

Committee Substitute for  
Committee Substitute for Senate Bill No. 902

An act relating to community associations; creating s. 712.11, F.S.; providing for the revival of certain covenants that have lapsed; amending s. 718.106, F.S.; prohibiting local governments from limiting the access of certain persons to beaches adjacent to or adjoining condominium property; providing an exception; amending s. 718.110, F.S.; revising provisions relating to the amendment of declarations; providing legislative findings and a finding of compelling state interest; providing criteria for consent to an amendment; requiring notice regarding proposed amendments to mortgagees; providing criteria for notification; providing for voiding certain amendments; amending s. 718.114, F.S.; providing that certain leaseholds, memberships, or other possessory or use interests shall be considered a material alteration or substantial addition to certain real property; amending s. 718.404, F.S.; providing retroactive application of provisions relating to mixed-use condominiums; amending s. 719.103, F.S.; providing a definition; amending s. 719.507, F.S.; prohibiting laws, ordinances, or regulations that apply only to improvements that are or may be subjected to an equity club form of ownership; amending s. 720.302, F.S.; revising governing provisions relating to corporations that operate residential homeowners' associations; amending s. 720.303, F.S.; revising application to include certain meetings; requiring the association to provide certain information to prospective purchasers or lienholders; authorizing the association to charge a reasonable fee for providing certain information; requiring the budget to provide for annual operating expenses; authorizing the budget to include reserve accounts for capital expenditures and deferred maintenance; providing a formula for calculating the amount to be reserved; authorizing the association to adjust replacement reserve assessments annually; authorizing the developer to vote to waive the reserves or reduce the funding of reserves for a certain period; revising provisions relating to financial reporting; revising time periods in which the association must complete its reporting; repealing s. 720.303(2), F.S., as amended, relating to board meetings, to remove conflicting versions of that subsection; creating s. 720.3035, F.S.; providing for architectural control covenants and parcel owner improvements; authorizing the review and approval of plans and specifications; providing limitations; providing rights and privileges for parcel owners as set forth in the declaration of covenants; amending s. 720.305, F.S.; providing that, where a member is entitled to collect attorney's fees against the association, the member may also recover additional amounts as determined by the court; amending s. 720.306, F.S.; providing that certain mergers or consolidations of an association shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel; amending s. 720.307, F.S.; requiring developers to deliver financial records to the board in any transition of

association control to members; requiring certain information to be included in the records and for the records to be prepared in a specified manner; amending s. 720.308, F.S.; providing circumstances under which a guarantee of common expenses shall be effective; providing for approval of the guarantee by association members; providing for a guarantee period and extension thereof; requiring the stated dollar amount of the guarantee to be an exact dollar amount for each parcel identified in the declaration; providing payments required from the guarantor to be determined in a certain manner; providing a formula to determine the guarantor's total financial obligation to the association; providing that certain expenses incurred in the production of certain revenues shall not be included in the operating expenses; amending s. 720.311, F.S.; revising provisions relating to dispute resolution; providing that the filing of any petition for arbitration or the serving of an offer for presuit mediation shall toll the applicable statute of limitations; providing that certain disputes between an association and a parcel owner shall be subject to presuit mediation; revising provisions to conform; providing that temporary injunctive relief may be sought in certain disputes subject to presuit mediation; authorizing the court to refer the parties to mediation under certain circumstances; requiring the aggrieved party to serve on the responding party a written offer to participate in presuit mediation; providing a form for such offer; providing that service of the offer is effected by the sending of such an offer in a certain manner; providing that the prevailing party in any subsequent arbitration or litigation proceedings is entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process; requiring the mediator or arbitrator to meet certain certification requirements; removing a requirement relating to development of an education program to increase awareness of the operation of homeowners' associations and the use of alternative dispute resolution techniques; providing effective dates.

