

1                   A bill to be entitled  
2           An act relating to homeowners' associations; amending  
3           s. 720.305, F.S.; requiring the board of  
4           administration to provide written notice of the  
5           opportunity for certain hearings to certain persons;  
6           requiring certain hearings to be held within a  
7           specified time after certain persons receive a written  
8           request for such hearing; providing how a written  
9           request may be provided to certain persons;  
10          authorizing certain persons to attend the hearing in  
11          certain ways; authorizing a fine and suspension  
12          committee to reduce a fine or suspension levied by the  
13          board; requiring the association to provide written  
14          notice by electronic transmission to parcel owners of  
15          the fine and suspension committee's decision;  
16          providing an appeals process for certain fines and  
17          suspensions; requiring an appeal to be heard before a  
18          committee within a specified time after certain  
19          persons receive written notice of the appeal;  
20          providing how written notice of an appeal may be  
21          provided to certain persons; providing for the  
22          composition of an appeals committee; authorizing  
23          certain persons to attend the appeals committee;  
24          providing the ways that such persons may attend;  
25          specifying the role of the appeals committee;

26 specifying when a fine or suspension may not be  
27 imposed; requiring the appeals committee to reduce the  
28 fine or suspension by a specified percentage under  
29 certain circumstances; requiring the association to  
30 provide written notice, in specified ways, to certain  
31 persons of the decision of the appeals committee;  
32 specifying when payment of a fine that is appealed is  
33 due; amending s. 720.311, F.S.; authorizing parties to  
34 initiate nonbinding arbitration rather than presuit  
35 mediation for certain disputes; creating s. 720.319,  
36 F.S.; creating the Office of the Homeowners'  
37 Association Ombudsman within the Department of  
38 Business and Professional Regulation; providing for  
39 funding of the office; directing the Governor to  
40 appoint the ombudsman; requiring the ombudsman to be  
41 an attorney; prohibiting the ombudsman, officers, and  
42 full-time employees from holding certain positions,  
43 engaging in certain activities, or receiving certain  
44 remuneration; providing for the principal location of  
45 the ombudsman's office; authorizing the ombudsman to  
46 establish branch offices under specified  
47 circumstances; providing for the powers and duties of  
48 the ombudsman; providing for the administration of an  
49 election monitoring process; requiring the Division of  
50 Florida Condominiums, Timeshares, and Mobile Homes to

51 |       adopt certain rules; providing an effective date.

52 |

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

54 |

55 |       Section 1. Paragraph (b) of subsection (2) of section  
56 | 720.305, Florida Statutes, is amended to read:

57 |       720.305 Obligations of members; remedies at law or in  
58 | equity; levy of fines and suspension of use rights.—

59 |       (2) An association may levy reasonable fines. A fine may  
60 | not exceed \$100 per violation against any member or any member's  
61 | tenant, guest, or invitee for the failure of the owner of the  
62 | parcel or its occupant, licensee, or invitee to comply with any  
63 | provision of the declaration, the association bylaws, or  
64 | reasonable rules of the association unless otherwise provided in  
65 | the governing documents. A fine may be levied by the board for  
66 | each day of a continuing violation, with a single notice and  
67 | opportunity for hearing, except that the fine may not exceed  
68 | \$1,000 in the aggregate unless otherwise provided in the  
69 | governing documents. A fine of less than \$1,000 may not become a  
70 | lien against a parcel. In any action to recover a fine, the  
71 | prevailing party is entitled to reasonable attorney fees and  
72 | costs from the nonprevailing party as determined by the court.

