

By Senator Torres

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1 A bill to be entitled
2 An act relating to community associations; amending s.
3 718.1255, F.S.; requiring the Division of Florida
4 Condominiums, Timeshares, and Mobile Homes of the
5 Department of Business and Professional Regulation to
6 establish the Office of Community Association
7 Hearings; requiring the division to employ full-time
8 attorneys to act as community association hearing
9 officers in lieu of arbitrators for specified
10 purposes; allowing the division to certify attorneys
11 who are not employed by the division to act as
12 community association hearing officers under specified
13 conditions; specifying grounds for which a community
14 association hearing officer may be terminated;
15 transferring the powers and duties of arbitrators to
16 community association hearing officers; authorizing a
17 community association hearing officer to hold a
18 hearing and impose sanctions against a board member or
19 officer under certain conditions; amending s. 720.311,
20 F.S.; revising and providing requirements with respect
21 to alternative dispute resolution; amending ss. 34.01,
22 718.117, 719.106, 720.303, and 723.078, F.S.;

23 conforming provisions to changes made by the act;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (4) of section 718.1255, Florida
29 Statutes, is amended to read:

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30 718.1255 Alternative dispute resolution; voluntary
 31 mediation; mandatory nonbinding arbitration; legislative
 32 findings.—

33 (4) MANDATORY NONBINDING ARBITRATION AND MEDIATION OF
 34 DISPUTES.—The Division of Florida Condominiums, Timeshares, and
 35 Mobile Homes of the Department of Business and Professional
 36 Regulation shall establish the Office of Community Association
 37 Hearings and shall ~~may~~ employ full-time attorneys to act as
 38 community association hearing officers ~~arbitrators~~ to conduct
 39 the arbitration hearings provided by this chapter. The division
 40 may also certify attorneys who are not employed by the division
 41 to act as community association hearing officers, by mutual
 42 agreement of the parties, ~~arbitrators~~ to conduct the arbitration
 43 hearings provided by this chapter.

44 (a) A ~~Ne~~ person may not be employed by the department as a
 45 full-time community association hearing officer ~~arbitrator~~
 46 unless he or she is a member in good standing of The Florida
 47 Bar. A community association hearing officer may only be
 48 terminated by the department for cause. A person may only be
 49 certified by the division to act as a community association
 50 hearing officer ~~an arbitrator~~ if he or she has:

51 1. Been a member in good standing of The Florida Bar for at
 52 least 5 years and has mediated or arbitrated at least 10
 53 disputes involving condominiums in this state during the 3 years
 54 immediately preceding the date of application;~~;~~

55 2. Mediated or arbitrated at least 30 disputes in any
 56 subject area in this state during the 3 years immediately
 57 preceding the date of employment or application;~~;~~ or

58 3. Attained board certification in real estate law or

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59 condominium and planned development law from The Florida Bar.

60 (b) Community association hearing officer ~~Arbitrator~~
61 certification is valid for 1 year. A community association
62 hearing officer ~~An arbitrator~~ who does not maintain the minimum
63 qualifications for initial certification may not have his or her
64 certification renewed.

65 (c) The department may not enter into a legal services
66 contract for an arbitration hearing under this chapter with an
67 attorney who is not a certified community association hearing
68 officer ~~arbitrator~~ unless a certified community association
69 hearing officer ~~arbitrator~~ is not available within 50 miles of
70 the dispute. The department shall adopt rules of procedure to
71 govern such arbitration hearings including mediation incident
72 thereto.

73 (d) The decision of a community association hearing officer
74 ~~an arbitrator~~ is ~~shall be~~ final; however, a decision is not
75 ~~shall not be~~ deemed final agency action. Nothing in this
76 provision shall be construed to foreclose parties from
77 proceeding in a trial de novo unless the parties have agreed
78 that the arbitration is binding. If judicial proceedings are
79 initiated, the final decision of the community association
80 hearing officer ~~arbitrator~~ shall be admissible in evidence in
81 the trial de novo.

