

1 A bill to be entitled
2 An act relating to community associations; amending s.
3 718.1255, F.S.; requiring the Division of Florida
4 Condominiums, Timeshares, and Mobile Homes of the
5 Department of Business and Professional Regulation to
6 establish the Office of Community Association
7 Hearings; requiring the division to employ full-time
8 attorneys to act as community association hearing
9 officers in lieu of arbitrators for specified
10 purposes; allowing the division to certify attorneys
11 who are not employed by the division to act as
12 community association hearing officers under specified
13 conditions; specifying grounds for which a community
14 association hearing officer may be terminated;
15 transferring the powers and duties of arbitrators to
16 community association hearing officers; authorizing a
17 community association hearing officer to hold a
18 hearing and impose sanctions against a board member or
19 officer under certain conditions; amending s. 720.311,
20 F.S.; revising and providing requirements with respect
21 to alternative dispute resolution; amending ss. 34.01,
22 718.117, 719.106, 720.303, and 723.078, F.S.;
23 conforming provisions to changes made by the act;
24 providing an effective date.
25

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

27

28 Section 1. Subsection (4) of section 718.1255, Florida
 29 Statutes, is amended to read:

30 718.1255 Alternative dispute resolution; voluntary
 31 mediation; mandatory nonbinding arbitration; legislative
 32 findings.—

33 (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF
 34 DISPUTES.—The Division of Florida Condominiums, Timeshares, and
 35 Mobile Homes of the Department of Business and Professional
 36 Regulation shall establish the Office of Community Association
 37 Hearings and shall ~~may~~ employ full-time attorneys to act as
 38 community association hearing officers ~~arbitrators~~ to conduct
 39 the arbitration hearings provided by this chapter. The division
 40 may also certify attorneys who are not employed by the division
 41 to act as community association hearing officers, by mutual
 42 agreement of the parties, ~~arbitrators~~ to conduct the arbitration
 43 hearings provided by this chapter.

44 (a) A ~~No~~ person may not be employed by the department as a
 45 full-time community association hearing officer ~~arbitrator~~
 46 unless he or she is a member in good standing of The Florida
 47 Bar. A community association hearing officer may only be
 48 terminated by the department for cause. A person may only be
 49 certified by the division to act as a community association
 50 hearing officer ~~an arbitrator~~ if he or she has:

51 1. Been a member in good standing of The Florida Bar for
52 at least 5 years and has mediated or arbitrated at least 10
53 disputes involving condominiums in this state during the 3 years
54 immediately preceding the date of application;~~;~~

55 2. Mediated or arbitrated at least 30 disputes in any
56 subject area in this state during the 3 years immediately
57 preceding the date of employment or application;~~;~~ or

58 3. Attained board certification in real estate law or
59 condominium and planned development law from The Florida Bar.

60 (b) Community association hearing officer ~~Arbitrator~~
61 certification is valid for 1 year. A community association
62 hearing officer ~~An arbitrator~~ who does not maintain the minimum
63 qualifications for initial certification may not have his or her
64 certification renewed.

65 (c) The department may not enter into a legal services
66 contract for an arbitration hearing under this chapter with an
67 attorney who is not a certified community association hearing
68 officer ~~arbitrator~~ unless a certified community association
69 hearing officer ~~arbitrator~~ is not available within 50 miles of
70 the dispute. The department shall adopt rules of procedure to
71 govern such arbitration hearings including mediation incident
72 thereto.

73 (d) The decision of a community association hearing
74 officer ~~an arbitrator~~ is ~~shall be~~ final; however, a decision is
75 not ~~shall not be~~ deemed final agency action. Nothing in this

76 | provision shall be construed to foreclose parties from
 77 | proceeding in a trial de novo unless the parties have agreed
 78 | that the arbitration is binding. If judicial proceedings are
 79 | initiated, the final decision of the community association
 80 | hearing officer ~~arbitrator~~ shall be admissible in evidence in
 81 | the trial de novo.

82 | (e) ~~(a)~~ Before ~~Prior to~~ the institution of court
 83 | litigation, a party to a dispute shall petition the division for
 84 | nonbinding arbitration. The petition must be accompanied by a
 85 | filing fee in the amount of \$50. Filing fees collected under
 86 | this section must be used to defray the expenses of the
 87 | alternative dispute resolution program.

88 | (f) ~~(b)~~ The petition must recite, and have attached
 89 | thereto, supporting proof that the petitioner gave the
 90 | respondents:

- 91 | 1. Advance written notice of the specific nature of the
- 92 | dispute;
- 93 | 2. A demand for relief, and a reasonable opportunity to
- 94 | comply or to provide the relief; and
- 95 | 3. Notice of the intention to file an arbitration petition
- 96 | or other legal action in the absence of a resolution of the
- 97 | dispute.

98 |
 99 | Failure to include the allegations or proof of compliance with
 100 | these prerequisites requires dismissal of the petition without

101 prejudice.

102 (g)~~(e)~~ Upon receipt, the petition shall be promptly
103 reviewed by the division to determine the existence of a dispute
104 and compliance with the requirements of paragraphs (e) and (f)
105 ~~(a) and (b)~~. If emergency relief is required and is not
106 available through arbitration, a motion to stay the arbitration
107 may be filed. The motion must be accompanied by a verified
108 petition alleging facts that, if proven, would support entry of
109 a temporary injunction, and if an appropriate motion and
110 supporting papers are filed, the division may abate the
111 arbitration pending a court hearing and disposition of a motion
112 for temporary injunction.