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

Section 1. Section 712.11, Florida Statutes, is created to read:

712.11 Covenant revitalization.—A homeowners' association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 2. Subsection (5) is added to section 718.106, Florida Statutes, to read:

718.106 Condominium parcels; appurtenances; possession and enjoyment.—

(5) A local government may not adopt an ordinance or regulation that prohibits condominium unit owners or their guests, licensees, or invitees from pedestrian access to a public beach contiguous to a condominium property, except where necessary to protect public health, safety, or natural

resources. This subsection does not prohibit a governmental entity from enacting regulations governing activities taking place on the beach.

Section 3. Effective October 1, 2007, subsection (11) of section 718.110, Florida Statutes, is amended to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(11) The Legislature finds that the procurement of mortgagee consent to amendments that do not affect the rights or interests of mortgagees is an unreasonable and substantial logistical and financial burden on the unit owners and that there is a compelling state interest in enabling the members of a condominium association to approve amendments to the condominium documents through legal means. Accordingly, and notwithstanding any provision to the contrary contained in this section:

(a) As to any mortgage recorded on or after October 1, 2007, any provision in the declaration, articles of incorporation, or bylaws that requires recorded after April 1, 1992, may not require the consent or joinder of some or all mortgagees of units or any other portion of the condominium property to or in amendments to the declaration, articles of incorporation, or bylaws or for any other matter shall be enforceable only as to the following matters: unless the requirement is limited to amendments materially affecting the rights or interests of the mortgagees, or as otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and unless the requirement provides that such consent may not be unreasonably withheld. It shall be presumed that, except as to

1. Those matters described in subsections (4) and (8),

2. Amendments to the declaration, articles of incorporation, or bylaws that adversely affect the priority of the mortgagee's lien or the mortgagee's rights to foreclose its lien or that otherwise materially affect the rights and interests of the mortgagees.

(b) As to mortgages recorded before October 1, 2007, any existing provisions in the declaration, articles of incorporation, or bylaws requiring mortgagee consent shall be enforceable.

(c) In securing consent or joinder, the association shall be entitled to rely upon the public records to identify the holders of outstanding mortgages. The association may use the address provided in the original recorded mortgage document, unless there is a different address for the holder of the mortgage in a recorded assignment or modification of the mortgage, which recorded assignment or modification must reference the official records book and page on which the original mortgage was recorded. Once the association has identified the recorded mortgages of record, the association shall, in writing, request of each unit owner whose unit is encumbered by a mortgage of record any information the owner has in his or her possession regarding the name and address of the person to whom mortgage payments are currently being made. Notice shall be sent to such person if the address provided in the original recorded mortgage document is different from the name

and address of the mortgagee or assignee of the mortgage as shown by the public record. The association shall be deemed to have complied with this requirement by making the written request of the unit owners required under this paragraph. Any notices required to be sent to the mortgagees under this paragraph shall be sent to all available addresses provided to the association.

(d) Any notice to the mortgagees required under paragraph (c) may be sent by a method that establishes proof of delivery, and any mortgagee who fails to respond within 60 days after the date of mailing shall be deemed to have consented to the amendment.

(e) For those amendments requiring mortgagee consent on or after October 1, 2007, do not materially affect the rights or interests of mortgagees. In the event mortgagee consent is provided other than by properly recorded joinder, such consent shall be evidenced by affidavit of the association recorded in the public records of the county where the declaration is recorded. Any amendment adopted without the required consent of a mortgagee shall be voidable only by a mortgagee who was entitled to notice and an opportunity to consent. An action to void an amendment shall be subject to the statute of limitations beginning 5 years after the date of discovery as to the amendments described in subparagraphs (a)1. and 2. and 5 years after the date of recordation of the certificate of amendment for all other amendments. This provision shall apply to all mortgages, regardless of the date of recordation of the mortgage.

(f) Notwithstanding the provisions of this section, any amendment or amendments to conform a declaration of condominium to the insurance coverage provisions in s. 718.111(11) may be made as provided in that section.

