

1 A bill to be entitled
2 An act relating to homeowners' associations; amending
3 s. 720.311, F.S.; defining the term "dispute";
4 authorizing parties to initiate nonbinding arbitration
5 rather than presuit mediation for certain disputes;
6 creating s. 720.319, F.S.; creating the Office of the
7 Homeowners' Association Ombudsman within the
8 Department of Business and Professional Regulation;
9 providing for funding of the office; directing the
10 Governor to appoint the ombudsman; requiring the
11 ombudsman to be an attorney; prohibiting the
12 ombudsman, officers, and full-time employees from
13 holding certain positions, engaging in certain
14 activities, or receiving certain remuneration;
15 providing for the principal location of the
16 ombudsman's office; authorizing the ombudsman to
17 establish branch offices under specified
18 circumstances; providing for the powers and duties of
19 the ombudsman; providing an effective date.

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

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23 Section 1. Subsection (1) of section 720.311, Florida
24 Statutes, is amended and subsection (3) is added to that section
25 to read:

26 720.311 Dispute resolution.—
 27 (1) (a) The Legislature finds that alternative dispute
 28 resolution has made progress in reducing court dockets and
 29 trials and in offering a more efficient, cost-effective option
 30 to litigation. The filing of any petition for arbitration or the
 31 serving of a demand for presuit mediation as provided for in
 32 this section shall toll the applicable statute of limitations.
 33 Any recall dispute filed with the department under s.
 34 720.303(10) shall be conducted by the department in accordance
 35 with ~~the provisions of~~ ss. 718.112(2)(j) and 718.1255 and the
 36 rules adopted by the division. In addition, the department shall
 37 conduct binding arbitration of election disputes between a
 38 member and an association in accordance with s. 718.1255 and
 39 rules adopted by the division. Election disputes and recall
 40 disputes are not eligible for presuit mediation; these disputes
 41 must be arbitrated by the department or filed in a court of
 42 competent jurisdiction. At the conclusion of an arbitration
 43 proceeding, the department shall charge the parties a fee in an
 44 amount adequate to cover all costs and expenses incurred by the
 45 department in conducting the proceeding. Initially, the
 46 petitioner shall remit a filing fee of at least \$200 to the
 47 department. The fees paid to the department shall become a
 48 recoverable cost in the arbitration proceeding, and the
 49 prevailing party in an arbitration proceeding shall recover its
 50 reasonable costs and attorney fees in an amount found reasonable

51 | by the arbitrator. The department shall adopt rules to
 52 | effectuate the purposes of this section.

53 | (b) As used in this section, the term "dispute" means any
 54 | disagreement between two or more parties that involves:

55 | 1. The authority of the board of directors, under this
 56 | chapter or an association document, to:

57 | a. Require any owner to take any action, or not to take
 58 | any action, involving that owner's parcel or the appurtenances
 59 | thereto.

60 | b. Alter or add a common area or element.

61 | 2. The failure of a governing body, when required by this
 62 | chapter or an association document, to:

63 | a. Properly conduct elections.

64 | b. Give adequate notice of meetings or other actions.

65 | c. Properly conduct meetings.

66 | d. Allow inspection of books and records.

67 |
 68 | The term "dispute" does not include any disagreement that
 69 | primarily involves: title to any parcel or common area; the
 70 | interpretation or enforcement of any warranty; the levy of a fee
 71 | or assessment, or the collection of an assessment levied against
 72 | a party; the eviction or other removal of a tenant from a
 73 | parcel; alleged breaches of fiduciary duty by one or more
 74 | directors; or claims for damages to a parcel based upon the
 75 | alleged failure of the association to maintain the common area

76 | or community property.

77 | (3) In lieu of the initiation of presuit mediation under
 78 | this section, a party may submit an eligible dispute to
 79 | nonbinding arbitration in accordance with s. 718.1255.

80 | Section 2. Section 720.319, Florida Statutes, is created
 81 | to read:

82 | 720.319 Homeowners' association ombudsman.—

83 | (1) ADMINISTRATION; APPOINTMENT; LOCATION.—

84 | (a) There is created an Office of the Homeowners'
 85 | Association Ombudsman to be located, for administrative
 86 | purposes, within the Department of Business and Professional
 87 | Regulation. The functions of the office shall be funded by the
 88 | General Appropriations Act.

89 | (b) The Governor shall appoint the ombudsman. The
 90 | ombudsman must be an attorney admitted to practice before the
 91 | Florida Supreme Court and shall serve at the pleasure of the
 92 | Governor. The ombudsman, an officer, or a full-time employee of
 93 | the ombudsman's office may not actively engage in any other
 94 | business or profession that directly or indirectly relates to or
 95 | conflicts with his or her work in the ombudsman's office; serve
 96 | as the representative of any political party, executive
 97 | committee, or other governing body of a political party; serve
 98 | as an executive, officer, or employee of a political party;
 99 | receive remuneration for activities on behalf of any candidate
 100 | for public office; or engage in soliciting votes or other

101 activities on behalf of a candidate for public office. The
102 ombudsman, an officer, or a full-time employee of the
103 ombudsman's office may not become a candidate for election to
104 public office unless he or she first resigns from his or her
105 office or employment.

106 (c) The ombudsman shall maintain his or her principal
107 office at a place convenient to the department, which will
108 enable the ombudsman to expeditiously carry out the duties and
109 functions of his or her office. The ombudsman may establish
110 branch offices elsewhere in the state upon the concurrence of
111 the Governor.

112 (2) POWERS AND DUTIES.—The ombudsman has the powers
113 necessary to carry out the duties of his or her office,
114 including, but not limited to:

115 (a) Having access to and use of all files and records of a
116 homeowners' association.

117 (b) Employing professional and clerical staff as necessary
118 for the efficient operation of the office.

119 (c) Preparing and issuing reports and recommendations to
120 the Governor, the department, the President of the Senate, and
121 the Speaker of the House of Representatives on any matter or
122 subject within the jurisdiction of chapter 720.

123 (d) Acting as a liaison between the department, parcel
124 owners, boards of directors, board members, community
125 association managers, and other affected parties. The ombudsman

126 shall develop policies and procedures to assist parcel owners,
127 boards of directors, board members, community association
128 managers, and other affected parties to understand their rights
129 and responsibilities, as set forth in this chapter, and the
130 governing documents that govern their respective associations.
131 The ombudsman shall coordinate and assist in the preparation and
132 adoption of educational and reference material, and shall
133 endeavor to coordinate with private or volunteer providers of
134 these services, so that the availability of these resources is
135 made known to the largest possible audience.

136 (e) Monitoring and reviewing procedures and disputes
137 concerning elections or meetings.

138 (f) Making recommendations to the department for changes
139 in rules and procedures for the filing, investigation, and
140 resolution of complaints filed by parcel owners, associations,
141 and managers.

142 (g) Providing resources to assist members of boards of
143 directors and officers of associations to carry out their powers
144 and duties consistent with this chapter and the governing
145 documents that govern the association.

146 (h) Encouraging and facilitating voluntary meetings
147 between parcel owners, boards of directors, board members,
148 community association managers, and other affected parties when
149 the meetings may assist in resolving a dispute within a
150 homeowners' association before a person submits a dispute for a

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151 formal or administrative remedy. It is the intent of the
152 Legislature that the ombudsman act as a neutral resource for
153 both the rights and responsibilities of parcel owners,
154 associations, and board members.

155 (i) Assisting with the resolution of disputes between
156 parcel owners and the association, or between parcel owners, if
157 applicable.

158 Section 3. This act shall take effect July 1, 2022.