113 (h)~~(d)~~ Upon determination by the division that a dispute
114 exists and that the petition substantially meets the
115 requirements of paragraphs (e) and (f) ~~(a) and (b)~~ and any other
116 applicable rules, the division shall assign or enter into a
117 contract with a community association hearing officer ~~an~~
118 ~~arbitrator~~ and serve a copy of the petition upon all
119 respondents. The community association hearing officer
120 ~~arbitrator~~ shall conduct a hearing within 30 days after being
121 assigned or entering into a contract unless the petition is
122 withdrawn or a continuance is granted for good cause shown.

123 (i)~~(e)~~ Before or after the filing of the respondents'
124 answer to the petition, any party may request that the community
125 association hearing officer ~~arbitrator~~ refer the case to

126 mediation under this section and any rules adopted by the
127 division. Upon receipt of a request for mediation, the division
128 shall promptly contact the parties to determine if there is
129 agreement that mediation would be appropriate. If all parties
130 agree, the dispute must be referred to mediation.

131 Notwithstanding a lack of an agreement by all parties, the
132 community association hearing officer ~~arbitrator~~ may refer a
133 dispute to mediation at any time.

134 (j) ~~(f)~~ Upon referral of a case to mediation, the parties
135 must select a mutually acceptable mediator. To assist in the
136 selection, the community association hearing officer ~~arbitrator~~
137 shall provide the parties with a list of both volunteer and paid
138 mediators that have been certified by the division under s.
139 718.501. If the parties are unable to agree on a mediator within
140 the time allowed by the community association hearing officer
141 ~~arbitrator~~, the community association hearing officer ~~arbitrator~~
142 shall appoint a mediator from the list of certified mediators.
143 If a case is referred to mediation, the parties shall attend a
144 mediation conference, as scheduled by the parties and the
145 mediator. If any party fails to attend a duly noticed mediation
146 conference, without the permission or approval of the community
147 association hearing officer ~~arbitrator~~ or mediator, the
148 community association hearing officer ~~arbitrator~~ must impose
149 sanctions against the party, including the striking of any
150 pleadings filed, the entry of an order of dismissal or default

151 if appropriate, and the award of costs and attorney fees
152 incurred by the other parties. Unless otherwise agreed to by the
153 parties or as provided by order of the community association
154 hearing officer ~~arbitrator~~, a party is deemed to have appeared
155 at a mediation conference by the physical presence of the party
156 or its representative having full authority to settle without
157 further consultation, provided that an association may comply by
158 having one or more representatives present with full authority
159 to negotiate a settlement and recommend that the board of
160 administration ratify and approve such a settlement within 5
161 days from the date of the mediation conference. The parties
162 shall share equally the expense of mediation, unless they agree
163 otherwise.

164 ~~(k)-(g)~~ (k) The purpose of mediation as provided for by this
165 section is to present the parties with an opportunity to resolve
166 the underlying dispute in good faith, and with a minimum
167 expenditure of time and resources.

168 ~~(l)-(h)~~ (l) Mediation proceedings must generally be conducted
169 in accordance with the Florida Rules of Civil Procedure, and
170 these proceedings are privileged and confidential to the same
171 extent as court-ordered mediation. Persons who are not parties
172 to the dispute are not allowed to attend the mediation
173 conference without the consent of all parties, with the
174 exception of counsel for the parties and corporate
175 representatives designated to appear for a party. If the

176 mediator declares an impasse after a mediation conference has
177 been held, the arbitration proceeding terminates, unless all
178 parties agree in writing to continue the arbitration proceeding,
179 in which case the community association hearing officer's
180 ~~arbitrator's~~ decision shall be binding or nonbinding, as agreed
181 upon by the parties; in the arbitration proceeding, the
182 community association hearing officer ~~arbitrator~~ shall not
183 consider any evidence relating to the unsuccessful mediation
184 except in a proceeding to impose sanctions for failure to appear
185 at the mediation conference. If the parties do not agree to
186 continue arbitration, the community association hearing officer
187 ~~arbitrator~~ shall enter an order of dismissal, and either party
188 may institute a suit in a court of competent jurisdiction. The
189 parties may seek to recover any costs and attorney fees incurred
190 in connection with arbitration and mediation proceedings under
191 this section as part of the costs and fees that may be recovered
192 by the prevailing party in any subsequent litigation.

193 (m) ~~(i)~~ Arbitration shall be conducted according to rules
194 adopted by the division. The filing of a petition for
195 arbitration shall toll the applicable statute of limitations.

196 (n) ~~(j)~~ At the request of any party to the arbitration, the
197 community association hearing officer ~~arbitrator~~ shall issue
198 subpoenas for the attendance of witnesses and the production of
199 books, records, documents, and other evidence and any party on
200 whose behalf a subpoena is issued may apply to the court for

201 orders compelling such attendance and production. Subpoenas
202 shall be served and shall be enforceable in the manner provided
203 by the Florida Rules of Civil Procedure. Discovery may, in the
204 discretion of the community association hearing officer
205 ~~arbitrator~~, be permitted in the manner provided by the Florida
206 Rules of Civil Procedure. Rules adopted by the division may
207 authorize any reasonable sanctions except contempt for a
208 violation of the arbitration procedural rules of the division or
209 for the failure of a party to comply with a reasonable nonfinal
210 order issued by community association hearing officer ~~an~~
211 ~~arbitrator~~ which is not under judicial review.

