent

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1683 that the governing documents ~~do not~~ limit increases in
 1684 assessments, including reserves. If the budget of the
 1685 association includes reserve accounts established pursuant to
 1686 paragraph (d), such reserves shall be determined, maintained,
 1687 and waived in the manner provided in this subsection. Once an
 1688 association provides for reserve accounts pursuant to paragraph
 1689 (d) in the budget, the association shall thereafter determine,
 1690 maintain, and waive reserves in compliance with this subsection.
 1691 This section does not preclude the termination of a reserve
 1692 account established pursuant to this paragraph upon approval of
 1693 a majority of the voting interests of the association. Upon such
 1694 approval, the terminating reserve account shall be removed from
 1695 the budget.

1696 (c)1. If the budget of the association does not provide for
 1697 reserve accounts pursuant to paragraph (d) ~~governed by this~~
 1698 ~~subsection~~ and the association is responsible for the repair and
 1699 maintenance of capital improvements that may result in a special
 1700 assessment if reserves are not provided, each financial report
 1701 for the preceding fiscal year required under ~~by~~ subsection (7)
 1702 shall contain the following statement in conspicuous type:

1704 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR
 1705 RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED
 1706 MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
 1707 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS
 1708 PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),
 1709 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT~~
 1710 ~~LESS THAN~~ A MAJORITY OF THE TOTAL VOTING INTERESTS OF
 1711 THE ASSOCIATION BY VOTE OF THE MEMBERS AT A MEETING OR

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1712 BY WRITTEN CONSENT.

1713

1714 2. If the budget of the association does provide for
1715 funding accounts for deferred expenditures, including, but not
1716 limited to, funds for capital expenditures and deferred
1717 maintenance, but such accounts are not created or established
1718 pursuant to paragraph (d), each financial report for the
1719 preceding fiscal year required under subsection (7) must also
1720 contain the following statement in conspicuous type:

1721

1722 THE BUDGET OF THE ASSOCIATION DOES PROVIDE FOR LIMITED
1723 VOLUNTARY DEFERRED EXPENDITURE ACCOUNTS, INCLUDING
1724 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE, SUBJECT
1725 TO LIMITS ON FUNDING CONTAINED IN OUR GOVERNING
1726 DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO
1727 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION
1728 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT
1729 SUBJECT TO THE RESTRICTIONS ON USE OF SUCH FUNDS SET
1730 FORTH IN THAT STATUTE, NOR ARE RESERVES CALCULATED IN
1731 ACCORDANCE WITH THAT STATUTE.

1732

1733 (d) An association shall be deemed to have provided for
1734 reserve accounts if ~~when~~ reserve accounts have been initially
1735 established by the developer or if ~~when~~ the membership of the
1736 association affirmatively elects to provide for reserves. If
1737 reserve accounts are not initially provided for by the
1738 developer, the membership of the association may elect to do so
1739 upon the affirmative approval of ~~not less than~~ a majority of the
1740 total voting interests of the association. Such approval may be

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1741 obtained ~~attained~~ by vote of the members at a duly called
1742 meeting of the membership or by the ~~upon~~ a written consent of
1743 ~~executed by not less than~~ a majority of the total voting
1744 interests in the community. The approval action of the
1745 membership shall state that reserve accounts shall be provided
1746 for in the budget and shall designate the components for which
1747 the reserve accounts are to be established. Upon approval by the
1748 membership, the board of directors shall include ~~provide for~~ the
1749 required reserve accounts ~~for inclusion~~ in the budget in the
1750 next fiscal year following the approval and ~~in~~ each year
1751 thereafter. Once established as provided in this subsection, the
1752 reserve accounts shall be funded or maintained or shall have
1753 their funding waived in the manner provided in paragraph (f).

1754 (f) After one or more ~~Once a reserve account or~~ reserve
1755 accounts are established, the membership of the association,
1756 upon a majority vote at a meeting at which a quorum is present,
1757 may provide for no reserves or less reserves than required by
1758 this section. If a meeting of the unit owners has been called to
1759 determine whether to waive or reduce the funding of reserves and
1760 no such result is achieved or a quorum is not present, the
1761 reserves as included in the budget shall go into effect. After
1762 the turnover, the developer may vote its voting interest to
1763 waive or reduce the funding of reserves. Any vote taken pursuant
1764 to this subsection to waive or reduce reserves is ~~shall be~~
1765 applicable only to one budget year.

1766 (g) Funding formulas for reserves authorized by this
1767 section shall be based on either a separate analysis of each of
1768 the required assets or a pooled analysis of two or more of the
1769 required assets.

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1770 1. If the association maintains separate reserve accounts
1771 for each of the required assets, the amount of the contribution
1772 to each reserve account is ~~shall be~~ the sum of the following two
1773 calculations:

1774 a. The total amount necessary, if any, to bring a negative
1775 component balance to zero.

1776 b. The total estimated deferred maintenance expense or
1777 estimated replacement cost of the reserve component less the
1778 estimated balance of the reserve component as of the beginning
1779 of the period ~~for which~~ the budget will be in effect. The
1780 remainder, if greater than zero, shall be divided by the
1781 estimated remaining useful life of the component.

1782
1783 The formula may be adjusted each year for changes in estimates
1784 and deferred maintenance performed during the year and may
1785 include factors such as inflation and earnings on invested
1786 funds.

1787 2. If the association maintains a pooled account of two or
1788 more of the required reserve assets, the amount of the
1789 contribution to the pooled reserve account as disclosed on the
1790 proposed budget may ~~shall~~ not be less than that required to
1791 ensure that the balance on hand at the beginning of the period
1792 ~~for which~~ the budget will go into effect plus the projected
1793 annual cash inflows over the remaining estimated useful life of
1794 all of the assets that make up the reserve pool are equal to or
1795 greater than the projected annual cash outflows over the
1796 remaining estimated useful lives of all ~~of~~ the assets that make
1797 up the reserve pool, based on the current reserve analysis. The
1798 projected annual cash inflows may include estimated earnings

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1799 from investment of principal and accounts receivable minus the
1800 allowance for doubtful accounts. The reserve funding formula may
1801 ~~shall~~ not include any type of balloon payments.

1802 (10) RECALL OF DIRECTORS.—

1803 (c)1. If the declaration, articles of incorporation, or
1804 bylaws specifically provide, the members may also recall and
1805 remove a board director or directors by a vote taken at a
1806 meeting. If so provided in the governing documents, a special
1807 meeting of the members to recall a director or directors of the
1808 board of administration may be called by 10 percent of the
1809 voting interests giving notice of the meeting as required for a
1810 meeting of members, and the notice shall state the purpose of
1811 the meeting. Electronic transmission may not be used as a method
1812 of giving notice of a meeting called in whole or in part for
1813 this purpose.

1814 2. The board shall duly notice and hold a board meeting
1815 within 5 full business days after the adjournment of the member
1816 meeting to recall one or more directors. At the meeting, the
1817 board shall certify the recall, in which case such member or
1818 members shall be recalled effective immediately and shall turn
1819 over to the board within 5 full business days any and all
1820 records and property of the association in their possession, or
1821 shall proceed as set forth in paragraph ~~subparagraph~~ (d).

