

By Senator Rodriguez

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1 A bill to be entitled
2 An act relating to community associations; providing a
3 short title; amending s. 718.111, F.S.; prohibiting
4 association funds and reserves from being used by
5 specified persons or entities for certain reasons;
6 requiring the board of each association to appoint an
7 official recordkeeper for the association; authorizing
8 the board to provide powers and duties to the
9 recordkeeper if necessary; removing obsolete language;
10 requiring that certain information be posted on the
11 association's website or application and the
12 Department of State website; amending ss. 718.1224 and
13 720.304, F.S.; prohibiting reserves from being used in
14 prosecuting SLAPP suits; amending ss. 718.501 and
15 720.302, F.S.; providing the Division of Florida
16 Condominiums, Timeshares, and Mobile Homes with
17 certain jurisdiction; requiring the division to
18 forward certain complaints to the Department of Law
19 Enforcement; requiring the division to review
20 complaints within a specified timeframe and take
21 specified actions; amending s. 720.303, F.S.;
22 providing criminal penalties for certain actions by an
23 officer or director of the association; requiring that
24 certain officers or directors be removed from office
25 for a certain time period under certain circumstances;
26 specifying how a vacancy on the board must be filled;
27 providing restrictions on certain officers and
28 directors; specifying when an officer or director may
29 be reinstated; requiring that the governing documents

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30 of an association be amended to modify or restrict
31 parcel use; requiring an association to maintain
32 designated mailing and e-mail addresses as official
33 records; specifying what constitutes a designated
34 address; making conforming changes; requiring the
35 board of each association to designate an official
36 recordkeeper for the association; authorizing the
37 board to provide powers and duties to the recordkeeper
38 if necessary; requiring certain information be posted
39 on the association's and the Department of State
40 websites; revising the confidentiality of certain
41 official records; conforming cross-references;
42 prohibiting association funds and reserves from being
43 used by specified persons or entities for certain
44 reasons; amending s. 720.305, F.S.; restricting
45 certain attorney fees and fines; specifying the types
46 of violations for which an association may levy fines;
47 providing a maximum fine amount; prohibiting fines
48 from being aggregated; revising the amount of notice
49 the board of administration must give a parcel owner
50 before imposing a fine or suspension; specifying where
51 such notice must be delivered; providing requirements
52 for such notice; authorizing parcel owners to attend
53 certain hearings by telephone or other electronic
54 means; expanding duties of a specified committee;
55 requiring a specified notice after a hearing;
56 specifying how fines, suspensions, attorney fees, and
57 costs are determined; requiring that a detailed
58 accounting of amounts due to the association be given

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59 to certain persons within a certain timeframe upon
60 written request; providing for a complete waiver of a
61 violation under certain circumstances; specifying the
62 priority of payments made by a parcel owner to an
63 association; prohibiting the accrual of attorney fees
64 and costs after a specified time; authorizing certain
65 persons to request a hearing to dispute certain fees
66 and costs; providing for the waiver of certain fines
67 or suspensions; requiring that certain fines, fees, or
68 other costs be paid by an association; conforming
69 provisions to changes made by the act; amending s.
70 720.306, F.S.; requiring that the governing documents
71 of an association be amended to modify or restrict
72 parcel use; amending s. 720.3085, F.S.; specifying the
73 priority of payments made by a parcel owner to an
74 association; prohibiting an association from bringing
75 an action to foreclose a lien against a parcel;
76 providing that such lien stays on the parcel until the
77 lien is paid, settled, or released; requiring that
78 certain actions be brought in the same lawsuit;
79 amending s. 720.311, F.S.; providing the division with
80 certain jurisdiction; requiring the division to
81 forward certain complaints to the Department of Law
82 Enforcement; requiring the division to review
83 complaints within a specified timeframe and take
84 specified actions; revising which disputes require
85 presuit mediation; revising the timeframe for a
86 responding party to respond to a demand for presuit
87 mediation; amending s. 720.402, F.S.; prohibiting

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88 reserve funds from being used in the defense of
89 certain actions; creating s. 943.71, F.S.; authorizing
90 the Department of Law Enforcement to investigate
91 certain complaints relating to community associations
92 and their boards of administration, officers, or
93 directors; providing an effective date.

94

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

96

97 Section 1. This act may be cited as the "Community
98 Associations Bill of Rights."

99 Section 2. Paragraphs (b) and (g) of subsection (12) of
100 section 718.111, Florida Statutes, are amended and paragraph (g)
101 is added to subsection (3) of that section, to read:

102 718.111 The association.—

103 (3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT,
104 SUE, AND BE SUED; CONFLICT OF INTEREST.—

105 (g) Association funds and reserve funds may not be used by
106 a developer, the association, or elected board members to defend
107 a civil or criminal action, an administrative proceeding, or an
108 arbitration proceeding or to pay for attorney fees relating to
109 such action or proceeding, even when the subject of the action
110 or proceeding concerns the operation of the developer-controlled
111 association.

112 (12) OFFICIAL RECORDS.—

113 (b)1. The board of each community association shall appoint
114 an association member as a recordkeeper whose responsibility is
115 to maintain the official records of the association during the
116 time period of his or her appointment. The board must specify

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117 the duration of such appointment and may grant the recordkeeper
118 additional authority as needed. The name and contact information
119 of the recordkeeper must be displayed on the association's
120 website or application as required under paragraph (g) and the
121 Department of State website.

122 2. The official records specified in subparagraphs (a)1.-6.
123 must be permanently maintained from the inception of the
124 association. Bids for work to be performed or for materials,
125 equipment, or services must be maintained for at least 1 year
126 after receipt of the bid. All other official records must be
127 maintained within the state for at least 7 years, unless
128 otherwise provided by general law. The records of the
129 association shall be made available to a unit owner within 45
130 miles of the condominium property or within the county in which
131 the condominium property is located within 10 working days after
132 receipt of a written request by the board or its designee.
133 However, such distance requirement does not apply to an
134 association governing a timeshare condominium. This paragraph
135 may be complied with by having a copy of the official records of
136 the association available for inspection or copying on the
137 condominium property or association property, or the association
138 may offer the option of making the records available to a unit
139 owner electronically via the Internet or by allowing the records
140 to be viewed in electronic format on a computer screen and
141 printed upon request. The association is not responsible for the
142 use or misuse of the information provided to an association
143 member or his or her authorized representative in compliance
144 with this chapter unless the association has an affirmative duty
145 not to disclose such information under this chapter.

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146 (g)1. ~~By January 1, 2019,~~ An association managing a
147 condominium with 150 or more units which does not contain
148 timeshare units shall post digital copies of the documents
149 specified in subparagraph 2. on its website or make such
150 documents available through an application that can be
151 downloaded on a mobile device. The name and contact information
152 of the association's recordkeeper must be displayed on the
153 association's website or application.

154 a. The association's website or application must be:

155 (I) An independent website, application, or web portal
156 wholly owned and operated by the association; or

157 (II) A website, application, or web portal operated by a
158 third-party provider with whom the association owns, leases,
159 rents, or otherwise obtains the right to operate a web page,
160 subpage, web portal, collection of subpages or web portals, or
161 an application which is dedicated to the association's
162 activities and on which required notices, records, and documents
163 may be posted or made available by the association.

164 b. The association's website or application must be
165 accessible through the Internet and must contain a subpage, web
166 portal, or other protected electronic location that is
167 inaccessible to the general public and accessible only to unit
168 owners and employees of the association.

169 c. Upon a unit owner's written request, the association
170 must provide the unit owner with a username and password and
171 access to the protected sections of the association's website or
172 application which contain any notices, records, or documents
173 that must be electronically provided.

174 2. A current copy of the following documents must be posted

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175 in digital format on the association's website or application:

176 a. The recorded declaration of condominium of each
177 condominium operated by the association and each amendment to
178 each declaration.

179 b. The recorded bylaws of the association and each
180 amendment to the bylaws.

181 c. The articles of incorporation of the association, or
182 other documents creating the association, and each amendment to
183 the articles of incorporation or other documents. The copy
184 posted pursuant to this sub-subparagraph must be a copy of the
185 articles of incorporation filed with the Department of State.

186 d. The rules of the association.

187 e. A list of all executory contracts or documents to which
188 the association is a party or under which the association or the
189 unit owners have an obligation or responsibility and, after
190 bidding for the related materials, equipment, or services has
191 closed, a list of bids received by the association within the
192 past year. Summaries of bids for materials, equipment, or
193 services which exceed \$500 must be maintained on the website or
194 application for 1 year. In lieu of summaries, complete copies of
195 the bids may be posted.