212 (o) (k) The arbitration decision shall be ~~rendered within~~
213 ~~30 days after the hearing and~~ presented to the parties in
214 writing. An arbitration decision is final in those disputes in
215 which the parties have agreed to be bound. An arbitration
216 decision is also final if a complaint for a trial de novo is not
217 filed in a court of competent jurisdiction in which the
218 condominium is located within 30 days of the decision being
219 presented to the parties. The right to file for a trial de novo
220 entitles the parties to file a complaint in the appropriate
221 trial court for a judicial resolution of the dispute. The
222 prevailing party in an arbitration proceeding shall be awarded
223 the costs of the arbitration and reasonable attorney fees in an
224 amount determined by the community association hearing officer
225 ~~arbitrator~~. Such an award shall include the costs and reasonable

226 attorney fees incurred in the arbitration proceeding as well as
227 the costs and reasonable attorney fees incurred in preparing for
228 and attending any scheduled mediation. ~~An arbitrator's failure~~
229 ~~to render a written decision within 30 days after the hearing~~
230 ~~may result in the cancellation of his or her arbitration~~
231 ~~certification.~~

232 (p) ~~(l)~~ The party who files a complaint for a trial de novo
233 shall be assessed the other party's arbitration costs, court
234 costs, and other reasonable costs, including attorney fees,
235 investigation expenses, and expenses for expert or other
236 testimony or evidence incurred after the arbitration hearing if
237 the judgment upon the trial de novo is not more favorable than
238 the arbitration decision. If the judgment is more favorable, the
239 party who filed a complaint for trial de novo shall be awarded
240 reasonable court costs and attorney fees.

241 (q) ~~(m)~~ Any party to an arbitration proceeding may enforce
242 an arbitration award by filing a petition in a court of
243 competent jurisdiction in which the condominium is located. A
244 petition may not be granted unless the time for appeal by the
245 filing of a complaint for trial de novo has expired. If a
246 complaint for a trial de novo has been filed, a petition may not
247 be granted with respect to an arbitration award that has been
248 stayed. If the petition for enforcement is granted, the
249 petitioner shall recover reasonable attorney fees and costs
250 incurred in enforcing the arbitration award. A mediation

251 settlement may also be enforced through the county or circuit
252 court, as applicable, and any costs and fees incurred in the
253 enforcement of a settlement agreement reached at mediation must
254 be awarded to the prevailing party in any enforcement action.

255 (r)1. If the community association hearing officer's
256 judgment finds that a board member or officer has intentionally
257 prevented an association from complying with chapter 617,
258 chapter 718, chapter 719, or chapter 720, the community
259 association hearing officer shall serve the board member or
260 officer with an order to show cause why sanctions should not be
261 imposed against him or her. If the board member or officer
262 responds to the order to show cause, the community association
263 hearing officer shall hold a hearing to determine if sanctions
264 should be imposed on the board member or officer. If the board
265 member or officer does not respond to the order by the date
266 specified, a hearing shall not be held and sanctions shall be
267 imposed.

268 2.a. If the community association hearing officer finds
269 that a board member or officer has intentionally prevented an
270 association from complying with chapter 617, chapter 718,
271 chapter 719, or chapter 720, the community association hearing
272 officer may impose one or more of the following sanctions,
273 notice of which must be provided to the board member or officer
274 in writing:

275 (I) Require the board member or officer to reimburse the

276 association for any prevailing party attorney fees or costs
 277 imposed against it.

278 (II) Require the board member or officer to reimburse the
 279 attorney fees and costs incurred by and to the association.

280 (III) Require the board member or officer to reimburse the
 281 association for any damages awarded against it.

282 b. If the sanction is not paid by the date specified in
 283 the notice, the association shall impose the amount owed as a
 284 lien against the board member or officer's unit or units.

285 3. The award of attorney fees as provided in s. 57.105,
 286 applies to any proceeding conducted pursuant to this section.

287 4. If a community association hearing officer finds
 288 evidence of a criminal violation, the community association
 289 hearing officer shall refer the evidence to the appropriate
 290 state attorney.

291 Section 2. Section 720.311, Florida Statutes, is amended
 292 to read:

293 720.311 Alternative dispute resolution.—The division shall
 294 conduct alternative dispute resolution proceedings in accordance
 295 with s. 718.1255.

296 ~~(1) The Legislature finds that alternative dispute~~
 297 ~~resolution has made progress in reducing court dockets and~~
 298 ~~trials and in offering a more efficient, cost-effective option~~
 299 ~~to litigation. The filing of any petition for arbitration or the~~
 300 ~~servicing of a demand for presuit mediation as provided for in~~

301 ~~this section shall toll the applicable statute of limitations.~~
302 ~~Any recall dispute filed with the department pursuant to s.~~
303 ~~720.303(10) shall be conducted by the department in accordance~~
304 ~~with the provisions of ss. 718.112(2)(j) and 718.1255 and the~~
305 ~~rules adopted by the division. In addition, the department shall~~
306 ~~conduct mandatory binding arbitration of election disputes~~
307 ~~between a member and an association pursuant to s. 718.1255 and~~
308 ~~rules adopted by the division. Neither election disputes nor~~
309 ~~recall disputes are eligible for presuit mediation; these~~
310 ~~disputes shall be arbitrated by the department. At the~~
311 ~~conclusion of the proceeding, the department shall charge the~~
312 ~~parties a fee in an amount adequate to cover all costs and~~
313 ~~expenses incurred by the department in conducting the~~
314 ~~proceeding. Initially, the petitioner shall remit a filing fee~~
315 ~~of at least \$200 to the department. The fees paid to the~~
316 ~~department shall become a recoverable cost in the arbitration~~
317 ~~proceeding, and the prevailing party in an arbitration~~
318 ~~proceeding shall recover its reasonable costs and attorney~~
319 ~~attorney's fees in an amount found reasonable by the community~~
320 ~~association hearing officer arbitrator. The department shall~~
321 ~~adopt rules to effectuate the purposes of this section.~~

