

1                   A bill to be entitled  
2           An act relating to residential properties; amending s.  
3           718.112, F.S.; requiring each newly elected director to  
4           certify to the secretary of the association that he or she  
5           has read the association's declarations of covenants and  
6           restrictions, articles of incorporation, bylaws, and  
7           current written policies and will work to uphold such  
8           documents and policies to the best of his or her ability;  
9           providing that a failure to timely file the statement  
10          automatically disqualifies the director from service on  
11          the association's board of directors; requiring the  
12          secretary of the association to retain a director's  
13          certification for inspection by the members for a  
14          specified period of years after a director's election;  
15          amending s. 720.303, F.S.; revising provisions relating to  
16          homeowners' association board meetings, inspection and  
17          copying of records, and reserve accounts of budgets;  
18          prohibiting a salary or compensation for certain  
19          association personnel; providing exceptions; amending s.  
20          720.305, F.S.; authorizing fines assessed against members  
21          which exceed a certain amount to become a lien against a  
22          parcel; amending s. 720.306, F.S.; providing requirements  
23          for secret ballots; requiring newly elected members of a  
24          board of directors to make certain certifications in  
25          writing to the association; providing for disqualification  
26          for failure to make such certifications; requiring an  
27          association to retain certifications for a specified time;  
28          amending s. 720.401, F.S.; requiring that the disclosure

29 summary to prospective parcel owners include additional  
30 provisions; amending s. 34.01, F.S.; correcting a cross-  
31 reference to conform to changes made by the act; amending  
32 s. 720.302, F.S.; correcting a cross-reference to conform  
33 to changes made by the act; establishing legislative  
34 intent; repealing s. 720.311, F.S., relating to a  
35 procedure for dispute resolution in homeowners'  
36 associations; providing that dispute resolution cases  
37 pending on the date of repeal will continue under the  
38 repealed provisions; creating part IV of ch. 720, F.S.,  
39 relating to dispute resolution; creating s. 720.501, F.S.;  
40 providing a short title; creating s. 720.502, F.S.;  
41 providing legislative findings; creating s. 720.503, F.S.;  
42 setting applicability of provisions for mediation and  
43 arbitration applicable to disputes in homeowners'  
44 associations; creating exceptions; providing  
45 applicability; tolling applicable statutes of limitations;  
46 creating s. 720.504, F.S.; requiring that the notice of  
47 dispute be delivered before referral to mediation or  
48 arbitration; creating s. 720.505, F.S.; creating a  
49 statutory notice form for referral to mediation; requiring  
50 delivery by certified mail or personal delivery; setting  
51 deadlines; requiring parties to share costs; requiring the  
52 selection of a mediator and times to meet; providing  
53 penalties for failure to mediate; creating s. 720.506,  
54 F.S.; creating an opt-out provision; creating s. 720.507,  
55 F.S.; creating a statutory notice form for referral to  
56 arbitration; requiring delivery by certified mail or

57 | personal delivery; setting deadlines; requiring parties to  
58 | share costs; requiring the selection of an arbitrator and  
59 | times to meet; providing penalties for failure to  
60 | arbitrate; creating s. 720.508, F.S.; providing for rules  
61 | of procedure; providing for confidentiality; creating s.  
62 | 720.509, F.S.; setting qualifications for mediators and  
63 | arbitrators; creating s. 720.510, F.S.; providing for  
64 | enforcement of mediation agreements and arbitration  
65 | awards; providing that any three or more condominium  
66 | associations may form a self-insurance fund for certain  
67 | purposes under certain conditions; requiring that the  
68 | contract for participating in the fund disclose certain  
69 | information and contain certain provisions; requiring  
70 | that a disclosure be provided to an association before  
71 | execution of such contract; requiring that such disclosure  
72 | contain certain information; providing for the charging of  
73 | contributions for participation in the fund; requiring  
74 | that the majority of the governing board of the fund be  
75 | participants in the fund; providing powers of the  
76 | governing board; authorizing the fund to enter into  
77 | certain contracts; requiring that the fund use a general  
78 | lines agent meeting certain criteria when soliciting  
79 | participation in the fund; prohibiting the fund from  
80 | taking certain actions when selecting such agent;  
81 | requiring that the fund be independently audited at  
82 | specified intervals; authorizing the fund to accumulate  
83 | funds or distribute excess funds to participants on a  
84 | pro rata basis; providing for a deductible for

85 participants in the fund; exempting such self-insurance  
 86 funds from certain requirements, regulations, fees, taxes,  
 87 and assessments; providing effective dates.

88

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

90

91 Section 1. Paragraph (d) of subsection (2) of section  
 92 718.112, Florida Statutes, is amended to read:

93 718.112 Bylaws.--

94 (2) REQUIRED PROVISIONS.--The bylaws shall provide for the  
 95 following and, if they do not do so, shall be deemed to include  
 96 the following:

97 (d) Unit owner meetings.--

98 1. There shall be an annual meeting of the unit owners  
 99 held at the location provided in the association bylaws and, if  
 100 the bylaws are silent as to the location, the meeting shall be  
 101 held within 45 miles of the condominium property. However, such  
 102 distance requirement does not apply to an association governing  
 103 a timeshare condominium. Unless the bylaws provide otherwise, a  
 104 vacancy on the board caused by the expiration of a director's  
 105 term shall be filled by electing a new board member, and the  
 106 election shall be by secret ballot; however, if the number of  
 107 vacancies equals or exceeds the number of candidates, no  
 108 election is required. The terms of all members of the board  
 109 shall expire at the annual meeting and such board members may  
 110 stand for reelection unless otherwise permitted by the bylaws.  
 111 In the event that the bylaws permit staggered terms of no more  
 112 than 2 years and upon approval of a majority of the total voting

113 interests, the association board members may serve 2-year  
114 staggered terms. If no person is interested in or demonstrates  
115 an intention to run for the position of a board member whose  
116 term has expired according to the provisions of this  
117 subparagraph, such board member whose term has expired shall be  
118 automatically reappointed to the board of administration and  
119 need not stand for reelection. In a condominium association of  
120 more than 10 units, coowners of a unit may not serve as members  
121 of the board of directors at the same time. Any unit owner  
122 desiring to be a candidate for board membership shall comply  
123 with subparagraph 3. A person who has been suspended or removed  
124 by the division under this chapter, or who is delinquent in the  
125 payment of any fee or assessment as provided in paragraph (n),  
126 is not eligible for board membership. A person who has been  
127 convicted of any felony in this state or in a United States  
128 District or Territorial Court, or who has been convicted of any  
129 offense in another jurisdiction that would be considered a  
130 felony if committed in this state, is not eligible for board  
131 membership unless such felon's civil rights have been restored  
132 for a period of no less than 5 years as of the date on which  
133 such person seeks election to the board. The validity of an  
134 action by the board is not affected if it is later determined  
135 that a member of the board is ineligible for board membership  
136 due to having been convicted of a felony.

137 2. The bylaws shall provide the method of calling meetings  
138 of unit owners, including annual meetings. Written notice, which  
139 notice must include an agenda, shall be mailed, hand delivered,  
140 or electronically transmitted to each unit owner at least 14

HB 27

2009

141 days prior to the annual meeting and shall be posted in a  
142 conspicuous place on the condominium property at least 14  
143 continuous days preceding the annual meeting. Upon notice to the  
144 unit owners, the board shall by duly adopted rule designate a  
145 specific location on the condominium property or association  
146 property upon which all notices of unit owner meetings shall be  
147 posted; however, if there is no condominium property or  
148 association property upon which notices can be posted, this  
149 requirement does not apply. In lieu of or in addition to the  
150 physical posting of notice of any meeting of the unit owners on  
151 the condominium property, the association may, by reasonable  
152 rule, adopt a procedure for conspicuously posting and repeatedly  
153 broadcasting the notice and the agenda on a closed-circuit cable  
154 television system serving the condominium association. However,  
155 if broadcast notice is used in lieu of a notice posted  
156 physically on the condominium property, the notice and agenda  
157 must be broadcast at least four times every broadcast hour of  
158 each day that a posted notice is otherwise required under this  
159 section. When broadcast notice is provided, the notice and  
160 agenda must be broadcast in a manner and for a sufficient  
161 continuous length of time so as to allow an average reader to  
162 observe the notice and read and comprehend the entire content of  
163 the notice and the agenda. Unless a unit owner waives in writing  
164 the right to receive notice of the annual meeting, such notice  
165 shall be hand delivered, mailed, or electronically transmitted  
166 to each unit owner. Notice for meetings and notice for all other  
167 purposes shall be mailed to each unit owner at the address last  
168 furnished to the association by the unit owner, or hand

Page 6 of 58

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0027-00

169 delivered to each unit owner. However, if a unit is owned by  
170 more than one person, the association shall provide notice, for  
171 meetings and all other purposes, to that one address which the  
172 developer initially identifies for that purpose and thereafter  
173 as one or more of the owners of the unit shall so advise the  
174 association in writing, or if no address is given or the owners  
175 of the unit do not agree, to the address provided on the deed of  
176 record. An officer of the association, or the manager or other  
177 person providing notice of the association meeting, shall  
178 provide an affidavit or United States Postal Service certificate  
179 of mailing, to be included in the official records of the  
180 association affirming that the notice was mailed or hand  
181 delivered, in accordance with this provision.

182 3. The members of the board shall be elected by written  
183 ballot or voting machine. Proxies shall in no event be used in  
184 electing the board, either in general elections or elections to  
185 fill vacancies caused by recall, resignation, or otherwise,  
186 unless otherwise provided in this chapter. Not less than 60 days  
187 before a scheduled election, the association shall mail,  
188 deliver, or electronically transmit, whether by separate  
189 association mailing or included in another association mailing,  
190 delivery, or transmission, including regularly published  
191 newsletters, to each unit owner entitled to a vote, a first  
192 notice of the date of the election along with a certification  
193 form provided by the division attesting that he or she has read  
194 and understands, to the best of his or her ability, the  
195 governing documents of the association and the provisions of  
196 this chapter and any applicable rules. Any unit owner or other

HB 27

2009

197 eligible person desiring to be a candidate for the board must  
198 give written notice to the association not less than 40 days  
199 before a scheduled election. Together with the written notice  
200 and agenda as set forth in subparagraph 2., the association  
201 shall mail, deliver, or electronically transmit a second notice  
202 of the election to all unit owners entitled to vote therein,  
203 together with a ballot which shall list all candidates. Upon  
204 request of a candidate, the association shall include an  
205 information sheet, no larger than 8 1/2 inches by 11 inches,  
206 which must be furnished by the candidate not less than 35 days  
207 before the election, along with the signed certification form  
208 provided for in this subparagraph, to be included with the  
209 mailing, delivery, or transmission of the ballot, with the costs  
210 of mailing, delivery, or electronic transmission and copying to  
211 be borne by the association. The association is not liable for  
212 the contents of the information sheets prepared by the  
213 candidates. In order to reduce costs, the association may print  
214 or duplicate the information sheets on both sides of the paper.  
215 The division shall by rule establish voting procedures  
216 consistent with the provisions contained herein, including rules  
217 establishing procedures for giving notice by electronic  
218 transmission and rules providing for the secrecy of ballots.  
219 Elections shall be decided by a plurality of those ballots cast.  
220 There shall be no quorum requirement; however, at least 20  
221 percent of the eligible voters must cast a ballot in order to  
222 have a valid election of members of the board. No unit owner  
223 shall permit any other person to vote his or her ballot, and any  
224 such ballots improperly cast shall be deemed invalid, provided



HB 27

2009

225 any unit owner who violates this provision may be fined by the  
226 association in accordance with s. 718.303. A unit owner who  
227 needs assistance in casting the ballot for the reasons stated in  
228 s. 101.051 may obtain assistance in casting the ballot. The  
229 regular election shall occur on the date of the annual meeting.  
230 The provisions of this subparagraph shall not apply to timeshare  
231 condominium associations. Notwithstanding the provisions of this  
232 subparagraph, an election is not required unless more candidates  
233 file notices of intent to run or are nominated than board  
234 vacancies exist.