73 |       (b)1. A fine or suspension levied by the board of  
74 | administration may not be imposed unless the board first  
75 | provides at least 14 days' notice to the parcel owner and, if

76 applicable, any occupant, licensee, or invitee of the parcel  
 77 owner, sought to be fined or suspended, and provides written  
 78 notice of an opportunity for a hearing before a fine and  
 79 suspension committee of at least three members appointed by the  
 80 board who are not officers, directors, or employees of the  
 81 association, or the spouse, parent, child, brother, or sister of  
 82 an officer, director, or employee. The hearing must be conducted  
 83 within 14 days after the board of administration receives a  
 84 written request for a hearing by the parcel owner or the  
 85 occupant, licensee, or invitee of the parcel owner sought to be  
 86 fined or suspended, unless the parcel owner or the occupant,  
 87 licensee, or invitee of the parcel owner sought to be fined or  
 88 suspended requests a later date in writing. The request must be  
 89 made by United States mail, hand delivery, or e-mail to the  
 90 board, a manager, the fine and suspension committee, or a  
 91 designated officer. The parcel owner, occupant, licensee, or  
 92 invitee sought to be fined or suspended has a right to appear  
 93 before the fine and suspension committee and may do so in person  
 94 or by telephone, real-time videoconferencing, or similar real-  
 95 time electronic or video communication. If the fine and  
 96 suspension committee, by majority vote, does not approve or  
 97 reduce a proposed fine or suspension, the proposed fine or  
 98 suspension may not be imposed. The role of the fine and  
 99 suspension committee is limited to determining whether to  
 100 confirm, ~~or~~ reject, or reduce the fine or suspension levied by

101 the board. If the proposed fine or suspension levied by the  
102 board is approved by the fine and suspension committee, the fine  
103 payment is due 5 days after notice of the approved fine is  
104 provided to the parcel owner and, if applicable, to any  
105 occupant, licensee, or invitee of the parcel owner. The  
106 association must provide written notice of such fine or  
107 suspension by United States mail or hand delivery to the parcel  
108 owner and, if applicable, to any occupant, licensee, or invitee  
109 of the parcel owner. The association must also provide the  
110 written notice by electronic transmission to the parcel owner's  
111 e-mail address, if the parcel owner's e-mail address is  
112 maintained in the association's official records.

113 2. Within 3 days after receiving written notice that the  
114 fine or suspension was approved by the fine and suspension  
115 committee, a parcel owner or, if applicable, the occupant,  
116 licensee, or invitee of the parcel owner, who is fined or  
117 suspended, may appeal the fine or suspension by providing  
118 written notice of such appeal to the board, a manager, the fine  
119 and suspension committee, or a designated officer by United  
120 States mail, hand delivery, or e-mail.

121 3. An association must give a parcel owner or, if  
122 applicable, any occupant, licensee, or invitee of the parcel  
123 owner, who appeals a fine or suspension, an opportunity for a  
124 hearing before an appeals committee made up of at least five  
125 members appointed by the board who are not officers, directors,

126 employees of the association, or members of the fine and  
127 suspension committee, or the spouse, parent, child, brother, or  
128 sister of an officer, director, employee, or member of the fine  
129 and suspension committee. The parcel owner or the occupant,  
130 licensee, or invitee of the parcel owner fined or suspended has  
131 a right to appear before the appeals committee and may do so in  
132 person or by telephone, real-time videoconferencing, or similar  
133 real-time electronic or video communication. The role of the  
134 appeals committee is limited to determining whether to confirm,  
135 reject, or reduce the fine or suspension levied by the board and  
136 confirmed by the fine and suspension committee. If the appeals  
137 committee, by majority vote, does not approve or reduce the fine  
138 or suspension, the fine or suspension may not be imposed. If the  
139 violation that resulted in the fine or suspension is corrected  
140 before the hearing, the appeals committee must reduce the fine  
141 or suspension by at least 50 percent. The association must  
142 provide written notice of the appeals committee's decision by  
143 United States mail or hand delivery to the parcel owner and, if  
144 applicable, to the occupant, licensee, or invitee of the parcel  
145 owner who received the fine or suspension. The association must  
146 also provide the written notice by electronic transmission to  
147 the parcel owner's e-mail address, if the parcel owner's e-mail  
148 address is maintained in the association's official records.  
149 Payment of a fine that is appealed in compliance with this  
150 paragraph is due 5 days after notice of the appeals committee's

151 decision is provided to the parcel owner and, if applicable, to  
152 the occupant, licensee, or invitee of the parcel owner.