1822 (d) If the board determines not to certify the written
1823 agreement or written ballots to recall a director or directors
1824 of the board or does not certify the recall by a vote at a
1825 meeting, the board shall, within 5 full business days after the
1826 meeting, initiate ~~file with the department a petition for~~
1827 binding arbitration pursuant to the applicable procedures in s.

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1828 720.507 ~~ss. 718.112(2)(j) and 718.1255~~ and the rules adopted
1829 ~~thereunder~~. For the purposes of this section, the members who
1830 voted at the meeting or who executed the agreement in writing
1831 shall constitute one party under the petition for arbitration.
1832 If the arbitrator certifies the recall as to any director or
1833 directors of the board, the recall will be effective upon
1834 mailing of the final order of arbitration to the association.
1835 The director or directors so recalled shall deliver to the board
1836 any and all records of the association in their possession
1837 within 5 full business days after the effective date of the
1838 recall.

1839 (12) COMPENSATION PROHIBITED.—A director, officer, or
1840 committee member of the association may not receive, directly or
1841 indirectly, any salary or compensation from the association for
1842 the performance of duties as a director, officer, or committee
1843 member and may not in any other way benefit financially from
1844 service to the association. This subsection does not preclude:

1845 (a) Participation by such person in a financial benefit
1846 accruing to all or a significant number of members as a result
1847 of actions lawfully taken by the board or a committee of which
1848 he or she is a member, including, but not limited to, routine
1849 maintenance, repair, or replacement of community assets.

1850 (b) Reimbursement for out-of-pocket expenses incurred by
1851 such person on behalf of the association, subject to approval in
1852 accordance with procedures established by the association's
1853 governing documents or, in the absence of such procedures, in
1854 accordance with an approval process established by the board.

1855 (c) Any recovery of insurance proceeds derived from a
1856 policy of insurance maintained by the association for the

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1857 benefit of its members.

1858 (d) Any fee or compensation authorized in the governing
1859 documents.

1860 (e) Any fee or compensation authorized in advance by a vote
1861 of a majority of the voting interests voting in person or by
1862 proxy at a meeting of the members.

1863 (f) A developer or its representative from serving as a
1864 director, officer, or committee member of the association and
1865 benefiting financially from service to the association.

1866 (13) BORROWING.—The borrowing of funds or committing to a
1867 line of credit by the board of administration shall be
1868 considered a special assessment, and any meeting of the board of
1869 administration to discuss such matters must be noticed as
1870 provided in paragraph (2) (c). The board may not borrow funds or
1871 enter into a line of credit for any purpose unless the specific
1872 use of the funds from the loan or line of credit is set forth in
1873 the notice of meeting with the same specificity as required for
1874 a special assessment or unless the borrowing or line of credit
1875 has received the prior approval of at least two-thirds of the
1876 voting interests of the association.

1877 (14) TRANSFER FEES.—No charge may be made by the
1878 association or anyone on its behalf in connection with the sale,
1879 mortgage, lease, sublease, or other transfer of a parcel.
1880 Nothing in this subsection may be construed to prohibit an
1881 association from requiring as a condition to permitting the
1882 letting or renting of a parcel, when the association has such
1883 authority in the documents, the depositing into an escrow
1884 account maintained by the association of a security deposit in
1885 an amount not to exceed the equivalent of 1 month's rent. The

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1886 security deposit shall protect against damages to the common
 1887 areas or association property. Within 15 days after a tenant
 1888 vacates the premises, the association shall refund the full
 1889 security deposit or give written notice to the tenant of any
 1890 claim made against the security. Disputes under this subsection
 1891 shall be handled in the same fashion as disputes concerning
 1892 security deposits under s. 83.49.

1893 Section 16. Paragraph (a) of subsection (2) of section
 1894 720.304, Florida Statutes, is amended to read:

1895 720.304 Right of owners to peaceably assemble; display of
 1896 flag; SLAPP suits prohibited.-

1897 (2) (a) Any homeowner may display within the boundaries of
 1898 the homeowner's parcel one portable, removable United States
 1899 flag ~~or official flag of the State of Florida in a respectful~~
 1900 manner, and one portable, removable official flag, in a
 1901 respectful way and, on Armed Forces Day, Memorial Day, Flag Day,
 1902 Independence Day, and Veterans' Day, may display in a respectful
 1903 way portable, removable official flags manner, not larger than 4
 1904 1/2 feet by 6 feet, which represent ~~represents~~ the United States
 1905 Army, Navy, Air Force, Marine Corps, or Coast Guard, ~~or a POW-~~
 1906 MIA flag, regardless of any declaration covenants, restrictions,
 1907 bylaws, rules, or requirements dealing with flags or decorations
 1908 of the association.

1909 Section 17. Subsection (2) of section 720.305, Florida
 1910 Statutes, is amended to read:

1911 720.305 Obligations of members; remedies at law or in
 1912 equity; levy of fines and suspension of use rights.-

1913 (2) If the governing documents so provide, an association
 1914 may suspend, for a reasonable period of time, the rights of a

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1915 member or a member's tenants, guests, or invitees, or both, to
1916 use common areas and facilities and may levy reasonable fines of
1917 up to, not to exceed \$100 per violation, against any member or
1918 any tenant, guest, or invitee. A fine may be levied on the basis
1919 of each day of a continuing violation, with a single notice and
1920 opportunity for hearing, except that no ~~such~~ fine may shall
1921 exceed \$1,000 in the aggregate unless otherwise provided in the
1922 governing documents. A fine of less than \$1,000 may shall not
1923 become a lien against a parcel. In any action to recover a fine,
1924 the prevailing party is entitled to collect its reasonable
1925 attorney's fees and costs from the nonprevailing party as
1926 determined by the court.

1927 (a) A fine or suspension may not be imposed without ~~notice~~
1928 ~~of~~ at least 14 days' notice ~~days~~ to the person sought to be
1929 fined or suspended and an opportunity for a hearing before a
1930 committee of at least three members appointed by the board who
1931 are not officers, directors, or employees of the association, or
1932 the spouse, parent, child, brother, or sister of an officer,
1933 director, or employee. If the committee, by majority vote, does
1934 not approve a proposed fine or suspension, it may not be
1935 imposed.

1936 (b) The requirements of this subsection do not apply to the
1937 imposition of suspensions or fines upon any member because of
1938 the failure of the member to pay assessments or other charges
1939 when due if such action is authorized by the governing
1940 documents.

1941 (c) Suspension of common-area-use rights do shall not
1942 impair the right of an owner or tenant of a parcel to have
1943 vehicular and pedestrian ingress to and egress from the parcel,

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1944 including, but not limited to, the right to park.

1945 Section 18. Subsections (8) and (9) of section 720.306,
1946 Florida Statutes, are amended to read:

1947 720.306 Meetings of members; voting and election
1948 procedures; amendments.—

1949 (8) PROXY VOTING.—The members have the right, unless
1950 otherwise provided in this subsection or in the governing
1951 documents, to vote in person or by proxy.

1952 (a) To be valid, a proxy must be dated, must state the
1953 date, time, and place of the meeting for which it was given, and
1954 must be signed by the authorized person who executed the proxy.
1955 A proxy is effective only for the specific meeting for which it
1956 was originally given, as the meeting may lawfully be adjourned
1957 and reconvened from time to time, and automatically expires 90
1958 days after the date of the meeting for which it was originally
1959 given. A proxy is revocable at any time at the pleasure of the
1960 person who executes it. If the proxy form expressly so provides,
1961 any proxy holder may appoint, in writing, a substitute to act in
1962 his or her place.