196 f. The annual budget required by s. 718.112(2)(f) and any
197 proposed budget to be considered at the annual meeting.

198 g. The financial report required by subsection (13) and any
199 monthly income or expense statement to be considered at a
200 meeting.

201 h. The certification of each director required by s.
202 718.112(2)(d)4.b.

203 i. All contracts or transactions between the association

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204 and any director, officer, corporation, firm, or association
205 that is not an affiliated condominium association or any other
206 entity in which an association director is also a director or
207 officer and financially interested.

208 j. Any contract or document regarding a conflict of
209 interest or possible conflict of interest as provided in ss.
210 468.436(2)(b)6. and 718.3027(3).

211 k. The notice of any unit owner meeting and the agenda for
212 the meeting, as required by s. 718.112(2)(d)3., no later than 14
213 days before the meeting. The notice must be posted in plain view
214 on the front page of the website or application, or on a
215 separate subpage of the website or application labeled "Notices"
216 which is conspicuously visible and linked from the front page.
217 The association must also post on its website or application any
218 document to be considered and voted on by the owners during the
219 meeting or any document listed on the agenda at least 7 days
220 before the meeting at which the document or the information
221 within the document will be considered.

222 l. Notice of any board meeting, the agenda, and any other
223 document required for the meeting as required by s.
224 718.112(2)(c), which must be posted no later than the date
225 required for notice under s. 718.112(2)(c).

226 m. The inspection reports described in ss. 553.899 and
227 718.301(4)(p) and any other inspection report relating to a
228 structural or life safety inspection of condominium property.

229 n. The association's most recent structural integrity
230 reserve study, if applicable.

231 3. The association shall ensure that the information and
232 records described in paragraph (c), which are not allowed to be

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233 accessible to unit owners, are not posted on the association's
234 website or application. If protected information or information
235 restricted from being accessible to unit owners is included in
236 documents that are required to be posted on the association's
237 website or application, the association shall ensure the
238 information is redacted before posting the documents.
239 Notwithstanding the foregoing, the association or its agent is
240 not liable for disclosing information that is protected or
241 restricted under this paragraph unless such disclosure was made
242 with a knowing or intentional disregard of the protected or
243 restricted nature of such information.

244 4. The failure of the association to post information
245 required under subparagraph 2. is not in and of itself
246 sufficient to invalidate any action or decision of the
247 association's board or its committees.

248 Section 3. Subsection (4) of section 718.1224, Florida
249 Statutes, is amended to read:

250 718.1224 Prohibition against SLAPP suits.—

251 (4) Condominium associations may not expend association
252 funds or reserve funds in prosecuting a SLAPP suit against a
253 condominium unit owner.

254 Section 4. Subsection (1) of section 718.501, Florida
255 Statutes, is amended to read:

256 718.501 Authority, responsibility, and duties of Division
257 of Florida Condominiums, Timeshares, and Mobile Homes.—

258 (1) The division may enforce and ensure compliance with
259 this chapter and rules relating to the development,
260 construction, sale, lease, ownership, operation, and management
261 of residential condominium units and complaints related to the

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262 procedural completion of milestone inspections under s. 553.899.
263 In performing its duties, the division has complete jurisdiction
264 to investigate complaints and enforce compliance with respect to
265 associations that are still under developer control or the
266 control of a bulk assignee or bulk buyer pursuant to part VII of
267 this chapter and complaints against developers, bulk assignees,
268 or bulk buyers involving improper turnover or failure to
269 turnover, pursuant to s. 718.301. However, after turnover has
270 occurred, the division has jurisdiction to investigate
271 complaints related only to financial issues, elections, and the
272 maintenance of and unit owner access to association records
273 under s. 718.111(12), and the procedural completion of
274 structural integrity reserve studies under s. 718.112(2)(g). If
275 the division receives a complaint alleging criminal activity,
276 whether before or after turnover of the association, the
277 division must forward the complaint to the Department of Law
278 Enforcement.

279 (a)1. The division must, within 72 hours after receiving a
280 complaint, review the complaint and determine whether the
281 complaint, on its face, alleges any criminal activity. If the
282 division determines that a complaint contains allegations of
283 criminal activity, the division shall forward the complaint to
284 the Department of Law Enforcement for investigation. The
285 division is responsible for investigating all portions of the
286 complaint that do not allege criminal activity.

287 2. The division may make necessary public or private
288 investigations within or outside the ~~this~~ state to determine
289 whether any person has violated this chapter or any rule or
290 order hereunder, to aid in the enforcement of this chapter, or

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291 to aid in the adoption of rules or forms.

292 ~~3.2.~~ The division may submit any official written report,
293 worksheet, or other related paper, or a duly certified copy
294 thereof, compiled, prepared, drafted, or otherwise made by and
295 duly authenticated by a financial examiner or analyst to be
296 admitted as competent evidence in any hearing in which the
297 financial examiner or analyst is available for cross-examination
298 and attests under oath that such documents were prepared as a
299 result of an examination or inspection conducted pursuant to
300 this chapter.

301 (b) The division may require or permit any person to file a
302 statement in writing, under oath or otherwise, as the division
303 determines, as to the facts and circumstances concerning a
304 matter to be investigated.

305 (c) For the purpose of any investigation under this
306 chapter, the division director or any officer or employee
307 designated by the division director may administer oaths or
308 affirmations, subpoena witnesses and compel their attendance,
309 take evidence, and require the production of any matter which is
310 relevant to the investigation, including the existence,
311 description, nature, custody, condition, and location of any
312 books, documents, or other tangible things and the identity and
313 location of persons having knowledge of relevant facts or any
314 other matter reasonably calculated to lead to the discovery of
315 material evidence. Upon the failure by a person to obey a
316 subpoena or to answer questions propounded by the investigating
317 officer and upon reasonable notice to all affected persons, the
318 division may apply to the circuit court for an order compelling
319 compliance.

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320 (d) Notwithstanding any remedies available to unit owners
321 and associations, if the division has reasonable cause to
322 believe that a violation of ~~any provision of~~ this chapter or
323 related rule has occurred, the division may institute
324 enforcement proceedings in its own name against any developer,
325 bulk assignee, bulk buyer, association, officer, or member of
326 the board of administration, or its assignees or agents, as
327 follows:

328 1. The division may permit a person whose conduct or
329 actions may be under investigation to waive formal proceedings
330 and enter into a consent proceeding whereby orders, rules, or
331 letters of censure or warning, whether formal or informal, may
332 be entered against the person.

333 2. The division may issue an order requiring the developer,
334 bulk assignee, bulk buyer, association, developer-designated
335 officer, or developer-designated member of the board of
336 administration, developer-designated assignees or agents, bulk
337 assignee-designated assignees or agents, bulk buyer-designated
338 assignees or agents, community association manager, or community
339 association management firm to cease and desist from the
340 unlawful practice and take such affirmative action as in the
341 judgment of the division carry out the purposes of this chapter.
342 If the division finds that a developer, bulk assignee, bulk
343 buyer, association, officer, or member of the board of
344 administration, or its assignees or agents, is violating or is
345 about to violate ~~any provision of~~ this chapter, any rule adopted
346 or order issued by the division, or any written agreement
347 entered into with the division, and presents an immediate danger
348 to the public requiring an immediate final order, it may issue

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349 an emergency cease and desist order reciting with particularity
350 the facts underlying such findings. The emergency cease and
351 desist order is effective for 90 days. If the division begins
352 nonemergency cease and desist proceedings, the emergency cease
353 and desist order remains effective until the conclusion of the
354 proceedings under ss. 120.569 and 120.57.

355 3. If a developer, bulk assignee, or bulk buyer fails to
356 pay any restitution determined by the division to be owed, plus
357 any accrued interest at the highest rate permitted by law,
358 within 30 days after expiration of any appellate time period of
359 a final order requiring payment of restitution or the conclusion
360 of any appeal thereof, whichever is later, the division must
361 bring an action in circuit or county court on behalf of any
362 association, class of unit owners, lessees, or purchasers for
363 restitution, declaratory relief, injunctive relief, or any other
364 available remedy. The division may also temporarily revoke its
365 acceptance of the filing for the developer to which the
366 restitution relates until payment of restitution is made.

367 4. The division may petition the court for appointment of a
368 receiver or conservator. If appointed, the receiver or
369 conservator may take action to implement the court order to
370 ensure the performance of the order and to remedy any breach
371 thereof. In addition to all other means provided by law for the
372 enforcement of an injunction or temporary restraining order, the
373 circuit court may impound or sequester the property of a party
374 defendant, including books, papers, documents, and related
375 records, and allow the examination and use of the property by
376 the division and a court-appointed receiver or conservator.