82 (e) ~~(a)~~ Before ~~Prior to~~ the institution of court litigation,
83 a party to a dispute shall petition the division for nonbinding
84 arbitration. The petition must be accompanied by a filing fee in
85 the amount of \$50. Filing fees collected under this section must
86 be used to defray the expenses of the alternative dispute
87 resolution program.

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88 (f)~~(b)~~ The petition must recite, and have attached thereto,
89 supporting proof that the petitioner gave the respondents:

90 1. Advance written notice of the specific nature of the
91 dispute;

92 2. A demand for relief, and a reasonable opportunity to
93 comply or to provide the relief; and

94 3. Notice of the intention to file an arbitration petition
95 or other legal action in the absence of a resolution of the
96 dispute.

97
98 Failure to include the allegations or proof of compliance with
99 these prerequisites requires dismissal of the petition without
100 prejudice.

101 (g)~~(e)~~ Upon receipt, the petition shall be promptly
102 reviewed by the division to determine the existence of a dispute
103 and compliance with the requirements of paragraphs (e) and (f)
104 ~~(a)~~ and ~~(b)~~. If emergency relief is required and is not
105 available through arbitration, a motion to stay the arbitration
106 may be filed. The motion must be accompanied by a verified
107 petition alleging facts that, if proven, would support entry of
108 a temporary injunction, and if an appropriate motion and
109 supporting papers are filed, the division may abate the
110 arbitration pending a court hearing and disposition of a motion
111 for temporary injunction.

112 (h)~~(d)~~ Upon determination by the division that a dispute
113 exists and that the petition substantially meets the
114 requirements of paragraphs (e) and (f) ~~(a)~~ and ~~(b)~~ and any other
115 applicable rules, the division shall assign or enter into a
116 contract with a community association hearing officer ~~an~~

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117 ~~arbitrator~~ and serve a copy of the petition upon all
118 respondents. The community association hearing officer
119 ~~arbitrator~~ shall conduct a hearing within 30 days after being
120 assigned or entering into a contract unless the petition is
121 withdrawn or a continuance is granted for good cause shown.

122 (i)~~(e)~~ Before or after the filing of the respondents'
123 answer to the petition, any party may request that the community
124 association hearing officer ~~arbitrator~~ refer the case to
125 mediation under this section and any rules adopted by the
126 division. Upon receipt of a request for mediation, the division
127 shall promptly contact the parties to determine if there is
128 agreement that mediation would be appropriate. If all parties
129 agree, the dispute must be referred to mediation.
130 Notwithstanding a lack of an agreement by all parties, the
131 community association hearing officer ~~arbitrator~~ may refer a
132 dispute to mediation at any time.

133 (j)~~(f)~~ Upon referral of a case to mediation, the parties
134 must select a mutually acceptable mediator. To assist in the
135 selection, the community association hearing officer ~~arbitrator~~
136 shall provide the parties with a list of both volunteer and paid
137 mediators that have been certified by the division under s.
138 718.501. If the parties are unable to agree on a mediator within
139 the time allowed by the community association hearing officer
140 ~~arbitrator~~, the community association hearing officer ~~arbitrator~~
141 shall appoint a mediator from the list of certified mediators.
142 If a case is referred to mediation, the parties shall attend a
143 mediation conference, as scheduled by the parties and the
144 mediator. If any party fails to attend a duly noticed mediation
145 conference, without the permission or approval of the community

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146 association hearing officer ~~arbitrator~~ or mediator, the
147 community association hearing officer ~~arbitrator~~ must impose
148 sanctions against the party, including the striking of any
149 pleadings filed, the entry of an order of dismissal or default
150 if appropriate, and the award of costs and attorney fees
151 incurred by the other parties. Unless otherwise agreed to by the
152 parties or as provided by order of the community association
153 hearing officer ~~arbitrator~~, a party is deemed to have appeared
154 at a mediation conference by the physical presence of the party
155 or its representative having full authority to settle without
156 further consultation, provided that an association may comply by
157 having one or more representatives present with full authority
158 to negotiate a settlement and recommend that the board of
159 administration ratify and approve such a settlement within 5
160 days from the date of the mediation conference. The parties
161 shall share equally the expense of mediation, unless they agree
162 otherwise.