235 4. Any approval by unit owners called for by this chapter  
236 or the applicable declaration or bylaws, including, but not  
237 limited to, the approval requirement in s. 718.111(8), shall be  
238 made at a duly noticed meeting of unit owners and shall be  
239 subject to all requirements of this chapter or the applicable  
240 condominium documents relating to unit owner decisionmaking,  
241 except that unit owners may take action by written agreement,  
242 without meetings, on matters for which action by written  
243 agreement without meetings is expressly allowed by the  
244 applicable bylaws or declaration or any statute that provides  
245 for such action.

246 5. Unit owners may waive notice of specific meetings if  
247 allowed by the applicable bylaws or declaration or any statute.  
248 If authorized by the bylaws, notice of meetings of the board of  
249 administration, unit owner meetings, except unit owner meetings  
250 called to recall board members under paragraph (j), and  
251 committee meetings may be given by electronic transmission to

252 unit owners who consent to receive notice by electronic  
253 transmission.

254 6. Unit owners shall have the right to participate in  
255 meetings of unit owners with reference to all designated agenda  
256 items. However, the association may adopt reasonable rules  
257 governing the frequency, duration, and manner of unit owner  
258 participation.

259 7. Any unit owner may tape record or videotape a meeting  
260 of the unit owners subject to reasonable rules adopted by the  
261 division.

262 8. Unless otherwise provided in the bylaws, any vacancy  
263 occurring on the board before the expiration of a term may be  
264 filled by the affirmative vote of the majority of the remaining  
265 directors, even if the remaining directors constitute less than  
266 a quorum, or by the sole remaining director. In the alternative,  
267 a board may hold an election to fill the vacancy, in which case  
268 the election procedures must conform to the requirements of  
269 subparagraph 3. unless the association governs 10 units or less  
270 and has opted out of the statutory election process, in which  
271 case the bylaws of the association control. Unless otherwise  
272 provided in the bylaws, a board member appointed or elected  
273 under this section shall fill the vacancy for the unexpired term  
274 of the seat being filled. Filling vacancies created by recall is  
275 governed by paragraph (j) and rules adopted by the division.

276 9. Within 30 days after being elected to the board of  
277 directors, a new director shall certify in writing to the  
278 secretary of the association that he or she has read the  
279 association's declarations of covenants and restrictions,

HB 27

2009

280 articles of incorporation, bylaws, and current written policies,  
281 that he or she will work to uphold such documents and policies  
282 to the best of his or her ability, and that he or she will  
283 faithfully discharge his or her fiduciary responsibility to the  
284 association's members. Failure to timely file the statement  
285 automatically disqualifies the director from service on the  
286 association's board of directors. The secretary shall cause the  
287 association to retain a director's certification for inspection  
288 by the members for 5 years after a director's election. Failure  
289 to have such certification on file does not affect the validity  
290 of any appropriate action.

291  
292 Notwithstanding subparagraphs (b)2. and (d)3., an association of  
293 10 or fewer units may, by the affirmative vote of a majority of  
294 the total voting interests, provide for different voting and  
295 election procedures in its bylaws, which vote may be by a proxy  
296 specifically delineating the different voting and election  
297 procedures. The different voting and election procedures may  
298 provide for elections to be conducted by limited or general  
299 proxy.

300 Section 2. Paragraph (b) of subsection (2), paragraphs (a)  
301 and (c) of subsection (5), paragraphs (b), (c), (d), (f), and  
302 (g) of subsection (6) of section 720.303, Florida Statutes, are  
303 amended, and subsection (12) is added to that section, to read:

304 720.303 Association powers and duties; meetings of board;  
305 official records; budgets; financial reporting; association  
306 funds; recalls.--

307 (2) BOARD MEETINGS.--

308 (b) Members have the right to attend all meetings of the  
 309 board and to speak on any matter placed on the agenda by  
 310 petition of the voting interests for at least 3 minutes. The  
 311 association may adopt written reasonable rules expanding the  
 312 right of members to speak and governing the frequency, duration,  
 313 and other manner of member statements, which rules must be  
 314 consistent with this paragraph and may include a sign-up sheet  
 315 for members wishing to speak. Notwithstanding any other law, ~~the~~  
 316 ~~requirement that board meetings and committee meetings be open~~  
 317 ~~to the members is inapplicable to~~ meetings between the board or  
 318 a committee to discuss proposed or pending litigation with and  
 319 the association's attorney, or ~~with respect to~~ meetings of the  
 320 board held for the purpose of discussing personnel matters are  
 321 not required to be open to the members.

322 (5) INSPECTION AND COPYING OF RECORDS.--The official  
 323 records shall be maintained within the state and must be open to  
 324 inspection and available for photocopying by members or their  
 325 authorized agents at reasonable times and places within 10  
 326 business days after receipt of a written request for access.  
 327 This subsection may be complied with by having a copy of the  
 328 official records available for inspection or copying in the  
 329 community. If the association has a photocopy machine available  
 330 where the records are maintained, it must provide parcel owners  
 331 with copies on request during the inspection if the entire  
 332 request is limited to no more than 25 pages.

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

HB 27

2009

336 creates a rebuttable presumption that the association willfully  
337 failed to comply with this subsection.

338 (c) The association may adopt reasonable written rules  
339 governing the frequency, time, location, notice, records to be  
340 inspected, and manner of inspections, but may not require ~~impose~~  
341 ~~a requirement that~~ a parcel owner to demonstrate any proper  
342 purpose for the inspection, state any reason for the inspection,  
343 or limit a parcel owner's right to inspect records to less than  
344 one 8-hour business day per month. The association may impose  
345 fees to cover the costs of providing copies of the official  
346 records, including, without limitation, the costs of copying.  
347 The association may charge up to 50 cents per page for copies  
348 made on the association's photocopier. If the association does  
349 not have a photocopy machine available where the records are  
350 kept, or if the records requested to be copied exceed 25 pages  
351 in length, the association may have copies made by an outside  
352 vendor or association management company personnel and may  
353 charge the actual cost of copying, including any reasonable  
354 costs involving personnel fees and charges at an hourly rate for  
355 employee time to cover administrative costs to the association.  
356 The association shall maintain an adequate number of copies of  
357 the recorded governing documents, to ensure their availability  
358 to members and prospective members. Notwithstanding the  
359 provisions of this paragraph, the following records are ~~shall~~  
360 not ~~be~~ accessible to members or parcel owners:

361 1. Any record protected by the lawyer-client privilege as  
362 described in s. 90.502 and any record protected by the work-  
363 product privilege, including, but not limited to, any record

364 prepared by an association attorney or prepared at the  
 365 attorney's express direction which reflects a mental impression,  
 366 conclusion, litigation strategy, or legal theory of the attorney  
 367 or the association and which was prepared exclusively for civil  
 368 or criminal litigation or for adversarial administrative  
 369 proceedings or which was prepared in anticipation of imminent  
 370 civil or criminal litigation or imminent adversarial  
 371 administrative proceedings until the conclusion of the  
 372 litigation or ~~adversarial~~ administrative proceedings.

373 2. Information obtained by an association in connection  
 374 with the approval of the lease, sale, or other transfer of a  
 375 parcel.

376 3. Disciplinary, health, insurance, and personnel records  
 377 of the association's employees.

378 4. Medical records of parcel owners or community  
 379 residents.

380 (6) BUDGETS.--

381 (b) In addition to annual operating expenses, the budget  
 382 may include reserve accounts for capital expenditures and  
 383 deferred maintenance for which the association is responsible.  
 384 If reserve accounts are not established pursuant to paragraph  
 385 (d), funding of such reserves shall be limited to the extent  
 386 that the governing documents ~~do not~~ limit increases in  
 387 assessments, including reserves. If the budget of the  
 388 association includes reserve accounts established pursuant to  
 389 paragraph (d), such reserves shall be determined, maintained,  
 390 and waived in the manner provided in this subsection. Once an  
 391 association provides for reserve accounts pursuant to paragraph

392 ~~(d) in the budget~~, the association shall thereafter determine,  
393 maintain, and waive reserves in compliance with this subsection.  
394 The provisions of this section do not preclude the termination  
395 of a reserve account established pursuant to this paragraph upon  
396 approval of a majority of the voting interests of the  
397 association. Upon such approval, the terminating reserve account  
398 shall be removed from the budget.

399 (c)1. If the budget of the association does not provide  
400 for reserve accounts pursuant to paragraph (d) ~~governed by this~~  
401 ~~subsection~~ and the association is responsible for the repair and  
402 maintenance of capital improvements that may result in a special  
403 assessment if reserves are not provided, each financial report  
404 for the preceding fiscal year required by subsection (7) shall  
405 contain the following statement in conspicuous type: THE BUDGET  
406 OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR  
407 CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN  
408 SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE  
409 ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6),  
410 FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF ~~NOT LESS THAN A~~  
411 MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY  
412 VOTE OF THE MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

413 2. If the budget of the association does provide for  
414 funding accounts for deferred expenditures, including, but not  
415 limited to, funds for capital expenditures and deferred  
416 maintenance, but such accounts are not created or established  
417 pursuant to paragraph (d), each financial report for the  
418 preceding fiscal year required under subsection (7) must also  
419 contain the following statement in conspicuous type: THE BUDGET

420 OF THE ASSOCIATION DOES PROVIDE FOR LIMITED VOLUNTARY DEFERRED  
421 EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES AND  
422 DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED IN  
423 OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED TO  
424 PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),  
425 FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE  
426 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR  
427 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

428 (d) An association shall be deemed to have provided for  
429 reserve accounts if ~~when~~ reserve accounts have been initially  
430 established by the developer or if ~~when~~ the membership of the  
431 association affirmatively elects to provide for reserves. If  
432 reserve accounts are not initially provided for by the  
433 developer, the membership of the association may elect to do so  
434 upon the affirmative approval of ~~not less than~~ a majority of the  
435 total voting interests of the association. Such approval may be  
436 obtained ~~attained~~ by vote of the members at a duly called  
437 meeting of the membership or by the ~~upon a~~ written consent of  
438 ~~executed by not less than~~ a majority of the total voting  
439 interests in the community. The approval action of the  
440 membership shall state that reserve accounts shall be provided  
441 for in the budget and shall designate the components for which  
442 the reserve accounts are to be established. Upon approval by the  
443 membership, the board of directors shall include ~~provide for~~ the  
444 required reserve accounts ~~for inclusion~~ in the budget in the  
445 next fiscal year following the approval and ~~in~~ each year  
446 thereafter. Once established as provided in this subsection, the



447 reserve accounts shall be funded or maintained or shall have  
 448 their funding waived in the manner provided in paragraph (f).

