

1 A bill to be entitled
2 An act relating to homeowners' associations; amending
3 s. 34.01, F.S.; conforming provisions to changes made
4 by the act; amending s. 468.436, F.S.; providing
5 grounds for disciplinary actions against community
6 association managers; amending s. 720.303, F.S.;
7 requiring a homeowners' association to maintain an
8 internal dispute resolution procedure in the
9 association's official records; requiring official
10 records to be maintained within a specified distance
11 of the association for a specified time; authorizing
12 associations to maintain such records online;
13 requiring associations to permit members to take
14 photographs of such records using electronic devices
15 at no charge; providing that denial of access to such
16 records entitles parties prevailing in enforcement
17 actions to attorney fees; removing provisions allowing
18 the association to charge fees for personnel costs
19 related to records access; requiring budgets to
20 designate permissible uses of reserve accounts;
21 requiring a community association manager, or a
22 director or his or her designee in the absence of a
23 community association manager, to report certain
24 information to the Division of Florida Condominiums,
25 Timeshares, and Mobile Homes; creating s. 720.3033,
26 F.S.; requiring association directors to file with the
27 association secretary written certification that they
28 have read certain association documents, will uphold

29 | the documents, and will uphold their fiduciary
30 | responsibility to the members; providing that such
31 | certification is valid while the director is on the
32 | board; providing penalties for failure to file such
33 | certification; requiring the association secretary to
34 | retain such certification for 5 years; requiring the
35 | board to follow specified procedures relating to
36 | contracts or transactions between the association and
37 | certain entities; providing for disclosure of the
38 | contract or transaction to members; providing for the
39 | cancellation of such contract or transaction under
40 | certain circumstances; prohibiting any association
41 | officer, director, or manager from soliciting or
42 | receiving certain personal benefits from any person
43 | providing or offering to provide goods or services to
44 | the association; providing a penalty; providing an
45 | exception; providing for the removal of any director
46 | or officer charged with a felony theft or embezzlement
47 | offense involving association funds or property;
48 | providing for the reinstatement of such person under
49 | certain circumstances; requiring the association to
50 | maintain insurance or a bond to cover funds that will
51 | be in the custody of the association or its management
52 | agent; providing a definition; amending s. 720.307,
53 | F.S.; providing additional circumstances for
54 | authorizing members to elect a majority of association
55 | board members; providing circumstances under which
56 | members other than the developer are authorized to

57 | elect at least one member to the board of directors;
 58 | amending s. 720.3075, F.S.; prohibiting certain
 59 | provisions in association documents; authorizing the
 60 | unilateral ability of a developer to amend the
 61 | documents; amending s. 720.311, F.S.; requiring
 62 | associations to adopt internal dispute resolution
 63 | procedures; providing minimum requirements for such
 64 | procedures; providing for an internal dispute
 65 | resolution in the absence of a procedure adopted by
 66 | the association; providing that certain resolutions
 67 | and agreements are binding and judicially enforceable;
 68 | repealing provisions relating to presuit mediation;
 69 | providing an effective date.

70 |

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

72 |

73 | Section 1. Paragraph (d) of subsection (1) of section
 74 | 34.01, Florida Statutes, is amended to read:

75 | 34.01 Jurisdiction of county court.—

76 | (1) County courts shall have original jurisdiction:

77 | (d) Of disputes occurring in the homeowners' associations
 78 | as described in chapter 720 ~~s. 720.311(2)(a)~~, which shall be
 79 | concurrent with jurisdiction of the circuit courts, except
 80 | disputes within the exclusive jurisdiction of the circuit
 81 | courts.

82 | Section 2. Paragraph (b) of subsection (2) of section
 83 | 468.436, Florida Statutes, is amended to read:

84 | 468.436 Disciplinary proceedings.—

85 (2) The following acts constitute grounds for which the
 86 disciplinary actions in subsection (4) may be taken:

87 (b)1. Violation of any provision of this part.

88 2. Violation of any lawful order or rule rendered or
 89 adopted by the department or the council.

90 3. Being convicted of or pleading nolo contendere to a
 91 felony in any court in the United States.

92 4. Obtaining a license or certification or any other
 93 order, ruling, or authorization by means of fraud,
 94 misrepresentation, or concealment of material facts.

95 5. Committing acts of gross misconduct or gross negligence
 96 in connection with the profession.

97 6. Contracting, on behalf of an association, with any
 98 entity in which the licensee has a financial interest that is
 99 not disclosed.

100 7. Failing to report to the division as required in s.
 101 720.303(13).

102 8. Violating any provision of chapter 720 during the
 103 course of performing community association management services
 104 pursuant to a contract with a homeowners' association.