377 5. The division may apply to the circuit court for an order

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378 of restitution whereby the defendant in an action brought under
379 subparagraph 4. is ordered to make restitution of those sums
380 shown by the division to have been obtained by the defendant in
381 violation of this chapter. At the option of the court, such
382 restitution is payable to the conservator or receiver appointed
383 under subparagraph 4. or directly to the persons whose funds or
384 assets were obtained in violation of this chapter.

385 6. The division may impose a civil penalty against a
386 developer, bulk assignee, or bulk buyer, or association, or its
387 assignee or agent, for any violation of this chapter or related
388 rule. The division may impose a civil penalty individually
389 against an officer or board member who willfully and knowingly
390 violates this chapter, an adopted rule, or a final order of the
391 division; may order the removal of such individual as an officer
392 or from the board of administration or as an officer of the
393 association; and may prohibit such individual from serving as an
394 officer or on the board of a community association for a period
395 of time. The term "willfully and knowingly" means that the
396 division informed the officer or board member that his or her
397 action or intended action violates this chapter, a rule adopted
398 under this chapter, or a final order of the division and that
399 the officer or board member refused to comply with the
400 requirements of this chapter, a rule adopted under this chapter,
401 or a final order of the division. The division, before
402 initiating formal agency action under chapter 120, must afford
403 the officer or board member an opportunity to voluntarily
404 comply, and an officer or board member who complies within 10
405 days is not subject to a civil penalty. A penalty may be imposed
406 on the basis of each day of continuing violation, but the

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407 penalty for any offense may not exceed \$5,000. The division
408 shall adopt, by rule, penalty guidelines applicable to possible
409 violations or to categories of violations of this chapter or
410 rules adopted by the division. The guidelines must specify a
411 meaningful range of civil penalties for each such violation of
412 the statute and rules and must be based upon the harm caused by
413 the violation, upon the repetition of the violation, and upon
414 such other factors deemed relevant by the division. For example,
415 the division may consider whether the violations were committed
416 by a developer, bulk assignee, or bulk buyer, or owner-
417 controlled association, the size of the association, and other
418 factors. The guidelines must designate the possible mitigating
419 or aggravating circumstances that justify a departure from the
420 range of penalties provided by the rules. It is the legislative
421 intent that minor violations be distinguished from those which
422 endanger the health, safety, or welfare of the condominium
423 residents or other persons and that such guidelines provide
424 reasonable and meaningful notice to the public of likely
425 penalties that may be imposed for proscribed conduct. This
426 subsection does not limit the ability of the division to
427 informally dispose of administrative actions or complaints by
428 stipulation, agreed settlement, or consent order. All amounts
429 collected shall be deposited with the Chief Financial Officer to
430 the credit of the Division of Florida Condominiums, Timeshares,
431 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
432 bulk buyer fails to pay the civil penalty and the amount deemed
433 to be owed to the association, the division shall issue an order
434 directing that such developer, bulk assignee, or bulk buyer
435 cease and desist from further operation until such time as the

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436 civil penalty is paid or may pursue enforcement of the penalty
437 in a court of competent jurisdiction. If an association fails to
438 pay the civil penalty, the division shall pursue enforcement in
439 a court of competent jurisdiction, and the order imposing the
440 civil penalty or the cease and desist order is not effective
441 until 20 days after the date of such order. Any action commenced
442 by the division shall be brought in the county in which the
443 division has its executive offices or in the county where the
444 violation occurred.

445 7. If a unit owner presents the division with proof that
446 the unit owner has requested access to official records in
447 writing by certified mail, and that after 10 days the unit owner
448 again made the same request for access to official records in
449 writing by certified mail, and that more than 10 days has
450 elapsed since the second request and the association has still
451 failed or refused to provide access to official records as
452 required by this chapter, the division shall issue a subpoena
453 requiring production of the requested records where the records
454 are kept pursuant to s. 718.112.

455 8. In addition to subparagraph 6., the division may seek
456 the imposition of a civil penalty through the circuit court for
457 any violation for which the division may issue a notice to show
458 cause under paragraph (r). The civil penalty shall be at least
459 \$500 but no more than \$5,000 for each violation. The court may
460 also award to the prevailing party court costs and reasonable
461 attorney fees and, if the division prevails, may also award
462 reasonable costs of investigation.

463 (e) The division may prepare and disseminate a prospectus
464 and other information to assist prospective owners, purchasers,

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465 lessees, and developers of residential condominiums in assessing
466 the rights, privileges, and duties pertaining thereto.

467 (f) The division may adopt rules to administer and enforce
468 this chapter.

469 (g) The division shall establish procedures for providing
470 notice to an association and the developer, bulk assignee, or
471 bulk buyer during the period in which the developer, bulk
472 assignee, or bulk buyer controls the association if the division
473 is considering the issuance of a declaratory statement with
474 respect to the declaration of condominium or any related
475 document governing such condominium community.

476 (h) The division shall furnish each association that pays
477 the fees required by paragraph (2) (a) a copy of this chapter, as
478 amended, and the rules adopted thereto on an annual basis.

479 (i) The division shall annually provide each association
480 with a summary of declaratory statements and formal legal
481 opinions relating to the operations of condominiums which were
482 rendered by the division during the previous year.

483 (j) The division shall provide training and educational
484 programs for condominium association board members and unit
485 owners. The training may, in the division's discretion, include
486 web-based electronic media and live training and seminars in
487 various locations throughout the state. The division may review
488 and approve education and training programs for board members
489 and unit owners offered by providers and shall maintain a
490 current list of approved programs and providers and make such
491 list available to board members and unit owners in a reasonable
492 and cost-effective manner.

493 (k) The division shall maintain a toll-free telephone

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494 number accessible to condominium unit owners.

495 (l) The division shall develop a program to certify both
496 volunteer and paid mediators to provide mediation of condominium
497 disputes. The division shall provide, upon request, a list of
498 such mediators to any association, unit owner, or other
499 participant in alternative dispute resolution proceedings under
500 s. 718.1255 requesting a copy of the list. The division shall
501 include on the list of volunteer mediators only the names of
502 persons who have received at least 20 hours of training in
503 mediation techniques or who have mediated at least 20 disputes.
504 In order to become initially certified by the division, paid
505 mediators must be certified by the Supreme Court to mediate
506 court cases in county or circuit courts. However, the division
507 may adopt, by rule, additional factors for the certification of
508 paid mediators, which must be related to experience, education,
509 or background. Any person initially certified as a paid mediator
510 by the division must, in order to continue to be certified,
511 comply with the factors or requirements adopted by rule.

512 (m) If a complaint is made, the division must conduct its
513 inquiry with due regard for the interests of the affected
514 parties. Within 30 days after receipt of a complaint, the
515 division shall acknowledge the complaint in writing and notify
516 the complainant whether the complaint is within the jurisdiction
517 of the division and whether additional information is needed by
518 the division from the complainant. The division shall conduct
519 its investigation and, within 90 days after receipt of the
520 original complaint or of timely requested additional
521 information, take action upon the complaint. However, the
522 failure to complete the investigation within 90 days does not

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523 prevent the division from continuing the investigation,
524 accepting or considering evidence obtained or received after 90
525 days, or taking administrative action if reasonable cause exists
526 to believe that a violation of this chapter or a rule has
527 occurred. If an investigation is not completed within the time
528 limits established in this paragraph, the division shall, on a
529 monthly basis, notify the complainant in writing of the status
530 of the investigation. When reporting its action to the
531 complainant, the division shall inform the complainant of any
532 right to a hearing under ss. 120.569 and 120.57. The division
533 may adopt rules regarding the submission of a complaint against
534 an association.

535 (n) Condominium association directors, officers, and
536 employees; condominium developers; bulk assignees, bulk buyers,
537 and community association managers; and community association
538 management firms have an ongoing duty to reasonably cooperate
539 with the division in any investigation under this section. The
540 division shall refer to local law enforcement authorities any
541 person whom the division believes has altered, destroyed,
542 concealed, or removed any record, document, or thing required to
543 be kept or maintained by this chapter with the purpose to impair
544 its verity or availability in the department's investigation.

545 (o) The division may:

- 546 1. Contract with agencies in the ~~this~~ state or other
547 jurisdictions to perform investigative functions; or
- 548 2. Accept grants-in-aid from any source.

549 (p) The division shall cooperate with similar agencies in
550 other jurisdictions to establish uniform filing procedures and
551 forms, public offering statements, advertising standards, and

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552 rules and common administrative practices.

553 (q) The division shall consider notice to a developer, bulk
554 assignee, or bulk buyer to be complete when it is delivered to
555 the address of the developer, bulk assignee, or bulk buyer
556 currently on file with the division.