449 (f) After one or more ~~Once a reserve account or~~ reserve  
 450 accounts are established, the membership of the association,  
 451 upon a majority vote at a meeting at which a quorum is present,  
 452 may provide for no reserves or less reserves than required by  
 453 this section. If a meeting of the unit owners has been called to  
 454 determine whether to waive or reduce the funding of reserves and  
 455 no such result is achieved or a quorum is not present, the  
 456 reserves as included in the budget shall go into effect. After  
 457 the turnover, the developer may vote its voting interest to  
 458 waive or reduce the funding of reserves. Any vote taken pursuant  
 459 to this subsection to waive or reduce reserves is ~~shall be~~  
 460 applicable only to one budget year.

461 (g) Funding formulas for reserves authorized by this  
 462 section shall be based on either a separate analysis of each of  
 463 the required assets or a pooled analysis of two or more of the  
 464 required assets.

465 1. If the association maintains separate reserve accounts  
 466 for each of the required assets, the amount of the contribution  
 467 to each reserve account is ~~shall be~~ the sum of the following two  
 468 calculations:

469 a. The total amount necessary, if any, to bring a negative  
 470 component balance to zero.

471 b. The total estimated deferred maintenance expense or  
 472 estimated replacement cost of the reserve component less the  
 473 estimated balance of the reserve component as of the beginning  
 474 of the period ~~for which~~ the budget will be in effect. The

HB 27

2009

475 remainder, if greater than zero, shall be divided by the  
476 estimated remaining useful life of the component.

477  
478 The formula may be adjusted each year for changes in estimates  
479 and deferred maintenance performed during the year and may  
480 include factors such as inflation and earnings on invested  
481 funds.

482 2. If the association maintains a pooled account of two or  
483 more of the required reserve assets, the amount of the  
484 contribution to the pooled reserve account as disclosed on the  
485 proposed budget may ~~shall~~ not be less than that required to  
486 ensure that the balance on hand at the beginning of the period  
487 ~~for which~~ the budget will go into effect plus the projected  
488 annual cash inflows over the remaining estimated useful life of  
489 all of the assets that make up the reserve pool are equal to or  
490 greater than the projected annual cash outflows over the  
491 remaining estimated useful lives of all ~~of~~ the assets that make  
492 up the reserve pool, based on the current reserve analysis. The  
493 projected annual cash inflows may include estimated earnings  
494 from investment of principal and accounts receivable minus the  
495 allowance for doubtful accounts. The reserve funding formula may  
496 ~~shall~~ not include any type of balloon payments.

497 (12) COMPENSATION PROHIBITED.--A director, officer, or  
498 committee member of the association may not receive directly or  
499 indirectly any salary or compensation from the association for  
500 the performance of duties as a director, officer, or committee  
501 member and may not in any other way benefit financially from  
502 service to the association. This subsection does not preclude:

HB 27

2009

503        (a) Participation by such person in a financial benefit  
504 accruing to all or a significant number of members as a result  
505 of actions lawfully taken by the board or a committee of which  
506 he or she is a member, including, but not limited to, routine  
507 maintenance, repair, or replacement of community assets.

508        (b) Reimbursement for out-of-pocket expenses incurred by  
509 such person on behalf of the association, subject to approval in  
510 accordance with procedures established by the association's  
511 governing documents or, in the absence of such procedures, in  
512 accordance with an approval process established by the board.

513        (c) Any recovery of insurance proceeds derived from a  
514 policy of insurance maintained by the association for the  
515 benefit of its members.

516        (d) Any fee or compensation authorized in the governing  
517 documents.

518        (e) Any fee or compensation authorized in advance by a  
519 vote of a majority of the voting interests voting in person or  
520 by proxy at a meeting of the members.

521        Section 3. Subsection (2) of section 720.305, Florida  
522 Statutes, is amended to read:

523        720.305 Obligations of members; remedies at law or in  
524 equity; levy of fines and suspension of use rights.--

525        (2) If the governing documents so provide, an association  
526 may suspend, for a reasonable period of time, the rights of a  
527 member or a member's tenants, guests, or invitees, or both, to  
528 use common areas and facilities and may levy reasonable fines of  
529 up to, ~~not to exceed~~ \$100 per violation, against any member or  
530 any tenant, guest, or invitee. A fine may be levied on the basis

HB 27

2009

531 of each day of a continuing violation, with a single notice and  
532 opportunity for hearing, except that no ~~such~~ fine may ~~shall~~  
533 exceed \$1,000 in the aggregate unless otherwise provided in the  
534 governing documents. A fine of less than \$1,000 may ~~shall~~ not  
535 become a lien against a parcel. In any action to recover a fine,  
536 the prevailing party is entitled to collect its reasonable  
537 attorney's fees and costs from the nonprevailing party as  
538 determined by the court.

539 (a) A fine or suspension may not be imposed without ~~notice~~  
540 ~~of~~ at least 14 days' notice ~~days~~ to the person sought to be  
541 fined or suspended and an opportunity for a hearing before a  
542 committee of at least three members appointed by the board who  
543 are not officers, directors, or employees of the association, or  
544 the spouse, parent, child, brother, or sister of an officer,  
545 director, or employee. If the committee, by majority vote, does  
546 not approve a proposed fine or suspension, it may not be  
547 imposed.

548 (b) The requirements of this subsection do not apply to  
549 the imposition of suspensions or fines upon any member because  
550 of the failure of the member to pay assessments or other charges  
551 when due if such action is authorized by the governing  
552 documents.

553 (c) Suspension of common-area-use rights do ~~shall~~ not  
554 impair the right of an owner or tenant of a parcel to have  
555 vehicular and pedestrian ingress to and egress from the parcel,  
556 including, but not limited to, the right to park.

557 Section 4. Subsections (8) and (9) of section 720.306,  
558 Florida Statutes, are amended to read:

559 720.306 Meetings of members; voting and election  
560 procedures; amendments.--

561 (8) PROXY VOTING.--The members have the right, unless  
562 otherwise provided in this subsection or in the governing  
563 documents, to vote in person or by proxy.

564 (a) To be valid, a proxy must be dated, must state the  
565 date, time, and place of the meeting for which it was given, and  
566 must be signed by the authorized person who executed the proxy.  
567 A proxy is effective only for the specific meeting for which it  
568 was originally given, as the meeting may lawfully be adjourned  
569 and reconvened from time to time, and automatically expires 90  
570 days after the date of the meeting for which it was originally  
571 given. A proxy is revocable at any time at the pleasure of the  
572 person who executes it. If the proxy form expressly so provides,  
573 any proxy holder may appoint, in writing, a substitute to act in  
574 his or her place.

575 (b) If the governing documents permit voting by secret  
576 ballot by members who are not in attendance at a meeting of the  
577 members for the election of directors, such ballots shall be  
578 placed in an inner envelope with no identifying markings and  
579 mailed or delivered to the association in an outer envelope  
580 bearing identifying information reflecting the name of the  
581 member, the lot or parcel for which the vote is being cast, and  
582 the signature of the lot or parcel owner casting that ballot.  
583 After the eligibility of the member to vote and confirmation  
584 that no other ballot has been submitted for that lot or parcel,  
585 the inner envelope shall be removed from the outer envelope  
586 bearing the identification information, placed with the ballots

HB 27

2009

587 which were personally cast, and opened when the ballots are  
588 counted. If more than one ballot is submitted for a lot or  
589 parcel, the ballots for that lot or parcel shall be  
590 disqualified. Any vote by ballot received after the closing of  
591 the balloting may not be considered.

592 (9) ELECTIONS; BOARD MEMBER CERTIFICATION.--

593 (a) Elections of directors must be conducted in accordance  
594 with the procedures set forth in the governing documents of the  
595 association. All members of the association are ~~shall be~~  
596 eligible to serve on the board of directors, and a member may  
597 nominate himself or herself as a candidate for the board at a  
598 meeting where the election is to be held or, if the election  
599 process allows voting by absentee ballot, in advance of the  
600 balloting. Except as otherwise provided in the governing  
601 documents, boards of directors must be elected by a plurality of  
602 the votes cast by eligible voters. Any election dispute between  
603 a member and an association must be submitted to mandatory  
604 binding arbitration with the division. Such proceedings shall be  
605 conducted in the manner provided by s. 718.1255 and the  
606 procedural rules adopted by the division.

607 (b) Within 30 days after being elected to the board of  
608 directors, a new director shall certify in writing to the  
609 secretary of the association that he or she has read the  
610 association's declarations of covenants and restrictions,  
611 articles of incorporation, bylaws, and current written policies  
612 and that he or she will work to uphold each to the best of his  
613 or her ability and will faithfully discharge his or her  
614 fiduciary responsibility to the association's members. Failure

615 to timely file such statement shall automatically disqualify the  
 616 director from service on the association's board of directors.  
 617 The secretary shall cause the association to retain a director's  
 618 certification for inspection by the members for 5 years after a  
 619 director's election. Failure to have such certification on file  
 620 does not affect the validity of any appropriate action.

621 Section 5. Paragraph (a) of subsection (1) of section  
 622 720.401, Florida Statutes, is amended to read:

623 720.401 Prospective purchasers subject to association  
 624 membership requirement; disclosure required; covenants;  
 625 assessments; contract cancellation.--

626 (1)(a) A prospective parcel owner in a community must be  
 627 presented a disclosure summary before executing the contract for  
 628 sale. The disclosure summary must be in a form substantially  
 629 similar to the following form:

630  
 631 DISCLOSURE SUMMARY  
 632 FOR  
 633 (NAME OF COMMUNITY)  
 634

635 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL  
 636 BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

637 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE  
 638 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS  
 639 COMMUNITY.

640 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE  
 641 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF  
 642 APPLICABLE, THE CURRENT AMOUNT IS \$ \_\_\_\_\_ PER \_\_\_\_\_. YOU WILL

643 ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE  
 644 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.  
 645 IF APPLICABLE, THE CURRENT AMOUNT IS \$ \_\_\_\_\_ PER \_\_\_\_\_.

646 4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE  
 647 RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL  
 648 ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

649 5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS  
 650 LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION MAY ~~COULD~~ RESULT  
 651 IN A LIEN ON YOUR PROPERTY.

652 6. THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE FEES  
 653 FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN  
 654 OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF  
 655 APPLICABLE, THE CURRENT AMOUNT IS \$ \_\_\_\_\_ PER \_\_\_\_\_.

656 7. IF THE ASSOCIATION IS STILL UNDER THE CONTROL OF THE  
 657 DEVELOPER, THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE  
 658 RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION  
 659 MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

660 8. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE  
 661 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU  
 662 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING  
 663 DOCUMENTS BEFORE PURCHASING PROPERTY.

664 9. THESE DOCUMENTS ARE ~~EITHER~~ MATTERS OF PUBLIC RECORD AND  
 665 CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE  
 666 PROPERTY IS LOCATED, OR, IF ARE NOT RECORDED, ~~AND~~ CAN BE  
 667 OBTAINED FROM THE DEVELOPER.

668 10. THERE MAY BE AN OBLIGATION TO PAY ASSESSMENTS (TAXES  
 669 OR FEES) TO A RESIDENTIAL COMMUNITY DEVELOPMENT DISTRICT FOR THE



HB 27

2009

670 PURPOSE OF RETIRING BOND OBLIGATIONS USED TO CONSTRUCT  
 671 INFRASTRUCTURE OR OTHER IMPROVEMENTS.

672 11. YOU ARE JOINTLY AND SEVERALLY LIABLE WITH THE PREVIOUS  
 673 OWNER OF YOUR PROPERTY FOR ALL UNPAID ASSESSMENTS THAT CAME DUE  
 674 UP TO THE TIME OF TRANSFER OF TITLE.

