

1 A bill to be entitled
 2 An act relating to levying of fines by homeowners'
 3 associations; amending s. 720.305, F.S.; removing the
 4 authority of a homeowners' association to levy fines;
 5 removing requirements relating to the levying of
 6 fines; conforming provisions to changes made by the
 7 act; amending ss. 720.306 and 720.311, F.S.;
 8 conforming provisions to changes made by the act;
 9 providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

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 13 Section 1. Subsections (2), (3), and (4) of section
 14 720.305, Florida Statutes, are amended to read:

15 720.305 Obligations of members; remedies at law or in
 16 equity; ~~levy of fines and suspension of use rights.-~~

17 ~~(2) An association may levy reasonable fines. A fine may~~
 18 ~~not exceed \$100 per violation against any member or any member's~~
 19 ~~tenant, guest, or invitee for the failure of the owner of the~~
 20 ~~parcel or its occupant, licensee, or invitee to comply with any~~
 21 ~~provision of the declaration, the association bylaws, or~~
 22 ~~reasonable rules of the association unless otherwise provided in~~
 23 ~~the governing documents. A fine may be levied by the board for~~
 24 ~~each day of a continuing violation, with a single notice and~~
 25 ~~opportunity for hearing, except that the fine may not exceed~~

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26 | ~~\$1,000 in the aggregate unless otherwise provided in the~~
27 | ~~governing documents. A fine of less than \$1,000 may not become a~~
28 | ~~lien against a parcel. In any action to recover a fine, the~~
29 | ~~prevailing party is entitled to reasonable attorney fees and~~
30 | ~~costs from the nonprevailing party as determined by the court.~~

31 | (a) An association may suspend, for a reasonable period of
32 | time, the right of a member, or a member's tenant, guest, or
33 | invitee, to use common areas and facilities for the failure of
34 | the owner of the parcel or its occupant, licensee, or invitee to
35 | comply with any provision of the declaration, the association
36 | bylaws, or reasonable rules of the association. This paragraph
37 | does not apply to that portion of common areas used to provide
38 | access or utility services to the parcel. A suspension may not
39 | prohibit an owner or tenant of a parcel from having vehicular
40 | and pedestrian ingress to and egress from the parcel, including,
41 | but not limited to, the right to park.

42 | (b) A ~~fine or~~ suspension levied by the board of
43 | administration may not be imposed unless the board first
44 | provides at least 14 days' notice to the parcel owner and, if
45 | applicable, any occupant, licensee, or invitee of the parcel
46 | owner, sought to be ~~fin~~~~ed~~ or suspended and an opportunity for a
47 | hearing before a committee of at least three members appointed
48 | by the board who are not officers, directors, or employees of
49 | the association, or the spouse, parent, child, brother, or
50 | sister of an officer, director, or employee. If the committee,

51 by majority vote, does not approve a proposed ~~fine or~~
52 suspension, the proposed ~~fine or~~ suspension may not be imposed.
53 The role of the committee is limited to determining whether to
54 confirm or reject the ~~fine or~~ suspension levied by the board. ~~If~~
55 ~~the proposed fine or suspension levied by the board is approved~~
56 ~~by the committee, the fine payment is due 5 days after notice of~~
57 ~~the approved fine is provided to the parcel owner and, if~~
58 ~~applicable, to any occupant, licensee, or invitee of the parcel~~
59 ~~owner.~~ The association must provide written notice of such ~~fine~~
60 ~~or~~ suspension by mail or hand delivery to the parcel owner and,
61 if applicable, to any occupant, licensee, or invitee of the
62 parcel owner.

63 (3) If a member is more than 90 days delinquent in paying
64 any fee, ~~fine,~~ or other monetary obligation due to the
65 association, the association may suspend the rights of the
66 member, or the member's tenant, guest, or invitee, to use common
67 areas and facilities until the fee, ~~fine,~~ or other monetary
68 obligation is paid in full. This subsection does not apply to
69 that portion of common areas used to provide access or utility
70 services to the parcel. A suspension may not prohibit an owner
71 or tenant of a parcel from having vehicular and pedestrian
72 ingress to and egress from the parcel, including, but not
73 limited to, the right to park. The notice and hearing
74 requirements under subsection (2) do not apply to a suspension
75 imposed under this subsection.