557 (r) In addition to its enforcement authority, the division
558 may issue a notice to show cause, which must provide for a
559 hearing, upon written request, in accordance with chapter 120.

560 (s) The division shall submit to the Governor, the
561 President of the Senate, the Speaker of the House of
562 Representatives, and the chairs of the legislative
563 appropriations committees an annual report that includes, but
564 need not be limited to, the number of training programs provided
565 for condominium association board members and unit owners, the
566 number of complaints received by type, the number and percent of
567 complaints acknowledged in writing within 30 days and the number
568 and percent of investigations acted upon within 90 days in
569 accordance with paragraph (m), and the number of investigations
570 exceeding the 90-day requirement. The annual report must also
571 include an evaluation of the division's core business processes
572 and make recommendations for improvements, including statutory
573 changes. The report shall be submitted by September 30 following
574 the end of the fiscal year.

575 Section 5. Subsection (2) of section 720.302, Florida
576 Statutes, is amended and subsection (6) is added to that section
577 to read:

578 720.302 Purposes, scope, and application; jurisdiction of
579 the division.—

580 (2) The Legislature recognizes that it is not in the best

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581 interest of homeowners' associations or the individual
582 association members thereof to create or impose a bureau or
583 other agency of state government to regulate the affairs of
584 homeowners' associations. However, in accordance with s.
585 720.311, the Legislature finds that homeowners' associations and
586 their individual members will benefit from an expedited
587 alternative process for resolution of election and recall
588 disputes and presuit mediation of other disputes involving
589 covenant enforcement and authorizes the department to hear,
590 administer, and determine these disputes as more fully set forth
591 in this chapter. Further, the Legislature recognizes that
592 certain contract rights have been created for the benefit of
593 homeowners' associations and members thereof before the
594 effective date of this act and that ss. 720.301-720.407 are not
595 intended to impair such contract rights, including, but not
596 limited to, the rights of the developer to complete the
597 community as initially contemplated. Finally, the Legislature
598 recognizes that it is in the best interests of homeowners'
599 associations and the individual association members thereof that
600 complaints involving criminal activity be investigated
601 thoroughly.

602 (6) The division has jurisdiction to accept and review
603 complaints alleging criminal activity, whether before or after
604 turnover of the association, and shall follow the procedures
605 under s. 720.311(1)(b).

606 Section 6. Subsection (1), paragraphs (g) and (m) of
607 subsection (4), subsection (5), and paragraph (c) of subsection
608 (8) of section 720.303, Florida Statutes, are amended to read:
609 720.303 Association powers and duties; meetings of board;

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610 official records; budgets; financial reporting; association
611 funds; recalls.—

612 (1) POWERS AND DUTIES.—

613 (a) An association which operates a community as defined in
614 s. 720.301, must be operated by an association that is a Florida
615 corporation. After October 1, 1995, the association must be
616 incorporated and the initial governing documents must be
617 recorded in the official records of the county in which the
618 community is located. An association may operate more than one
619 community.

620 (b) The officers and directors of an association have a
621 fiduciary relationship to the members who are served by the
622 association. As required by s. 617.0830, an officer or a
623 director shall discharge his or her duties in good faith, with
624 the care an ordinarily prudent person in a like position would
625 exercise under similar circumstances, and in a manner he or she
626 reasonably believes to be in the interests of the association.
627 An officer or a director is liable for monetary damages as
628 provided in s. 617.0834 if such officer or director breached or
629 failed to perform his or her duties and the breach of, or
630 failure to perform, his or her duties constitutes a violation of
631 criminal law as provided in s. 617.0834; constitutes a
632 transaction from which the officer or director derived an
633 improper personal benefit, either directly or indirectly; or
634 constitutes recklessness or an act or omission that was in bad
635 faith, with malicious purpose, or in a manner exhibiting wanton
636 and willful disregard of human rights, safety, or property.
637 Forgery of a ballot envelope or voting certificate used in a
638 homeowners' association election is punishable as provided in s.

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639 831.01, the theft or embezzlement of funds of a homeowners'
640 association is punishable as provided in s. 812.014, and the
641 destruction of or the refusal to allow inspection or copying of
642 an official record of a homeowners' association that is
643 accessible to parcel owners within the time periods required by
644 general law in furtherance of any crime is punishable as
645 tampering with physical evidence as provided in s. 918.13 or as
646 obstruction of justice as provided in chapter 843. An officer or
647 a director charged by information or indictment with a crime
648 referenced in this paragraph must be removed from office, and
649 the vacancy must be filled as provided in s. 720.306(9) until
650 the end of the officer's or director's period of suspension or
651 the end of his or her term of office, whichever occurs first. If
652 a criminal charge is pending against the officer or director, he
653 or she may not be appointed or elected to a position as an
654 officer or a director of any association and may not have access
655 to the official records of any association, except pursuant to a
656 court order. However, if the charges are resolved without a
657 finding of guilt, the officer or director must be reinstated for
658 the remainder of his or her term of office, if any.

659 (c) The powers and duties of an association include those
660 set forth in this chapter and, except as expressly limited or
661 restricted in this chapter, those set forth in the governing
662 documents. An association may not modify or restrict the use of
663 a parcel without amending its governing documents.

664 (d) After control of the association is obtained by members
665 other than the developer, the association may institute,
666 maintain, settle, or appeal actions or hearings in its name on
667 behalf of all members concerning matters of common interest to

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668 the members, including, but not limited to, the common areas;
669 roof or structural components of a building, or other
670 improvements for which the association is responsible;
671 mechanical, electrical, or plumbing elements serving an
672 improvement or building for which the association is
673 responsible; representations of the developer pertaining to any
674 existing or proposed commonly used facility; and protesting ad
675 valorem taxes on commonly used facilities. The association may
676 defend actions in eminent domain or bring inverse condemnation
677 actions. Before commencing litigation against any party in the
678 name of the association involving amounts in controversy in
679 excess of \$100,000, the association must obtain the affirmative
680 approval of a majority of the voting interests at a meeting of
681 the membership at which a quorum has been attained. This
682 paragraph subsection does not limit any statutory or common-law
683 right of any individual member or class of members to bring any
684 action without participation by the association.

685 (e) A member does not have authority to act for the
686 association by virtue of being a member. An association may have
687 more than one class of members and may issue membership
688 certificates.

689 (f) An association of 15 or fewer parcel owners may enforce
690 only the requirements of those deed restrictions established
691 prior to the purchase of each parcel upon an affected parcel
692 owner or owners.

693 (4) OFFICIAL RECORDS.—The association shall maintain each
694 of the following items, when applicable, which constitute the
695 official records of the association:

696 (g) A current roster of all members and their designated

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697 mailing addresses and parcel identifications. A member's
698 designated mailing address is the member's property address,
699 unless the member has sent written notice to the association
700 requesting that a different mailing address be used for all
701 required notices. The association shall also maintain the e-mail
702 ~~electronic mailing~~ addresses and the facsimile numbers
703 designated by members for receiving notice sent by electronic
704 transmission of those members consenting to receive notice by
705 electronic transmission. A member's e-mail address is the e-mail
706 address the member provided when consenting in writing to
707 receiving notice by electronic transmission unless the member
708 has sent written notice to the association requesting that a
709 different e-mail address be used for all required notices. The
710 e-mail ~~electronic mailing~~ addresses and facsimile numbers
711 provided by members ~~unit owners~~ to receive notice by electronic
712 transmission must ~~shall~~ be removed from association records when
713 the member revokes consent to receive notice by electronic
714 transmission ~~is revoked~~. However, the association is not liable
715 for an erroneous disclosure of the e-mail ~~electronic mail~~
716 address or the facsimile number for receiving electronic
717 transmission of notices.

718 (m) All affirmative acknowledgments made pursuant to s.
719 720.3085(4)(c)3 ~~s. 720.3085(3)(c)3~~.

720 (5) INSPECTION AND COPYING OF RECORDS.—The board of each
721 homeowners' association shall appoint an association member as a
722 recordkeeper whose responsibility is to maintain the official
723 records of the association during the time period of his or her
724 appointment. The board must specify the duration of such
725 appointment and may grant the recordkeeper additional authority

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726 as needed. The name and contact information of the recordkeeper
727 must be displayed on the association's website and the
728 Department of State website. The official records shall be
729 maintained within the state for at least 7 years and shall be
730 made available to a parcel owner for inspection or photocopying
731 within 45 miles of the community or within the county in which
732 the association is located within 10 business days after receipt
733 by the board or its designee of a written request. This
734 subsection may be complied with by having a copy of the official
735 records available for inspection or copying in the community or,
736 at the option of the association, by making the records
737 available to a parcel owner electronically via the Internet or
738 by allowing the records to be viewed in electronic format on a
739 computer screen and printed upon request. If the association has
740 a photocopy machine available where the records are maintained,
741 it must provide parcel owners with copies on request during the
742 inspection if the entire request is limited to no more than 25
743 pages. An association shall allow a member or his or her
744 authorized representative to use a portable device, including a
745 smartphone, tablet, portable scanner, or any other technology
746 capable of scanning or taking photographs, to make an electronic
747 copy of the official records in lieu of the association's
748 providing the member or his or her authorized representative
749 with a copy of such records. The association may not charge a
750 fee to a member or his or her authorized representative for the
751 use of a portable device.