1963 (b) If the governing documents permit voting by secret
1964 ballot by members who are not in attendance at a meeting of the
1965 members for the election of directors, such ballots shall be
1966 placed in an inner envelope with no identifying markings and
1967 mailed or delivered to the association in an outer envelope
1968 bearing identifying information reflecting the name of the
1969 member, the lot or parcel for which the vote is being cast, and
1970 the signature of the lot or parcel owner casting that ballot.
1971 After the eligibility of the member to vote and confirmation
1972 that no other ballot has been submitted for that lot or parcel,

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1973 the inner envelope shall be removed from the outer envelope
1974 bearing the identification information, placed with the ballots
1975 which were personally cast, and opened when the ballots are
1976 counted. If more than one ballot is submitted for a lot or
1977 parcel, the ballots for that lot or parcel shall be
1978 disqualified. Any vote by ballot received after the closing of
1979 the balloting may not be considered.

1980 (9) ELECTIONS; BOARD MEMBER CERTIFICATION.-

1981 (a) Elections of directors must be conducted in accordance
1982 with the procedures set forth in the governing documents of the
1983 association. All members of the association ~~are shall be~~
1984 eligible to serve on the board of directors, and a member may
1985 nominate himself or herself as a candidate for the board at a
1986 meeting where the election is to be held or, if the election
1987 process allows voting by absentee ballot, in advance of the
1988 balloting. Except as otherwise provided in the governing
1989 documents, boards of directors must be elected by a plurality of
1990 the votes cast by eligible voters. Any election dispute between
1991 a member and an association must be submitted to mandatory
1992 binding arbitration with the division. Such proceedings shall be
1993 conducted in the manner provided by s. 720.507 ~~718.1255~~ and the
1994 procedural rules adopted by the division.

1995 (b) Within 30 days after being elected to the board of
1996 directors, a new director shall certify in writing to the
1997 secretary of the association that he or she has read the
1998 association's declarations of covenants and restrictions,
1999 articles of incorporation, bylaws, and current written policies
2000 and that he or she will work to uphold each to the best of his
2001 or her ability and will faithfully discharge his or her

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2002 fiduciary responsibility to the association's members. Failure
2003 to timely file such statement shall automatically disqualify the
2004 director from service on the association's board of directors.
2005 The secretary shall cause the association to retain a director's
2006 certification for inspection by the members for 5 years after a
2007 director's election. Failure to have such certification on file
2008 does not affect the validity of any appropriate action.

2009 Section 19. Section (8) is added to section 720.3085,
2010 Florida Statutes, to read:

2011 720.3085 Payment for assessments; lien claims.—

2012 (8) During the pendency of any foreclosure action of a
2013 parcel within a homeowners' association, if the home is occupied
2014 by a tenant and the parcel owner is delinquent in the payment of
2015 regular assessments, the association may demand that the tenant
2016 pay to the association the future regular assessments related to
2017 the parcel. The demand shall be continuing in nature, and upon
2018 demand the tenant shall continue to pay the regular assessments
2019 to the association until the association releases the tenant or
2020 the tenant discontinues tenancy in the unit. The association
2021 shall mail written notice to the parcel owner of the
2022 association's demand that the tenant pay regular assessments to
2023 the association. The tenant shall not be liable for increases in
2024 the amount of the regular assessment due unless the tenant was
2025 reasonably notified of the increase prior to the day that the
2026 rent is due. The tenant shall be given a credit against rents
2027 due to the parcel owner in the amount of assessments paid to the
2028 association. The association shall, upon request, provide the
2029 tenant with written receipts for payments made. The association
2030 may issue notices under s. 83.56 and may sue for eviction under

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2031 ss. 83.59-83.625 as if the association were a landlord under
2032 part II of chapter 83 should the tenant fail to pay an
2033 assessment. However, the association shall not otherwise be
2034 considered a landlord under chapter 83 and shall specifically
2035 not have any duty under s. 83.51. The tenant shall not, by
2036 virtue of payment of assessments, have any of the rights of a
2037 unit owner to vote in any election or to examine the books and
2038 records of the association. A court may supersede the effect of
2039 this subsection by appointing a receiver.

2040 Section 20. Section 720.3095, Florida Statutes, is created
2041 to read:

2042 720.3095 Management and maintenance agreements entered into
2043 by the association.—

2044 (1) A written contract between a party contracting to
2045 provide maintenance or management services and an association
2046 which provides for operation, maintenance, or management of a
2047 homeowners' association is not valid or enforceable unless the
2048 contract:

2049 (a) Specifies the services, obligations, and
2050 responsibilities of the party contracting to provide maintenance
2051 or management services to the unit owners.

2052 (b) Specifies those costs incurred in the performance of
2053 those services, obligations, or responsibilities which are to be
2054 reimbursed by the association to the party contracting to
2055 provide maintenance or management services.

2056 (c) Provides an indication of how often each service,
2057 obligation, or responsibility is to be performed, whether stated
2058 for each service, obligation, or responsibility or in categories
2059 thereof.

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2060 (d) Specifies a minimum number of personnel to be employed
2061 by the party contracting to provide maintenance or management
2062 services for the purpose of providing service to the
2063 association.

2064 (e) Discloses any financial or ownership interest which the
2065 developer, if the developer is in control of the association,
2066 holds with regard to the party contracting to provide
2067 maintenance or management services.

2068 (f) Discloses any financial or ownership interest a board
2069 member or any party providing maintenance or management services
2070 to the association holds with the contracting party.

2071 (2) In any case in which the party contracting to provide
2072 maintenance or management services fails to provide such
2073 services in accordance with the contract, the association is
2074 authorized to procure such services from some other party and
2075 shall be entitled to collect any fees or charges paid for
2076 services performed by another party from the party contracting
2077 to provide maintenance or management services.

2078 (3) Any services or obligations not stated on the face of
2079 the contract shall be unenforceable.

2080 (4) Notwithstanding the fact that certain vendors contract
2081 with associations to maintain equipment or property which is
2082 made available to serve unit owners, it is the intent of the
2083 Legislature that this section applies to contracts for
2084 maintenance or management services for which the association
2085 pays compensation. This section does not apply to contracts for
2086 services or property made available for the convenience of unit
2087 owners by lessees or licensees of the association, such as coin-
2088 operated laundry, food, soft drink, or telephone vendors; cable

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2089 television operators; retail store operators; businesses;
2090 restaurants; or similar vendors.

2091 Section 21. Section 720.3096, Florida Statutes, is created
2092 to read:

2093 720.3096 Limitation on agreements entered into by the
2094 association.—As to any contract or other transaction between an
2095 association and one or more of its directors or any other
2096 corporation, firm, association, or entity in which one or more
2097 of its directors are directors or officers or are financially
2098 interested:

2099 (1) The association must comply with the requirements of s.
2100 617.0832.

2101 (2) The disclosures required by s. 617.0832 must be entered
2102 into the written minutes of the meeting.

2103 (3) Approval of the contract or other transaction requires
2104 an affirmative vote of at least two-thirds of the directors
2105 present.