322 ~~(2)(a) Disputes between an association and a parcel owner~~
323 ~~regarding use of or changes to the parcel or the common areas~~
324 ~~and other covenant enforcement disputes, disputes regarding~~
325 ~~amendments to the association documents, disputes regarding~~

326 ~~meetings of the board and committees appointed by the board,~~
327 ~~membership meetings not including election meetings, and access~~
328 ~~to the official records of the association shall be the subject~~
329 ~~of a demand for presuit mediation served by an aggrieved party~~
330 ~~before the dispute is filed in court. Presuit mediation~~
331 ~~proceedings must be conducted in accordance with the applicable~~
332 ~~Florida Rules of Civil Procedure, and these proceedings are~~
333 ~~privileged and confidential to the same extent as court-ordered~~
334 ~~mediation. Disputes subject to presuit mediation under this~~
335 ~~section shall not include the collection of any assessment,~~
336 ~~fine, or other financial obligation, including attorney's fees~~
337 ~~and costs, claimed to be due or any action to enforce a prior~~
338 ~~mediation settlement agreement between the parties. Also, in any~~
339 ~~dispute subject to presuit mediation under this section where~~
340 ~~emergency relief is required, a motion for temporary injunctive~~
341 ~~relief may be filed with the court without first complying with~~
342 ~~the presuit mediation requirements of this section. After any~~
343 ~~issues regarding emergency or temporary relief are resolved, the~~
344 ~~court may either refer the parties to a mediation program~~
345 ~~administered by the courts or require mediation under this~~
346 ~~section. An arbitrator or judge may not consider any information~~
347 ~~or evidence arising from the presuit mediation proceeding except~~
348 ~~in a proceeding to impose sanctions for failure to attend a~~
349 ~~presuit mediation session or to enforce a mediated settlement~~
350 ~~agreement. Persons who are not parties to the dispute may not~~

351 ~~attend the presuit mediation conference without the consent of~~
 352 ~~all parties, except for counsel for the parties and a corporate~~
 353 ~~representative designated by the association. When mediation is~~
 354 ~~attended by a quorum of the board, such mediation is not a board~~
 355 ~~meeting for purposes of notice and participation set forth in s.~~
 356 ~~720.303. An aggrieved party shall serve on the responding party~~
 357 ~~a written demand to participate in presuit mediation in~~
 358 ~~substantially the following form:~~

359 ~~STATUTORY OFFER TO PARTICIPATE~~

360
 361 ~~IN PRESUIT MEDIATION~~

362 ~~The alleged aggrieved party,, hereby demands~~
 363 ~~that, as the responding party, engage in~~
 364 ~~mandatory presuit mediation in connection with the following~~
 365 ~~disputes, which by statute are of a type that are subject to~~
 366 ~~presuit mediation:~~

367 ~~(List specific nature of the dispute or disputes to be mediated~~
 368 ~~and the authority supporting a finding of a violation as to each~~
 369 ~~dispute.)~~

370 ~~Pursuant to section 720.311, Florida Statutes, this demand to~~
 371 ~~resolve the dispute through presuit mediation is required before~~
 372 ~~a lawsuit can be filed concerning the dispute. Pursuant to the~~
 373 ~~statute, the parties are required to engage in presuit mediation~~
 374 ~~with a neutral third-party mediator in order to attempt to~~
 375 ~~resolve this dispute without court action, and the aggrieved~~

376 ~~party demands that you likewise agree to this process. If you~~
377 ~~fail to participate in the mediation process, suit may be~~
378 ~~brought against you without further warning.~~
379 ~~The process of mediation involves a supervised negotiation~~
380 ~~process in which a trained, neutral third-party mediator meets~~
381 ~~with both parties and assists them in exploring possible~~
382 ~~opportunities for resolving part or all of the dispute. By~~
383 ~~agreeing to participate in presuit mediation, you are not bound~~
384 ~~in any way to change your position. Furthermore, the mediator~~
385 ~~has no authority to make any decisions in this matter or to~~
386 ~~determine who is right or wrong and merely acts as a facilitator~~
387 ~~to ensure that each party understands the position of the other~~
388 ~~party and that all options for reasonable settlement are fully~~
389 ~~explored.~~
390 ~~If an agreement is reached, it shall be reduced to writing and~~
391 ~~becomes a binding and enforceable commitment of the parties. A~~
392 ~~resolution of one or more disputes in this fashion avoids the~~
393 ~~need to litigate these issues in court. The failure to reach an~~
394 ~~agreement, or the failure of a party to participate in the~~
395 ~~process, results in the mediator declaring an impasse in the~~
396 ~~mediation, after which the aggrieved party may proceed to court~~
397 ~~on all outstanding, unsettled disputes. If you have failed or~~
398 ~~refused to participate in the entire mediation process, you will~~
399 ~~not be entitled to recover attorney's fees, even if you prevail.~~
400 ~~The aggrieved party has selected and hereby lists five certified~~