752 (a) The failure of an association to provide access to the
753 records within 10 business days after receipt of a written
754 request submitted by certified mail, return receipt requested,

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755 creates a rebuttable presumption that the association willfully
756 failed to comply with this subsection.

757 (b) A member who is denied access to official records is
758 entitled to the actual damages or minimum damages for the
759 association's willful failure to comply with this subsection.
760 The minimum damages are to be \$50 per calendar day up to 10
761 days, the calculation to begin on the 11th business day after
762 receipt of the written request.

763 (c) The association may adopt reasonable written rules
764 governing the frequency, time, location, notice, records to be
765 inspected, and manner of inspections, but may not require a
766 parcel owner to demonstrate any proper purpose for the
767 inspection, state any reason for the inspection, or limit a
768 parcel owner's right to inspect records to less than one 8-hour
769 business day per month. The association may impose fees to cover
770 the costs of providing copies of the official records, including
771 the costs of copying and the costs required for personnel to
772 retrieve and copy the records if the time spent retrieving and
773 copying the records exceeds one-half hour and if the personnel
774 costs do not exceed \$20 per hour. Personnel costs may not be
775 charged for records requests that result in the copying of 25 or
776 fewer pages. The association may charge up to 25 cents per page
777 for copies made on the association's photocopier. If the
778 association does not have a photocopy machine available where
779 the records are kept, or if the records requested to be copied
780 exceed 25 pages in length, the association may have copies made
781 by an outside duplicating service and may charge the actual cost
782 of copying, as supported by the vendor invoice. The association
783 shall maintain an adequate number of copies of the recorded

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784 governing documents, to ensure their availability to members and
785 prospective members. Notwithstanding this paragraph, the
786 following records are not accessible to members or parcel
787 owners:

788 1. Any record protected by the lawyer-client privilege as
789 described in s. 90.502 and any record protected by the work-
790 product privilege, including, but not limited to, a record
791 prepared by an association attorney or prepared at the
792 attorney's express direction which reflects a mental impression,
793 conclusion, litigation strategy, or legal theory of the attorney
794 or the association and which was prepared exclusively for civil
795 or criminal litigation or for adversarial administrative
796 proceedings or which was prepared in anticipation of such
797 litigation or proceedings until the conclusion of the litigation
798 or proceedings.

799 2. Information obtained by an association in connection
800 with the approval of the lease, sale, or other transfer of a
801 parcel, but only to the extent the record contains protected
802 personal identifying information or any other information that
803 is protected by applicable state or federal privacy laws. Any
804 such protected information must be redacted from the records by
805 the association and the redacted records must be made available
806 to a parcel owner for inspection or photocopying if requested.

807 3. Information an association obtains in a gated community
808 in connection with guests' visits to parcel owners or community
809 residents.

810 4. Personnel records of association or management company
811 employees, including, but not limited to, disciplinary, payroll,
812 health, and insurance records. For purposes of this

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813 subparagraph, the term "personnel records" does not include
814 written employment agreements with an association or management
815 company employee or budgetary or financial records that indicate
816 the compensation paid to an association or management company
817 employee.

818 5. Medical records of parcel owners or community residents.

819 6. Social security numbers, driver license numbers, credit
820 card numbers, e-mail ~~electronic mailing~~ addresses, telephone
821 numbers, facsimile numbers, emergency contact information, any
822 addresses for a parcel owner other than as provided for
823 association notice requirements, and other personal identifying
824 information of any person, excluding the person's name, parcel
825 designation, mailing address, and property address.

826 Notwithstanding the restrictions in this subparagraph, an
827 association may print and distribute to parcel owners a
828 directory containing the name, parcel address, and all telephone
829 numbers of each parcel owner. However, an owner may exclude his
830 or her telephone numbers from the directory by so requesting in
831 writing to the association. An owner may consent in writing to
832 the disclosure of other contact information described in this
833 subparagraph. The association is not liable for the disclosure
834 of information that is protected under this subparagraph if the
835 information is included in an official record of the association
836 and is voluntarily provided by an owner and not requested by the
837 association.

838 7. Any electronic security measure that is used by the
839 association to safeguard data, including passwords.

840 8. The software and operating system used by the
841 association which allows the manipulation of data, even if the

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842 owner owns a copy of the same software used by the association.
843 The data is part of the official records of the association.

844 9. All affirmative acknowledgments made pursuant to s.
845 720.3085(4)(c)3 ~~s. 720.3085(3)(c)3~~.

846 (d) The association or its authorized agent is not required
847 to provide a prospective purchaser or lienholder with
848 information about the residential subdivision or the association
849 other than information or documents required by this chapter to
850 be made available or disclosed. The association or its
851 authorized agent may charge a reasonable fee to the prospective
852 purchaser or lienholder or the current parcel owner or member
853 for providing good faith responses to requests for information
854 by or on behalf of a prospective purchaser or lienholder, other
855 than that required by law, if the fee does not exceed \$150 plus
856 the reasonable cost of photocopying and any attorney fees
857 incurred by the association in connection with the response.

858 (8) ASSOCIATION FUNDS; COMMINGLING.—

859 (c) Association funds and reserve funds may not be used by
860 a developer, the association, or elected board members to defend
861 a civil or criminal action, administrative proceeding, or
862 arbitration proceeding or to pay attorney fees relating to such
863 action or proceeding ~~that has been filed against the developer~~
864 ~~or directors appointed to the association board by the~~
865 ~~developer~~, even when the subject of the action or proceeding
866 concerns the operation of the developer-controlled association.

867 Section 7. Paragraph (d) of subsection (4) of section
868 720.304, Florida Statutes, is amended to read:

869 720.304 Right of owners to peaceably assemble; display of
870 flag; SLAPP suits prohibited.—

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871 (4) It is the intent of the Legislature to protect the
872 right of parcel owners to exercise their rights to instruct
873 their representatives and petition for redress of grievances
874 before the various governmental entities of this state as
875 protected by the First Amendment to the United States
876 Constitution and s. 5, Art. I of the State Constitution. The
877 Legislature recognizes that "Strategic Lawsuits Against Public
878 Participation" or "SLAPP" suits, as they are typically called,
879 have occurred when members are sued by individuals, business
880 entities, or governmental entities arising out of a parcel
881 owner's appearance and presentation before a governmental entity
882 on matters related to the homeowners' association. However, it
883 is the public policy of this state that government entities,
884 business organizations, and individuals not engage in SLAPP
885 suits because such actions are inconsistent with the right of
886 parcel owners to participate in the state's institutions of
887 government. Therefore, the Legislature finds and declares that
888 prohibiting such lawsuits by governmental entities, business
889 entities, and individuals against parcel owners who address
890 matters concerning their homeowners' association will preserve
891 this fundamental state policy, preserve the constitutional
892 rights of parcel owners, and assure the continuation of
893 representative government in this state. It is the intent of the
894 Legislature that such lawsuits be expeditiously disposed of by
895 the courts.

896 (d) Homeowners' associations may not expend association
897 funds or reserve funds in prosecuting a SLAPP suit against a
898 parcel owner.

899 Section 8. Subsections (1), (2), and (5) of section

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900 720.305, Florida Statutes, are amended, and subsection (7) is
901 added to that section to read:

902 720.305 Obligations of members; remedies at law or in
903 equity; levy of fines and suspension of use rights.-

904 (1) Each member and the member's tenants, guests, and
905 invitees, and each association, are governed by, and must comply
906 with, this chapter, the governing documents of the community,
907 and the rules of the association. Actions at law or in equity,
908 or both, to redress alleged failure or refusal to comply with
909 these provisions may be brought by the association or by any
910 member against:

911 (a) The association;

912 (b) A member;

913 (c) Any director or officer of an association who willfully
914 and knowingly fails to comply with these provisions; and

915 (d) Any tenants, guests, or invitees occupying a parcel or
916 using the common areas.