105 Section 3. Subsection (5) and paragraph (b) of subsection
 106 (6) of section 720.303, Florida Statutes, are amended, paragraph
 107 (m) is added to subsection (4), and subsection (13) is added to
 108 that section, to read:

109 720.303 Association powers and duties; meetings of board;
 110 official records; budgets; financial reporting; association
 111 funds; recalls.—

112 (4) OFFICIAL RECORDS.—The association shall maintain each

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113 of the following items, when applicable, which constitute the
114 official records of the association:

115 (m) A copy of the association internal dispute resolution
116 procedure.

117 (5) INSPECTION AND COPYING OF RECORDS.—The official
118 records shall be maintained within the state for at least 7
119 years and shall be made available to a parcel owner for
120 inspection or photocopying within 45 miles of the community or
121 within the county in which the association is located within 10
122 business days after receipt by the board or its designee of a
123 written request ~~must be open to inspection and available for~~
124 ~~photocopying by members or their authorized agents at reasonable~~
125 ~~times and places within 10 business days after receipt of a~~
126 ~~written request for access.~~ This subsection may be complied with
127 by having a copy of the official records available for
128 inspection or copying in the community or, at the option of the
129 association, by making the records available to a parcel owner
130 electronically via the Internet or by allowing the records to be
131 viewed in electronic format on a computer screen and printed
132 upon request. If the association has a photocopy machine
133 available where the records are maintained, it must provide
134 parcel owners with copies on request during the inspection if
135 the entire request is limited to no more than 25 pages. The
136 association must also allow a member to take photographic images
137 of the records with a camera or other electronic device at no
138 charge.

139 (a) The failure of an association to provide access to the
140 records within 10 business days after receipt of a written

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141 request submitted by certified mail, return receipt requested,
142 creates a rebuttable presumption that the association willfully
143 failed to comply with this subsection.

144 (b) A member who is denied access to official records is
145 entitled to the actual damages or minimum damages for the
146 association's willful failure to comply with this subsection.
147 The minimum damages are to be \$50 per calendar day up to 10
148 days, the calculation to begin on the 11th business day after
149 receipt of the written request. The denial of access to the
150 records entitles any person prevailing in an enforcement action
151 to recover reasonable attorney fees from the person in control
152 of the records who, directly or indirectly, wrongfully denied
153 access to the records.

154 (c) The association may adopt reasonable written rules
155 governing the frequency, time, location, notice, records to be
156 inspected, and manner of inspections, but may not require a
157 parcel owner to demonstrate any proper purpose for the
158 inspection, state any reason for the inspection, or limit a
159 parcel owner's right to inspect records to less than one 8-hour
160 business day per month. ~~The association may impose fees to cover~~
161 ~~the costs of providing copies of the official records,~~
162 ~~including, without limitation, the costs of copying.~~ The
163 association may charge up to 50 cents per page for copies made
164 on the association's photocopier. If the association does not
165 have a photocopy machine available where the records are kept,
166 or if the records requested to be copied exceed 25 pages in
167 length, the association may have copies made by an outside
168 vendor or association management company personnel and may

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169 charge the actual cost of copying, ~~including any reasonable~~
170 ~~costs involving personnel fees and charges at an hourly rate for~~
171 ~~vendor or employee time to cover administrative costs to the~~
172 ~~vendor or association.~~ The association shall maintain an
173 adequate number of copies of the recorded governing documents,
174 to ensure their availability to members and prospective members.
175 Notwithstanding this paragraph, the following records are not
176 accessible to members or parcel owners:

177 1. Any record protected by the lawyer-client privilege as
178 described in s. 90.502 and any record protected by the work-
179 product privilege, including, but not limited to, a record
180 prepared by an association attorney or prepared at the
181 attorney's express direction which reflects a mental impression,
182 conclusion, litigation strategy, or legal theory of the attorney
183 or the association and which was prepared exclusively for civil
184 or criminal litigation or for adversarial administrative
185 proceedings or which was prepared in anticipation of such
186 litigation or proceedings until the conclusion of the litigation
187 or proceedings.

188 2. Information obtained by an association in connection
189 with the approval of the lease, sale, or other transfer of a
190 parcel.

191 3. Personnel records of the association's employees,
192 including, but not limited to, disciplinary, payroll, health,
193 and insurance records. For purposes of this subparagraph, the
194 term "personnel records" does not include written employment
195 agreements with an association employee or budgetary or
196 financial records that indicate the compensation paid to an

197 association employee.

198 4. Medical records of parcel owners or community
199 residents.