76 (4) An association may suspend the voting rights of a
 77 parcel or member for the nonpayment of any fee, ~~fine~~, or other
 78 monetary obligation due to the association that is more than 90
 79 days delinquent. A voting interest or consent right allocated to
 80 a parcel or member which has been suspended by the association
 81 shall be subtracted from the total number of voting interests in
 82 the association, which shall be reduced by the number of
 83 suspended voting interests when calculating the total percentage
 84 or number of all voting interests available to take or approve
 85 any action, and the suspended voting interests shall not be
 86 considered for any purpose, including, but not limited to, the
 87 percentage or number of voting interests necessary to constitute
 88 a quorum, the percentage or number of voting interests required
 89 to conduct an election, or the percentage or number of voting
 90 interests required to approve an action under this chapter or
 91 pursuant to the governing documents. The notice and hearing
 92 requirements under subsection (2) do not apply to a suspension
 93 imposed under this subsection. The suspension ends upon full
 94 payment of all obligations currently due or overdue to the
 95 association.

96 Section 2. Paragraph (b) of subsection (9) of section
 97 720.306, Florida Statutes, is amended to read:

98 720.306 Meetings of members; voting and election
 99 procedures; amendments.—

100 (9) ELECTIONS AND BOARD VACANCIES.—

101 (b) A person who is delinquent in the payment of any fee~~,~~
 102 ~~fine,~~ or other monetary obligation to the association on the day
 103 that he or she could last nominate himself or herself or be
 104 nominated for the board may not seek election to the board, and
 105 his or her name shall not be listed on the ballot. A person
 106 serving as a board member who becomes more than 90 days
 107 delinquent in the payment of any fee~~,~~~~fine,~~ or other monetary
 108 obligation to the association shall be deemed to have abandoned
 109 his or her seat on the board, creating a vacancy on the board to
 110 be filled according to law. For purposes of this paragraph, the
 111 term "any fee~~,~~~~fine,~~ or other monetary obligation" means any
 112 delinquency to the association with respect to any parcel. A
 113 person who has been convicted of any felony in this state or in
 114 a United States District or Territorial Court, or has been
 115 convicted of any offense in another jurisdiction which would be
 116 considered a felony if committed in this state, may not seek
 117 election to the board and is not eligible for board membership
 118 unless such felon's civil rights have been restored for at least
 119 5 years as of the date on which such person seeks election to
 120 the board. The validity of any action by the board is not
 121 affected if it is later determined that a person was ineligible
 122 to seek election to the board or that a member of the board is
 123 ineligible for board membership.

124 Section 3. Paragraph (a) of subsection (2) of section
 125 720.311, Florida Statutes, is amended to read:

126 720.311 Dispute resolution.—
 127 (2)(a) Disputes between an association and a parcel owner
 128 regarding use of or changes to the parcel or the common areas
 129 and other covenant enforcement disputes, disputes regarding
 130 amendments to the association documents, disputes regarding
 131 meetings of the board and committees appointed by the board,
 132 membership meetings not including election meetings, and access
 133 to the official records of the association shall be the subject
 134 of a demand for presuit mediation served by an aggrieved party
 135 before the dispute is filed in court. Presuit mediation
 136 proceedings must be conducted in accordance with the applicable
 137 Florida Rules of Civil Procedure, and these proceedings are
 138 privileged and confidential to the same extent as court-ordered
 139 mediation. Disputes subject to presuit mediation under this
 140 section shall not include the collection of any assessment,
 141 ~~fine,~~ or other financial obligation, including attorney's fees
 142 and costs, claimed to be due or any action to enforce a prior
 143 mediation settlement agreement between the parties. Also, in any
 144 dispute subject to presuit mediation under this section where
 145 emergency relief is required, a motion for temporary injunctive
 146 relief may be filed with the court without first complying with
 147 the presuit mediation requirements of this section. After any
 148 issues regarding emergency or temporary relief are resolved, the
 149 court may either refer the parties to a mediation program
 150 administered by the courts or require mediation under this

151 section. An arbitrator or judge may not consider any information
 152 or evidence arising from the presuit mediation proceeding except
 153 in a proceeding to impose sanctions for failure to attend a
 154 presuit mediation session or to enforce a mediated settlement
 155 agreement. Persons who are not parties to the dispute may not
 156 attend the presuit mediation conference without the consent of
 157 all parties, except for counsel for the parties and a corporate
 158 representative designated by the association. When mediation is
 159 attended by a quorum of the board, such mediation is not a board
 160 meeting for purposes of notice and participation set forth in s.
 161 720.303. An aggrieved party shall serve on the responding party
 162 a written demand to participate in presuit mediation in
 163 substantially the following form:

164 STATUTORY OFFER TO PARTICIPATE
 165 IN PRESUIT MEDIATION

166 The alleged aggrieved party,, hereby demands
 167 that, as the responding party, engage in
 168 mandatory presuit mediation in connection with the following
 169 disputes, which by statute are of a type that are subject to
 170 presuit mediation:

171 (List specific nature of the dispute or disputes to be mediated
 172 and the authority supporting a finding of a violation as to each
 173 dispute.)