917
918 The prevailing party in any such litigation is entitled to
919 recover reasonable attorney fees and costs as provided in
920 paragraph (2) (e). A member prevailing in an action between the
921 association and the member under this section, in addition to
922 recovering his or her reasonable attorney fees, may recover
923 additional amounts as determined by the court to be necessary to
924 reimburse the member for his or her share of assessments levied
925 by the association to fund its expenses of the litigation. This
926 relief does not exclude other remedies provided by law. This
927 section does not deprive any person of any other available right
928 or remedy.

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929 (2) An association may levy reasonable fines for violations
930 of the declaration, association's bylaws, or reasonable rules of
931 the association. A fine may not exceed \$100 per violation
932 against any member or any member's tenant, guest, or invitee for
933 the failure of the owner of the parcel or its occupant,
934 licensee, or invitee to comply with any provision of the
935 declaration, the association bylaws, or reasonable rules of the
936 association unless otherwise provided in the governing
937 documents; however, a fine may not exceed \$1,000 per violation.
938 ~~A fine may be levied by the board for each day of a continuing~~
939 ~~violation, with a single notice and opportunity for hearing,~~
940 ~~except that the fine may not exceed \$1,000 in the aggregate~~
941 ~~unless otherwise provided in the governing documents. A fine of~~
942 ~~less than \$1,000 or less may not become a lien against a parcel~~
943 ~~and finer may not be aggregated to create a lien against a~~
944 ~~parcel~~. In any action to recover a fine, the prevailing party is
945 entitled to reasonable attorney fees and costs from the
946 nonprevailing party as provided in paragraph (e) ~~determined by~~
947 ~~the court~~.

948 (a) An association may suspend, for a reasonable period of
949 time, the right of a member, or a member's tenant, guest, or
950 invitee, to use common areas and facilities for the failure of
951 the owner of the parcel or its occupant, licensee, or invitee to
952 comply with any provision of the declaration, the association
953 bylaws, or reasonable rules of the association. This paragraph
954 does not apply to that portion of common areas used to provide
955 access or utility services to the parcel. A suspension may not
956 prohibit an owner or tenant of a parcel from having vehicular
957 and pedestrian ingress to and egress from the parcel, including,

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958 but not limited to, the right to park.

959 (b) A fine or suspension levied for a violation by the
960 board of administration may not be imposed unless the board
961 first provides at least 30 ~~14~~ days' notice to the parcel owner
962 at his or her designated mailing or e-mail address in the
963 association's official records and, if applicable, any occupant,
964 licensee, or invitee of the parcel owner, sought to be fined or
965 suspended and ~~an opportunity for~~ a hearing before a committee of
966 at least three members appointed by the board who are not
967 officers, directors, or employees of the association, or the
968 spouse, parent, child, brother, or sister of an officer,
969 director, or employee. The notice must include a description of
970 the alleged violation, the specific action required to cure such
971 violation, and the date and location of the hearing. A parcel
972 owner has the right to attend a hearing by telephone or other
973 electronic means.

974 (c) If the committee, by majority vote, does not approve a
975 proposed fine or suspension, the proposed fine or suspension may
976 not be imposed. If the committee, by majority vote, determines
977 that a violation does not exist then no other action may be
978 taken related to that alleged violation. The role of the
979 committee is limited to determining whether a violation exists
980 and whether to approve ~~confirm~~ or reject the fine or suspension
981 levied by the board.

982 (d) After the hearing, the committee shall provide written
983 notice to the parcel owner at his or her designated mailing or
984 e-mail address in the association's official records and, if
985 applicable, any occupant, licensee, or invitee of the parcel
986 owner, of the committee's findings related to the violation,

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987 including any applicable fines or suspensions that the committee
988 approved or rejected, and how the parcel owner or any occupant,
989 licensee, or invitee of the parcel owner may cure the violation.

990 (e) Fines, suspensions, attorney fees, and costs are
991 imposed as follows:

992 1. If a violation is found by the committee, but is cured
993 before the hearing, a fine or suspension may not be imposed and
994 attorney fees and costs may not be awarded.

995 2. If a violation is found and the proposed fine or
996 suspension levied by the board is approved by the committee, the
997 committee must decide, by majority vote, a date that the fine
998 payment is due, which date must be at least 30 days after
999 delivery of the written notice required in paragraph (d).

1000 3. If a violation is found and the proposed fine or
1001 suspension levied by the board is approved by the committee, but
1002 the violation is cured within 30 days after delivery of the
1003 written notice required in paragraph (d), the fine must be
1004 reduced by 50 percent, any applicable suspensions must be
1005 lifted, and attorney fees and costs may not be awarded.

1006 4. If a violation is found and the proposed fine or
1007 suspension levied by the board is approved by the committee and
1008 the violation is not cured or the fine is not paid within 30
1009 days after delivery of the written notice required in paragraph
1010 (d), reasonable attorney fees and costs may be awarded to the
1011 association.

1012 (f) A parcel owner or any occupant, licensee, or invitee of
1013 the parcel owner may, at any time, make a written request for a
1014 detailed accounting of any amounts he or she owes to the
1015 association and the board shall provide such information within

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1016 10 days after receipt of the written request. Failure by the
1017 board to respond to a written request for a detailed accounting
1018 constitutes a complete waiver of the violation.

1019 (g) Upon receipt of a payment for any outstanding fines
1020 from a parcel owner or any occupant, licensee, or invitee of the
1021 parcel owner, the board must apply the payment first to the fine
1022 before satisfying any other amounts due to the association.
1023 Attorney fees and costs may not continue to accrue after a
1024 parcel owner or any occupant, licensee, or invitee of the parcel
1025 owner pays the fine.

1026 (h) A parcel owner or any occupant, licensee, or invitee of
1027 the parcel owner may request a hearing before the board to
1028 dispute the reasonableness of the attorney fees and costs
1029 awarded to the association 5 days after notice of the approved
1030 fine is provided to the parcel owner and, if applicable, to any
1031 occupant, licensee, or invitee of the parcel owner. The
1032 association must provide written notice of such fine or
1033 suspension by mail or hand delivery to the parcel owner and, if
1034 applicable, to any occupant, licensee, or invitee of the parcel
1035 owner.

1036 (5) All suspensions imposed under ~~pursuant to~~ subsection
1037 (3) or subsection (4) must be approved at a properly noticed
1038 board meeting. Upon approval, the board ~~association~~ must send
1039 written notice to notify the parcel owner and, if applicable,
1040 the parcel's occupant, licensee, or invitee by mail or hand
1041 delivery to the parcel owner's designated mailing or e-mail
1042 address in the association's official records.

1043 (7) The failure of the association or committee to comply
1044 with this section constitutes a waiver of all fines or

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1045 suspensions imposed or proposed for a violation. Any fines,
1046 fees, or other costs incurred by a parcel owner or any occupant,
1047 licensee, or invitee of the parcel owner which is related to a
1048 fine that is waived under this subsection must also be waived or
1049 paid by the association if such fine, fee, or other cost is not
1050 waivable.

1051 Section 9. Paragraph (c) of subsection (1) of section
1052 720.306, Florida Statutes, is amended to read:

1053 720.306 Meetings of members; voting and election
1054 procedures; amendments.—

1055 (1) QUORUM; AMENDMENTS.—

1056 (c) An association may not modify or restrict the use of a
1057 parcel without amending its governing documents. Unless
1058 otherwise provided in the governing documents as originally
1059 recorded or permitted by this chapter or chapter 617, an
1060 amendment may not materially and adversely alter the
1061 proportionate voting interest appurtenant to a parcel or
1062 increase the proportion or percentage by which a parcel shares
1063 in the common expenses of the association unless the record
1064 parcel owner and all record owners of liens on the parcels join
1065 in the execution of the amendment. For purposes of this section,
1066 a change in quorum requirements is not an alteration of voting
1067 interests. The merger or consolidation of one or more
1068 associations under a plan of merger or consolidation under part
1069 I of chapter 607 or chapter 617 is not a material or adverse
1070 alteration of the proportionate voting interest appurtenant to a
1071 parcel.

1072 Section 10. Present subsections (1) through (8) of section
1073 720.3085, Florida Statutes, are redesignated as subsections (2)

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1074 through (9), respectively, a new subsection (1) is added to that
1075 section, and paragraph (c) of present subsection (1), present
1076 subsection (5), and paragraph (a) of present subsection (8) are
1077 amended, to read:

1078 720.3085 Priority of payments; payment for assessments;
1079 lien claims.-

1080 (1) An association must apply payments made by a parcel
1081 owner first to any outstanding amounts due as designated by the
1082 parcel owner on the payment instrument or otherwise in writing.
1083 If the parcel owner does not designate on the payment instrument
1084 or in writing to which outstanding amount the payment is for,
1085 the association must apply the payment to the parcel owner's
1086 outstanding amounts in the following order:

1087 (a) Regularly occurring assessments.