200 5. Social security numbers, driver's license numbers,
201 credit card numbers, electronic mailing addresses, telephone
202 numbers, facsimile numbers, emergency contact information, any
203 addresses for a parcel owner other than as provided for
204 association notice requirements, and other personal identifying
205 information of any person, excluding the person's name, parcel
206 designation, mailing address, and property address. However, an
207 owner may consent in writing to the disclosure of protected
208 information described in this subparagraph. The association is
209 not liable for the disclosure of information that is protected
210 under this subparagraph if the information is included in an
211 official record of the association and is voluntarily provided
212 by an owner and not requested by the association.

213 6. Any electronic security measure that is used by the
214 association to safeguard data, including passwords.

215 7. The software and operating system used by the
216 association which allows the manipulation of data, even if the
217 owner owns a copy of the same software used by the association.
218 The data is part of the official records of the association.

219 (d) The association or its authorized agent is not
220 required to provide a prospective purchaser or lienholder with
221 information about the residential subdivision or the association
222 other than information or documents required by this chapter to
223 be made available or disclosed. The association or its
224 authorized agent may charge a reasonable fee to the prospective

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225 purchaser or lienholder or the current parcel owner or member
226 for providing good faith responses to requests for information
227 by or on behalf of a prospective purchaser or lienholder, other
228 than that required by law, if the fee does not exceed \$150 plus
229 the reasonable cost of photocopying and any attorney's fees
230 incurred by the association in connection with the response.

231 (6) BUDGETS.—

232 (b) In addition to annual operating expenses, the budget
233 may include reserve accounts for capital expenditures and
234 deferred maintenance for which the association is responsible.
235 The budget must designate the components for which the reserve
236 accounts may be used. If reserve accounts are not established
237 pursuant to paragraph (d), funding of such reserves is limited
238 to the extent that the governing documents limit increases in
239 assessments, including reserves. If the budget of the
240 association includes reserve accounts established pursuant to
241 paragraph (d), such reserves shall be determined, maintained,
242 and waived in the manner provided in this subsection. Once an
243 association provides for reserve accounts pursuant to paragraph
244 (d), the association shall thereafter determine, maintain, and
245 waive reserves in compliance with this subsection. This section
246 does not preclude the termination of a reserve account
247 established pursuant to this paragraph upon approval of a
248 majority of the total voting interests of the association. Upon
249 such approval, the terminating reserve account shall be removed
250 from the budget.

251 (13) REPORTING REQUIREMENT.—The community association
252 manager, or a director of the association or his or her designee

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253 when there is no community association manager, shall report to
254 the division by November 22, 2013, and annually thereafter, in a
255 manner and form prescribed by the division.

256 (a) The report shall include the association's:

257 1. Legal name.

258 2. Federal employer identification number.

259 3. Mailing and physical addresses.

260 4. Total number of parcels.

261 5. Total amount of revenues and expenses from the
262 association's annual budget.

263 (b) For associations in which control of the association
264 has not been transitioned to nondeveloper members, as set forth
265 in s. 720.307, the report shall also include the developer's:

266 1. Legal name.

267 2. Mailing address.

268 3. Total number of parcels owned on the date of reporting.

269 (c) By October 1, 2013, the department shall establish and
270 implement a registration system through an Internet website that
271 provides for the reporting requirements of paragraphs (a) and
272 (b).

273 (d) On December 1, 2013, the department shall submit a
274 report to the Governor, the President of the Senate, and the
275 Speaker of the House of Representatives providing the homeowner
276 association data reported pursuant to this subsection.

277 (e) The department may adopt rules pursuant to ss.
278 120.536(1) and 120.54 to implement the provisions of this
279 subsection.

280 Section 4. Section 720.3033, Florida Statutes, is created

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281 to read:

282 720.3033 Officers and directors.-

283 (1) (a) Within 90 days after being elected or appointed to
284 the board, each director shall certify in writing to the
285 secretary of the association that he or she has read the
286 association's declaration of covenants, articles of
287 incorporation, bylaws, and current written rules and policies;
288 that he or she will work to uphold such documents and policies
289 to the best of his or her ability; and that he or she will
290 faithfully discharge his or her fiduciary responsibility to the
291 association's members.

292 (b) The written certification is valid for the
293 uninterrupted tenure of the director on the board. A director
294 who does not timely file the written certification shall be
295 suspended from the board until he or she complies with the
296 requirement. The board may temporarily fill the vacancy during
297 the period of suspension.

298 (c) The secretary shall retain each director's written
299 certification for inspection by the members for 5 years after
300 the director's election. However, the failure to have the
301 written certification on file does not affect the validity of
302 any board action.

303 (2) If the association enters into a contract or other
304 transaction with any of its directors or a corporation, firm,
305 association, or other entity in which an association director is
306 also a director or officer or is financially interested, the
307 board must:

308 (a) Comply with the requirements of s. 617.0832.

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309 (b) Enter the disclosures required by s. 617.0832 into the
310 written minutes of the meeting.