153 Section 2. Paragraph (a) of subsection (2) of section  
154 720.311, Florida Statutes, is amended and subsection (3) is  
155 added to that section to read:

156 720.311 Dispute resolution.—

157 (2)(a) Disputes between an association and a parcel owner  
158 regarding use of or changes to the parcel or the common areas  
159 and other covenant enforcement disputes, disputes regarding  
160 amendments to the association documents, disputes regarding  
161 meetings of the board and committees appointed by the board,  
162 membership meetings not including election meetings, and access  
163 to the official records of the association must ~~shall~~ be the  
164 subject of a demand for presuit mediation served by an aggrieved  
165 party or a petition for nonbinding arbitration as provided in  
166 subsection (3) before the dispute is filed in court. Presuit  
167 mediation proceedings must be conducted in accordance with the  
168 applicable Florida Rules of Civil Procedure, and these  
169 proceedings are privileged and confidential to the same extent  
170 as court-ordered mediation. Disputes subject to presuit  
171 mediation under this section may ~~shall~~ not include the  
172 collection of any assessment, fine, or other financial  
173 obligation, including attorney ~~attorney's~~ fees and costs,  
174 claimed to be due or any action to enforce a prior mediation  
175 settlement agreement between the parties. Also, in any dispute

176 subject to presuit mediation under this section where emergency  
 177 relief is required, a motion for temporary injunctive relief may  
 178 be filed with the court without first complying with the presuit  
 179 mediation requirements of this section. After any issues  
 180 regarding emergency or temporary relief are resolved, the court  
 181 may either refer the parties to a mediation program administered  
 182 by the courts or require mediation under this section. An  
 183 arbitrator or judge may not consider any information or evidence  
 184 arising from the presuit mediation proceeding except in a  
 185 proceeding to impose sanctions for failure to attend a presuit  
 186 mediation session or to enforce a mediated settlement agreement.  
 187 Persons who are not parties to the dispute may not attend the  
 188 presuit mediation conference without the consent of all parties,  
 189 except for counsel for the parties and a corporate  
 190 representative designated by the association. When mediation is  
 191 attended by a quorum of the board, such mediation is not a board  
 192 meeting for purposes of notice and participation set forth in s.  
 193 720.303. An aggrieved party must ~~shall~~ serve on the responding  
 194 party a written demand to participate in presuit mediation in  
 195 substantially the following form:  
 196 STATUTORY OFFER TO PARTICIPATE  
 197 IN PRESUIT MEDIATION  
 198 The alleged aggrieved party, ....., hereby demands  
 199 that ....., as the responding party, engage in  
 200 mandatory presuit mediation in connection with the following



201 | disputes, which by statute are of a type that are subject to  
202 | presuit mediation:  
203 | (List specific nature of the dispute or disputes to be mediated  
204 | and the authority supporting a finding of a violation as to each  
205 | dispute.)  
206 | Pursuant to section 720.311, Florida Statutes, this demand to  
207 | resolve the dispute through presuit mediation is required before  
208 | a lawsuit can be filed concerning the dispute. Pursuant to the  
209 | statute, the parties are required to engage in presuit mediation  
210 | with a neutral third-party mediator in order to attempt to  
211 | resolve this dispute without court action, and the aggrieved  
212 | party demands that you likewise agree to this process. If you  
213 | fail to participate in the mediation process, suit may be  
214 | brought against you without further warning.  
215 | The process of mediation involves a supervised negotiation  
216 | process in which a trained, neutral third-party mediator meets  
217 | with both parties and assists them in exploring possible  
218 | opportunities for resolving part or all of the dispute. By  
219 | agreeing to participate in presuit mediation, you are not bound  
220 | in any way to change your position. Furthermore, the mediator  
221 | has no authority to make any decisions in this matter or to  
222 | determine who is right or wrong and merely acts as a facilitator  
223 | to ensure that each party understands the position of the other  
224 | party and that all options for reasonable settlement are fully  
225 | explored.