174 Pursuant to section 720.311, Florida Statutes, this demand to
 175 resolve the dispute through presuit mediation is required before

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176 a lawsuit can be filed concerning the dispute. Pursuant to the
177 statute, the parties are required to engage in presuit mediation
178 with a neutral third-party mediator in order to attempt to
179 resolve this dispute without court action, and the aggrieved
180 party demands that you likewise agree to this process. If you
181 fail to participate in the mediation process, suit may be
182 brought against you without further warning.

183 The process of mediation involves a supervised negotiation
184 process in which a trained, neutral third-party mediator meets
185 with both parties and assists them in exploring possible
186 opportunities for resolving part or all of the dispute. By
187 agreeing to participate in presuit mediation, you are not bound
188 in any way to change your position. Furthermore, the mediator
189 has no authority to make any decisions in this matter or to
190 determine who is right or wrong and merely acts as a facilitator
191 to ensure that each party understands the position of the other
192 party and that all options for reasonable settlement are fully
193 explored.

194 If an agreement is reached, it shall be reduced to writing and
195 becomes a binding and enforceable commitment of the parties. A
196 resolution of one or more disputes in this fashion avoids the
197 need to litigate these issues in court. The failure to reach an
198 agreement, or the failure of a party to participate in the
199 process, results in the mediator declaring an impasse in the
200 mediation, after which the aggrieved party may proceed to court

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201 on all outstanding, unsettled disputes. If you have failed or
202 refused to participate in the entire mediation process, you will
203 not be entitled to recover attorney's fees, even if you prevail.
204 The aggrieved party has selected and hereby lists five certified
205 mediators who we believe to be neutral and qualified to mediate
206 the dispute. You have the right to select any one of these
207 mediators. The fact that one party may be familiar with one or
208 more of the listed mediators does not mean that the mediator
209 cannot act as a neutral and impartial facilitator. Any mediator
210 who cannot act in this capacity is required ethically to decline
211 to accept engagement. The mediators that we suggest, and their
212 current hourly rates, are as follows:

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

216 You may contact the offices of these mediators to confirm that
217 the listed mediators will be neutral and will not show any
218 favoritism toward either party. The Florida Supreme Court can
219 provide you a list of certified mediators.

220 Unless otherwise agreed by the parties, section 720.311(2)(b),
221 Florida Statutes, requires that the parties share the costs of
222 presuit mediation equally, including the fee charged by the
223 mediator. An average mediation may require three to four hours
224 of the mediator's time, including some preparation time, and the
225 parties would need to share equally the mediator's fees as well

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226 as their own attorney's fees if they choose to employ an
227 attorney in connection with the mediation. However, use of an
228 attorney is not required and is at the option of each party. The
229 mediators may require the advance payment of some or all of the
230 anticipated fees. The aggrieved party hereby agrees to pay or
231 prepay one-half of the mediator's estimated fees and to forward
232 this amount or such other reasonable advance deposits as the
233 mediator requires for this purpose. Any funds deposited will be
234 returned to you if these are in excess of your share of the fees
235 incurred.

236 To begin your participation in presuit mediation to try to
237 resolve the dispute and avoid further legal action, please sign
238 below and clearly indicate which mediator is acceptable to you.
239 We will then ask the mediator to schedule a mutually convenient
240 time and place for the mediation conference to be held. The
241 mediation conference must be held within ninety (90) days of
242 this date, unless extended by mutual written agreement. In the
243 event that you fail to respond within 20 days from the date of
244 this letter, or if you fail to agree to at least one of the
245 mediators that we have suggested or to pay or prepay to the
246 mediator one-half of the costs involved, the aggrieved party
247 will be authorized to proceed with the filing of a lawsuit
248 against you without further notice and may seek an award of
249 attorney's fees or costs incurred in attempting to obtain
250 mediation.

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

255

256

257 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO
258 THAT CHOICE.

259 AGREEMENT TO MEDIATE

260 The undersigned hereby agrees to participate in presuit
261 mediation and agrees to attend a mediation conducted by the
262 following mediator or mediators who are listed above as someone
263 who would be acceptable to mediate this dispute:

264 (List acceptable mediator or mediators.)

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

268

269 Signature of responding party #1

270

271 Telephone contact information

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273 Signature and telephone contact information of responding party
274 #2 (if applicable) (if property is owned by more than one person,
275 all owners must sign)

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