311 (c) Approve the contract or other transaction by an
312 affirmative vote of two-thirds of the directors present.

313 (d) At the next regular or special meeting of the members,
314 disclose the existence of the contract or other transaction to
315 the members. Upon motion of any member, the contract or
316 transaction shall be brought up for a vote and may be canceled
317 by a majority vote of the members present. If the members cancel
318 the contract, the association is only liable for the reasonable
319 value of goods and services provided up to the time of
320 cancellation and is not liable for any termination fee,
321 liquidated damages, or other penalty for such cancellation.

322 (3) An officer, director, or manager may not solicit,
323 offer to accept, or accept any good or service of value for
324 which consideration has not been provided for his or her benefit
325 or for the benefit of a member of his or her immediate family
326 from any person providing or proposing to provide goods or
327 services to the association. Any officer, director, or manager
328 who knowingly solicits, offers to accept, or accepts any good or
329 service of value must be removed from office. The vacancy shall
330 be filled according to law until the end of the period of the
331 end of the director's term of office. However, an officer,
332 director, or manager may accept food to be consumed at a
333 business meeting with a value of less than \$25 per individual or
334 a service or good received in connection with trade fairs or
335 education programs.

336 (4) A director or officer charged by information or

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337 indictment with a felony theft or embezzlement offense involving
338 the association's funds or property must be removed from office.
339 The vacancy shall be filled according to general law until the
340 end of the period of the suspension or the end of the director's
341 term of office, whichever occurs first. A director or officer
342 who has criminal charges pending may not be appointed or elected
343 to a position as a director or officer. However, if the charges
344 are resolved without a finding of guilt or without acceptance of
345 a plea of guilty or nolo contendere, the director or officer
346 shall be reinstated for any remainder of his or her term of
347 office.

348 (5) An association with total annual revenues of more than
349 \$500,000 shall maintain insurance or a fidelity bond for all
350 persons who control or disburse funds of the association. The
351 insurance policy or fidelity bond must cover the maximum funds
352 that will be in the custody of the association or its management
353 agent at any one time. As used in this subsection, the term
354 "persons who control or disburse funds of the association"
355 includes, but is not limited to, persons authorized to sign
356 checks on behalf of the association, and the president,
357 secretary, and treasurer of the association. The association
358 shall bear the cost of any insurance or bond.

359 Section 5. Subsection (1) of section 720.307, Florida
360 Statutes, is amended, subsections (2) through (4) are renumbered
361 as subsections (3) through (5), respectively, and a new
362 subsection (2) is added to that section, to read:

363 720.307 Transition of association control in a community.—
364 With respect to homeowners' associations:

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365 (1) Members other than the developer are entitled to elect
366 at least a majority of the members of the board of directors of
367 the homeowners' association when the earlier of the following
368 events occurs:

369 (a) Three months after 90 percent of the parcels in all
370 phases of the community that will ultimately be operated by the
371 homeowners' association have been conveyed to members; ~~or~~

372 (b) Such other percentage of the parcels has been conveyed
373 to members, or such other date or event has occurred, as is set
374 forth in the governing documents in order to comply with the
375 requirements of any governmentally chartered entity with regard
376 to the mortgage financing of parcels;

377 (c) Two years after the developer has ceased construction
378 or ceased to offer parcels for sale in the ordinary course of
379 business;

380 (d) Upon the developer abandoning or deserting its
381 responsibility to maintain and complete the advertised amenities
382 or infrastructure. There is a rebuttable presumption that the
383 developer has abandoned and deserted the property if the
384 developer has not engaged in construction or sale of properties
385 or has paid nothing in assessments or guaranteed amounts under
386 s. 720.308 for a period of more than 2 years;

387 (e) Upon the developer filing a petition seeking
388 protection under chapter 7 of the federal Bankruptcy Code;

389 (f) Upon the developer losing title to the property
390 through a foreclosure action or the transfer of a deed in lieu
391 of foreclosure; or

392 (g) Upon a receiver for the developer being appointed by a

393 circuit court and not being discharged within 30 days after such
 394 appointment, unless the court determines within 30 days after
 395 such appointment that transfer of control would be detrimental
 396 to the association or its members.

397
 398 For purposes of this section, the term "members other than the
 399 developer" shall not include builders, contractors, or others
 400 who purchase a parcel for the purpose of constructing
 401 improvements thereon for resale.

402 (2) Members other than the developer are entitled to elect
 403 at least one member of the board of directors of the homeowners'
 404 association when 15 percent of the parcels in all phases of the
 405 community that will ultimately be operated by the association
 406 have been conveyed to members.