163 ~~(k)~~ ~~(g)~~ The purpose of mediation as provided for by this
164 section is to present the parties with an opportunity to resolve
165 the underlying dispute in good faith, and with a minimum
166 expenditure of time and resources.

167 ~~(l)~~ ~~(h)~~ Mediation proceedings must generally be conducted in
168 accordance with the Florida Rules of Civil Procedure, and these
169 proceedings are privileged and confidential to the same extent
170 as court-ordered mediation. Persons who are not parties to the
171 dispute are not allowed to attend the mediation conference
172 without the consent of all parties, with the exception of
173 counsel for the parties and corporate representatives designated
174 to appear for a party. If the mediator declares an impasse after

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175 a mediation conference has been held, the arbitration proceeding
176 terminates, unless all parties agree in writing to continue the
177 arbitration proceeding, in which case the community association
178 hearing officer's ~~arbitrator's~~ decision shall be binding or
179 nonbinding, as agreed upon by the parties; in the arbitration
180 proceeding, the community association hearing officer ~~arbitrator~~
181 shall not consider any evidence relating to the unsuccessful
182 mediation except in a proceeding to impose sanctions for failure
183 to appear at the mediation conference. If the parties do not
184 agree to continue arbitration, the community association hearing
185 officer ~~arbitrator~~ shall enter an order of dismissal, and either
186 party may institute a suit in a court of competent jurisdiction.
187 The parties may seek to recover any costs and attorney fees
188 incurred in connection with arbitration and mediation
189 proceedings under this section as part of the costs and fees
190 that may be recovered by the prevailing party in any subsequent
191 litigation.

192 (m) ~~(i)~~ Arbitration shall be conducted according to rules
193 adopted by the division. The filing of a petition for
194 arbitration shall toll the applicable statute of limitations.

195 (n) ~~(j)~~ At the request of any party to the arbitration, the
196 community association hearing officer ~~arbitrator~~ shall issue
197 subpoenas for the attendance of witnesses and the production of
198 books, records, documents, and other evidence and any party on
199 whose behalf a subpoena is issued may apply to the court for
200 orders compelling such attendance and production. Subpoenas
201 shall be served and shall be enforceable in the manner provided
202 by the Florida Rules of Civil Procedure. Discovery may, in the
203 discretion of the community association hearing officer

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204 ~~arbitrator~~, be permitted in the manner provided by the Florida
205 Rules of Civil Procedure. Rules adopted by the division may
206 authorize any reasonable sanctions except contempt for a
207 violation of the arbitration procedural rules of the division or
208 for the failure of a party to comply with a reasonable nonfinal
209 order issued by a community association hearing officer ~~an~~
210 ~~arbitrator~~ which is not under judicial review.

211 (o) ~~(k)~~ The arbitration decision shall be ~~rendered within 30~~
212 ~~days after the hearing and~~ presented to the parties in writing.
213 An arbitration decision is final in those disputes in which the
214 parties have agreed to be bound. An arbitration decision is also
215 final if a complaint for a trial de novo is not filed in a court
216 of competent jurisdiction in which the condominium is located
217 within 30 days of the decision being presented to the parties.
218 The right to file for a trial de novo entitles the parties to
219 file a complaint in the appropriate trial court for a judicial
220 resolution of the dispute. The prevailing party in an
221 arbitration proceeding shall be awarded the costs of the
222 arbitration and reasonable attorney fees in an amount determined
223 by the community association hearing officer ~~arbitrator~~. Such an
224 award shall include the costs and reasonable attorney fees
225 incurred in the arbitration proceeding as well as the costs and
226 reasonable attorney fees incurred in preparing for and attending
227 any scheduled mediation. ~~An arbitrator's failure to render a~~
228 ~~written decision within 30 days after the hearing may result in~~
229 ~~the cancellation of his or her arbitration certification.~~