675  
 676 DATE: PURCHASER:

677 PURCHASER:

678  
 679 The disclosure must be supplied by the developer, or by the  
 680 parcel owner if the sale is by an owner that is not the  
 681 developer. Any contract or agreement for sale shall refer to and  
 682 incorporate the disclosure summary and shall include, in  
 683 prominent language, a statement that the potential buyer should  
 684 not execute the contract or agreement until he or she has ~~they~~  
 685 ~~have~~ received and read the disclosure summary required by this  
 686 section.

687 Section 6. Effective July 1, 2010, paragraph (d) of  
 688 subsection (1) of section 34.01, Florida Statutes, is amended to  
 689 read:

690 34.01 Jurisdiction of county court.--

691 (1) County courts shall have original jurisdiction:

692 (d) Of disputes occurring in the homeowners' associations  
 693 as described in part IV of chapter 720 ~~s. 720.311(2)(a)~~, which  
 694 shall be concurrent with jurisdiction of the circuit courts.

695 Section 7. Effective July 1, 2010, subsection (2) of  
 696 section 720.302, Florida Statutes, is amended to read:

697 720.302 Purposes, scope, and application.--

698 (2) The Legislature recognizes that it is not in the best  
 699 interest of homeowners' associations or the individual  
 700 association members thereof to create or impose a bureau or  
 701 other agency of state government to regulate the affairs of  
 702 homeowners' associations. However, in accordance with part IV of  
 703 this chapter s. 720.311, the Legislature finds that homeowners'  
 704 associations and their individual members will benefit from an  
 705 expedited alternative process for resolution of ~~election and~~  
 706 ~~recall disputes and presuit mediation of other~~ disputes  
 707 involving covenant enforcement in homeowner's associations and  
 708 deed-restricted communities using the procedures provided in  
 709 part IV of and ~~authorizes the department to hear, administer,~~  
 710 ~~and determine these disputes as more fully set forth in this~~  
 711 chapter. Further, the Legislature recognizes that certain  
 712 contract rights have been created for the benefit of homeowners'  
 713 associations and members thereof as well as deed-restricted  
 714 communities before the effective date of this act and that part  
 715 IV of this chapter is ss. 720.301-720.407 are not intended to  
 716 impair such contract rights, including, but not limited to, the  
 717 rights of the developer to complete the community as initially  
 718 contemplated.

719 Section 8. Effective July 1, 2010, section 720.311,  
 720 Florida Statutes, is repealed.

721 Section 9. Effective July 1, 2010, part IV of chapter 720,  
 722 Florida Statutes, to be entitled "Dispute Resolution,"  
 723 consisting of sections 720.501, 720.502, 720.503, 720.504,  
 724 720.505, 720.506, 720.507, 720.508, 720.509, and 720.510, is  
 725 created to read:

HB 27

2009

726 720.501 Short title.--This part may be cited as the "Home  
727 Court Advantage Dispute Resolution Act."

728 720.502 Legislative findings.--The Legislature finds that  
729 alternative dispute resolution has made progress in reducing  
730 court dockets and trials and in offering a more efficient, cost-  
731 effective option to litigation.

732 720.503 Applicability of this part.--

733 (1) Unless otherwise provided in this part, before a  
734 dispute described in this part between a homeowners' association  
735 and a parcel owner or owners, or a dispute between parcel owners  
736 within the same homeowners' association, may be filed in court,  
737 the dispute is subject to presuit mediation pursuant to s.  
738 720.505 or presuit arbitration pursuant to s. 720.507, at the  
739 option of the aggrieved party who initiates the first formal  
740 action of alternative dispute resolution under this part. The  
741 parties may mutually agree to participate in both presuit  
742 mediation and presuit arbitration prior to suit being filed by  
743 either party.

744 (2) Unless otherwise provided in this part, the mediation  
745 and arbitration provisions of this part are limited to disputes  
746 between an association and a parcel owner or owners or between  
747 parcel owners regarding the use of or changes to the parcel or  
748 the common areas under the governing documents and other  
749 disputes involving violations of the recorded declaration of  
750 covenants or other governing documents, disputes arising  
751 concerning enforcement of the governing documents or any  
752 amendments thereto, and disputes involving access to the  
753 official records of the association. A dispute concerning title

754 to any parcel or common area, interpretation or enforcement of  
755 any warranty, the levy of a fee or assessment, the collection of  
756 an assessment levied against a party, the eviction or other  
757 removal of a tenant from a parcel, alleged breaches of fiduciary  
758 duty by one or more directors, or any action to collect mortgage  
759 indebtedness or to foreclosure a mortgage shall not be subject  
760 to the provisions of this part.

761 (3) All disputes arising after the effective date of this  
762 part involving the election of the board of directors for an  
763 association or the recall of any member of the board or officer  
764 of the association shall not be eligible for presuit mediation  
765 under s. 720.505, but shall be subject to the provisions  
766 concerning presuit arbitration under s. 720.507.

767 (4) In any dispute subject to presuit mediation or presuit  
768 arbitration under this part for which emergency relief is  
769 required, a motion for temporary injunctive relief may be filed  
770 with the court without first complying with the presuit  
771 mediation or presuit arbitration requirements of this part.  
772 After any issues regarding emergency or temporary relief are  
773 resolved, the court may refer the parties to a mediation program  
774 administered by the courts or require mediation or arbitration  
775 under this part.

776 (5) The mailing of a statutory notice of presuit mediation  
777 or presuit arbitration as provided in this part shall toll the  
778 applicable statute of limitations during the pendency of the  
779 mediation or arbitration and for a period of 30 days following  
780 the conclusion of either proceeding. The 30-day period shall  
781 start upon the filing of the mediator's notice of impasse or the

HB 27

2009

782 arbitrator's written arbitration award. If the parties mutually  
783 agree to participate in both presuit mediation and presuit  
784 arbitration under this part, the tolling of the applicable  
785 statute of limitations for each such alternative dispute  
786 resolution proceeding shall be consecutive.

787 720.504 Notice of dispute.--Prior to giving the statutory  
788 notice to proceed under presuit medication or presuit  
789 arbitration under this part, the aggrieved association or parcel  
790 owner shall first provide written notice of the dispute to the  
791 responding party in the manner provided by this section.

792 (1) The notice of dispute shall be delivered to the  
793 responding party by certified mail, return receipt requested, or  
794 the notice of dispute may be hand delivered, and the person  
795 making delivery shall file with their notice of mediation either  
796 the proof of receipt of mailing or an affidavit stating the date  
797 and time of the delivery of the notice of dispute. If the notice  
798 is delivered by certified mail, return receipt requested, and  
799 the responding party fails or refuses to accept delivery, notice  
800 shall be considered properly delivered for purposes of this  
801 section on the date of the first attempted delivery.

802 (2) The notice of dispute shall state with specificity the  
803 nature of the dispute, including the date, time, and location of  
804 each event that is the subject of the dispute and the action  
805 requested to resolve the dispute. The notice shall also include  
806 the text of any provision in the governing documents, including  
807 the rules and regulations, of the association which form the  
808 basis of the dispute.

809        (3) Unless the parties otherwise agree in writing to a  
810 longer time period, the party receiving the notice of dispute  
811 shall have 10 days following the date of receipt of notice to  
812 resolve the dispute. If the alleged dispute has not been  
813 resolved within the 10-day period, the aggrieved party may  
814 proceed under this part at any time thereafter within the  
815 applicable statute of limitations.

816        (4) A copy of the notice and the text of the provision in  
817 the governing documents, or the rules and regulations, of the  
818 association which are the basis of the dispute, along with proof  
819 of service of the notice of dispute and a copy of any written  
820 responses received from the responding party, shall be included  
821 as an exhibit to any demand for mediation or arbitration under  
822 this part.

823        720.505 Presuit mediation.--

824        (1) Disputes between an association and a parcel owner or  
825 owners and between parcel owners must be submitted to presuit  
826 mediation before the dispute may be filed in court; or, at the  
827 election of the party initiating the presuit procedures, such  
828 dispute may be submitted to presuit arbitration pursuant to s.  
829 720.507 before the dispute may be filed in court. An aggrieved  
830 party who elects to use the presuit mediation procedure under  
831 this section shall serve on the responding party a written  
832 notice of presuit mediation in substantially the following form:

833  
834                    STATUTORY NOTICE OF PRESUIT MEDIATION  
835

836 THE ALLEGED AGGRIEVED PARTY, \_\_\_\_\_ ,  
 837 HEREBY DEMANDS THAT \_\_\_\_\_ , AS THE  
 838 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT  
 839 MEDIATION IN CONNECTION WITH THE FOLLOWING DISPUTE(S)  
 840 WITH YOU, WHICH BY STATUTE ARE OF A TYPE THAT ARE  
 841 SUBJECT TO PRESUIT MEDIATION:  
 842  
 843 ATTACHED IS A COPY OF THE PRIOR NOTICE OF VIOLATION  
 844 WHICH DETAILS THE SPECIFIC NATURE OF THE DISPUTE(S) TO  
 845 BE MEDIATED AND THE AUTHORITY SUPPORTING A FINDING OF  
 846 A VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT  
 847 LIMITED TO, THE APPLICABLE PROVISIONS OF THE GOVERNING  
 848 DOCUMENTS OF THE ASSOCIATION BELIEVED TO APPLY TO THE  
 849 DISPUTE BETWEEN THE PARTIES, AND A COPY OF THE NOTICE  
 850 YOU RECEIVED OR REFUSED AND COPIES OF ANY WRITTEN  
 851 RESPONSE(S) RECEIVED FROM YOU ABOUT THIS DISPUTE.  
 852  
 853 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,  
 854 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT  
 855 MEDIATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED  
 856 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,  
 857 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT  
 858 MEDIATION WITH A NEUTRAL THIRD-PARTY MEDIATOR IN ORDER  
 859 TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT  
 860 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU  
 861 PARTICIPATE IN THIS PROCESS. UNLESS YOU RESPOND TO  
 862 THIS NOTICE BY FILING WITH THE AGGRIEVED PARTY A  
 863 NOTICE OF OPTING OUT AND DEMAND FOR ARBITRATION UNDER

864 S. 720.506, FLORIDA STATUTES, YOUR FAILURE TO  
 865 PARTICIPATE IN THE MEDIATION PROCESS MAY RESULT IN A  
 866 LAWSUIT BEING FILED IN COURT AGAINST YOU WITHOUT  
 867 FURTHER NOTICE.

868  
 869 THE PROCESS OF MEDIATION INVOLVES A SUPERVISED  
 870 NEGOTIATION PROCESS IN WHICH A TRAINED, NEUTRAL THIRD-  
 871 PARTY MEDIATOR MEETS WITH BOTH PARTIES AND ASSISTS  
 872 THEM IN EXPLORING POSSIBLE OPPORTUNITIES FOR RESOLVING  
 873 PART OR ALL OF THE DISPUTE. BY AGREEING TO PARTICIPATE  
 874 IN PRESUIT MEDIATION, YOU ARE NOT BOUND IN ANY WAY TO  
 875 CHANGE YOUR POSITION. FURTHERMORE, THE MEDIATOR HAS NO  
 876 AUTHORITY TO MAKE ANY DECISIONS IN THIS MATTER OR TO  
 877 DETERMINE WHO IS RIGHT OR WRONG AND MERELY ACTS AS A  
 878 FACILITATOR TO ENSURE THAT EACH PARTY UNDERSTANDS THE  
 879 POSITION OF THE OTHER PARTY AND THAT ALL OPTIONS FOR  
 880 REASONABLE SETTLEMENT ARE FULLY EXPLORED.