2106 (4) At the next regular or special meeting of the members,
2107 the existence of the contract or other transaction must be
2108 disclosed to the members. Upon motion of any member, the
2109 contract or transaction shall be brought up for a vote and may
2110 be canceled by a majority vote of the members present. If the
2111 members cancel the contract, the association is liable for only
2112 the reasonable value of goods and services provided up to the
2113 time of cancellation and is not liable for any termination fee,
2114 liquidated damages, or other form of penalty for such
2115 cancellation.

2116 Section 22. Section 720.311, Florida Statutes, is repealed.

2117 Section 23. Paragraph (a) of subsection (1) of section

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2118 720.401, Florida Statutes, is amended to read:

2119 720.401 Prospective purchasers subject to association
 2120 membership requirement; disclosure required; covenants;
 2121 assessments; contract cancellation.—

2122 (1) (a) A prospective parcel owner in a community must be
 2123 presented a disclosure summary before executing the contract for
 2124 sale. The disclosure summary must be in a form substantially
 2125 similar to the following form:

2126
 2127 DISCLOSURE SUMMARY
 2128 FOR
 2129 (NAME OF COMMUNITY)
 2130

2131 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL
 2132 BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2133 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
 2134 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS
 2135 COMMUNITY.

2136 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
 2137 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF
 2138 APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

2139 YOU WILL ALSO
 2140 BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE
 2141 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.
 2142 IF APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

2143 4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE
 2144 RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL
 2145 ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

2146 5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS
 2147 LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION MAY ~~COULD~~ RESULT

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2147 IN A LIEN ON YOUR PROPERTY.

2148 6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES
 2149 FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN
 2150 OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF
 2151 APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

2152 7. IF THE ASSOCIATION IS STILL UNDER THE CONTROL OF THE
 2153 DEVELOPER, THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE
 2154 RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION
 2155 MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

2156 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE
 2157 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
 2158 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
 2159 DOCUMENTS BEFORE PURCHASING PROPERTY.

2160 9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND
 2161 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE
 2162 PROPERTY IS LOCATED, OR, IF ARE NOT RECORDED, ~~AND~~ CAN BE
 2163 OBTAINED FROM THE DEVELOPER.

2164 10. THERE MAY BE AN OBLIGATION TO PAY ASSESSMENTS (TAXES OR
 2165 FEES) TO A RESIDENTIAL COMMUNITY DEVELOPMENT DISTRICT FOR THE
 2166 PURPOSE OF RETIRING BOND OBLIGATIONS USED TO CONSTRUCT
 2167 INFRASTRUCTURE OR OTHER IMPROVEMENTS.

2168 11. YOU ARE JOINTLY AND SEVERALLY LIABLE WITH THE PREVIOUS
 2169 OWNER OF YOUR PROPERTY FOR ALL UNPAID ASSESSMENTS THAT CAME DUE
 2170 UP TO THE TIME OF TRANSFER OF TITLE.

2171
 2172 DATE: PURCHASER:
 2173 PURCHASER:
 2174

2175 The disclosure must be supplied by the developer, or by the

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2176 parcel owner if the sale is by an owner that is not the
2177 developer. Any contract or agreement for sale shall refer to and
2178 incorporate the disclosure summary and shall include, in
2179 prominent language, a statement that the potential buyer should
2180 not execute the contract or agreement until he or she has ~~they~~
2181 ~~have~~ received and read the disclosure summary required by this
2182 section.

2183 Section 24. Part IV of chapter 720, Florida Statutes,
2184 consisting of sections 720.501, 720.502, 720.503, 720.504,
2185 720.505, 720.506, 720.507, 720.508, 720.509, and 720.510, is
2186 created to read:

2187 PART IV

2188 DISPUTE RESOLUTION

2189 720.501 Short title.—This part may be cited as the "Home
2190 Court Advantage Dispute Resolution Act."

2191 720.502 Legislative findings.—The Legislature finds that
2192 alternative dispute resolution has made progress in reducing
2193 court dockets and trials and in offering a more efficient, cost-
2194 effective option to litigation.

2195 720.503 Applicability of this part.—

2196 (1) Unless otherwise provided in this part, before a
2197 dispute described in this part between a homeowners' association
2198 and a parcel owner or owners, or a dispute between parcel owners
2199 within the same homeowners' association, may be filed in court,
2200 the dispute is subject to presuit mediation pursuant to s.
2201 720.505 or presuit arbitration pursuant to s. 720.507, at the
2202 option of the aggrieved party who initiates the first formal
2203 action of alternative dispute resolution under this part. The
2204 parties may mutually agree to participate in both presuit

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2205 mediation and presuit arbitration prior to suit being filed by
2206 either party.

2207 (2) Unless otherwise provided in this part, the mediation
2208 and arbitration provisions of this part are limited to disputes
2209 between an association and a parcel owner or owners or between
2210 parcel owners regarding the use of or changes to the parcel or
2211 the common areas under the governing documents and other
2212 disputes involving violations of the recorded declaration of
2213 covenants or other governing documents, disputes arising
2214 concerning enforcement of the governing documents or any
2215 amendments thereto, and disputes involving access to the
2216 official records of the association. A dispute concerning title
2217 to any parcel or common area, interpretation or enforcement of
2218 any warranty, the levy of a fee or assessment, the collection of
2219 an assessment levied against a party, the eviction or other
2220 removal of a tenant from a parcel, alleged breaches of fiduciary
2221 duty by one or more directors, or any action to collect mortgage
2222 indebtedness or to foreclosure a mortgage shall not be subject
2223 to the provisions of this part.

2224 (3) A dispute arising after the effective date of this part
2225 involving the election of the board of directors for an
2226 association or the recall of any member of the board or officer
2227 of the association is ineligible for presuit mediation under s.
2228 720.505 and subject to presuit arbitration under s. 720.507.

2229 (4) In any dispute subject to presuit mediation or presuit
2230 arbitration under this part for which emergency relief is
2231 required, a motion for temporary injunctive relief may be filed
2232 with the court without first complying with the presuit
2233 mediation or presuit arbitration requirements of this part.

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2234 After any issues regarding emergency or temporary relief are
2235 resolved, the court may refer the parties to a mediation program
2236 administered by the courts or require mediation or arbitration
2237 under this part.

2238 (5) The mailing of a statutory notice of presuit mediation
2239 or presuit arbitration as provided in this part shall toll the
2240 applicable statute of limitations during the pendency of the
2241 mediation or arbitration and for a period of 30 days following
2242 the conclusion of either proceeding. The 30-day period shall
2243 start upon the filing of the mediator's notice of impasse or the
2244 arbitrator's written arbitration award. If the parties mutually
2245 agree to participate in both presuit mediation and presuit
2246 arbitration under this part, the tolling of the applicable
2247 statute of limitations for each such alternative dispute
2248 resolution proceeding shall be consecutive.

2249 720.504 Notice of dispute.—Prior to giving the statutory
2250 notice to proceed under presuit mediation or presuit arbitration
2251 under this part, the aggrieved association or parcel owner must
2252 first provide written notice of the dispute to the responding
2253 party in the manner provided by this section.

2254 (1) The notice of dispute shall be delivered to the
2255 responding party by certified mail, return receipt requested, or
2256 in person, and the person making delivery shall file with the
2257 notice of mediation either the proof of receipt of mailing or an
2258 affidavit stating the date and time of the delivery of the
2259 notice of dispute. If the notice is delivered by certified mail,
2260 return receipt requested, and the responding party fails or
2261 refuses to accept delivery, notice shall be considered properly
2262 delivered for purposes of this section on the date of the first

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2263 attempted delivery.