226 If an agreement is reached, it shall be reduced to writing and  
227 becomes a binding and enforceable commitment of the parties. A  
228 resolution of one or more disputes in this fashion avoids the  
229 need to litigate these issues in court. The failure to reach an  
230 agreement, or the failure of a party to participate in the  
231 process, results in the mediator declaring an impasse in the  
232 mediation, after which the aggrieved party may proceed to court  
233 on all outstanding, unsettled disputes. If you have failed or  
234 refused to participate in the entire mediation process, you will  
235 not be entitled to recover attorney ~~attorney's~~ fees, even if you  
236 prevail.

237 The aggrieved party has selected and hereby lists five certified  
238 mediators who we believe to be neutral and qualified to mediate  
239 the dispute. You have the right to select any one of these  
240 mediators. The fact that one party may be familiar with one or  
241 more of the listed mediators does not mean that the mediator  
242 cannot act as a neutral and impartial facilitator. Any mediator  
243 who cannot act in this capacity is required ethically to decline  
244 to accept engagement. The mediators that we suggest, and their  
245 current hourly rates, are as follows:

246 (List the names, addresses, telephone numbers, and hourly rates  
247 of the mediators. Other pertinent information about the  
248 background of the mediators may be included as an attachment.)

249 You may contact the offices of these mediators to confirm that  
250 the listed mediators will be neutral and will not show any

251 favoritism toward either party. The Florida Supreme Court can  
252 provide you a list of certified mediators.

253 Unless otherwise agreed by the parties, section 720.311(2)(b),  
254 Florida Statutes, requires that the parties share the costs of  
255 presuit mediation equally, including the fee charged by the  
256 mediator. An average mediation may require three to four hours  
257 of the mediator's time, including some preparation time, and the  
258 parties would need to share equally the mediator's fees as well  
259 as their own attorney ~~attorney's~~ fees if they choose to employ  
260 an attorney in connection with the mediation. However, use of an  
261 attorney is not required and is at the option of each party. The  
262 mediators may require the advance payment of some or all of the  
263 anticipated fees. The aggrieved party hereby agrees to pay or  
264 prepay one-half of the mediator's estimated fees and to forward  
265 this amount or such other reasonable advance deposits as the  
266 mediator requires for this purpose. Any funds deposited will be  
267 returned to you if these are in excess of your share of the fees  
268 incurred.

269 To begin your participation in presuit mediation to try to  
270 resolve the dispute and avoid further legal action, please sign  
271 below and clearly indicate which mediator is acceptable to you.  
272 We will then ask the mediator to schedule a mutually convenient  
273 time and place for the mediation conference to be held. The  
274 mediation conference must be held within ninety (90) days after  
275 ~~of~~ this date, unless extended by mutual written agreement. In



301 .....  
 302 Signature of responding party #1  
 303 .....  
 304 Telephone contact information  
 305 .....  
 306 Signature and telephone contact information of responding party  
 307 #2 (if applicable) (if property is owned by more than one person,  
 308 all owners must sign)

309 (3) In lieu of initiating presuit mediation under this  
 310 section, an aggrieved party may submit a dispute subject to  
 311 presuit mediation under subsection (2) to nonbinding arbitration  
 312 in accordance with s. 718.1255.

313 Section 3. Section 720.319, Florida Statutes, is created  
 314 to read:

315 720.319 Homeowners' association ombudsman.-

316 (1) ADMINISTRATION; APPOINTMENT; LOCATION.-

317 (a) There is created an Office of the Homeowners'  
 318 Association Ombudsman to be located, for administrative  
 319 purposes, within the Department of Business and Professional  
 320 Regulation. The functions of the office shall be funded by the  
 321 General Appropriations Act.