1088 (b) Special assessments.

1089 (c) Fines.

1090 (d) Interest.

1091 (e) Other fees or costs charged by the association to the
1092 parcel owner, including attorney fees and costs.

1093 (2)~~(1)~~ When authorized by the governing documents, the
1094 association has a lien on each parcel to secure the payment of
1095 assessments and other amounts provided for by this section.
1096 Except as otherwise set forth in this section, the lien is
1097 effective from and shall relate back to the date on which the
1098 original declaration of the community was recorded. However, as
1099 to first mortgages of record, the lien is effective from and
1100 after recording of a claim of lien in the public records of the
1101 county in which the parcel is located. This subsection does not
1102 bestow upon any lien, mortgage, or certified judgment of record

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1103 on July 1, 2008, including the lien for unpaid assessments
1104 created in this section, a priority that, by law, the lien,
1105 mortgage, or judgment did not have before July 1, 2008.

1106 (c) A lien against a parcel is not foreclosable and will
1107 stay on the parcel until it is paid, settled, or released. The
1108 association may not bring an action in its name to foreclose a
1109 lien for assessments in the same manner in which a mortgage of
1110 real property is foreclosed. The association ~~and~~ may ~~also~~ bring
1111 an action to recover a money judgment for the unpaid assessments
1112 without waiving any claim of lien as long as the money judgment
1113 action is brought in the same lawsuit as the claim of lien. The
1114 association is entitled to recover its reasonable attorney
1115 ~~attorney's~~ fees incurred in ~~an action to foreclose a lien or an~~
1116 action to recover a money judgment for unpaid assessments.

1117 (6) ~~(5)~~ The association may bring an action in its name to
1118 foreclose a lien for unpaid assessments secured by a lien in the
1119 same manner that a mortgage of real property is foreclosed and
1120 may also bring an action to recover a money judgment for the
1121 unpaid assessments without waiving any claim of lien. The action
1122 to foreclose the lien may not be brought until 45 days after the
1123 parcel owner has been provided notice of the association's
1124 intent to foreclose and collect the unpaid amount. The notice
1125 must be given in the manner provided in paragraph (5) (b) ~~(4) (b)~~,
1126 and the notice may not be provided until the passage of the 45
1127 days required in paragraph (5) (a) ~~(4) (a)~~. The notice must be in
1128 substantially the following form:

1129
1130 DELINQUENT ASSESSMENT
1131

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1132 This letter is to inform you a Claim of Lien has been filed
1133 against your property because you have not paid the ...(type of
1134 assessment)... assessment to ...(name of association).... The
1135 association intends to foreclose the lien and collect the unpaid
1136 amount within 45 days of this letter being provided to you.

1137
1138 You owe the interest accruing from ...(month/year)... to the
1139 present. As of the date of this letter, the total amount due
1140 with interest is \$..... All costs of any action and interest
1141 from this day forward will also be charged to your account.

1142
1143 Any questions concerning this matter should be directed to
1144 ...(insert name, addresses, and telephone numbers of association
1145 representative)....

1146 (a) The association may recover any interest, late charges,
1147 costs, and reasonable attorney ~~attorney's~~ fees incurred in a
1148 lien foreclosure action or in an action to recover a money
1149 judgment for the unpaid assessments.

1150 (b) The time limitations in this subsection do not apply if
1151 the parcel is subject to a foreclosure action or forced sale of
1152 another party, or if an owner of the parcel is a debtor in a
1153 bankruptcy proceeding.

1154 (9) (a) ~~(8) (a)~~ If the parcel is occupied by a tenant and the
1155 parcel owner is delinquent in paying any monetary obligation due
1156 to the association, the association may demand that the tenant
1157 pay to the association the subsequent rental payments and
1158 continue to make such payments until all the monetary
1159 obligations of the parcel owner related to the parcel have been
1160 paid in full to the association and the association releases the

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1161 tenant or until the tenant discontinues tenancy in the parcel.

1162 1. The association must provide the tenant a notice, by
1163 hand delivery or United States mail, in substantially the
1164 following form:

1165
1166 Pursuant to section 720.3085(9) ~~720.3085(8)~~,
1167 Florida Statutes, we demand that you make your rent
1168 payments directly to the homeowners' association and
1169 continue doing so until the association notifies you
1170 otherwise.

1171 Payment due the homeowners' association may be in
1172 the same form as you paid your landlord and must be
1173 sent by United States mail or hand delivery to
1174 ...(full address)..., payable to ...(name)....

1175 Your obligation to pay your rent to the
1176 association begins immediately, unless you have
1177 already paid rent to your landlord for the current
1178 period before receiving this notice. In that case, you
1179 must provide the association written proof of your
1180 payment within 14 days after receiving this notice and
1181 your obligation to pay rent to the association would
1182 then begin with the next rental period.

1183 Pursuant to section 720.3085(9) ~~720.3085(8)~~,
1184 Florida Statutes, your payment of rent to the
1185 association gives you complete immunity from any claim
1186 for the rent by your landlord.

1187
1188 2. A tenant is immune from any claim by the parcel owner
1189 related to the rent timely paid to the association after the

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1190 association has made written demand.

1191 Section 11. Subsection (1) and paragraphs (a) and (b) of
1192 subsection (2) of section 720.311, Florida Statutes, are amended
1193 to read:

1194 720.311 Dispute resolution; complaints alleging criminal
1195 activity.—

1196 (1) (a) The Legislature finds that alternative dispute
1197 resolution has made progress in reducing court dockets and
1198 trials and in offering a more efficient, cost-effective option
1199 to litigation. The filing of any petition for arbitration or the
1200 serving of a demand for presuit mediation as provided for in
1201 this section shall toll the applicable statute of limitations.
1202 Any recall dispute filed with the department under s.
1203 720.303(10) shall be conducted by the department in accordance
1204 with the provisions of ss. 718.112(2)(1) and 718.1255 and the
1205 rules adopted by the division. In addition, the department shall
1206 conduct binding arbitration of election disputes between a
1207 member and an association in accordance with s. 718.1255 and
1208 rules adopted by the division. Election disputes and recall
1209 disputes are not eligible for presuit mediation; these disputes
1210 must be arbitrated by the department or filed in a court of
1211 competent jurisdiction. At the conclusion of an arbitration
1212 proceeding, the department shall charge the parties a fee in an
1213 amount adequate to cover all costs and expenses incurred by the
1214 department in conducting the proceeding. Initially, the
1215 petitioner shall remit a filing fee of at least \$200 to the
1216 department. The fees paid to the department shall become a
1217 recoverable cost in the arbitration proceeding, and the
1218 prevailing party in an arbitration proceeding shall recover its

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1219 reasonable costs and attorney fees in an amount found reasonable
1220 by the arbitrator.

1221 (b) The division must, within 72 hours after receiving a
1222 complaint, review the complaint and determine whether the
1223 complaint, on its face, alleges any criminal activity. If the
1224 division determines that a complaint contains allegations of
1225 criminal activity, the division shall forward the complaint to
1226 the Department of Law Enforcement for investigation.

1227 (c) The department shall adopt rules to implement
1228 ~~effectuate the purposes of~~ this section.

1229 (2) (a) Disputes between an association and a parcel owner
1230 regarding violations, fines, suspensions, or use of or changes
1231 to the parcel or the common areas and other covenant enforcement
1232 disputes; ~~7~~ disputes regarding amendments to the association
1233 documents; disputes related to an alleged violation of the
1234 governing documents and any fines related to the alleged
1235 violation which subsequently are deemed covered assessments;
1236 and ~~7~~ disputes regarding meetings of the board and committees
1237 appointed by the board, membership meetings not including
1238 election meetings, and access to the official records of the
1239 association must ~~shall~~ be the subject of a demand for presuit
1240 mediation served by an aggrieved party before the dispute is
1241 filed in court. Presuit mediation proceedings must be conducted
1242 in accordance with the applicable Florida Rules of Civil
1243 Procedure, and these proceedings are privileged and confidential
1244 to the same extent as court-ordered mediation. Disputes not
1245 subject to presuit mediation under this section ~~shall not~~
1246 include the collection of any regular or special assessment, ~~7~~
1247 ~~fine, or other financial obligation, including attorney's fees~~