2264 (2) The notice of dispute shall state with specificity the
2265 nature of the dispute, including the date, time, and location of
2266 each event that is the subject of the dispute and the action
2267 requested to resolve the dispute. The notice shall also include
2268 the text of any provision in the governing documents, including
2269 the rules and regulations, of the association which form the
2270 basis of the dispute.

2271 (3) Unless the parties otherwise agree in writing to a
2272 longer time period, the party receiving the notice of dispute
2273 shall have 10 days following the date of receipt of notice to
2274 resolve the dispute. If the alleged dispute has not been
2275 resolved within the 10-day period, the aggrieved party may
2276 proceed under this part at any time thereafter within the
2277 applicable statute of limitations.

2278 (4) A copy of the notice and the text of the provision in
2279 the governing documents, or the rules and regulations, of the
2280 association which are the basis of the dispute, along with proof
2281 of service of the notice of dispute and a copy of any written
2282 responses received from the responding party, shall be included
2283 as an exhibit to any demand for mediation or arbitration under
2284 this part.

2285 720.505 Presuit mediation.-

2286 (1) Disputes between an association and a parcel owner or
2287 owners or between parcel owners must be submitted to presuit
2288 mediation before the dispute may be filed in court; or, at the
2289 election of the party initiating the presuit procedures, such
2290 dispute may be submitted to presuit arbitration pursuant to s.
2291 720.507 before the dispute may be filed in court. An aggrieved

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2292 party who elects to use the presuit mediation procedure under
 2293 this section shall serve on the responding party a written
 2294 notice of presuit mediation in substantially the following form:

2295
 2296 STATUTORY NOTICE OF PRESUIT MEDIATION

2297
 2298 THE ALLEGED AGGRIEVED PARTY, _____,
 2299 HEREBY DEMANDS THAT _____, AS THE
 2300 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT
 2301 MEDIATION IN CONNECTION WITH THE FOLLOWING DISPUTE(S)
 2302 WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT ARE
 2303 SUBJECT TO PRESUIT MEDIATION:

2304
 2305 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION
 2306 WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO
 2307 BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF
 2308 A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT
 2309 LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING
 2310 DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE
 2311 DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE
 2312 YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN
 2313 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.

2314
 2315 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,
 2316 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT
 2317 MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED
 2318 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,
 2319 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT
 2320 MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER

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2321 TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT
2322 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU
2323 PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO
2324 THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A
2325 NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER
2326 SECTION 720.506, FLORIDA STATUTES, YOUR FAILURE TO
2327 PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A
2328 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT
2329 FURTHER NOTICE.

2330
2331 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED
2332 NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-
2333 PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS
2334 THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING
2335 PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE
2336 IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO
2337 CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO
2338 AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO
2339 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A
2340 FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE
2341 POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR
2342 REASONABLE SETTLEMENT ARE FULLY EXPLORED.

2343
2344 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO
2345 WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT
2346 BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE
2347 DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE
2348 THESE ISSUES IN COURT. THE FAILURE TO REACH AN
2349 AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN

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2350 THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN
2351 IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED
2352 PARTY MAY PROCEED TO FILE A LAWSUIT ON ALL
2353 OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR
2354 REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION
2355 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER
2356 ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT
2357 PROCEEDING INVOLVING THE SAME DISPUTE.

2358
2359 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF
2360 ELIGIBLE, QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED
2361 MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
2362 NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE
2363 THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE
2364 FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE
2365 OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE
2366 MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL
2367 FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE
2368 AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU
2369 MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE
2370 NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

2371
2372 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND
2373 HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT
2374 INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY
2375 BE INCLUDED AS AN ATTACHMENT.)

2376
2377 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO
2378 CONFIRM THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL

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2379 BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD
2380 EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE
2381 PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES,
2382 REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT
2383 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE
2384 MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4
2385 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME
2386 PREPARATION TIME, AND THE PARTIES WOULD NEED TO
2387 EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE
2388 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF
2389 THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH
2390 THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT
2391 REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE
2392 MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR
2393 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY
2394 HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE
2395 SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS
2396 AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS
2397 THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE
2398 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE
2399 RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR
2400 SHARE OF THE MEDIATOR FEES INCURRED.

2401
2402 TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO
2403 TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER
2404 LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE
2405 WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE
2406 MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.
2407

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2408 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
2409 OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE
2410 YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND
2411 TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE
2412 MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED
2413 DATE OF THE MAILING OF THIS NOTICE OF PRESUIT
2414 MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE
2415 SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY
2416 WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY
2417 CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE
2418 TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE
2419 DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO
2420 SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR
2421 SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO
2422 EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90
2423 DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST
2424 SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN
2425 THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS
2426 AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE
2427 MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE
2428 AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE
2429 TO ONE OF THE MEDIATORS THAT THE AGGRIEVED PARTY HAS
2430 LISTED, FAIL TO PAY OR PREPAY TO THE MEDIATOR ONE-HALF
2431 OF THE COSTS INVOLVED, OR FAIL TO APPEAR AND
2432 PARTICIPATE AT THE SCHEDULED MEDIATION, THE AGGRIEVED
2433 PARTY WILL BE AUTHORIZED TO PROCEED WITH THE FILING OF
2434 A LAWSUIT AGAINST YOU WITHOUT FURTHER NOTICE. IN ANY
2435 SUBSEQUENT COURT ACTION, THE AGGRIEVED PARTY MAY SEEK
2436 AN AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS

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2437 INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.

2438
2439 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY
2440 LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-
2441 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED
2442 PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE
2443 AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF
2444 THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS
2445 AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY
2446 OF THIS NOTICE.

2447
2448 _____
2449 SIGNATURE OF AGGRIEVED PARTY

2450
2451 _____
2452 PRINTED NAME OF AGGRIEVED PARTY

2453
2454 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR
2455 ACCEPTANCE OF THE AGREEMENT TO MEDIATE.

2456
2457 AGREEMENT TO MEDIATE

2458
2459 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN
2460 PRESUIT MEDIATION AND AGREES TO ATTEND A MEDIATION
2461 CONDUCTED BY THE MEDIATOR LISTED BELOW AS ACCEPTABLE
2462 TO MEDIATE THIS DISPUTE:

2463
2464 (LIST ONE ACCEPTABLE MEDIATOR FROM THOSE LISTED BY THE
2465 AGGRIEVED PARTY.)

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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,

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2495 to the address of the responding party as it last appears on the
2496 books and records of the association or, if not available, then
2497 as it last appears in the official records of the county
2498 property appraiser where the parcel in dispute is located. The
2499 responding party has 20 days after the postmarked date of the
2500 mailing of the statutory notice or the date the responding party
2501 is served with a copy of the notice to serve a written response
2502 to the aggrieved party. The response shall be served by
2503 certified mail, return receipt requested, with an additional
2504 copy being sent by regular first-class mail, to the address
2505 shown on the statutory notice. The date of the postmark on the
2506 envelope for the response shall constitute the date that the
2507 response is served. Once the parties have agreed on a mediator,
2508 the mediator may schedule or reschedule the mediation for a date
2509 and time mutually convenient to the parties within 90 days after
2510 the date of service of the statutory notice. After such 90-day
2511 period, the mediator may reschedule the mediation only upon the
2512 mutual written agreement of all the parties.