322 (b) The Governor shall appoint the ombudsman. The  
 323 ombudsman must be an attorney admitted to practice before the  
 324 Florida Supreme Court and shall serve at the pleasure of the  
 325 Governor. The ombudsman, an officer, or a full-time employee of

326 the ombudsman's office may not actively engage in any other  
327 business or profession that directly or indirectly relates to or  
328 conflicts with his or her work in the ombudsman's office; serve  
329 as the representative or an executive, officer, or employee of  
330 any political party, executive committee, or other governing  
331 body of a political party; receive remuneration for activities  
332 on behalf of any candidate for public office; or engage in  
333 soliciting votes or other activities on behalf of a candidate  
334 for public office. The ombudsman, an officer, or a full-time  
335 employee of the ombudsman's office may not become a candidate  
336 for election to public office unless he or she first resigns  
337 from his or her office or employment.

338 (c) The ombudsman shall maintain his or her principal  
339 office at a place convenient to the department, which will  
340 enable the ombudsman to expeditiously carry out the duties and  
341 functions of his or her office. The ombudsman may establish  
342 branch offices elsewhere in the state upon the concurrence of  
343 the Governor.

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

347 (a) Employing professional and clerical staff as necessary  
348 for the efficient operation of the office.

349 (b) Preparing and issuing reports and recommendations to  
350 the Governor, the department, the President of the Senate, and

351 the Speaker of the House of Representatives on any matter or  
352 subject within the jurisdiction of this chapter.

353 (c) Acting as a liaison between the department, parcel  
354 owners, boards of directors, board members, community  
355 association managers, and other affected parties. The ombudsman  
356 shall develop policies and procedures to assist parcel owners,  
357 boards of directors, board members, community association  
358 managers, and other affected parties to understand their rights  
359 and responsibilities, as set forth in this chapter, and the  
360 governing documents that govern their respective associations.  
361 The ombudsman shall coordinate and assist in the preparation and  
362 adoption of educational and reference material, and shall  
363 endeavor to coordinate with private or volunteer providers of  
364 these services, so that the availability of these resources is  
365 made known to the largest possible audience.

366 (d) Monitoring and reviewing procedures and disputes  
367 concerning elections or meetings.

368 (e) Providing resources to assist members of boards of  
369 directors and officers of associations to carry out their powers  
370 and duties consistent with this chapter and the governing  
371 documents that govern the association.

372 (f) Encouraging and facilitating voluntary meetings  
373 between parcel owners, boards of directors, board members,  
374 community association managers, and other affected parties when  
375 the meetings may assist in resolving a dispute within a

376 homeowners' association before a person submits a dispute for a  
377 formal or administrative remedy. It is the intent of the  
378 Legislature that the ombudsman act as a neutral resource for  
379 both the rights and responsibilities of parcel owners,  
380 associations, and board members.

381 (g) Assisting with the resolution of disputes between  
382 parcel owners and the association, or between parcel owners, if  
383 applicable.

384 (3) ELECTION MONITORING.—

385 (a) Fifteen percent of the total voting interests in a  
386 homeowners' association, or six parcel owners, whichever is  
387 greater, may petition the ombudsman to appoint an election  
388 monitor to attend the annual meeting of the parcel owners and  
389 conduct the election of directors.

390 (b) The ombudsman shall appoint a division employee, a  
391 person who specializes in homeowners' association election  
392 monitoring, or an attorney licensed to practice in the state as  
393 the election monitor.

394 (c) The association must pay all costs associated with the  
395 election monitoring process.

396 (d) The division shall adopt a rule establishing  
397 procedures for the appointment of election monitors and the  
398 scope and extent of the monitor's role in the election process.

399 Section 4. This act shall take effect July 1, 2022.