401 ~~mediators who we believe to be neutral and qualified to mediate~~
402 ~~the dispute. You have the right to select any one of these~~
403 ~~mediators. The fact that one party may be familiar with one or~~
404 ~~more of the listed mediators does not mean that the mediator~~
405 ~~cannot act as a neutral and impartial facilitator. Any mediator~~
406 ~~who cannot act in this capacity is required ethically to decline~~
407 ~~to accept engagement. The mediators that we suggest, and their~~
408 ~~current hourly rates, are as follows:~~
409 ~~(List the names, addresses, telephone numbers, and hourly rates~~
410 ~~of the mediators. Other pertinent information about the~~
411 ~~background of the mediators may be included as an attachment.)~~
412 ~~You may contact the offices of these mediators to confirm that~~
413 ~~the listed mediators will be neutral and will not show any~~
414 ~~favoritism toward either party. The Florida Supreme Court can~~
415 ~~provide you a list of certified mediators.~~
416 ~~Unless otherwise agreed by the parties, section 720.311(2)(b),~~
417 ~~Florida Statutes, requires that the parties share the costs of~~
418 ~~presuit mediation equally, including the fee charged by the~~
419 ~~mediator. An average mediation may require three to four hours~~
420 ~~of the mediator's time, including some preparation time, and the~~
421 ~~parties would need to share equally the mediator's fees as well~~
422 ~~as their own attorney's fees if they choose to employ an~~
423 ~~attorney in connection with the mediation. However, use of an~~
424 ~~attorney is not required and is at the option of each party. The~~
425 ~~mediators may require the advance payment of some or all of the~~

426 ~~anticipated fees. The aggrieved party hereby agrees to pay or~~
427 ~~prepay one-half of the mediator's estimated fees and to forward~~
428 ~~this amount or such other reasonable advance deposits as the~~
429 ~~mediator requires for this purpose. Any funds deposited will be~~
430 ~~returned to you if these are in excess of your share of the fees~~
431 ~~incurred.~~

432 ~~To begin your participation in presuit mediation to try to~~
433 ~~resolve the dispute and avoid further legal action, please sign~~
434 ~~below and clearly indicate which mediator is acceptable to you.~~
435 ~~We will then ask the mediator to schedule a mutually convenient~~
436 ~~time and place for the mediation conference to be held. The~~
437 ~~mediation conference must be held within ninety (90) days of~~
438 ~~this date, unless extended by mutual written agreement. In the~~
439 ~~event that you fail to respond within 20 days from the date of~~
440 ~~this letter, or if you fail to agree to at least one of the~~
441 ~~mediators that we have suggested or to pay or prepay to the~~
442 ~~mediator one-half of the costs involved, the aggrieved party~~
443 ~~will be authorized to proceed with the filing of a lawsuit~~
444 ~~against you without further notice and may seek an award of~~
445 ~~attorney's fees or costs incurred in attempting to obtain~~
446 ~~mediation.~~

447 ~~Therefore, please give this matter your immediate attention. By~~
448 ~~law, your response must be mailed by certified mail, return~~
449 ~~receipt requested, and by first-class mail to the address shown~~
450 ~~on this demand.~~

451 ~~.....~~

452 ~~.....~~

453 ~~RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO~~
454 ~~THAT CHOICE.~~

455 ~~AGREEMENT TO MEDIATE~~

456 ~~The undersigned hereby agrees to participate in presuit~~
457 ~~mediation and agrees to attend a mediation conducted by the~~
458 ~~following mediator or mediators who are listed above as someone~~
459 ~~who would be acceptable to mediate this dispute:~~

460 ~~(List acceptable mediator or mediators.)~~

461 ~~I/we further agree to pay or prepay one half of the mediator's~~
462 ~~fees and to forward such advance deposits as the mediator may~~
463 ~~require for this purpose.~~

464 ~~.....~~

465 ~~Signature of responding party #1~~

466 ~~.....~~

467 ~~Telephone contact information~~

468 ~~.....~~

469 ~~Signature and telephone contact information of responding party~~
470 ~~#2 (if applicable) (if property is owned by more than one person,~~
471 ~~all owners must sign)~~

472 ~~(b) Service of the statutory demand to participate in~~
473 ~~presuit mediation shall be effected by sending a letter in~~
474 ~~substantial conformity with the above form by certified mail,~~
475 ~~return receipt requested, with an additional copy being sent by~~

476 ~~regular first-class mail, to the address of the responding party~~
477 ~~as it last appears on the books and records of the association.~~
478 ~~The responding party has 20 days from the date of the mailing of~~
479 ~~the statutory demand to serve a response to the aggrieved party~~
480 ~~in writing. The response shall be served by certified mail,~~
481 ~~return receipt requested, with an additional copy being sent by~~
482 ~~regular first-class mail, to the address shown on the statutory~~
483 ~~demand. Notwithstanding the foregoing, once the parties have~~
484 ~~agreed on a mediator, the mediator may reschedule the mediation~~
485 ~~for a date and time mutually convenient to the parties. The~~
486 ~~parties shall share the costs of presuit mediation equally,~~
487 ~~including the fee charged by the mediator, if any, unless the~~
488 ~~parties agree otherwise, and the mediator may require advance~~
489 ~~payment of its reasonable fees and costs. The failure of any~~
490 ~~party to respond to a demand or response, to agree upon a~~
491 ~~mediator, to make payment of fees and costs within the time~~
492 ~~established by the mediator, or to appear for a scheduled~~
493 ~~mediation session without the approval of the mediator, shall~~
494 ~~constitute the failure or refusal to participate in the~~
495 ~~mediation process and shall operate as an impasse in the presuit~~
496 ~~mediation by such party, entitling the other party to proceed in~~
497 ~~court and to seek an award of the costs and fees associated with~~
498 ~~the mediation. Additionally, notwithstanding the provisions of~~
499 ~~any other law or document, persons who fail or refuse to~~
500 ~~participate in the entire mediation process may not recover~~