2513 (b) The parties shall share the costs of presuit mediation
2514 equally, including the fee charged by the mediator, if any,
2515 unless the parties agree otherwise, and the mediator may require
2516 advance payment of his or her reasonable fees and costs. Each
2517 party shall be responsible for that party's own attorney's fees
2518 if a party chooses to be represented by an attorney at the
2519 mediation.

2520 (c) The party responding to the aggrieved party may provide
2521 a notice of opting out under s. 720.506 and demand arbitration
2522 or may sign the agreement to mediate included in the notice of
2523 presuit mediation. A responding party signing the agreement to

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2524 mediate must clearly indicate the name of the mediator who is
2525 acceptable from the five names provided by the aggrieved party
2526 and must provide a list of dates and times in which the
2527 responding party is available to participate in the mediation
2528 within 90 days after the date the responding party was served,
2529 either by process server or by certified mail, with the
2530 statutory notice of presuit mediation.

2531 (d) The mediator who has been selected and agreed to
2532 mediate must schedule the mediation conference at a mutually
2533 convenient time and place within that 90-day period; but, if the
2534 responding party does not provide a list of available dates and
2535 times, the mediator is authorized to schedule a mediation
2536 conference without taking the responding party's schedule and
2537 convenience into consideration. Within 10 days after the
2538 designation of the mediator, the mediator shall coordinate with
2539 the parties and notify the parties in writing of the date, time,
2540 and place of the mediation conference.

2541 (e) The mediation conference must be held on the scheduled
2542 date and may be rescheduled if a rescheduled date is approved by
2543 the mediator. However, in no event shall the mediation be held
2544 later than 90 days after the notice of presuit mediation was
2545 first served, unless all parties mutually agree in writing
2546 otherwise. If the presuit mediation is not completed within the
2547 required time limits, the mediator shall declare an impasse
2548 unless the mediation date is extended by mutual written
2549 agreement by all parties and approved by the mediator.

2550 (f) If the responding party fails to respond within 20 days
2551 after the date of service of the statutory notice of presuit
2552 mediation, fails to agree to at least one of the mediators

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2553 listed by the aggrieved party in the notice, fails to pay or
2554 prepay to the mediator one-half of the costs of the mediator, or
2555 fails to appear and participate at the scheduled mediation, the
2556 aggrieved party shall be authorized to proceed with the filing
2557 of a lawsuit without further notice.

2558 (g)1. The failure of any party to respond to the statutory
2559 notice of presuit mediation within 20 days, the failure to agree
2560 upon a mediator, the failure to provide a listing of dates and
2561 times in which the responding party is available to participate
2562 in the mediation within 90 days after the date the responding
2563 party was served with the statutory notice of presuit mediation,
2564 the failure to make payment of fees and costs within the time
2565 established by the mediator, or the failure to appear for a
2566 scheduled mediation session without the approval of the mediator
2567 shall in each instance constitute a failure or refusal to
2568 participate in the mediation process and shall operate as an
2569 impasse in the presuit mediation by such party, entitling the
2570 other party to file a lawsuit in court and to seek an award of
2571 the costs and attorney's fees associated with the mediation.

2572 2. Persons who fail or refuse to participate in the entire
2573 mediation process may not recover attorney's fees and costs in
2574 subsequent litigation relating to the same dispute between the
2575 same parties. If any presuit mediation session cannot be
2576 scheduled and conducted within 90 days after the offer to
2577 participate in mediation was filed, through no fault of either
2578 party, then an impasse shall be deemed to have occurred unless
2579 the parties mutually agree in writing to extend this deadline.
2580 In the event of such impasse, each party shall be responsible
2581 for its own costs and attorney's fees and one-half of any

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2582 mediator fees and filing fees, and either party may file a
2583 lawsuit in court regarding the dispute.

2584 720.506 Opt-out of presuit mediation.—A party served with a
2585 notice of presuit mediation under s. 720.505 may opt out of
2586 presuit mediation and demand that the dispute proceed under
2587 nonbinding arbitration as follows:

2588 (1) In lieu of a response to the notice of presuit
2589 mediation as required under s. 720.505, the responding party may
2590 serve upon the aggrieved party, in the same manner as the
2591 response to a notice for presuit mediation under s. 720.505, a
2592 notice of opting out of mediation and demand that the dispute
2593 instead proceed to presuit arbitration under s. 720.507.

2594 (2) The aggrieved party shall be relieved from having to
2595 satisfy the requirements of s. 720.504 as a condition precedent
2596 to filing the demand for presuit arbitration.

2597 (3) Except as otherwise provided in this part, the choice
2598 of which presuit alternative dispute resolution procedure is
2599 used shall be at the election of the aggrieved party who first
2600 initiated such proceeding after complying with the provisions of
2601 s. 720.504.

2602 720.507 Presuit arbitration.—

2603 (1) Disputes between an association and a parcel owner or
2604 owners or between parcel owners are subject to a demand for
2605 presuit arbitration pursuant to this section before the dispute
2606 may be filed in court. A party who elects to use the presuit
2607 arbitration procedure under this part shall serve on the
2608 responding party a written notice of presuit arbitration in
2609 substantially the following form:

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2639

STATUTORY NOTICE OF PRESUIT ARBITRATION

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

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

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

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2640 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD
2641 PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY
2642 THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN
2643 "ARBITRATION AWARD." PURSUANT TO SECTION 720.507,
2644 FLORIDA STATUTES, THE ARBITRATION AWARD SHALL BE FINAL
2645 UNLESS A LAWSUIT IS FILED IN A COURT OF COMPETENT
2646 JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE
2647 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION
2648 IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE OF THE
2649 ARBITRATION AWARD.

2650
2651 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE
2652 ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND
2653 BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE
2654 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS
2655 FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR
2656 TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE
2657 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE
2658 PARTIES UNDER SECTION 720.505, FLORIDA STATUTES. THE
2659 FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION
2660 PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN
2661 ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF
2662 YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE
2663 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED
2664 TO RECOVER ATTORNEY'S FEES IF YOU PREVAIL IN A
2665 SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME
2666 DISPUTE.

2667
2668 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE

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2669 ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE
2670 NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU
2671 HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS.
2672 THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR
2673 MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE
2674 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL
2675 ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS
2676 CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT
2677 ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE
2678 AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT
2679 ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS,
2680 AND HOURLY RATES, ARE AS FOLLOWS:

2681
2682 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND
2683 HOURLY RATES OF AT LEAST FIVE ARBITRATORS.)

2684
2685 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO
2686 CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL
2687 AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.

2688
2689 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF
2690 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE
2691 PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION
2692 EQUALLY, INCLUDING THE FEE CHARGED BY THE ARBITRATOR.
2693 THE PARTIES SHALL BE RESPONSIBLE FOR THEIR OWN
2694 ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY
2695 IN CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN
2696 ATTORNEY TO REPRESENT YOU FOR THE ARBITRATION IS NOT
2697 REQUIRED. THE ARBITRATOR SELECTED MAY REQUIRE THE

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2698 ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED
2699 FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR
2700 PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED
2701 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER
2702 REASONABLE ADVANCE DEPOSITS AS THE ARBITRATOR WHO IS
2703 SELECTED REQUIRES FOR THIS PURPOSE. ANY FUNDS
2704 DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE
2705 IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.