Section 4. Section 718.114, Florida Statutes, is amended to read:

718.114 Association powers.—An association has the power to enter into agreements, to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests not entered into within 12 months following the recording of the declaration shall be considered a material alteration or substantial addition to the real property that is association property, and the association may not acquire or enter into agreements acquiring these leaseholds, memberships, or other possessory or use interests except as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not incon-

sistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Section 5. Subsections (1) and (2) of section 718.404, Florida Statutes, are amended to read:

718.404 Mixed-use condominiums.—When a condominium consists of both residential and commercial units, the following provisions shall apply:

(1) The condominium documents shall not provide that the owner of any commercial unit shall have the authority to veto amendments to the declaration, articles of incorporation, bylaws, or rules or regulations of the association. This subsection shall apply retroactively as a remedial measure.

(2) Subject to s. 718.301, where the number of residential units in the condominium equals or exceeds 50 percent of the total units operated by the association, owners of the residential units shall be entitled to vote for a majority of the seats on the board of administration. This subsection shall apply retroactively as a remedial measure.

Section 6. Subsections (18) through (27) of section 719.103, Florida Statutes, are renumbered as subsections (19) through (28), respectively, and a new subsection (18) is added to that section to read:

719.103 Definitions.—As used in this chapter:

(18) “Equity facilities club” means a club comprised of recreational facilities in which proprietary membership interests are sold to individuals, which membership interests entitle the individuals to use certain physical facilities owned by the equity club. Such physical facilities do not include a residential unit or accommodation. For purposes of this definition, the term “accommodation” shall include, but is not limited to, any apartment, residential cooperative unit, residential condominium unit, cabin, lodge, hotel or motel room, or other accommodation designed for overnight occupancy for one or more individuals.

Section 7. Section 719.507, Florida Statutes, is amended to read:

719.507 Zoning and building laws, ordinances, and regulations.—All laws, ordinances, and regulations concerning buildings or zoning shall be construed and applied with reference to the nature and use of such property, without regard to the form of ownership. No law, ordinance, or regulation shall establish any requirement concerning the use, location, placement, or construction of buildings or other improvements which are, or may thereafter be, subjected to the cooperative or equity facilities club form of ownership, unless such requirement shall be equally applicable to all buildings and improvements of the same kind not then, or thereafter to be, subjected to the cooperative or equity facilities club form of ownership. This section does not apply if the owner in fee of any land enters into and records a covenant that existing improvements or improvements to be constructed shall not be converted to the cooperative form of residential ownership prior to 5 years after the later of the date of the covenant or completion date of the improvements. Such covenant shall be entered into with the governing

body of the municipality in which the land is located or, if the land is not located in a municipality, with the governing body of the county in which the land is located.

Section 8. Subsections (4) and (5) of section 720.302, Florida Statutes, are amended to read:

720.302 Purposes, scope, and application.—

(4) This chapter does not apply to any association that is subject to regulation under chapter 718, chapter 719, or chapter 721; or to any non-mandatory association formed under chapter 723, except to the extent that a provision of chapter 718, chapter 719, or chapter 721 is expressly incorporated into this chapter for the purpose of regulating homeowners' associations.

(5) Unless expressly stated to the contrary, corporations ~~not for profit~~ that operate residential homeowners' associations in this state shall be governed by and subject to chapter 607, if the association was incorporated under that chapter, or to chapter 617, if the association was incorporated under that chapter, and this chapter. This subsection is intended to clarify existing law.

Section 9. Subsections (2), (6), and (7) of section 720.303, Florida Statutes, are amended, and paragraph (d) is added to subsection (5) of that section, to read:

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

(2) BOARD MEETINGS.—

(a) A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. All meetings of the board must be open to all members except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(b) Members have the right to attend all meetings of the board and to speak on any matter placed on the agenda by petition of the voting interests for at least 3 minutes. The association may adopt written reasonable rules expanding the right of members to speak and governing the frequency, duration, and other manner of member statements, which rules must be consistent with this paragraph and may include a sign-up sheet for members wishing to speak. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the members is inapplicable to meetings between the board or a committee and the association's

attorney, with respect to meetings of the board held for the purpose of discussing personnel matters.