407 Section 6. Subsection (1) of section 720.3075, Florida
 408 Statutes, is amended to read:

409 720.3075 Prohibited clauses in association documents.—

410 (1) It is declared that the public policy of this state
 411 prohibits the inclusion or enforcement of certain types of
 412 clauses in homeowners' association documents, including
 413 declaration of covenants, articles of incorporation, bylaws, or
 414 any other document of the association which binds members of the
 415 association, which either have the effect of or provide that:

416 (a) A developer has the unilateral ability and right to
 417 make changes to the homeowners' association documents after the
 418 transition of homeowners' association control in a community
 419 from the developer to the nondeveloper members, as set forth in
 420 s. 720.307, has occurred.

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421 (b) A homeowners' association is prohibited or restricted
422 from filing a lawsuit against the developer, or the homeowners'
423 association is otherwise effectively prohibited or restricted
424 from bringing a lawsuit against the developer.

425 (c) After the transition of homeowners' association
426 control in a community from the developer to the nondeveloper
427 members, as set forth in s. 720.307, has occurred, a developer
428 is entitled to cast votes in an amount that exceeds one vote per
429 residential lot.

430 (d) A developer may make changes to the homeowners'
431 association documents without a majority vote of nondeveloper
432 members that increase liabilities of homeowners or limit the
433 rights of homeowners to amenities or common areas after 70
434 percent of the parcels in all phases of the community that
435 ultimately will be operated by the homeowners' association have
436 been conveyed to nondeveloper members.

437
438 Such clauses are declared null and void as against the public
439 policy of this state.

440 Section 7. Section 720.311, Florida Statutes, is amended
441 to read:

442 720.311 Dispute resolution.—

443 (1) The Legislature finds that alternative dispute
444 resolution has made progress in reducing court dockets and
445 trials and in offering a more efficient, cost-effective option
446 to litigation. The filing of any petition for arbitration or the
447 participation in an internal dispute resolution process ~~erving~~
448 ~~of a demand for presuit mediation~~ as provided for in this

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449 section shall toll the applicable statute of limitations.

450 (2) Any recall dispute filed with the department pursuant
451 to s. 720.303(10) shall be conducted by the department in
452 accordance with the provisions of ss. 718.112(2)(j) and 718.1255
453 and the rules adopted by the division. In addition, the
454 department shall conduct mandatory binding arbitration of
455 election disputes between a member and an association pursuant
456 to s. 718.1255 and rules adopted by the division. Neither
457 election disputes nor recall disputes are eligible for internal
458 dispute resolution ~~presuit mediation~~; these disputes shall be
459 arbitrated by the department. At the conclusion of the
460 proceeding, the department shall charge the parties a fee in an
461 amount adequate to cover all costs and expenses incurred by the
462 department in conducting the proceeding. Initially, the
463 petitioner shall remit a filing fee of at least \$200 to the
464 department. The fees paid to the department shall become a
465 recoverable cost in the arbitration proceeding, and the
466 prevailing party in an arbitration proceeding shall recover its
467 reasonable costs and attorney's fees in an amount found
468 reasonable by the arbitrator. The department shall adopt rules
469 to effectuate the purposes of this section.

470 (3) An association's bylaws shall provide a fair,
471 reasonable, and expeditious procedure for resolving disputes
472 concerning rights, duties, or liabilities under this chapter and
473 the governing documents.

474 (a) The procedure shall meet the following minimum
475 criteria:

476 1. The procedure must be in writing.

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477 2. A member of the association may not be charged a fee to
478 participate in the procedure.

479 3. The procedure may be initiated by either party to a
480 dispute.

481 4. Requests to initiate the procedure shall be in writing.

482 5. The procedure must use prompt deadlines and specify the
483 maximum time for the association to respond to requests to
484 initiate the procedure.

485 6. If the procedure is initiated by a member, the
486 association shall participate in the procedure.

487 7. If the procedure is initiated by the association, the
488 member may refuse to participate in the procedure.

489 8. The procedure shall provide a means by which the
490 parties may explain their positions.

491 9. If the dispute is resolved other than by agreement of
492 the parties, the member may appeal to the association's board of
493 directors.

494 10. Whenever feasible, neutral third parties shall be used
495 to facilitate resolution.

496 11. The procedure may not prevent the member from
497 retaining an attorney or other representative.

498 (b) If the association has not adopted an internal dispute
499 resolution process meeting the requirements of paragraph (a),
500 either party to a dispute may initiate the following procedure:

501 1. The party may request, in writing, the other party to
502 meet and confer in an effort to resolve the dispute.

503 2. A member of an association may refuse a request to meet
504 and confer. The association may not refuse a request to meet and

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505 confer.

506 3. The association's board of directors shall deliver a
507 written response to a request from a member within 5 business
508 days. The response shall designate a member of the board to meet
509 and confer with the member and include contact information for
510 the board member.