2706
2707 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND
2708 CLEARLY INDICATE THE NAME OF THE ARBITRATOR WHO IS
2709 ACCEPTABLE TO YOU FROM THE NAMES LISTED BY THE
2710 AGGRIEVED PARTY.

2711
2712 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE
2713 WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF
2714 PRESUIT ARBITRATION WAS PERSONALLY SERVED ON YOU OR
2715 THE POSTMARKED DATE THAT THIS NOTICE OF PRESUIT
2716 ARBITRATION WAS SENT TO YOU BY CERTIFIED MAIL. YOU
2717 MUST ALSO PROVIDE A LIST OF AT LEAST THREE DATES AND
2718 TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE
2719 ARBITRATION THAT ARE WITHIN 90 DAYS AFTER THE DATE YOU
2720 WERE PERSONALLY SERVED OR WITHIN 90 DAYS AFTER THE
2721 POSTMARKED DATE OF THE CERTIFIED MAILING OF THIS
2722 STATUTORY NOTICE OF PRESUIT ARBITRATION. A COPY OF
2723 THIS NOTICE AND YOUR RESPONSE WILL BE PROVIDED BY THE
2724 AGGRIEVED PARTY TO THE ARBITRATOR SELECTED, AND THE
2725 ARBITRATOR WILL SCHEDULE A MUTUALLY CONVENIENT TIME
2726 AND PLACE FOR THE ARBITRATION CONFERENCE TO BE HELD.

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2727 IF YOU DO NOT PROVIDE A LIST OF AVAILABLE DATES AND
2728 TIMES, THE ARBITRATOR IS AUTHORIZED TO SCHEDULE AN
2729 ARBITRATION CONFERENCE WITHOUT TAKING YOUR SCHEDULE
2730 AND CONVENIENCE INTO CONSIDERATION. THE ARBITRATION
2731 CONFERENCE MUST BE HELD ON THE SCHEDULED DATE, OR ANY
2732 RESCHEDULED DATE APPROVED BY THE ARBITRATOR. IN NO
2733 EVENT SHALL THE ARBITRATION CONFERENCE BE LATER THAN
2734 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS
2735 FIRST SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN
2736 WRITING OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED
2737 WITHIN THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL
2738 ISSUE AN ARBITRATION AWARD, UNLESS THE HEARING IS
2739 EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES
2740 AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU
2741 FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE
2742 SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE
2743 ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE
2744 AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO
2745 AGREE TO ONE OF THE ARBITRATORS THAT THE AGGRIEVED
2746 PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO THE
2747 ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS REQUIRED,
2748 OR FAIL TO APPEAR AND PARTICIPATE AT THE SCHEDULED
2749 ARBITRATION CONFERENCE, THE AGGRIEVED PARTY MAY
2750 REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION AWARD.
2751 IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED PARTY
2752 SHALL BE ENTITLED TO RECOVER AN AWARD OF REASONABLE
2753 ATTORNEY'S FEES AND COSTS, INCLUDING ANY FEES PAID TO
2754 THE ARBITRATOR, INCURRED IN OBTAINING AN ARBITRATION
2755 AWARD PURSUANT TO SECTION 720.507, FLORIDA STATUTES.

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

Signature of aggrieved party

PRINTED NAME OF AGGRIEVED PARTY

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

AGREEMENT TO ARBITRATE

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

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

THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE IS

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2785 AVAILABLE AND ABLE TO ATTEND AND PARTICIPATE IN THE
 2786 PRESUIT ARBITRATION CONFERENCE AT THE FOLLOWING DATES
 2787 AND TIMES:

2788
 2789 (LIST ALL AVAILABLE DATES AND TIMES, OF WHICH THERE
 2790 MUST BE AT LEAST THREE, WITHIN 90 DAYS AFTER THE DATE
 2791 ON WHICH YOU WERE SERVED, EITHER BY PROCESS SERVER OR
 2792 BY CERTIFIED MAIL, WITH THE NOTICE OF PRESUIT
 2793 ARBITRATION.)

2794
 2795 I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE
 2796 ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS
 2797 AS THE ARBITRATOR MAY REQUIRE FOR THIS PURPOSE.

2798
 2799 _____
 2800 SIGNATURE OF RESPONDING PARTY #1

2801 _____
 2802 TELEPHONE CONTACT INFORMATION

2803
 2804 _____
 2805 SIGNATURE AND TELEPHONE CONTACT INFORMATION OF
 2806 RESPONDING PARTY #2, IF APPLICABLE. IF THE PROPERTY IS
 2807 OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,
 2808 OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF
 2809 A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

2810
 2811 (2) (a) Service of the notice of presuit arbitration shall
 2812 be effected either by personal service, as provided in chapter
 2813 48, or by certified mail, return receipt requested, in a letter

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2814 in substantial conformity with the form provided in subsection
2815 (1), with an additional copy being sent by regular first-class
2816 mail, to the address of the responding party as it last appears
2817 on the books and records of the association or, if not
2818 available, the last address as it appears on the official
2819 records of the county property appraiser for the county in which
2820 the property is situated that is subject to the association
2821 documents. The responding party has 20 days after the postmarked
2822 date of the certified mailing of the statutory notice of presuit
2823 arbitration or the date the responding party is personally
2824 served with the statutory notice of presuit arbitration to serve
2825 a written response to the aggrieved party. The response shall be
2826 served by certified mail, return receipt requested, with an
2827 additional copy being sent by regular first-class mail, to the
2828 address shown on the statutory notice of presuit arbitration.
2829 The postmarked date on the envelope of the response shall
2830 constitute the date the response was served.

2831 (b) The parties shall share the costs of presuit
2832 arbitration equally, including the fee charged by the
2833 arbitrator, if any, unless the parties agree otherwise, and the
2834 arbitrator may require advance payment of his or her reasonable
2835 fees and costs. Each party shall be responsible for that party's
2836 own attorney's fees if a party chooses to be represented by an
2837 attorney for the arbitration proceedings.

2838 (c)1. The party responding to the aggrieved party must sign
2839 the agreement to arbitrate included in the notice of presuit
2840 arbitration and clearly indicate the name of the arbitrator who
2841 is acceptable of those arbitrators listed by the aggrieved
2842 party. The responding party must provide a list of at least

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2843 three dates and times in which the responding party is available
2844 to participate in the arbitration conference within 90 days
2845 after the date the responding party was served with the
2846 statutory notice of presuit arbitration.

2847 2. The arbitrator must schedule the arbitration conference
2848 at a mutually convenient time and place, but if the responding
2849 party does not provide a list of available dates and times, the
2850 arbitrator is authorized to schedule an arbitration conference
2851 without taking the responding party's schedule and convenience
2852 into consideration. Within 10 days after the designation of the
2853 arbitrator, the arbitrator shall notify the parties in writing
2854 of the date, time, and place of the arbitration conference.

2855 3. The arbitration conference must be held on the scheduled
2856 date and may be rescheduled if approved by the arbitrator.
2857 However, in no event shall the arbitration hearing be later than
2858 90 days after the notice of presuit arbitration was first
2859 served, unless all parties mutually agree in writing otherwise.
2860 If the arbitration hearing is not completed within the required
2861 time limits, the arbitrator may issue an arbitration award
2862 unless the time for the hearing is extended as provided herein.