(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to provide the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The bylaws or amended bylaws may provide for giving notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(d) If 20 percent of the total voting interests petition the board to address an item of business, the board shall at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda. The board shall

give all members notice of the meeting at which the petitioned item shall be addressed in accordance with the 14-day notice requirement pursuant to subparagraph (c)2. Each member shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the board is not obligated to take any other action requested by the petition.

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

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

(6) **BUDGETS.**—

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible to the extent that the governing documents do not limit increases in assessments, including reserves. If the budget of the association includes reserve accounts, such reserves shall be determined, maintained, and waived in the manner provided in this subsection. Once an association provides for reserve accounts in the budget, the association shall thereafter determine, maintain, and waive reserves in compliance with this subsection.

(c) If the budget of the association does not provide for reserve accounts governed by this subsection and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) shall contain the following statement in conspicuous type: THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING INTERESTS OF THE ASSOCIATION.

(d) An association shall be deemed to have provided for reserve accounts when reserve accounts have been initially established by the developer or when the membership of the association affirmatively elects to provide for reserves. If reserve accounts are not initially provided for by the developer, the membership of the association may elect to do so upon the affirmative approval of not less than a majority of the total voting interests of the association. Such approval may be attained by vote of the members at a duly called meeting of the membership or upon a written consent executed by not less than a majority of the total voting interests in the community. The approval action of the membership shall state that reserve accounts shall be provided for in the budget and designate the components for which the reserve accounts are to be established. Upon approval by the membership, the board of directors shall provide for the required reserve accounts for inclusion in the budget in the next fiscal year following the approval and in each year thereafter. Once established as provided in this subsection, the reserve accounts shall be funded or maintained or shall have their funding waived in the manner provided in paragraph (f).

(e) The amount to be reserved in any account established shall be computed by means of a formula that is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates of cost or useful life of a reserve item.

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

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

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

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

b. The total estimated deferred maintenance expense or estimated replacement cost of the reserve component less the estimated balance of the reserve component as of the beginning of the period for which the budget will be in effect. The remainder, if greater than zero, shall be divided by the estimated remaining useful life of the component.

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

2. If the association maintains a pooled account of two or more of the required reserve assets, the amount of the contribution to the pooled reserve account as disclosed on the proposed budget shall not be less than that required to ensure that the balance on hand at the beginning of the period for which the budget will go into effect plus the projected annual cash inflows over the remaining estimated useful life of all of the assets that make up the reserve pool are equal to or greater than the projected annual cash outflows over the remaining estimated useful lives of all of the assets that make up the reserve pool, based on the current reserve analysis. The projected annual cash inflows may include estimated earnings from investment of principal. The reserve funding formula shall not include any type of balloon payments.

(h) Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association shall not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.

(7) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall prepare an annual financial report within 60 days after the close of the fiscal year. The association shall, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(a) An association that meets the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;
2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or
3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 10. Subsection (2) of section 720.303, Florida Statutes, as amended by section 2 of chapter 2004-345 and section 15 of chapter 2004-353, Laws of Florida, is repealed.

Section 11. Section 720.3035, Florida Statutes, is created to read:

720.3035 Architectural control covenants; parcel owner improvements; rights and privileges.—

(1) The authority of an association or any architectural, construction improvement, or other such similar committee of an association to review and approve plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel, or to enforce standards for the external appearance of any structure or improvement located on a parcel, shall be permitted only to the extent that the authority is specifically stated or reasonably inferred as to such location, size, type, or appearance in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(2) If the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants provides options for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel, neither the association nor any architectural, construction improvement, or other such similar committee of the association shall restrict the right of a parcel owner to select from the options provided in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(3) Unless otherwise specifically stated in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, each parcel shall be deemed to have only one front for purposes of determining the required front setback even if the parcel is bounded by a roadway or other easement on more than one side. When the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants do not provide for specific setback limitations, the applicable county or municipal setback limitations shall apply, and neither the association nor any architectural, construction improvement, or other such similar committee of the association shall enforce or attempt to enforce any setback limitation that is inconsistent with the applicable county or municipal standard or standards.