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1248 ~~and costs,~~ claimed to be due or any action to enforce a prior
1249 mediation settlement agreement between the parties. Also, in any
1250 dispute subject to presuit mediation under this section where
1251 emergency relief is required, a motion for temporary injunctive
1252 relief may be filed with the court without first complying with
1253 the presuit mediation requirements of this section. After any
1254 issues regarding emergency or temporary relief are resolved, the
1255 court may either refer the parties to a mediation program
1256 administered by the courts or require mediation under this
1257 section. An arbitrator or judge may not consider any information
1258 or evidence arising from the presuit mediation proceeding except
1259 in a proceeding to impose sanctions for failure to attend a
1260 presuit mediation session or to enforce a mediated settlement
1261 agreement. Persons who are not parties to the dispute may not
1262 attend the presuit mediation conference without the consent of
1263 all parties, except for counsel for the parties and a corporate
1264 representative designated by the association. When mediation is
1265 attended by a quorum of the board, such mediation is not a board
1266 meeting for purposes of notice and participation set forth in s.
1267 720.303. An aggrieved party shall serve on the responding party
1268 a written demand to participate in presuit mediation in
1269 substantially the following form:

1271 STATUTORY OFFER TO PARTICIPATE
1272 IN PRESUIT MEDIATION

1274 The alleged aggrieved party,, hereby
1275 demands that, as the responding
1276 party, engage in mandatory presuit mediation in

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1277 connection with the following disputes, which by
1278 statute are of a type that are subject to presuit
1279 mediation:

1280
1281 (List specific nature of the dispute or disputes to be
1282 mediated and the authority supporting a finding of a
1283 violation as to each dispute.)

1284
1285 Pursuant to section 720.311, Florida Statutes, this
1286 demand to resolve the dispute through presuit
1287 mediation is required before a lawsuit can be filed
1288 concerning the dispute. Pursuant to the statute, the
1289 parties are required to engage in presuit mediation
1290 with a neutral third-party mediator in order to
1291 attempt to resolve this dispute without court action,
1292 and the aggrieved party demands that you likewise
1293 agree to this process. If you fail to participate in
1294 the mediation process, suit may be brought against you
1295 without further warning.

1296
1297 The process of mediation involves a supervised
1298 negotiation process in which a trained, neutral third-
1299 party mediator meets with both parties and assists
1300 them in exploring possible opportunities for resolving
1301 part or all of the dispute. By agreeing to participate
1302 in presuit mediation, you are not bound in any way to
1303 change your position. Furthermore, the mediator has no
1304 authority to make any decisions in this matter or to
1305 determine who is right or wrong and merely acts as a

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1306 facilitator to ensure that each party understands the
1307 position of the other party and that all options for
1308 reasonable settlement are fully explored.

1309
1310 If an agreement is reached, it shall be reduced to
1311 writing and becomes a binding and enforceable
1312 commitment of the parties. A resolution of one or more
1313 disputes in this fashion avoids the need to litigate
1314 these issues in court. The failure to reach an
1315 agreement, or the failure of a party to participate in
1316 the process, results in the mediator declaring an
1317 impasse in the mediation, after which the aggrieved
1318 party may proceed to court on all outstanding,
1319 unsettled disputes. If you have failed or refused to
1320 participate in the entire mediation process, you will
1321 not be entitled to recover attorney ~~attorney's~~ fees,
1322 even if you prevail.

1323
1324 The aggrieved party has selected and hereby lists five
1325 certified mediators who we believe to be neutral and
1326 qualified to mediate the dispute. You have the right
1327 to select any one of these mediators. The fact that
1328 one party may be familiar with one or more of the
1329 listed mediators does not mean that the mediator
1330 cannot act as a neutral and impartial facilitator. Any
1331 mediator who cannot act in this capacity is required
1332 ethically to decline to accept engagement. The
1333 mediators that we suggest, and their current hourly
1334 rates, are as follows:

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

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

Unless otherwise agreed by the parties, section 720.311(2)(b), Florida Statutes, requires that the parties share the costs of presuit mediation equally, including the fee charged by the mediator. An average mediation may require three to four hours of the mediator's time, including some preparation time, and the parties would need to share equally the mediator's fees as well as their own attorney ~~attorney's~~ fees if they choose to employ an attorney in connection with the mediation. However, use of an attorney is not required and is at the option of each party. The mediators may require the advance payment of some or all of the anticipated fees. The aggrieved party hereby agrees to pay or prepay one-half of the mediator's estimated fees and to forward this amount or such other reasonable advance deposits as the mediator requires for this purpose. Any funds

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1364 deposited will be returned to you if these are in
1365 excess of your share of the fees incurred.
1366

1367 To begin your participation in presuit mediation to
1368 try to resolve the dispute and avoid further legal
1369 action, please sign below and clearly indicate which
1370 mediator is acceptable to you. We will then ask the
1371 mediator to schedule a mutually convenient time and
1372 place for the mediation conference to be held. The
1373 mediation conference must be held within 90 days after
1374 ~~ninety (90) days of~~ this date, unless extended by
1375 mutual written agreement. In the event that you fail
1376 to respond within 45 ~~20~~ days after ~~from~~ the date of
1377 this letter, or if you fail to agree to at least one
1378 of the mediators that we have suggested or to pay or
1379 prepay to the mediator one-half of the costs involved,
1380 the aggrieved party will be authorized to proceed with
1381 the filing of a lawsuit against you without further
1382 notice and may seek an award of attorney ~~attorney's~~
1383 fees or costs incurred in attempting to obtain
1384 mediation.
1385

1386 Therefore, please give this matter your immediate
1387 attention. By law, your response must be mailed by
1388 certified mail, return receipt requested, and by
1389 first-class mail to the address shown on this demand.
1390

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

AGREEMENT TO MEDIATE

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

(List acceptable mediator or mediators.)

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

.....
Signature of responding party #1

.....
Telephone contact information

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

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1422 (b) Service of the statutory demand to participate in
1423 presuit mediation is ~~shall be~~ effected by sending a letter in
1424 substantial conformity with the above form by certified mail,
1425 return receipt requested, with an additional copy being sent by
1426 regular first-class mail, to the address of the responding party
1427 as it last appears on the books and records of the association.
1428 The responding party has 45 ~~20~~ days after ~~from~~ the date of the
1429 mailing of the statutory demand to serve a response to the
1430 aggrieved party in writing. The response must ~~shall~~ be served by
1431 certified mail, return receipt requested, with an additional
1432 copy being sent by regular first-class mail, to the address
1433 shown on the statutory demand. Notwithstanding the foregoing,
1434 once the parties have agreed on a mediator, the mediator may
1435 reschedule the mediation for a date and time mutually convenient
1436 to the parties. The parties shall share the costs of presuit
1437 mediation equally, including the fee charged by the mediator, if
1438 any, unless the parties agree otherwise, and the mediator may
1439 require advance payment of its reasonable fees and costs. The
1440 failure of any party to respond to a demand or response, to
1441 agree upon a mediator, to make payment of fees and costs within
1442 the time established by the mediator, or to appear for a
1443 scheduled mediation session without the approval of the
1444 mediator, constitutes ~~shall constitute the~~ failure or refusal to
1445 participate in the mediation process and operates ~~shall operate~~
1446 as an impasse in the presuit mediation by such party, entitling
1447 the other party to proceed in court and to seek an award of the
1448 costs and fees associated with the mediation. Additionally,
1449 notwithstanding the provisions of any other law or document,
1450 persons who fail or refuse to participate in the entire

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1451 mediation process may not recover attorney ~~attorney's~~ fees and
1452 costs in subsequent litigation relating to the dispute. If any
1453 presuit mediation session cannot be scheduled and conducted
1454 within 90 days after the offer to participate in mediation was
1455 filed, an impasse is ~~shall be~~ deemed to have occurred unless
1456 both parties agree to extend this deadline.

1457 Section 12. Subsection (2) of section 720.402, Florida
1458 Statutes, is amended to read:

1459 720.402 Publication of false and misleading information.—

1460 (2) In any action for relief under this section, the
1461 prevailing party may recover reasonable attorney ~~attorney's~~
1462 fees. A developer may not expend association funds or reserves
1463 in the defense of any suit under this section.

1464 Section 13. Section 943.71, Florida Statutes, is created to
1465 read:

1466 943.71 Powers related to community associations.—In order
1467 to ensure that the rights of unit owners and parcel owners of
1468 community associations are protected and violations of the law
1469 are expeditiously resolved, the department has the authority to
1470 investigate complaints alleging violations of general law by:

1471 (1) A condominium association and its board of
1472 administration, as those terms are defined in s. 718.103(2) and
1473 (4), respectively.

1474 (2) A cooperative association and its board of
1475 administration, as those terms are defined in s. 719.103(2) and
1476 (3), respectively.

1477 (3) A homeowners' association as defined in s. 720.301 and
1478 its officers or board of directors.

1479 Section 14. This act shall take effect October 1, 2023.