

By Senator Soto

14-00026-15

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1                   A bill to be entitled  
2       An act relating to dispute resolution; amending s.  
3       720.311, F.S.; requiring disputes regarding homesteads  
4       to be the subject of a demand for presuit mediation;  
5       providing an effective date.

6  
7 Be It Enacted by the Legislature of the State of Florida:

8  
9       Section 1. Paragraph (a) of subsection (2) of section  
10      720.311, Florida Statutes, is amended to read:

11       720.311 Dispute resolution.—

12       (2) (a) Disputes between an association and a parcel owner  
13      regarding use of or changes to the parcel or the common areas  
14      and other covenant enforcement disputes, disputes regarding  
15      homesteads, disputes regarding amendments to the association  
16      documents, disputes regarding meetings of the board and  
17      committees appointed by the board, membership meetings not  
18      including election meetings, and access to the official records  
19      of the association must ~~shall~~ be the subject of a demand for  
20      presuit mediation served by an aggrieved party before the  
21      dispute is filed in court. Presuit mediation proceedings must be  
22      conducted in accordance with the applicable Florida Rules of  
23      Civil Procedure, and ~~these proceedings~~ are privileged and  
24      confidential to the same extent as court-ordered mediation.  
25      Disputes subject to presuit mediation under this section may  
26      ~~shall~~ not include the collection of an ~~any~~ assessment, fine, or  
27      other financial obligation, including attorney ~~attorney's~~ fees  
28      and costs, claimed to be due or any action to enforce a prior  
29      mediation settlement agreement between the parties. Also, in any

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30 dispute subject to presuit mediation under this section which  
31 requires ~~where~~ emergency relief ~~is required~~, a motion for  
32 temporary injunctive relief may be filed with the court without  
33 first complying with the presuit mediation requirements of this  
34 section. After any issues regarding emergency or temporary  
35 relief are resolved, the court may either refer the parties to a  
36 mediation program administered by the courts or require  
37 mediation under this section. An arbitrator or judge may not  
38 consider any information or evidence arising from the presuit  
39 mediation proceeding except in a proceeding to impose sanctions  
40 for failure to attend a presuit mediation session or to enforce  
41 a mediated settlement agreement. Persons who are not parties to  
42 the dispute may not attend the presuit mediation conference  
43 without the consent of all parties, except for counsel for the  
44 parties and a corporate representative designated by the  
45 association. When mediation is attended by a quorum of the  
46 board, such mediation is not a board meeting for purposes of  
47 notice and participation set forth in s. 720.303. An aggrieved  
48 party shall serve on the responding party a written demand to  
49 participate in presuit mediation in substantially the following  
50 form:

51  
52 STATUTORY OFFER TO PARTICIPATE  
53 IN PRESUIT MEDIATION

54  
55 The alleged aggrieved party, ....., hereby  
56 demands that ....., as the responding  
57 party, engage in mandatory presuit mediation in  
58 connection with the following disputes, which by

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59 statute are of a type that are subject to presuit  
60 mediation:

61  
62 (List specific nature of the dispute or disputes to be  
63 mediated and the authority supporting a finding of a  
64 violation as to each dispute.)

65  
66 Pursuant to section 720.311, Florida Statutes, this  
67 demand to resolve the dispute through presuit  
68 mediation is required before a lawsuit can be filed  
69 concerning the dispute. Pursuant to the statute, the  
70 parties are required to engage in presuit mediation  
71 with a neutral third-party mediator in order to  
72 attempt to resolve this dispute without court action,  
73 and the aggrieved party demands that you likewise  
74 agree to this process. If you fail to participate in  
75 the mediation process, suit may be brought against you  
76 without further warning.

77  
78 The process of mediation involves a supervised  
79 negotiation process in which a trained, neutral third-  
80 party mediator meets with both parties and assists  
81 them in exploring possible opportunities for resolving  
82 part or all of the dispute. By agreeing to participate  
83 in presuit mediation, you are not bound in any way to  
84 change your position. Furthermore, the mediator has no  
85 authority to make any decisions in this matter or to  
86 determine who is right or wrong and merely acts as a  
87 facilitator to ensure that each party understands the

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88 position of the other party and that all options for  
89 reasonable settlement are fully explored.