881  
 882 IF AN AGREEMENT IS REACHED, IT SHALL BE REDUCED TO  
 883 WRITING AND BECOME A BINDING AND ENFORCEABLE CONTRACT  
 884 BETWEEN THE PARTIES. A RESOLUTION OF ONE OR MORE  
 885 DISPUTES IN THIS FASHION AVOIDS THE NEED TO LITIGATE  
 886 THESE ISSUES IN COURT. THE FAILURE TO REACH AN  
 887 AGREEMENT, OR THE FAILURE OF A PARTY TO PARTICIPATE IN  
 888 THE PROCESS, RESULTS IN THE MEDIATOR DECLARING AN  
 889 IMPASSE IN THE MEDIATION, AFTER WHICH THE AGGRIEVED  
 890 PARTY MAY PROCEED TO FILE A LAWSUIT ON ALL  
 891 OUTSTANDING, UNSETTLED DISPUTES. IF YOU HAVE FAILED OR



892 REFUSED TO PARTICIPATE IN THE ENTIRE MEDIATION  
 893 PROCESS, YOU WILL NOT BE ENTITLED TO RECOVER  
 894 ATTORNEY'S FEES IF YOU PREVAIL IN A SUBSEQUENT COURT  
 895 PROCEEDING INVOLVING THE SAME DISPUTE.

896  
 897 THE AGGRIEVED PARTY HAS SELECTED FROM A LIST OF  
 898 ELIGIBLE, QUALIFIED MEDIATORS AT LEAST FIVE CERTIFIED  
 899 MEDIATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE  
 900 NEUTRAL AND QUALIFIED TO MEDIATE THE DISPUTE. YOU HAVE  
 901 THE RIGHT TO SELECT ANY ONE OF THESE MEDIATORS. THE  
 902 FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR MORE  
 903 OF THE LISTED MEDIATORS DOES NOT MEAN THAT THE  
 904 MEDIATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL  
 905 FACILITATOR. THE NAMES OF THE MEDIATORS THAT THE  
 906 AGGRIEVED PARTY HEREBY SUBMITS TO YOU FROM WHOM YOU  
 907 MAY CHOOSE ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE  
 908 NUMBERS, AND HOURLY RATES ARE AS FOLLOWS:

909  
 910 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND  
 911 HOURLY RATES OF THE MEDIATORS. OTHER PERTINENT  
 912 INFORMATION ABOUT THE BACKGROUND OF THE MEDIATORS MAY  
 913 BE INCLUDED AS AN ATTACHMENT.)

914  
 915 YOU MAY CONTACT THE OFFICES OF THESE MEDIATORS TO  
 916 CONFIRM THAT EACH OF THE ABOVE-LISTED MEDIATORS WILL  
 917 BE NEUTRAL AND WILL NOT SHOW ANY FAVORITISM TOWARD  
 918 EITHER PARTY. UNLESS OTHERWISE AGREED TO BY THE  
 919 PARTIES, PART IV OF CHAPTER 720, FLORIDA STATUTES,

920 REQUIRES THAT THE PARTIES SHARE THE COSTS OF PRESUIT  
 921 MEDIATION EQUALLY, INCLUDING THE FEE CHARGED BY THE  
 922 MEDIATOR. AN AVERAGE MEDIATION MAY REQUIRE 3 TO 4  
 923 HOURS OF THE MEDIATOR'S TIME, INCLUDING SOME  
 924 PREPARATION TIME, AND THE PARTIES WOULD NEED TO  
 925 EQUALLY SHARE THE MEDIATOR'S FEES AS WELL AS BE  
 926 RESPONSIBLE FOR ALL OF THEIR OWN ATTORNEY'S FEES IF  
 927 THEY CHOOSE TO EMPLOY AN ATTORNEY IN CONNECTION WITH  
 928 THE MEDIATION. HOWEVER, USE OF AN ATTORNEY IS NOT  
 929 REQUIRED AND IS AT THE OPTION OF EACH PARTY. THE  
 930 MEDIATORS MAY REQUIRE THE ADVANCE PAYMENT OF SOME OR  
 931 ALL OF THE ANTICIPATED FEES. THE AGGRIEVED PARTY  
 932 HEREBY AGREES TO PAY OR PREPAY ONE-HALF OF THE  
 933 SELECTED MEDIATOR'S ESTIMATED FEES AND TO FORWARD THIS  
 934 AMOUNT OR SUCH OTHER REASONABLE ADVANCE DEPOSITS AS  
 935 THE MEDIATOR REQUIRES FOR THIS PURPOSE UPON THE  
 936 SELECTION OF THE MEDIATOR. ANY FUNDS DEPOSITED WILL BE  
 937 RETURNED TO YOU IF THESE FUNDS ARE IN EXCESS OF YOUR  
 938 SHARE OF THE MEDIATOR FEES INCURRED.

939  
 940 TO BEGIN YOUR PARTICIPATION IN PRESUIT MEDIATION TO  
 941 TRY TO RESOLVE THE DISPUTE WITH YOU AND AVOID FURTHER  
 942 LEGAL ACTION, PLEASE SIGN BELOW AND CLEARLY INDICATE  
 943 WHICH MEDIATOR IS ACCEPTABLE TO YOU FROM THE FIVE  
 944 MEDIATORS LISTED BY THE AGGRIEVED PARTY ABOVE.

945  
 946 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE  
 947 OF PRESUIT MEDIATION WITHIN 20 DAYS. IN YOUR RESPONSE

948 | YOU MUST PROVIDE A LISTING OF AT LEAST THREE DATES AND  
 949 | TIMES IN WHICH YOU ARE AVAILABLE TO PARTICIPATE IN THE  
 950 | MEDIATION THAT ARE WITHIN 90 DAYS AFTER THE POSTMARKED  
 951 | DATE OF THE MAILING OF THIS NOTICE OF PRESUIT  
 952 | MEDIATION OR WITHIN 90 DAYS AFTER THE DATE YOU WERE  
 953 | SERVED WITH A COPY OF THIS NOTICE. THE AGGRIEVED PARTY  
 954 | WILL THEN ASK THE MEDIATOR TO SCHEDULE A MUTUALLY  
 955 | CONVENIENT TIME AND PLACE FOR THE MEDIATION CONFERENCE  
 956 | TO BE HELD. IF YOU DO NOT PROVIDE A LIST OF AVAILABLE  
 957 | DATES AND TIMES, THE MEDIATOR IS AUTHORIZED TO  
 958 | SCHEDULE A MEDIATION CONFERENCE WITHOUT TAKING YOUR  
 959 | SCHEDULE AND CONVENIENCE INTO CONSIDERATION. IN NO  
 960 | EVENT SHALL THE MEDIATION CONFERENCE BE LATER THAN 90  
 961 | DAYS AFTER THE NOTICE OF PRESUIT MEDIATION WAS FIRST  
 962 | SERVED UNLESS ALL PARTIES MUTUALLY AGREE OTHERWISE. IN  
 963 | THE EVENT THAT YOU FAIL TO RESPOND WITHIN 20 DAYS  
 964 | AFTER THE DATE OF THIS NOTICE, FAIL TO PROVIDE THE  
 965 | MEDIATOR WITH DATES AND TIMES IN WHICH YOU ARE  
 966 | AVAILABLE FOR THE MEDIATION CONFERENCE, FAIL TO AGREE  
 967 | TO AT LEAST ONE OF THE MEDIATORS THAT THE AGGRIEVED  
 968 | PARTY HAS LISTED, FAIL TO PAY OR PREPAY TO THE  
 969 | MEDIATOR ONE-HALF OF THE COSTS INVOLVED, OR FAIL TO  
 970 | APPEAR AND PARTICIPATE AT THE SCHEDULED MEDIATION, THE  
 971 | AGGRIEVED PARTY WILL BE AUTHORIZED TO PROCEED WITH THE  
 972 | FILING OF A LAWSUIT AGAINST YOU WITHOUT FURTHER  
 973 | NOTICE. IN ANY SUBSEQUENT COURT ACTION, THE AGGRIEVED  
 974 | PARTY MAY SEEK AN AWARD OF REASONABLE ATTORNEY'S FEES  
 975 | AND COSTS INCURRED IN ATTEMPTING TO OBTAIN MEDIATION.

976  
 977 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY  
 978 LAW, YOUR RESPONSE MUST BE MAILED BY CERTIFIED, FIRST-  
 979 CLASS MAIL, RETURN RECEIPT REQUESTED, TO THE AGGRIEVED  
 980 PARTY LISTED ABOVE AT THE ADDRESS SHOWN ON THIS NOTICE  
 981 AND POSTMARKED NO MORE THAN 20 DAYS AFTER THE DATE OF  
 982 THE POSTMARKED DATE FOR THIS NOTICE OR WITHIN 20 DAYS  
 983 AFTER THE DATE UPON WHICH YOU WERE SERVED WITH A COPY  
 984 OF THIS NOTICE.

985  
 986 \_\_\_\_\_  
 987 SIGNATURE OF AGGRIEVED PARTY

988  
 989 \_\_\_\_\_  
 990 PRINTED NAME OF AGGRIEVED PARTY

991  
 992 RESPONDING PARTY: YOUR SIGNATURE BELOW INDICATES YOUR  
 993 ACCEPTANCE OF THE AGREEMENT TO MEDIATE.

994  
 995 AGREEMENT TO MEDIATE

996  
 997 THE UNDERSIGNED HEREBY AGREES TO PARTICIPATE IN  
 998 PRESUIT MEDIATION AND AGREES TO ATTEND A MEDIATION  
 999 CONDUCTED BY THE FOLLOWING MEDIATOR(S) LISTED BELOW AS  
 1000 ACCEPTABLE TO MEDIATE THIS DISPUTE:

1001  
 1002 (LIST ONE ACCEPTABLE MEDIATOR FROM THOSE LISTED BY THE  
 1003 AGGRIEVED PARTY.)

1004  
1005  
1006  
1007  
1008  
1009  
1010  
1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1020  
1021  
1022  
1023  
1024  
1025  
1026  
1027  
1028  
1029  
1030  
1031

THE UNDERSIGNED HEREBY REPRESENTS THAT HE OR SHE CAN  
ATTEND AND PARTICIPATE IN THE PRESUIT MEDIATION AT THE  
FOLLOWING DATES AND TIMES:

(LIST AT LEAST THREE AVAILABLE DATES AND TIMES WITHIN  
THE 90-DAY TIME LIMIT DESCRIBED ABOVE.)