(4) Each parcel owner shall be entitled to the rights and privileges set forth in the declaration of covenants or other published guidelines and

standards authorized by the declaration of covenants concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges shall not be unreasonably infringed upon or impaired by the association or any architectural, construction improvement, or other such similar committee of the association. If the association or any architectural, construction improvement, or other such similar committee of the association should unreasonably, knowingly, and willfully infringe upon or impair the rights and privileges set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, the adversely affected parcel owner shall be entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney's fees incurred in preserving or restoring the rights and privileges of the parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants.

(5) Neither the association nor any architectural, construction improvement, or other such similar committee of the association shall enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, whether uniformly applied or not. Neither the association nor any architectural, construction improvement, or other such similar committee of the association may rely upon a policy or restriction that is inconsistent with the declaration of covenants or other published guidelines and standards authorized by the declaration of covenants, whether uniformly applied or not, in defense of any action taken in the name of or on behalf of the association against a parcel owner.

Section 12. Subsection (1) of section 720.305, Florida Statutes, is amended to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights; failure to fill sufficient number of vacancies on board of directors to constitute a quorum; appointment of receiver upon petition of any member.—

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

- (a) The association;
- (b) A member;
- (c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and
- (d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney's fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

Section 13. Paragraph (c) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

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

(1) QUORUM; AMENDMENTS.—

(c) Unless otherwise provided in the governing documents as originally recorded or permitted by this chapter or chapter 617, an amendment may not materially and adversely alter the proportionate voting interest appurtenant to a parcel or increase the proportion or percentage by which a parcel shares in the common expenses of the association unless the record parcel owner and all record owners of liens on the parcels join in the execution of the amendment. For purposes of this section, a change in quorum requirements is not an alteration of voting interests. The merger or consolidation of one or more associations under a plan of merger or consolidation under chapter 607 or chapter 617 shall not be considered a material or adverse alteration of the proportionate voting interest appurtenant to a parcel.

Section 14. Paragraph (t) is added to subsection (3) of section 720.307, Florida Statutes, to read:

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

(3) At the time the members are entitled to elect at least a majority of the board of directors of the homeowners' association, the developer shall, at the developer's expense, within no more than 90 days deliver the following documents to the board:

(t) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records shall be audited by an independent certified public accountant for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation. All financial statements shall be prepared in accordance with generally accepted accounting principles and shall be audited in accordance with generally accepted auditing standards, as prescribed by the Board of Accountancy, pursuant to chapter 473. The certified public accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for association purposes and the billings, cash receipts, and related records

of the association to determine that the developer was charged and paid the proper amounts of assessments. This paragraph applies to associations with a date of incorporation after December 31, 2007.

Section 15. Section 720.308, Florida Statutes, is amended to read:

720.308 Assessments and charges.—

(1) ASSESSMENTS.—For any community created after October 1, 1995, the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof. Assessments levied pursuant to the annual budget or special assessment must be in the member's proportional share of expenses as described in the governing document, which share may be different among classes of parcels based upon the state of development thereof, levels of services received by the applicable members, or other relevant factors. While the developer is in control of the homeowners' association, it may be excused from payment of its share of the operating expenses and assessments related to its parcels for any period of time for which the developer has, in the declaration, obligated itself to pay any operating expenses incurred that exceed the assessments receivable from other members and other income of the association. This section does not apply to an association, no matter when created, if the association is created in a community that is included in an effective development-of-regional-impact development order as of the effective date of this act, together with any approved modifications thereto.

(2) GUARANTEES OF COMMON EXPENSES.—

(a) Establishment of a guarantee.—If a guarantee of the assessments of parcel owners is not included in the purchase contracts or declaration, any agreement establishing a guarantee shall only be effective upon the approval of a majority of the voting interests of the members other than the developer. Approval shall be expressed at a meeting of the members voting in person or by limited proxy or by agreement in writing without a meeting if provided in the bylaws. Such guarantee must meet the requirements of this section.