511 4. The parties shall meet at a mutually convenient time
512 and place to explain their positions and confer in good faith in
513 an effort to resolve the dispute within 30 days after the
514 initial request. The parties may extend this time period by
515 agreement.

516 5. A resolution of the dispute agreed to by the parties
517 shall be memorialized in writing and signed by the parties,
518 including the association's board designee.

519 6. A member may not be charged a fee to participate in the
520 procedure.

521 (c) A resolution of the dispute, which is not in conflict
522 with general law or the governing documents, is binding on the
523 association and is judicially enforceable. A written agreement
524 signed by the parties, which is not in conflict with general law
525 or the governing documents, is binding on the parties and is
526 judicially enforceable.

527 ~~(2) (a) Disputes between an association and a parcel owner~~
528 ~~regarding use of or changes to the parcel or the common areas~~
529 ~~and other covenant enforcement disputes, disputes regarding~~
530 ~~amendments to the association documents, disputes regarding~~
531 ~~meetings of the board and committees appointed by the board,~~
532 ~~membership meetings not including election meetings, and access~~

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533 ~~to the official records of the association shall be the subject~~
534 ~~of a demand for presuit mediation served by an aggrieved party~~
535 ~~before the dispute is filed in court. Presuit mediation~~
536 ~~proceedings must be conducted in accordance with the applicable~~
537 ~~Florida Rules of Civil Procedure, and these proceedings are~~
538 ~~privileged and confidential to the same extent as court-ordered~~
539 ~~mediation. Disputes subject to presuit mediation under this~~
540 ~~section shall not include the collection of any assessment,~~
541 ~~fine, or other financial obligation, including attorney's fees~~
542 ~~and costs, claimed to be due or any action to enforce a prior~~
543 ~~mediation settlement agreement between the parties. Also, in any~~
544 ~~dispute subject to presuit mediation under this section where~~
545 ~~emergency relief is required, a motion for temporary injunctive~~
546 ~~relief may be filed with the court without first complying with~~
547 ~~the presuit mediation requirements of this section. After any~~
548 ~~issues regarding emergency or temporary relief are resolved, the~~
549 ~~court may either refer the parties to a mediation program~~
550 ~~administered by the courts or require mediation under this~~
551 ~~section. An arbitrator or judge may not consider any information~~
552 ~~or evidence arising from the presuit mediation proceeding except~~
553 ~~in a proceeding to impose sanctions for failure to attend a~~
554 ~~presuit mediation session or to enforce a mediated settlement~~
555 ~~agreement. Persons who are not parties to the dispute may not~~
556 ~~attend the presuit mediation conference without the consent of~~
557 ~~all parties, except for counsel for the parties and a corporate~~
558 ~~representative designated by the association. When mediation is~~
559 ~~attended by a quorum of the board, such mediation is not a board~~
560 ~~meeting for purposes of notice and participation set forth in s.~~

561 | ~~720.303. An aggrieved party shall serve on the responding party~~
 562 | ~~a written demand to participate in presuit mediation in~~
 563 | ~~substantially the following form:~~

564 | ~~STATUTORY OFFER TO PARTICIPATE~~

565 |
 566 | ~~IN PRESUIT MEDIATION~~

567 | ~~The alleged aggrieved party,, hereby demands~~
 568 | ~~that, as the responding party, engage in~~
 569 | ~~mandatory presuit mediation in connection with the following~~
 570 | ~~disputes, which by statute are of a type that are subject to~~
 571 | ~~presuit mediation:~~

572 | ~~(List specific nature of the dispute or disputes to be mediated~~
 573 | ~~and the authority supporting a finding of a violation as to each~~
 574 | ~~dispute.)~~

575 | ~~Pursuant to section 720.311, Florida Statutes, this demand to~~
 576 | ~~resolve the dispute through presuit mediation is required before~~
 577 | ~~a lawsuit can be filed concerning the dispute. Pursuant to the~~
 578 | ~~statute, the parties are required to engage in presuit mediation~~
 579 | ~~with a neutral third-party mediator in order to attempt to~~
 580 | ~~resolve this dispute without court action, and the aggrieved~~
 581 | ~~party demands that you likewise agree to this process. If you~~
 582 | ~~fail to participate in the mediation process, suit may be~~
 583 | ~~brought against you without further warning.~~

584 | ~~The process of mediation involves a supervised negotiation~~
 585 | ~~process in which a trained, neutral third-party mediator meets~~
 586 | ~~with both parties and assists them in exploring possible~~
 587 | ~~opportunities for resolving part or all of the dispute. By~~
 588 | ~~agreeing to participate in presuit mediation, you are not bound~~