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 THE PROPERTY IS  
OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,  
OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF  
A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

(2) (a) Service of the notice of presuit mediation shall be  
effected either by personal service, as provided in chapter 48,  
or by certified mail, return receipt requested, in a letter in  
substantial conformity with the form provided in subsection (1),

HB 27

2009

1032 with an additional copy being sent by regular first-class mail,  
1033 to the address of the responding party as it last appears on the  
1034 books and records of the association or, if not available, then  
1035 as it last appears in the official records of the county  
1036 property appraiser where the parcel in dispute is located. The  
1037 responding party has either 20 days after the postmarked date of  
1038 the mailing of the statutory notice or 20 days after the date  
1039 the responding party is served with a copy of the notice to  
1040 serve a written response to the aggrieved party. The response  
1041 shall be served by certified mail, return receipt requested,  
1042 with an additional copy being sent by regular first-class mail,  
1043 to the address shown on the statutory notice. The date of the  
1044 postmark on the envelope for the response shall constitute the  
1045 date that the response is served. Once the parties have agreed  
1046 on a mediator, the mediator may schedule or reschedule the  
1047 mediation for a date and time mutually convenient to the parties  
1048 within 90 days after the date of service of the statutory  
1049 notice. After such 90-day period, the mediator may reschedule  
1050 the mediation only upon the mutual written agreement of all the  
1051 parties.

1052 (b) The parties shall share the costs of presuit mediation  
1053 equally, including the fee charged by the mediator, if any,  
1054 unless the parties agree otherwise, and the mediator may require  
1055 advance payment of his or her reasonable fees and costs. Each  
1056 party shall be responsible for that party's own attorney's fees  
1057 if a party chooses to be represented by an attorney at the  
1058 mediation.

HB 27

2009

1059 (c) The party responding to the aggrieved party may  
1060 provide a notice of opting out under s. 720.506 and demand  
1061 arbitration or may sign the agreement to mediate included in the  
1062 notice of presuit mediation. A responding party signing the  
1063 agreement to mediate must clearly indicate the name of the  
1064 mediator who is acceptable from the five names provided by the  
1065 aggrieved party and must provide a list of dates and times in  
1066 which the responding party is available to participate in the  
1067 mediation within 90 days after the date the responding party was  
1068 served, either by process server or by certified mail, with the  
1069 statutory notice of presuit mediation.

1070 (d) The mediator who has been selected and agreed to  
1071 mediate must schedule the mediation conference at a mutually  
1072 convenient time and place within that 90-day period; but, if the  
1073 responding party does not provide a list of available dates and  
1074 times, the mediator is authorized to schedule a mediation  
1075 conference without taking the responding party's schedule and  
1076 convenience into consideration. Within 10 days after the  
1077 designation of the mediator, the mediator shall coordinate with  
1078 the parties and notify the parties in writing of the date, time,  
1079 and place of the mediation conference.

1080 (e) The mediation conference must be held on the scheduled  
1081 date and may be rescheduled if a rescheduled date is approved by  
1082 the mediator. However, in no event shall the mediation be held  
1083 later than 90 days after the notice of presuit mediation was  
1084 first served, unless all parties mutually agree in writing  
1085 otherwise. If the presuit mediation is not completed within the  
1086 required time limits, the mediator shall declare an impasse

1087 unless the mediation date is extended by mutual written  
 1088 agreement by all parties and approved by the mediator.

1089 (f) If the responding party fails to respond within 30  
 1090 days after the date of service of the statutory notice of  
 1091 presuit mediation, fails to agree to at least one of the  
 1092 mediators listed by the aggrieved party in the notice, fails to  
 1093 pay or prepay to the mediator one-half of the costs of the  
 1094 mediator, or fails to appear and participate at the scheduled  
 1095 mediation, the aggrieved party shall be authorized to proceed  
 1096 with the filing of a lawsuit without further notice.

1097 (g)1. The failure of any party to respond to the statutory  
 1098 notice of presuit mediation within 20 days, the failure to agree  
 1099 upon a mediator, the failure to provide a listing of dates and  
 1100 times in which the responding party is available to participate  
 1101 in the mediation within 90 days after the date the responding  
 1102 party was served with the statutory notice of presuit mediation,  
 1103 the failure to make payment of fees and costs within the time  
 1104 established by the mediator, or the failure to appear for a  
 1105 scheduled mediation session without the approval of the  
 1106 mediator, shall in each instance constitute a failure or refusal  
 1107 to participate in the mediation process and shall operate as an  
 1108 impasse in the presuit mediation by such party, entitling the  
 1109 other party to file a lawsuit in court and to seek an award of  
 1110 the costs and attorney's fees associated with the mediation.

1111 2. Persons who fail or refuse to participate in the entire  
 1112 mediation process may not recover attorney's fees and costs in  
 1113 subsequent litigation relating to the same dispute between the  
 1114 same parties. If any presuit mediation session cannot be



HB 27

2009

1115 scheduled and conducted within 90 days after the offer to  
1116 participate in mediation was filed, through no fault of either  
1117 party, then an impasse shall be deemed to have occurred unless  
1118 the parties mutually agree in writing to extend this deadline.  
1119 In the event of such impasse, each party shall be responsible  
1120 for its own costs and attorney's fees and one-half of any  
1121 mediator fees and filing fees, and either party may file a  
1122 lawsuit in court regarding the dispute.

1123 720.506 Opt-out of presuit mediation.--A party served with  
1124 a notice of presuit mediation under s. 720.505 may opt out of  
1125 presuit mediation and demand that the dispute proceed under  
1126 nonbinding arbitration as follows:

1127 (1) In lieu of a response to the notice of presuit  
1128 mediation as required under s. 720.505, the responding party may  
1129 serve upon the aggrieved party, in the same manner as the  
1130 response to a notice for presuit mediation under s. 720.505, a  
1131 notice of opting out of mediation and demand that the dispute  
1132 instead proceed to presuit arbitration under s. 720.507.

1133 (2) The aggrieved party shall be relieved from having to  
1134 satisfy the requirements of s. 720.504 as a condition precedent  
1135 to filing the demand for presuit arbitration.

1136 (3) Except as otherwise provided in this part, the choice  
1137 of which presuit alternative dispute resolution procedure is  
1138 used shall be at the election of the aggrieved party who first  
1139 initiated such proceeding after complying with the provisions of  
1140 s. 720.504.

1141 720.507 Presuit arbitration.--

1142 (1) Disputes between an association and a parcel owner or  
 1143 owners and disputes between parcel owners are subject to a  
 1144 demand for presuit arbitration pursuant to this section before  
 1145 the dispute may be filed in court. A party who elects to use the  
 1146 presuit arbitration procedure under this part shall serve on the  
 1147 responding party a written notice of presuit arbitration in  
 1148 substantially the following form:

1150 STATUTORY NOTICE OF PRESUIT ARBITRATION

1151  
 1152 THE ALLEGED AGGRIEVED PARTY, \_\_\_\_\_,  
 1153 HEREBY DEMANDS THAT \_\_\_\_\_, AS THE  
 1154 RESPONDING PARTY, ENGAGE IN MANDATORY PRESUIT  
 1155 ARBITRATION IN CONNECTION WITH THE FOLLOWING  
 1156 DISPUTE(S) WITH YOU, WHICH BY STATUTE ARE OF A TYPE  
 1157 THAT ARE SUBJECT TO PRESUIT ARBITRATION:

1158  
 1159 (LIST SPECIFIC NATURE OF THE DISPUTE OR DISPUTES TO BE  
 1160 ARBITRATED AND THE AUTHORITY SUPPORTING A FINDING OF A  
 1161 VIOLATION AS TO EACH DISPUTE, INCLUDING, BUT NOT  
 1162 LIMITED TO, ALL APPLICABLE PROVISIONS OF THE GOVERNING  
 1163 DOCUMENTS BELIEVED TO APPLY TO THE DISPUTE BETWEEN THE  
 1164 PARTIES.)

1165  
 1166 PURSUANT TO PART IV OF CHAPTER 720, FLORIDA STATUTES,  
 1167 THIS DEMAND TO RESOLVE THE DISPUTE THROUGH PRESUIT  
 1168 ARBITRATION IS REQUIRED BEFORE A LAWSUIT CAN BE FILED  
 1169 CONCERNING THE DISPUTE. PURSUANT TO FLORIDA STATUTES,

1170 THE PARTIES ARE REQUIRED TO ENGAGE IN PRESUIT  
 1171 ARBITRATION WITH A NEUTRAL THIRD-PARTY ARBITRATOR IN  
 1172 ORDER TO ATTEMPT TO RESOLVE THIS DISPUTE WITHOUT COURT  
 1173 ACTION, AND THE AGGRIEVED PARTY DEMANDS THAT YOU  
 1174 PARTICIPATE IN THIS PROCESS. IF YOU FAIL TO  
 1175 PARTICIPATE IN THE ARBITRATION PROCESS, A LAWSUIT MAY  
 1176 BE BROUGHT AGAINST YOU IN COURT WITHOUT FURTHER  
 1177 WARNING.

1178  
 1179 THE PROCESS OF ARBITRATION INVOLVES A NEUTRAL THIRD  
 1180 PERSON WHO CONSIDERS THE LAW AND FACTS PRESENTED BY  
 1181 THE PARTIES AND RENDERS A WRITTEN DECISION CALLED AN  
 1182 "ARBITRATION AWARD." PURSUANT TO S. 720.507, FLORIDA  
 1183 STATUTES, THE ARBITRATION AWARD SHALL BE FINAL UNLESS  
 1184 A LAWSUIT IS FILED IN A COURT OF COMPETENT  
 1185 JURISDICTION FOR THE JUDICIAL CIRCUIT IN WHICH THE  
 1186 PARCEL(S) GOVERNED BY THE HOMEOWNERS' ASSOCIATION  
 1187 IS/ARE LOCATED WITHIN 30 DAYS AFTER THE DATE OF THE  
 1188 ARBITRATION AWARD.

1189  
 1190 IF A SETTLEMENT AGREEMENT IS REACHED BEFORE THE  
 1191 ARBITRATION AWARD, IT SHALL BE REDUCED TO WRITING AND  
 1192 BECOME A BINDING AND ENFORCEABLE CONTRACT OF THE  
 1193 PARTIES. A RESOLUTION OF ONE OR MORE DISPUTES IN THIS  
 1194 FASHION AVOIDS THE NEED TO ARBITRATE THESE ISSUES OR  
 1195 TO LITIGATE THESE ISSUES IN COURT AND SHALL BE THE  
 1196 SAME AS A SETTLEMENT AGREEMENT REACHED BETWEEN THE  
 1197 PARTIES UNDER S. 720.505, FLORIDA STATUTES. THE

1198 FAILURE OF A PARTY TO PARTICIPATE IN THE ARBITRATION  
 1199 PROCESS MAY RESULT IN THE ARBITRATOR ISSUING AN  
 1200 ARBITRATION AWARD BY DEFAULT IN THE ARBITRATION. IF  
 1201 YOU HAVE FAILED OR REFUSED TO PARTICIPATE IN THE  
 1202 ENTIRE ARBITRATION PROCESS, YOU WILL NOT BE ENTITLED  
 1203 TO RECOVER ATTORNEY'S FEES, EVEN IF YOU PREVAIL IN A  
 1204 SUBSEQUENT COURT PROCEEDING INVOLVING THE SAME DISPUTE  
 1205 BETWEEN THE SAME PARTIES.