501 ~~attorney's fees and costs in subsequent litigation relating to~~
502 ~~the dispute. If any presuit mediation session cannot be~~
503 ~~scheduled and conducted within 90 days after the offer to~~
504 ~~participate in mediation was filed, an impasse shall be deemed~~
505 ~~to have occurred unless both parties agree to extend this~~
506 ~~deadline.~~

507 ~~(c) If presuit mediation as described in paragraph (a) is~~
508 ~~not successful in resolving all issues between the parties, the~~
509 ~~parties may file the unresolved dispute in a court of competent~~
510 ~~jurisdiction or elect to enter into binding or nonbinding~~
511 ~~arbitration pursuant to the procedures set forth in s. 718.1255~~
512 ~~and rules adopted by the division, with the arbitration~~
513 ~~proceeding to be conducted by a department arbitrator or by a~~
514 ~~private arbitrator certified by the department. If all parties~~
515 ~~do not agree to arbitration proceedings following an~~
516 ~~unsuccessful presuit mediation, any party may file the dispute~~
517 ~~in court. A final order resulting from nonbinding arbitration is~~
518 ~~final and enforceable in the courts if a complaint for trial de~~
519 ~~novo is not filed in a court of competent jurisdiction within 30~~
520 ~~days after entry of the order. As to any issue or dispute that~~
521 ~~is not resolved at presuit mediation, and as to any issue that~~
522 ~~is settled at presuit mediation but is thereafter subject to an~~
523 ~~action seeking enforcement of the mediation settlement, the~~
524 ~~prevailing party in any subsequent arbitration or litigation~~
525 ~~proceeding shall be entitled to seek recovery of all costs and~~

526 ~~attorney's fees incurred in the presuit mediation process.~~

527 ~~(d) A mediator or arbitrator shall be authorized to~~
 528 ~~conduct mediation or arbitration under this section only if he~~
 529 ~~or she has been certified as a circuit court civil mediator or~~
 530 ~~arbitrator, respectively, pursuant to the requirements~~
 531 ~~established by the Florida Supreme Court. Settlement agreements~~
 532 ~~resulting from mediation shall not have precedential value in~~
 533 ~~proceedings involving parties other than those participating in~~
 534 ~~the mediation to support either a claim or defense in other~~
 535 ~~disputes.~~

536 ~~(e) The presuit mediation procedures provided by this~~
 537 ~~subsection may be used by a Florida corporation responsible for~~
 538 ~~the operation of a community in which the voting members are~~
 539 ~~parcel owners or their representatives, in which membership in~~
 540 ~~the corporation is not a mandatory condition of parcel~~
 541 ~~ownership, or which is not authorized to impose an assessment~~
 542 ~~that may become a lien on the parcel.~~

543 Section 3. Subsection (1) of section 34.01, Florida
 544 Statutes, is amended to read:

545 34.01 Jurisdiction of county court.—

546 (1) County courts shall have original jurisdiction:

547 (a) In all misdemeanor cases not cognizable by the circuit
 548 courts;

549 (b) Of all violations of municipal and county ordinances;

550 (c) Of all actions at law in which the matter in

551 controversy does not exceed the sum of \$15,000, exclusive of
 552 interest, costs, and attorney ~~attorney's~~ fees, except those
 553 within the exclusive jurisdiction of the circuit courts; and

554 (d) Of disputes occurring in the homeowners' associations
 555 as described in s. 720.311 ~~s. 720.311(2)(a)~~, which shall be
 556 concurrent with jurisdiction of the circuit courts.

557 Section 4. Subsection (16) of section 718.117, Florida
 558 Statutes, is amended to read:

559 718.117 Termination of condominium.—

560 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest
 561 a plan of termination by initiating a petition for mandatory
 562 nonbinding arbitration pursuant to s. 718.1255 within 90 days
 563 after the date the plan is recorded. A unit owner or lienor may
 564 only contest the fairness and reasonableness of the
 565 apportionment of the proceeds from the sale among the unit
 566 owners, that the liens of the first mortgages of unit owners
 567 other than the bulk owner have not or will not be satisfied to
 568 the extent required by subsection (3), or that the required vote
 569 to approve the plan was not obtained. A unit owner or lienor who
 570 does not contest the plan within the 90-day period is barred
 571 from asserting or prosecuting a claim against the association,
 572 the termination trustee, any unit owner, or any successor in
 573 interest to the condominium property. In an action contesting a
 574 plan of termination, the person contesting the plan has the
 575 burden of pleading and proving that the apportionment of the

576 | proceeds from the sale among the unit owners was not fair and
577 | reasonable or that the required vote was not obtained. The
578 | apportionment of sale proceeds is presumed fair and reasonable
579 | if it was determined pursuant to the methods prescribed in
580 | subsection (12). The community association hearing officer
581 | ~~arbitrator~~ shall determine the rights and interests of the
582 | parties in the apportionment of the sale proceeds. If the
583 | community association hearing officer ~~arbitrator~~ determines that
584 | the apportionment of sales proceeds is not fair and reasonable,
585 | the community association hearing officer ~~arbitrator~~ may void
586 | the plan or may modify the plan to apportion the proceeds in a
587 | fair and reasonable manner pursuant to this section based upon
588 | the proceedings and order the modified plan of termination to be
589 | implemented. If the community association hearing officer
590 | ~~arbitrator~~ determines that the plan was not properly approved,
591 | or that the procedures to adopt the plan were not properly
592 | followed, the community association hearing officer ~~arbitrator~~
593 | may void the plan or grant other relief it deems just and
594 | proper. The community association hearing officer ~~arbitrator~~
595 | shall automatically void the plan upon a finding that any of the
596 | disclosures required in subparagraph (3)(c)5. are omitted,
597 | misleading, incomplete, or inaccurate. Any challenge to a plan,
598 | other than a challenge that the required vote was not obtained,
599 | does not affect title to the condominium property or the vesting
600 | of the condominium property in the trustee, but shall only be a

601 claim against the proceeds of the plan. In any such action, the
602 prevailing party shall recover reasonable attorney fees and
603 costs.