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589 ~~in any way to change your position. Furthermore, the mediator~~
590 ~~has no authority to make any decisions in this matter or to~~
591 ~~determine who is right or wrong and merely acts as a facilitator~~
592 ~~to ensure that each party understands the position of the other~~
593 ~~party and that all options for reasonable settlement are fully~~
594 ~~explored.~~

595 ~~If an agreement is reached, it shall be reduced to writing and~~
596 ~~becomes a binding and enforceable commitment of the parties. A~~
597 ~~resolution of one or more disputes in this fashion avoids the~~
598 ~~need to litigate these issues in court. The failure to reach an~~
599 ~~agreement, or the failure of a party to participate in the~~
600 ~~process, results in the mediator declaring an impasse in the~~
601 ~~mediation, after which the aggrieved party may proceed to court~~
602 ~~on all outstanding, unsettled disputes. If you have failed or~~
603 ~~refused to participate in the entire mediation process, you will~~
604 ~~not be entitled to recover attorney's fees, even if you prevail.~~
605 ~~The aggrieved party has selected and hereby lists five certified~~
606 ~~mediators who we believe to be neutral and qualified to mediate~~
607 ~~the dispute. You have the right to select any one of these~~
608 ~~mediators. The fact that one party may be familiar with one or~~
609 ~~more of the listed mediators does not mean that the mediator~~
610 ~~cannot act as a neutral and impartial facilitator. Any mediator~~
611 ~~who cannot act in this capacity is required ethically to decline~~
612 ~~to accept engagement. The mediators that we suggest, and their~~
613 ~~current hourly rates, are as follows:~~
614 ~~(List the names, addresses, telephone numbers, and hourly rates~~
615 ~~of the mediators. Other pertinent information about the~~
616 ~~background of the mediators may be included as an attachment.)~~

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617 | ~~You may contact the offices of these mediators to confirm that~~
618 | ~~the listed mediators will be neutral and will not show any~~
619 | ~~favoritism toward either party. The Florida Supreme Court can~~
620 | ~~provide you a list of certified mediators.~~
621 | ~~Unless otherwise agreed by the parties, section 720.311(2)(b),~~
622 | ~~Florida Statutes, requires that the parties share the costs of~~
623 | ~~presuit mediation equally, including the fee charged by the~~
624 | ~~mediator. An average mediation may require three to four hours~~
625 | ~~of the mediator's time, including some preparation time, and the~~
626 | ~~parties would need to share equally the mediator's fees as well~~
627 | ~~as their own attorney's fees if they choose to employ an~~
628 | ~~attorney in connection with the mediation. However, use of an~~
629 | ~~attorney is not required and is at the option of each party. The~~
630 | ~~mediators may require the advance payment of some or all of the~~
631 | ~~anticipated fees. The aggrieved party hereby agrees to pay or~~
632 | ~~prepay one half of the mediator's estimated fees and to forward~~
633 | ~~this amount or such other reasonable advance deposits as the~~
634 | ~~mediator requires for this purpose. Any funds deposited will be~~
635 | ~~returned to you if these are in excess of your share of the fees~~
636 | ~~incurred.~~
637 | ~~To begin your participation in presuit mediation to try to~~
638 | ~~resolve the dispute and avoid further legal action, please sign~~
639 | ~~below and clearly indicate which mediator is acceptable to you.~~
640 | ~~We will then ask the mediator to schedule a mutually convenient~~
641 | ~~time and place for the mediation conference to be held. The~~
642 | ~~mediation conference must be held within ninety (90) days of~~
643 | ~~this date, unless extended by mutual written agreement. In the~~
644 | ~~event that you fail to respond within 20 days from the date of~~

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645 ~~this letter, or if you fail to agree to at least one of the~~
646 ~~mediators that we have suggested or to pay or prepay to the~~
647 ~~mediator one-half of the costs involved, the aggrieved party~~
648 ~~will be authorized to proceed with the filing of a lawsuit~~
649 ~~against you without further notice and may seek an award of~~
650 ~~attorney's fees or costs incurred in attempting to obtain~~
651 ~~mediation.~~

652 ~~Therefore, please give this matter your immediate attention. By~~
653 ~~law, your response must be mailed by certified mail, return~~
654 ~~receipt requested, and by first class mail to the address shown~~
655 ~~on this demand.~~

656 ~~.....~~

657 ~~.....~~

658 ~~RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO~~
659 ~~THAT CHOICE.~~