(b) Guarantee period.—The period of time for the guarantee shall be indicated by a specific beginning and ending date or event.

1. The ending date or event shall be the same for all of the members of an association, including members in different phases of the development.

2. The guarantee may provide for different intervals of time during a guarantee period with different dollar amounts for each such interval.

3. The guarantee may provide that after the initial stated period, the developer has an option to extend the guarantee for one or more additional stated periods. The extension of a guarantee is limited to extending the ending date or event; therefore, the developer does not have the option of changing the level of assessments guaranteed.

(3) MAXIMUM LEVEL OF ASSESSMENTS.—The stated dollar amount of the guarantee shall be an exact dollar amount for each parcel identified

in the declaration. Regardless of the stated dollar amount of the guarantee, assessments charged to a member shall not exceed the maximum obligation of the member based on the total amount of the adopted budget and the member's proportionate share of the expenses as described in the governing documents.

(4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.—The cash payments required from the guarantor during the guarantee period shall be determined as follows:

(a) If at any time during the guarantee period the funds collected from member assessments at the guaranteed level and other revenues collected by the association are not sufficient to provide payment, on a timely basis, of all assessments, including the full funding of the reserves unless properly waived, the guarantor shall advance sufficient cash to the association at the time such payments are due.

(b) Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the assessments. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment-revenue-generating activity shall be considered separately. Any portion of the parcel assessment which is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

(5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.—The guarantor's total financial obligation to the association at the end of the guarantee period shall be determined on the accrual basis using the following formula: the guarantor shall pay any deficits that exceed the guaranteed amount, less the total regular periodic assessments earned by the association from the members other than the guarantor during the guarantee period regardless of whether the actual level charged was less than the maximum guaranteed amount.

(6) EXPENSES.—Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the operating expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment; such expense shall not be charged to the guarantor; and the net investment income shall be retained by the association. Each such nonassessment-revenue-generating activity shall be considered separately. Any portion of the parcel assessment which is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

Section 16. Section 720.311, Florida Statutes, is amended to read:

## 720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for ~~mediation or arbitration or the serving of a demand for presuit mediation~~ as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department pursuant to s. 720.303(10) shall be conducted by the department in accordance with the provisions of ss. 718.112(2)(j) and 718.1255 and the rules adopted by the division. In addition, the department shall conduct mandatory binding arbitration of election disputes between a member and an association pursuant to s. 718.1255 and rules adopted by the division. Neither election disputes nor recall disputes are eligible for presuit mediation; these disputes shall be arbitrated by the department. At the conclusion of the proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney's fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(2)(a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be the subject of a demand filed with the department for presuit mandatory mediation served by an aggrieved party before the dispute is filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to presuit mediation under this section shall not include the collection of any assessment, fine, or other financial obligation, including attorney's fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section. An arbitrator or judge may not consider any information or evidence arising from the presuit mediation proceeding except in a proceeding to impose sanctions for failure to attend a presuit mediation session or to enforce a mediated settlement agreement. Persons who are not parties to the dispute may not attend the presuit mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not

a board meeting for purposes of notice and participation set forth in s. 720.303. An aggrieved party shall serve on the responding party a written demand to participate in presuit mediation in substantially the following form:

STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION

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

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

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

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

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

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

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

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

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

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

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

.....

.....

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

AGREEMENT TO MEDIATE

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

(List acceptable mediator or mediators.)

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

.....

Signature of responding party #1

.....

Telephone contact information

.....