604 Section 5. Paragraph (f) of subsection (1) of section
605 719.106, Florida Statutes, is amended to read:

606 719.106 Bylaws; cooperative ownership.—

607 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
608 documents shall provide for the following, and if they do not,
609 they shall be deemed to include the following:

610 (f) Recall of board members.—Subject to s. 719.301, any
611 member of the board of administration may be recalled and
612 removed from office with or without cause by the vote or
613 agreement in writing by a majority of all the voting interests.
614 A special meeting of the voting interests to recall any member
615 of the board of administration may be called by 10 percent of
616 the unit owners giving notice of the meeting as required for a
617 meeting of unit owners, and the notice shall state the purpose
618 of the meeting. Electronic transmission may not be used as a
619 method of giving notice of a meeting called in whole or in part
620 for this purpose.

621 1. If the recall is approved by a majority of all voting
622 interests by a vote at a meeting, the recall shall be effective
623 as provided in this paragraph. The board shall duly notice and
624 hold a board meeting within 5 full business days after the
625 adjournment of the unit owner meeting to recall one or more

626 board members. At the meeting, the board shall either certify
627 the recall, in which case such member or members shall be
628 recalled effective immediately and shall turn over to the board
629 within 5 full business days any and all records and property of
630 the association in their possession, or shall proceed as set
631 forth in subparagraph 3.

632 2. If the proposed recall is by an agreement in writing by
633 a majority of all voting interests, the agreement in writing or
634 a copy thereof shall be served on the association by certified
635 mail or by personal service in the manner authorized by chapter
636 48 and the Florida Rules of Civil Procedure. The board of
637 administration shall duly notice and hold a meeting of the board
638 within 5 full business days after receipt of the agreement in
639 writing. At the meeting, the board shall either certify the
640 written agreement to recall members of the board, in which case
641 such members shall be recalled effective immediately and shall
642 turn over to the board, within 5 full business days, any and all
643 records and property of the association in their possession, or
644 proceed as described in subparagraph 3.

645 3. If the board determines not to certify the written
646 agreement to recall members of the board, or does not certify
647 the recall by a vote at a meeting, the board shall, within 5
648 full business days after the board meeting, file with the
649 division a petition for binding arbitration pursuant to the
650 procedures of s. 719.1255. For purposes of this paragraph, the

651 unit owners who voted at the meeting or who executed the
652 agreement in writing shall constitute one party under the
653 petition for arbitration. If the community association hearing
654 officer ~~arbitrator~~ certifies the recall as to any member of the
655 board, the recall shall be effective upon mailing of the final
656 order of arbitration to the association. If the association
657 fails to comply with the order of the community association
658 hearing officer ~~arbitrator~~, the division may take action
659 pursuant to s. 719.501. Any member so recalled shall deliver to
660 the board any and all records and property of the association in
661 the member's possession within 5 full business days after the
662 effective date of the recall.

663 4. If the board fails to duly notice and hold a board
664 meeting within 5 full business days after service of an
665 agreement in writing or within 5 full business days after the
666 adjournment of the unit owner recall meeting, the recall shall
667 be deemed effective and the board members so recalled shall
668 immediately turn over to the board any and all records and
669 property of the association.

670 5. If the board fails to duly notice and hold the required
671 meeting or fails to file the required petition, the unit owner
672 representative may file a petition pursuant to s. 719.1255
673 challenging the board's failure to act. The petition must be
674 filed within 60 days after the expiration of the applicable 5-
675 full-business-day period. The review of a petition under this

676 subparagraph is limited to the sufficiency of service on the
677 board and the facial validity of the written agreement or
678 ballots filed.

679 6. If a vacancy occurs on the board as a result of a
680 recall and less than a majority of the board members are
681 removed, the vacancy may be filled by the affirmative vote of a
682 majority of the remaining directors, notwithstanding any
683 provision to the contrary contained in this chapter. If
684 vacancies occur on the board as a result of a recall and a
685 majority or more of the board members are removed, the vacancies
686 shall be filled in accordance with procedural rules to be
687 adopted by the division, which rules need not be consistent with
688 this chapter. The rules must provide procedures governing the
689 conduct of the recall election as well as the operation of the
690 association during the period after a recall but before the
691 recall election.

692 7. A board member who has been recalled may file a
693 petition pursuant to s. 719.1255 challenging the validity of the
694 recall. The petition must be filed within 60 days after the
695 recall is deemed certified. The association and the unit owner
696 representative shall be named as the respondents.

697 8. The division may not accept for filing a recall
698 petition, whether filed pursuant to subparagraph 1.,
699 subparagraph 2., subparagraph 5., or subparagraph 7. and
700 regardless of whether the recall was certified, when there are

701 60 or fewer days until the scheduled reelection of the board
702 member sought to be recalled or when 60 or fewer days have not
703 elapsed since the election of the board member sought to be
704 recalled.