660 ~~AGREEMENT TO MEDIATE~~

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

665 ~~(List acceptable mediator or mediators.)~~

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

669 ~~.....~~

670 ~~Signature of responding party #1~~

671 ~~.....~~

672 ~~Telephone contact information~~

673 |
 674 | ~~Signature and telephone contact information of responding party~~
 675 | ~~#2 (if applicable) (if property is owned by more than one person,~~
 676 | ~~all owners must sign)~~
 677 | ~~(b) Service of the statutory demand to participate in~~
 678 | ~~presuit mediation shall be effected by sending a letter in~~
 679 | ~~substantial conformity with the above form by certified mail,~~
 680 | ~~return receipt requested, with an additional copy being sent by~~
 681 | ~~regular first-class mail, to the address of the responding party~~
 682 | ~~as it last appears on the books and records of the association.~~
 683 | ~~The responding party has 20 days from the date of the mailing of~~
 684 | ~~the statutory demand to serve a response to the aggrieved party~~
 685 | ~~in writing. The response shall be served by certified mail,~~
 686 | ~~return receipt requested, with an additional copy being sent by~~
 687 | ~~regular first-class mail, to the address shown on the statutory~~
 688 | ~~demand. Notwithstanding the foregoing, once the parties have~~
 689 | ~~agreed on a mediator, the mediator may reschedule the mediation~~
 690 | ~~for a date and time mutually convenient to the parties. The~~
 691 | ~~parties shall share the costs of presuit mediation equally,~~
 692 | ~~including the fee charged by the mediator, if any, unless the~~
 693 | ~~parties agree otherwise, and the mediator may require advance~~
 694 | ~~payment of its reasonable fees and costs. The failure of any~~
 695 | ~~party to respond to a demand or response, to agree upon a~~
 696 | ~~mediator, to make payment of fees and costs within the time~~
 697 | ~~established by the mediator, or to appear for a scheduled~~
 698 | ~~mediation session without the approval of the mediator, shall~~
 699 | ~~constitute the failure or refusal to participate in the~~
 700 | ~~mediation process and shall operate as an impasse in the presuit~~

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701 ~~mediation by such party, entitling the other party to proceed in~~
702 ~~court and to seek an award of the costs and fees associated with~~
703 ~~the mediation. Additionally, notwithstanding the provisions of~~
704 ~~any other law or document, persons who fail or refuse to~~
705 ~~participate in the entire mediation process may not recover~~
706 ~~attorney's fees and costs in subsequent litigation relating to~~
707 ~~the dispute. If any presuit mediation session cannot be~~
708 ~~scheduled and conducted within 90 days after the offer to~~
709 ~~participate in mediation was filed, an impasse shall be deemed~~
710 ~~to have occurred unless both parties agree to extend this~~
711 ~~deadline.~~

712 ~~(c) If presuit mediation as described in paragraph (a) is~~
713 ~~not successful in resolving all issues between the parties, the~~
714 ~~parties may file the unresolved dispute in a court of competent~~
715 ~~jurisdiction or elect to enter into binding or nonbinding~~
716 ~~arbitration pursuant to the procedures set forth in s. 718.1255~~
717 ~~and rules adopted by the division, with the arbitration~~
718 ~~proceeding to be conducted by a department arbitrator or by a~~
719 ~~private arbitrator certified by the department. If all parties~~
720 ~~do not agree to arbitration proceedings following an~~
721 ~~unsuccessful presuit mediation, any party may file the dispute~~
722 ~~in court. A final order resulting from nonbinding arbitration is~~
723 ~~final and enforceable in the courts if a complaint for trial de~~
724 ~~novo is not filed in a court of competent jurisdiction within 30~~
725 ~~days after entry of the order. As to any issue or dispute that~~
726 ~~is not resolved at presuit mediation, and as to any issue that~~
727 ~~is settled at presuit mediation but is thereafter subject to an~~
728 ~~action seeking enforcement of the mediation settlement, the~~

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729 ~~prevailing party in any subsequent arbitration or litigation~~
730 ~~proceeding shall be entitled to seek recovery of all costs and~~
731 ~~attorney's fees incurred in the presuit mediation process.~~

732 ~~(d) A mediator or arbitrator shall be authorized to~~
733 ~~conduct mediation or arbitration under this section only if he~~
734 ~~or she has been certified as a circuit court civil mediator or~~
735 ~~arbitrator, respectively, pursuant to the requirements~~
736 ~~established by the Florida Supreme Court. Settlement agreements~~
737 ~~resulting from mediation shall not have precedential value in~~
738 ~~proceedings involving parties other than those participating in~~
739 ~~the mediation to support either a claim or defense in other~~
740 ~~disputes.~~

741 ~~(e) The presuit mediation procedures provided by this~~
742 ~~subsection may be used by a Florida corporation responsible for~~
743 ~~the operation of a community in which the voting members are~~
744 ~~parcel owners or their representatives, in which membership in~~
745 ~~the corporation is not a mandatory condition of parcel~~
746 ~~ownership, or which is not authorized to impose an assessment~~
747 ~~that may become a lien on the parcel.~~

748 Section 8. This act shall take effect July 1, 2013.