1206  
 1207 THE AGGRIEVED PARTY HAS SELECTED AT LEAST FIVE  
 1208 ARBITRATORS WHO THE AGGRIEVED PARTY BELIEVES TO BE  
 1209 NEUTRAL AND QUALIFIED TO ARBITRATE THE DISPUTE. YOU  
 1210 HAVE THE RIGHT TO SELECT ANY ONE OF THE ARBITRATORS.  
 1211 THE FACT THAT ONE PARTY MAY BE FAMILIAR WITH ONE OR  
 1212 MORE OF THE LISTED ARBITRATORS DOES NOT MEAN THAT THE  
 1213 ARBITRATOR CANNOT ACT AS A NEUTRAL AND IMPARTIAL  
 1214 ARBITRATOR. ANY ARBITRATOR WHO CANNOT ACT IN THIS  
 1215 CAPACITY IS REQUIRED ETHICALLY TO DECLINE TO ACCEPT  
 1216 ENGAGEMENT. THE NAMES OF THE FIVE ARBITRATORS THAT THE  
 1217 AGGRIEVED PARTY HAS CHOSEN FROM WHICH YOU MAY SELECT  
 1218 ONE, AND THEIR CURRENT ADDRESSES, TELEPHONE NUMBERS,  
 1219 AND HOURLY RATES, ARE AS FOLLOWS:

1220  
 1221 (LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS, AND  
 1222 HOURLY RATES OF AT LEAST FIVE ARBITRATORS.

1223

1224 YOU MAY CONTACT THE OFFICES OF THESE ARBITRATORS TO  
 1225 CONFIRM THAT THE LISTED ARBITRATORS WILL BE NEUTRAL  
 1226 AND WILL NOT SHOW ANY FAVORITISM TOWARD EITHER PARTY.  
 1227  
 1228 UNLESS OTHERWISE AGREED TO BY THE PARTIES, PART IV OF  
 1229 CHAPTER 720, FLORIDA STATUTES, REQUIRES THAT THE  
 1230 PARTIES SHARE THE COSTS OF PRESUIT ARBITRATION  
 1231 EQUALLY, INCLUDING THE FEE CHARGED BY THE ARBITRATOR.  
 1232 THE PARTIES SHALL BE RESPONSIBLE FOR THEIR OWN  
 1233 ATTORNEY'S FEES IF THEY CHOOSE TO EMPLOY AN ATTORNEY  
 1234 IN CONNECTION WITH THE ARBITRATION. HOWEVER, USE OF AN  
 1235 ATTORNEY TO REPRESENT YOU FOR THE ARBITRATION IS NOT  
 1236 REQUIRED. THE ARBITRATOR SELECTED MAY REQUIRE THE  
 1237 ADVANCE PAYMENT OF SOME OR ALL OF THE ANTICIPATED  
 1238 FEES. THE AGGRIEVED PARTY HEREBY AGREES TO PAY OR  
 1239 PREPAY ONE-HALF OF THE SELECTED ARBITRATOR'S ESTIMATED  
 1240 FEES AND TO FORWARD THIS AMOUNT OR SUCH OTHER  
 1241 REASONABLE ADVANCE DEPOSITS AS THE ARBITRATOR WHO IS  
 1242 SELECTED REQUIRES FOR THIS PURPOSE. ANY FUNDS  
 1243 DEPOSITED WILL BE RETURNED TO YOU IF THESE FUNDS ARE  
 1244 IN EXCESS OF YOUR SHARE OF THE FEES INCURRED.  
 1245  
 1246 PLEASE SIGN THE AGREEMENT TO ARBITRATE BELOW AND  
 1247 CLEARLY INDICATE THE NAME OF THE ARBITRATOR WHO IS  
 1248 ACCEPTABLE TO YOU FROM THE NAMES LISTED BY THE  
 1249 AGGRIEVED PARTY.  
 1250

1251 YOU MUST RESPOND IN WRITING TO THIS STATUTORY NOTICE  
 1252 WITHIN 20 DAYS AFTER THE DATE THAT THE NOTICE OF  
 1253 PRESUIT ARBITRATION WAS EITHER PERSONALLY SERVED ON  
 1254 YOU OR 20 DAYS AFTER THE POSTMARKED DATE THAT THIS  
 1255 NOTICE OF PRESUIT ARBITRATION WAS SENT TO YOU BY  
 1256 CERTIFIED MAIL. YOU MUST ALSO PROVIDE A LIST OF AT  
 1257 LEAST THREE DATES AND TIMES IN WHICH YOU ARE AVAILABLE  
 1258 TO PARTICIPATE IN THE ARBITRATION THAT ARE WITHIN 90  
 1259 DAYS AFTER THE DATE YOU WERE PERSONALLY SERVED OR  
 1260 WITHIN 90 DAYS AFTER THE POSTMARKED DATE OF THE  
 1261 CERTIFIED MAILING OF THIS STATUTORY NOTICE OF PRESUIT  
 1262 ARBITRATION. A COPY OF THIS NOTICE AND YOUR RESPONSE  
 1263 WILL BE PROVIDED BY THE AGGRIEVED PARTY TO THE  
 1264 ARBITRATOR SELECTED, AND THE ARBITRATOR WILL SCHEDULE  
 1265 A MUTUALLY CONVENIENT TIME AND PLACE FOR THE  
 1266 ARBITRATION CONFERENCE TO BE HELD. IF YOU DO NOT  
 1267 PROVIDE A LIST OF AVAILABLE DATES AND TIMES, THE  
 1268 ARBITRATOR IS AUTHORIZED TO SCHEDULE AN ARBITRATION  
 1269 CONFERENCE WITHOUT TAKING YOUR SCHEDULE AND  
 1270 CONVENIENCE INTO CONSIDERATION. THE ARBITRATION  
 1271 CONFERENCE MUST BE HELD ON THE SCHEDULED DATE, OR ANY  
 1272 RESCHEDULED DATE APPROVED BY THE ARBITRATOR. IN NO  
 1273 EVENT SHALL THE ARBITRATION CONFERENCE BE LATER THAN  
 1274 90 DAYS AFTER NOTICE OF THE PRESUIT ARBITRATION WAS  
 1275 FIRST SERVED, UNLESS ALL PARTIES MUTUALLY AGREE IN  
 1276 WRITING OTHERWISE. IF THE ARBITRATION IS NOT COMPLETED  
 1277 WITHIN THE REQUIRED TIME LIMITS, THE ARBITRATOR SHALL  
 1278 ISSUE AN ARBITRATION AWARD, UNLESS THE HEARING IS

1279 EXTENDED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES  
 1280 AND APPROVED BY THE ARBITRATOR. IN THE EVENT THAT YOU  
 1281 FAIL TO RESPOND WITHIN 20 DAYS AFTER THE DATE YOU WERE  
 1282 SERVED WITH A COPY OF THIS NOTICE, FAIL TO PROVIDE THE  
 1283 ARBITRATOR WITH DATES AND TIMES IN WHICH YOU ARE  
 1284 AVAILABLE FOR THE ARBITRATION CONFERENCE, FAIL TO  
 1285 AGREE EITHER TO ONE OF THE ARBITRATORS THAT THE  
 1286 AGGRIEVED PARTY HAS NAMED, FAIL TO PAY OR PREPAY TO  
 1287 THE ARBITRATOR ONE-HALF OF THE COSTS INVOLVED AS  
 1288 REQUIRED, OR FAIL TO APPEAR AND PARTICIPATE AT THE  
 1289 SCHEDULED ARBITRATION CONFERENCE, THE AGGRIEVED PARTY  
 1290 MAY REQUEST THE ARBITRATOR TO ISSUE AN ARBITRATION  
 1291 AWARD. IN THE SUBSEQUENT COURT ACTION, THE AGGRIEVED  
 1292 PARTY SHALL BE ENTITLED TO RECOVER AN AWARD OF  
 1293 REASONABLE ATTORNEY'S FEES AND COSTS, INCLUDING ANY  
 1294 FEES PAID TO THE ARBITRATOR, INCURRED IN OBTAINING AN  
 1295 ARBITRATION AWARD PURSUANT TO S. 720.507, FLORIDA  
 1296 STATUTES.

1297  
 1298 PLEASE GIVE THIS MATTER YOUR IMMEDIATE ATTENTION. BY  
 1299 LAW, YOUR RESPONSE MUST BE POSTMARKED AND MAILED BY  
 1300 CERTIFIED, FIRST-CLASS MAIL, RETURN RECEIPT REQUESTED,  
 1301 TO THE ADDRESS SHOWN ON THIS NOTICE OF PRESUIT  
 1302 ARBITRATION.

1303  
 1304 \_\_\_\_\_  
 1305 SIGNATURE OF AGGRIEVED PARTY  
 1306





1335  
1336  
1337  
1338  
1339  
1340  
1341  
1342  
1343  
1344  
1345  
1346  
1347  
1348  
1349  
1350  
1351  
1352  
1353  
1354  
1355  
1356  
1357  
1358  
1359  
1360  
1361  
1362

I/WE FURTHER AGREE TO PAY OR PREPAY ONE-HALF OF THE  
ARBITRATOR'S FEES AND TO FORWARD SUCH ADVANCE DEPOSITS  
AS THE ARBITRATOR 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 THE PROPERTY IS  
OWNED BY MORE THAN ONE PERSON, ALL OWNERS MUST SIGN,  
OR A PERSON MAY SIGN WHO IS ACTING UNDER AUTHORITY OF  
A VALID POWER OF ATTORNEY GRANTED BY AN OWNER.

(2) (a) Service of the statutory notice of presuit  
arbitration shall be effected either by personal service, as  
provided in chapter 48, or by certified mail, return receipt  
requested, in a letter in substantial conformity with the form  
provided in subsection (1), with an additional copy being sent  
by regular first-class mail, to the address of the responding  
party as it last appears on the books and records of the  
association, or if not available, the last address as it appears  
on the official records of the county property appraiser for the  
county in which the property is situated that is subject to the  
association documents. The responding party has 20 days after

HB 27

2009

1363 the postmarked date of the certified mailing of the statutory  
1364 notice of presuit arbitration or 20 days after the date the  
1365 responding party is personally served with the statutory notice  
1366 of presuit arbitration by to serve a written response to the  
1367 aggrieved party. The response shall be served by certified mail,  
1368 return receipt requested, with an additional copy being sent by  
1369 regular first-class mail, to the address shown on the statutory  
1370 notice of presuit arbitration. The postmarked date on the  
1371 envelope of the response shall constitute the date the response  
1372 was served.

1373 (b) The parties shall share the costs of presuit  
1374 arbitration equally, including the fee charged by the  
1375 arbitrator, if any, unless the parties agree otherwise, and the  
1376 arbitrator may require advance payment of his or her reasonable  
1377 fees and costs. Each party shall be responsible for all of their  
1378 own attorney's fees if a party chooses to be represented by an  
1379 attorney for the arbitration proceedings.

1380 (c)1. The party responding to the aggrieved party must  
1381 sign the agreement to arbitrate included in the notice of  
1382 presuit arbitration and clearly indicate the name of the  
1383 arbitrator who is acceptable of those arbitrators listed by the  
1384 aggrieved party. The responding party must provide a list of at  
1385 least three dates and times in which the responding party is  
1386 available to participate in the arbitration conference within 90  
1387 days after the date the responding party was served with the  
1388 statutory notice of presuit arbitration.

1389 2. The arbitrator must schedule the arbitration conference  
1390 at a mutually convenient time and place, but if the responding

HB 27

2009

1391 party does not provide a list of available dates and times, the  
1392 arbitrator is authorized to schedule an arbitration conference  
1393 without taking the responding party's schedule and convenience  
1394 into consideration. Within 10 days after the designation of the  
1395 arbitrator, the arbitrator shall notify the parties in writing  
1396 of the date, time, and place of the arbitration conference.