705 Section 6. Paragraph (d) of subsection (10) of section
706 720.303, Florida Statutes, is amended to read:

707 720.303 Association powers and duties; meetings of board;
708 official records; budgets; financial reporting; association
709 funds; recalls.—

710 (10) RECALL OF DIRECTORS.—

711 (d) If the board determines not to certify the written
712 agreement or written ballots to recall a director or directors
713 of the board or does not certify the recall by a vote at a
714 meeting, the board shall, within 5 full business days after the
715 meeting, file with the department a petition for binding
716 arbitration pursuant to the applicable procedures in ss.
717 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For
718 the purposes of this section, the members who voted at the
719 meeting or who executed the agreement in writing shall
720 constitute one party under the petition for arbitration. If the
721 community association hearing officer ~~arbitrator~~ certifies the
722 recall as to any director or directors of the board, the recall
723 will be effective upon mailing of the final order of arbitration
724 to the association. The director or directors so recalled shall
725 deliver to the board any and all records of the association in

726 | their possession within 5 full business days after the effective
727 | date of the recall.

728 | Section 7. Paragraph (i) of subsection (2) of section
729 | 723.078, Florida Statutes, is amended to read:

730 | 723.078 Bylaws of homeowners' associations.—

731 | (2) The bylaws shall provide and, if they do not, shall be
732 | deemed to include, the following provisions:

733 | (i) Recall of board members.—Any member of the board of
734 | directors may be recalled and removed from office with or
735 | without cause by the vote of or agreement in writing by a
736 | majority of all members. A special meeting of the members to
737 | recall a member or members of the board of directors may be
738 | called by 10 percent of the members giving notice of the meeting
739 | as required for a meeting of members, and the notice shall state
740 | the purpose of the meeting. Electronic transmission may not be
741 | used as a method of giving notice of a meeting called in whole
742 | or in part for this purpose.

743 | 1. If the recall is approved by a majority of all members
744 | by a vote at a meeting, the recall is effective as provided in
745 | this paragraph. The board shall duly notice and hold a board
746 | meeting within 5 full business days after the adjournment of the
747 | member meeting to recall one or more board members. At the
748 | meeting, the board shall either certify the recall, in which
749 | case such member or members shall be recalled effective
750 | immediately and shall turn over to the board within 5 full

751 business days any and all records and property of the
752 association in their possession, or shall proceed under
753 subparagraph 3.

754 2. If the proposed recall is by an agreement in writing by
755 a majority of all members, the agreement in writing or a copy
756 thereof shall be served on the association by certified mail or
757 by personal service in the manner authorized by chapter 48 and
758 the Florida Rules of Civil Procedure. The board of directors
759 shall duly notice and hold a meeting of the board within 5 full
760 business days after receipt of the agreement in writing. At the
761 meeting, the board shall either certify the written agreement to
762 recall members of the board, in which case such members shall be
763 recalled effective immediately and shall turn over to the board,
764 within 5 full business days, any and all records and property of
765 the association in their possession, or shall proceed as
766 described in subparagraph 3.

767 3. If the board determines not to certify the written
768 agreement to recall members of the board, or does not certify
769 the recall by a vote at a meeting, the board shall, within 5
770 full business days after the board meeting, file with the
771 division a petition for binding arbitration pursuant to the
772 procedures of s. 723.1255. For purposes of this paragraph, the
773 members who voted at the meeting or who executed the agreement
774 in writing shall constitute one party under the petition for
775 arbitration. If the community association hearing officer

776 ~~arbitrator~~ certifies the recall of a member of the board, the
777 recall shall be effective upon mailing of the final order of
778 arbitration to the association. If the association fails to
779 comply with the order of the community association hearing
780 officer ~~arbitrator~~, the division may take action under s.
781 723.006. A member so recalled shall deliver to the board any and
782 all records and property of the association in the member's
783 possession within 5 full business days after the effective date
784 of the recall.

785 4. If the board fails to duly notice and hold a board
786 meeting within 5 full business days after service of an
787 agreement in writing or within 5 full business days after the
788 adjournment of the members' recall meeting, the recall shall be
789 deemed effective and the board members so recalled shall
790 immediately turn over to the board all records and property of
791 the association.

792 5. If the board fails to duly notice and hold the required
793 meeting or fails to file the required petition, the member's
794 representative may file a petition pursuant to s. 723.1255
795 challenging the board's failure to act. The petition must be
796 filed within 60 days after expiration of the applicable 5-full-
797 business-day period. The review of a petition under this
798 subparagraph is limited to the sufficiency of service on the
799 board and the facial validity of the written agreement or
800 ballots filed.

801 6. If a vacancy occurs on the board as a result of a
802 recall and less than a majority of the board members are
803 removed, the vacancy may be filled by the affirmative vote of a
804 majority of the remaining directors, notwithstanding any other
805 provision of this chapter. If vacancies occur on the board as a
806 result of a recall and a majority or more of the board members
807 are removed, the vacancies shall be filled in accordance with
808 procedural rules to be adopted by the division, which rules need
809 not be consistent with this chapter. The rules must provide
810 procedures governing the conduct of the recall election as well
811 as the operation of the association during the period after a
812 recall but before the recall election.

813 7. A board member who has been recalled may file a
814 petition pursuant to s. 723.1255 challenging the validity of the
815 recall. The petition must be filed within 60 days after the
816 recall is deemed certified. The association and the member's
817 representative shall be named as the respondents.

818 8. The division may not accept for filing a recall
819 petition, whether or not filed pursuant to this subsection, and
820 regardless of whether the recall was certified, when there are
821 60 or fewer days until the scheduled reelection of the board
822 member sought to be recalled or when 60 or fewer days have not
823 elapsed since the election of the board member sought to be
824 recalled.

825 Section 8. This act shall take effect July 1, 2018.