2863 4. If the responding party fails to respond within 20 days
2864 after the date of statutory notice of presuit arbitration, fails
2865 to agree to at least one of the arbitrators that have been
2866 listed by the aggrieved party in the presuit notice of
2867 arbitration, fails to pay or prepay to the arbitrator one-half
2868 of the costs involved, or fails to appear and participate at the
2869 scheduled arbitration, the aggrieved party is authorized to
2870 proceed with a request that the arbitrator issue an arbitration
2871 award.

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2872 (d)1. The failure of any party to respond to the statutory
2873 notice of presuit arbitration within 20 days, the failure to
2874 select one of the arbitrators listed by the aggrieved party, the
2875 failure to provide a listing of dates and times in which the
2876 responding party is available to participate in the arbitration
2877 conference within 90 days after the date of the responding party
2878 being served with the statutory notice of presuit arbitration,
2879 the failure to make payment of fees and costs as required within
2880 the time established by the arbitrator, or the failure to appear
2881 for an arbitration conference without the approval of the
2882 arbitrator shall entitle the other party to request the
2883 arbitrator to enter an arbitration award, including an award of
2884 the reasonable costs and attorney's fees associated with the
2885 arbitration.

2886 2. Persons who fail or refuse to participate in the entire
2887 arbitration process may not recover attorney's fees and costs in
2888 any subsequent litigation proceeding relating to the same
2889 dispute involving the same parties.

2890 (3) (a) In an arbitration proceeding, the arbitrator may not
2891 consider any unsuccessful mediation of the dispute.

2892 (b) An arbitrator in a proceeding initiated pursuant to
2893 this part may shorten the time for discovery or otherwise limit
2894 discovery in a manner consistent with the policy goals of this
2895 part to reduce the time and expense of litigating homeowners'
2896 association disputes initiated pursuant to this chapter and to
2897 promote an expeditious alternative dispute resolution procedure
2898 for parties to such actions.

2899 (4) At the request of any party to the arbitration, the
2900 arbitrator may issue subpoenas for the attendance of witnesses

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2901 and the production of books, records, documents, and other
2902 evidence, and any party on whose behalf a subpoena is issued may
2903 apply to the court for orders compelling such attendance and
2904 production. Subpoenas shall be served and are enforceable in the
2905 manner provided by the Florida Rules of Civil Procedure.
2906 Discovery may, at the discretion of the arbitrator, be permitted
2907 in the manner provided by the Florida Rules of Civil Procedure.

2908 (5) The final arbitration award shall be sent to the
2909 parties in writing no later than 30 days after the date of the
2910 arbitration hearing, absent extraordinary circumstances
2911 necessitating a later filing the reasons for which shall be
2912 stated in the final award if filed more than 30 days after the
2913 date of the final session of the arbitration conference. An
2914 agreed arbitration award is final in those disputes in which the
2915 parties have mutually agreed to be bound. An arbitration award
2916 decided by the arbitrator is final unless a lawsuit seeking a
2917 trial de novo is filed in a court of competent jurisdiction
2918 within 30 days after the date of the arbitration award. The
2919 right to file for a trial de novo entitles the parties to file a
2920 complaint in the appropriate trial court for a judicial
2921 resolution of the dispute. The prevailing party in an
2922 arbitration proceeding shall be awarded the costs of the
2923 arbitration and reasonable attorney's fees in an amount
2924 determined by the arbitrator.

2925 (6) The party filing a motion for a trial de novo shall be
2926 assessed the other party's arbitration costs, court costs, and
2927 other reasonable costs, including attorney's fees, investigation
2928 expenses, and expenses for expert or other testimony or evidence
2929 incurred after the arbitration hearing, if the judgment upon the

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2930 trial de novo is not more favorable than the final arbitration
2931 award.

2932 720.508 Rules of procedure.-

2933 (1) Presuit mediation and presuit arbitration proceedings
2934 under this part must be conducted in accordance with the
2935 applicable Florida Rules of Civil Procedure and rules governing
2936 mediations and arbitrations under chapter 44, except that this
2937 part shall be controlling to the extent of any conflict with
2938 other applicable rules or statutes. The arbitrator may shorten
2939 any applicable time period and otherwise limit the scope of
2940 discovery on request of the parties or within the discretion of
2941 the arbitrator exercised consistent with the purpose and
2942 objective of reducing the expense and expeditiously concluding
2943 proceedings under this part.

2944 (2) Presuit mediation proceedings under s. 720.505 are
2945 privileged and confidential to the same extent as court-ordered
2946 mediation under chapter 44. An arbitrator or judge may not
2947 consider any information or evidence arising from the presuit
2948 mediation proceeding except in a proceeding to impose sanctions
2949 for failure to attend a presuit mediation session or to enforce
2950 a mediated settlement agreement.

2951 (3) Persons who are not parties to the dispute may not
2952 attend the presuit mediation conference without consent of all
2953 parties, with the exception of counsel for the parties and a
2954 corporate representative designated by the association. Presuit
2955 mediations under this part are not a board meeting for purposes
2956 of notice and participation set forth in this chapter.

2957 (4) Attendance at a mediation conference by the board of
2958 directors shall not require notice or participation by nonboard

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2959 members as otherwise required by this chapter for meetings of
2960 the board.

2961 (5) Settlement agreements resulting from a mediation or
2962 arbitration proceeding do not have precedential value in
2963 proceedings involving parties other than those participating in
2964 the mediation or arbitration.

2965 (6) Arbitration awards by an arbitrator shall have
2966 precedential value in other proceedings involving the same
2967 association or with respect to the same parcel owner.

2968 720.509 Mediators and arbitrators; qualifications.—A person
2969 is authorized to conduct mediation or arbitration under this
2970 part if he or she has been certified as a circuit court civil
2971 mediator under the requirements adopted pursuant to s. 44.106,
2972 is a member in good standing with The Florida Bar, and otherwise
2973 meets all other requirements imposed by chapter 44.

2974 720.510 Enforcement of mediation agreement or arbitration
2975 award.—

2976 (1) A mediation settlement may be enforced through the
2977 county or circuit court, as applicable, and any costs and
2978 attorney's fees incurred in the enforcement of a settlement
2979 agreement reached at mediation shall be awarded to the
2980 prevailing party in any enforcement action.

2981 (2) Any party to an arbitration proceeding may enforce an
2982 arbitration award by filing a petition in a court of competent
2983 jurisdiction in which the homeowners' association is located.
2984 The prevailing party in such proceeding shall be awarded
2985 reasonable attorney's fees and costs incurred in such
2986 proceeding.

2987 (3) If a complaint is filed seeking a trial de novo, the

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2988 arbitration award shall be stayed and a petition to enforce the
2989 award may not be granted. Such award, however, shall be
2990 admissible in the court proceeding seeking a trial de novo.

2991 Section 25. All new residential construction in any deed-
2992 restricted community that requires mandatory membership in the
2993 association under chapter 718, chapter 719, or chapter 720,
2994 Florida Statutes, must comply with the provisions of Pub. L. No.
2995 110-140, Title XIV, ss. 1402 to 1406, 15 U.S.C. ss. 8001-8005.

2996 Section 26. This act shall take effect July 1, 2010.