1397 3. The arbitration conference must be held on the  
1398 scheduled date and may be rescheduled if approved by the  
1399 arbitrator. However, in no event shall the arbitration hearing  
1400 be later than 90 days after the notice of presuit arbitration  
1401 was first served, unless all parties mutually agree in writing  
1402 otherwise. If the arbitration hearing is not completed within  
1403 the required time limits, the arbitrator may issue an  
1404 arbitration award unless the time for the hearing is extended as  
1405 provided herein. If the responding party fails to respond within  
1406 20 days after the date of statutory notice of presuit  
1407 arbitration, fails to agree to at least one of the arbitrators  
1408 that have been listed by the aggrieved party in the presuit  
1409 notice of arbitration, fails to pay or prepay to the arbitrator  
1410 one-half of the costs involved, or fails to appear and  
1411 participate at the scheduled arbitration, the aggrieved party is  
1412 authorized to proceed with a request that the arbitrator issue  
1413 an arbitration award.

1414 (d)1. The failure of any party to respond to the statutory  
1415 notice of presuit arbitration within 20 days, the failure to  
1416 either select one of the five arbitrators listed by the  
1417 aggrieved party, the failure to provide a listing of dates and  
1418 times in which the responding party is available to participate

HB 27

2009

1419 in the arbitration conference within 90 days after the date of  
1420 the responding party being served with the statutory notice of  
1421 presuit arbitration, the failure to make payment of fees and  
1422 costs as required within the time established by the arbitrator,  
1423 or the failure to appear for an arbitration conference without  
1424 the approval of the arbitrator, shall entitle the other party to  
1425 request the arbitrator to enter an arbitration award, including  
1426 an award of the reasonable costs and attorney's fees associated  
1427 with the arbitration.

1428 2. Persons who fail or refuse to participate in the entire  
1429 arbitration process may not recover attorney's fees and costs in  
1430 any subsequent litigation proceeding relating to the same  
1431 dispute involving the same parties.

1432 (3) (a) In an arbitration proceeding, the arbitrator may  
1433 not consider any unsuccessful mediation of the dispute.

1434 (b) An arbitrator in a proceeding initiated pursuant to  
1435 the provisions of this part may shorten the time for discovery  
1436 or otherwise limit discovery in a manner consistent with the  
1437 policy goals of this part to reduce the time and expense of  
1438 litigating homeowners' association disputes initiated pursuant  
1439 to this chapter and promoting an expeditious alternative dispute  
1440 resolution procedure for parties to such actions.

1441 (4) At the request of any party to the arbitration, the  
1442 arbitrator may issue subpoenas for the attendance of witnesses  
1443 and the production of books, records, documents, and other  
1444 evidence, and any party on whose behalf a subpoena is issued may  
1445 apply to the court for orders compelling such attendance and  
1446 production. Subpoenas shall be served and are enforceable in the

HB 27

2009

1447 manner provided by the Florida Rules of Civil Procedure.  
1448 Discovery may, at the discretion of the arbitrator, be permitted  
1449 in the manner provided by the Florida Rules of Civil Procedure.

1450 (5) The final arbitration award shall be sent to the  
1451 parties in writing no later than 30 days after the date of the  
1452 arbitration hearing, absent extraordinary circumstances  
1453 necessitating a later filing the reasons for which shall be  
1454 stated in the final award if filed more than 30 days after the  
1455 date of the final session of the arbitration conference. An  
1456 agreed arbitration award is final in those disputes in which the  
1457 parties have mutually agreed to be bound. An arbitration award  
1458 decided by the arbitrator is final unless a lawsuit seeking a  
1459 trial de novo is filed in a court of competent jurisdiction  
1460 within 30 days after the date of the arbitration award. The  
1461 right to file for a trial de novo entitles the parties to file a  
1462 complaint in the appropriate trial court for a judicial  
1463 resolution of the dispute. The prevailing party in an  
1464 arbitration proceeding shall be awarded the costs of the  
1465 arbitration and reasonable attorney's fees in an amount  
1466 determined by the arbitrator.

1467 (6) The party filing a motion for a trial de novo shall be  
1468 assessed the other party's arbitration costs, court costs, and  
1469 other reasonable costs, including attorney's fees, investigation  
1470 expenses, and expenses for expert or other testimony or evidence  
1471 incurred after the arbitration hearing, if the judgment upon the  
1472 trial de novo is not more favorable than the final arbitration  
1473 award.

1474 720.508 Rules of procedure.--

1475 (1) Presuit mediation and presuit arbitration proceedings  
1476 under this part must be conducted in accordance with the  
1477 applicable Florida Rules of Civil Procedure and rules governing  
1478 mediations and arbitrations under chapter 44, except that this  
1479 part shall be controlling to the extent of any conflict with  
1480 other applicable rules or statutes. The arbitrator may shorten  
1481 any applicable time period and otherwise limit the scope of  
1482 discovery on request of the parties or within the discretion of  
1483 the arbitrator exercised consistent with the purpose and  
1484 objective of reducing the expense and expeditiously concluding  
1485 proceedings under this part.

1486 (2) Presuit mediation proceedings under s. 720.505 are  
1487 privileged and confidential to the same extent as court-ordered  
1488 mediation under chapter 44. An arbitrator or judge may not  
1489 consider any information or evidence arising from the presuit  
1490 mediation proceeding except in a proceeding to impose sanctions  
1491 for failure to attend a presuit mediation session or to enforce  
1492 a mediated settlement agreement.

1493 (3) Persons who are not parties to the dispute may not  
1494 attend the presuit mediation conference without consent of all  
1495 parties, with the exception of counsel for the parties and a  
1496 corporate representative designated by the association. Presuit  
1497 mediations under this part are not a board meeting for purposes  
1498 of notice and participation set forth in this chapter.

1499 (4) Attendance at a mediation conference by the board of  
1500 directors shall not require notice or participation by nonboard  
1501 members as otherwise required by this chapter for meetings of  
1502 the board.

1503           (5) Settlement agreements resulting from a mediation or  
 1504 arbitration proceeding do not have precedential value in  
 1505 proceedings involving parties other than those participating in  
 1506 the mediation or arbitration.

1507           (6) Arbitration awards by an arbitrator shall have  
 1508 precedential value in other proceedings involving the same  
 1509 association or with respect to the same parcel owner.

1510           720.509 Mediators and arbitrators; qualifications and  
 1511 registration.--A person is authorized to conduct mediation or  
 1512 arbitration under this part if he or she has been certified as a  
 1513 circuit court civil mediator under the requirements adopted  
 1514 pursuant to s. 44.106, is a member in good standing with The  
 1515 Florida Bar, and otherwise meets all other requirements imposed  
 1516 by chapter 44.

1517           720.510 Enforcement of mediation agreement or arbitration  
 1518 award.--

1519           (1) A mediation settlement may be enforced through the  
 1520 county or circuit court, as applicable, and any costs and  
 1521 attorney's fees incurred in the enforcement of a settlement  
 1522 agreement reached at mediation shall be awarded to the  
 1523 prevailing party in any enforcement action.

1524           (2) Any party to an arbitration proceeding may enforce an  
 1525 arbitration award by filing a petition in a court of competent  
 1526 jurisdiction in which the homeowners' association is located.  
 1527 The prevailing party in such proceeding shall be awarded  
 1528 reasonable attorney's fees and costs incurred in such  
 1529 proceeding.

1530        (3) If a complaint is filed seeking a trial de novo, the  
1531 arbitration award shall be stayed and a petition to enforce the  
1532 award may not be granted. Such award, however, shall be  
1533 admissible in the court proceeding seeking a trial de novo.

1534        Section 10. (1) Notwithstanding any other provisions of  
1535 law, any three or more condominium associations may form a  
1536 self-insurance fund for the purposes of pooling and spreading  
1537 the liabilities of its participant associations arising from the  
1538 deductible provisions of the commercial lines residential  
1539 property insurance policies of the participants applicable to  
1540 hurricane losses, if:

1541        (a) Such fund is a not-for-profit corporation pursuant to  
1542 chapter 617, Florida Statutes.

1543        (b) The fund is implemented through contracts among the  
1544 participating associations, or through contracts between the  
1545 participating associations and another legal entity established  
1546 for and limited to establishing and implementing the program.

1547        (c) The liability of the fund for claims is limited to  
1548 funds available for the payment of claims.

1549        (d) The contract provided to a participating  
1550 association clearly discloses the obligations of the  
1551 participants in the fund and the obligations of the fund,  
1552 including the limited liability of the fund as defined in  
1553 paragraph (c). The contract must specify a reasonable date  
1554 for the payment of claims which provides the fund with  
1555 adequate time to verify and account for all claims for a  
1556 given year so that claims payments can be properly  
1557 calculated after consideration of the funds available. Before



1558 execution of the contract, the association or its  
1559 representative must be provided a separate disclosure form  
1560 specifying the limited liability of the fund and all  
1561 administrative fees and estimated expenses, and provide  
1562 examples of the manner in which available funds will be  
1563 allocated among claimants if claims exceed the funds  
1564 available for the payment thereof. Such disclosure must be  
1565 signed by a representative of the participating association  
1566 before or at the time of execution of the contract.

1567 (e) The contributions charged for participating in the  
1568 fund are established by the fund and calculated as a percentage  
1569 of the participant's hurricane deductible dollar amount. The  
1570 fund may determine the method and timing of payment of  
1571 contributions.

1572 (f) All members of the governing board of the fund must  
1573 be participating associations in the fund, and the governing  
1574 body shall have all powers necessary to establish and  
1575 administer the fund as authorized by the participants in the  
1576 fund. All decisions of the fund shall be based upon a vote of  
1577 the majority of the board. The board may contract with  
1578 individual professionals to administer the fund.

1579 (g) The fund uses and contracts with knowledgeable  
1580 persons or business entities to administer and service the fund,  
1581 including marketing, policy, contract administration, claims  
1582 administration, accounting services, and legal services.

1583 (h) The fund uses a properly licensed general lines  
1584 insurance agent who is a Florida resident for solicitation  
1585 of participation in the fund and does not prevent,

1586 impede, or restrict any applicant or participant in  
 1587 the fund from maintaining or selecting an agent of  
 1588 choice. The fund may not favor one or more agents over  
 1589 another agent. The organizational documents, the contract,  
 1590 and notices of disclosure must be filed with the Office of  
 1591 Insurance Regulation not less than 45 days prior to  
 1592 solicitation by the fund.

1593 (i) The fund is audited by an independent auditor no less  
 1594 frequently than every 2 years.

1595 (2) The fund may accumulate funds or periodically  
 1596 distribute excess funds to its participants on a pro rata  
 1597 basis, reflecting loss experience of individual participants  
 1598 and proportionate contributions paid by participants.

1599 (3) Participants in the fund must have a deductible  
 1600 no greater than as provided in s. 627.701(8), Florida  
 1601 Statutes. Self-insurance funds or pools established  
 1602 pursuant to this section are not subject to licensure  
 1603 requirements or regulation pursuant to the Florida  
 1604 Insurance Code, except for part IX of chapter 626,  
 1605 Florida Statutes, which may be enforced by the  
 1606 Office of Insurance Regulation or the Department  
 1607 of Financial Services, as applicable, and are not  
 1608 subject to any fees, taxes, or assessments related to  
 1609 the writing or transaction of insurance in this state.

1610 Section 11. Except as otherwise expressly provided in this  
 1611 act, this act shall take effect July 1, 2009.