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

(b) Service of the statutory demand to participate in presuit mediation shall be effected by sending a letter in substantial conformity with the above form by certified mail, return receipt requested, 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. The responding party has 20 days from the date of the mailing of the statutory demand to serve a response to the aggrieved party in writing. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory demand. Notwithstanding the foregoing, once the parties have agreed on a mediator, the mediator may reschedule the mediation for a date and time mutually convenient to the parties. The department shall conduct the proceedings through the use of department mediators or refer the disputes to private mediators who have been duly certified by the department as provided in paragraph (c). The parties shall share the costs of presuit mediation equally, including the fee charged by the mediator, if any, unless the parties agree otherwise, and the mediator may require advance payment of its reasonable fees and costs. The failure of any party to respond to a demand or response, to agree upon a mediator, to make payment of fees and costs within the time established by the mediator, or to appear for a scheduled mediation session without the approval of the mediator, shall constitute the failure or refusal to participate in the mediation process and shall operate as an impasse in the presuit mediation by such party, entitling the other party to proceed in court and to seek an award of the costs and fees associated with the mediation. Additionally, notwithstanding the provisions of any other law or document, persons who fail or refuse to participate in the entire mediation process may not recover attorney's fees and costs in subsequent litigation relating to the dispute. If any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline. If a department mediator is used, the department may charge such fee as is necessary to pay expenses of the mediation, including, but not limited to, the salary and benefits of the mediator and any travel expenses incurred. The petitioner shall initially file with the department upon filing the disputes, a filing fee of \$200, which shall be used to defray the costs of the mediation. At the conclusion of the mediation, the department shall charge to the parties, to be shared equally unless otherwise agreed by the parties, such further fees as are necessary to fully reimburse the department for all expenses incurred in the mediation.

(c)(b) If presuit mediation as described in paragraph (a) is not successful in resolving all issues between the parties, the parties may file the unresolved dispute in a court of competent jurisdiction or elect to enter into binding or nonbinding arbitration pursuant to the procedures set forth in s. 718.1255 and rules adopted by the division, with the arbitration proceeding to be conducted by a department arbitrator or by a private arbitrator certified by the department. If all parties do not agree to arbitration proceedings following an unsuccessful presuit mediation, any party may file the dispute in court. A final order resulting from nonbinding arbitration is final and enforceable in the courts if a complaint for trial de novo is not filed in a court of competent jurisdiction within 30 days after entry of the order. As to any issue or dispute that is not resolved at presuit mediation, and as to any issue that is settled at presuit mediation but is thereafter subject to an action seeking enforcement of the mediation settlement, the prevailing party in any subsequent arbitration or litigation proceeding shall be entitled to seek recovery of all costs and attorney's fees incurred in the presuit mediation process.

~~(d)(e) The department shall develop a certification and training program for private mediators and private arbitrators which shall emphasize experience and expertise in the area of the operation of community associations. A mediator or arbitrator shall be authorized to conduct mediation or arbitration under this section certified by the department only if he or she has been certified as a circuit court civil mediator or arbitrator, respectively, pursuant to the requirements established attended at least 20 hours of training in mediation or arbitration, as appropriate, and only if the applicant has mediated or arbitrated at least 10 disputes involving community associations within 5 years prior to the date of the application, or has mediated or arbitrated 10 disputes in any area within 5 years prior to the date of application and has completed 20 hours of training in community association disputes. In order to be certified by the department, any mediator must also be certified by the Florida Supreme Court. Settlement agreements resulting from mediation shall not have precedential value in proceedings involving parties other than those participating in the mediation to support either a claim or defense in other disputes. The department may conduct the training and certification program within the department or may contract with an outside vendor to perform the training or certification. The expenses of operating the training and certification and training program shall be paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection and by the training fees.~~

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

~~(3) The department shall develop an education program to assist homeowners, associations, board members, and managers in understanding and increasing awareness of the operation of homeowners' associations pursuant~~

~~to this chapter and in understanding the use of alternative dispute resolution techniques in resolving disputes between parcel owners and associations or between owners. Such education program may include the development of pamphlets and other written instructional guides, the holding of classes and meetings by department employees or outside vendors, as the department determines, and the creation and maintenance of a website containing instructional materials. The expenses of operating the education program shall be initially paid by the moneys and filing fees generated by the arbitration of recall and election disputes and by the mediation of those disputes referred to in this subsection.~~

Section 17. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2007.

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.