90  
91 If an agreement is reached, it shall be reduced to  
92 writing and becomes a binding and enforceable  
93 commitment of the parties. A resolution of one or more  
94 disputes in this fashion avoids the need to litigate  
95 these issues in court. The failure to reach an  
96 agreement, or the failure of a party to participate in  
97 the process, results in the mediator declaring an  
98 impasse in the mediation, after which the aggrieved  
99 party may proceed to court on all outstanding,  
100 unsettled disputes. If you have failed or refused to  
101 participate in the entire mediation process, you will  
102 not be entitled to recover attorney ~~attorney's~~ fees,  
103 even if you prevail.

104  
105 The aggrieved party has selected and hereby lists five  
106 certified mediators who we believe to be neutral and  
107 qualified to mediate the dispute. You have the right  
108 to select any one of these mediators. The fact that  
109 one party may be familiar with one or more of the  
110 listed mediators does not mean that the mediator  
111 cannot act as a neutral and impartial facilitator. Any  
112 mediator who cannot act in this capacity is required  
113 ethically to decline to accept engagement. The  
114 mediators that we suggest, and their current hourly  
115 rates, are as follows:

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117 (List the names, addresses, telephone numbers, and  
118 hourly rates of the mediators. Other pertinent  
119 information about the background of the mediators may  
120 be included as an attachment.)  
121

122 You may contact the offices of these mediators to  
123 confirm that the listed mediators will be neutral and  
124 will not show any favoritism toward either party. The  
125 Florida Supreme Court can provide you a list of  
126 certified mediators.  
127

128 Unless otherwise agreed by the parties, section  
129 720.311(2)(b), Florida Statutes, requires that the  
130 parties share the costs of presuit mediation equally,  
131 including the fee charged by the mediator. An average  
132 mediation may require 3 ~~three~~ to 4 ~~four~~ hours of the  
133 mediator's time, including some preparation time, and  
134 the parties would need to share equally the mediator's  
135 fees as well as their own attorney ~~attorney's~~ fees if  
136 they choose to employ an attorney in connection with  
137 the mediation. However, use of an attorney is not  
138 required and is at the option of each party. The  
139 mediators may require the advance payment of some or  
140 all of the anticipated fees. The aggrieved party  
141 hereby agrees to pay or prepay one-half of the  
142 mediator's estimated fees and to forward this amount  
143 or such other reasonable advance deposits as the  
144 mediator requires for this purpose. Any funds  
145 deposited will be returned to you if these are in

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146 excess of your share of the fees incurred.

147

148 To begin your participation in presuit mediation to  
 149 try to resolve the dispute and avoid further legal  
 150 action, please sign below and clearly indicate which  
 151 mediator is acceptable to you. We will then ask the  
 152 mediator to schedule a mutually convenient time and  
 153 place for the mediation conference to be held. The  
 154 mediation conference must be held within 90 ~~ninety~~  
 155 ~~(90)~~ days of this date, unless extended by mutual  
 156 written agreement. In the event that you fail to  
 157 respond within 20 days from the date of this letter,  
 158 or if you fail to agree to at least one of the  
 159 mediators that we have suggested or to pay or prepay  
 160 to the mediator one-half of the costs involved, the  
 161 aggrieved party will be authorized to proceed with the  
 162 filing of a lawsuit against you without further notice  
 163 and may seek an award of attorney ~~attorney's~~ fees or  
 164 costs incurred in attempting to obtain mediation.

165

166 Therefore, please give this matter your immediate  
 167 attention. By law, your response must be mailed by  
 168 certified mail, return receipt requested, and by  
 169 first-class mail to the address shown on this demand.

170

171 .....

172 .....

173

174 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR

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175 AGREEMENT TO THAT CHOICE.

176

177 AGREEMENT TO MEDIATE

178

179 The undersigned hereby agrees to participate in  
180 presuit mediation and agrees to attend a mediation  
181 conducted by the following mediator or mediators who  
182 are listed above as someone who would be acceptable to  
183 mediate this dispute:

184

185 (List acceptable mediator or mediators.)

186

187 I/we further agree to pay or prepay one-half of the  
188 mediator's fees and to forward such advance deposits  
189 as the mediator may require for this purpose.

190

191 .....

192 Signature of responding party #1

193

194 .....

195 Telephone contact information

196

197 .....

198 Signature and telephone contact information of  
199 responding party #2 (if applicable) (If property is  
200 owned by more than one person, all owners must sign.)

201

202 Section 2. This act shall take effect July 1, 2015.