230 (p) ~~(l)~~ The party who files a complaint for a trial de novo
231 shall be assessed the other party's arbitration costs, court
232 costs, and other reasonable costs, including attorney fees,

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233 investigation expenses, and expenses for expert or other
234 testimony or evidence incurred after the arbitration hearing if
235 the judgment upon the trial de novo is not more favorable than
236 the arbitration decision. If the judgment is more favorable, the
237 party who filed a complaint for trial de novo shall be awarded
238 reasonable court costs and attorney fees.

239 (q)~~(m)~~ Any party to an arbitration proceeding may enforce
240 an arbitration award by filing a petition in a court of
241 competent jurisdiction in which the condominium is located. A
242 petition may not be granted unless the time for appeal by the
243 filing of a complaint for trial de novo has expired. If a
244 complaint for a trial de novo has been filed, a petition may not
245 be granted with respect to an arbitration award that has been
246 stayed. If the petition for enforcement is granted, the
247 petitioner shall recover reasonable attorney fees and costs
248 incurred in enforcing the arbitration award. A mediation
249 settlement may also be enforced through the county or circuit
250 court, as applicable, and any costs and fees incurred in the
251 enforcement of a settlement agreement reached at mediation must
252 be awarded to the prevailing party in any enforcement action.

253 (r)1. If the community association hearing officer's
254 judgment finds that a board member or officer has intentionally
255 prevented an association from complying with chapter 617,
256 chapter 718, chapter 719, or chapter 720, the community
257 association hearing officer shall serve the board member or
258 officer with an order to show cause why sanctions should not be
259 imposed against him or her. If the board member or officer
260 responds to the order to show cause, the community association
261 hearing officer shall hold a hearing to determine if sanctions

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262 should be imposed on the board member or officer. If the board
263 member or officer does not respond to the order by the date
264 specified, a hearing shall not be held and sanctions shall be
265 imposed.

266 2.a. If the community association hearing officer finds
267 that a board member or officer has intentionally prevented an
268 association from complying with chapter 617, chapter 718,
269 chapter 719, or chapter 720, the community association hearing
270 officer may impose one or more of the following sanctions,
271 notice of which must be provided to the board member or officer
272 in writing:

273 (I) Require the board member or officer to reimburse the
274 association for any prevailing party attorney fees or costs
275 imposed against it.

276 (II) Require the board member or officer to reimburse the
277 attorney fees and costs incurred by and to the association.

278 (III) Require the board member or officer to reimburse the
279 association for any damages awarded against it.

280 b. If the sanction is not paid by the date specified in the
281 notice, the association shall impose the amount owed as a lien
282 against the board member or officer's unit or units.

283 3. The award of attorney fees as provided in s. 57.105
284 applies to any proceeding conducted pursuant to this section.

285 4. If a community association hearing officer finds
286 evidence of a criminal violation, the community association
287 hearing officer shall refer the evidence to the appropriate
288 state attorney.

289 Section 2. Section 720.311, Florida Statutes, is amended to
290 read:

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291 720.311 Alternative dispute resolution.—The division shall
292 conduct alternative dispute resolution proceedings in accordance
293 with s. 718.1255.

294 ~~(1) The Legislature finds that alternative dispute~~
295 ~~resolution has made progress in reducing court dockets and~~
296 ~~trials and in offering a more efficient, cost-effective option~~
297 ~~to litigation. The filing of any petition for arbitration or the~~
298 ~~servicing of a demand for presuit mediation as provided for in~~
299 ~~this section shall toll the applicable statute of limitations.~~
300 ~~Any recall dispute filed with the department pursuant to s.~~
301 ~~720.303(10) shall be conducted by the department in accordance~~
302 ~~with the provisions of ss. 718.112(2)(j) and 718.1255 and the~~
303 ~~rules adopted by the division. In addition, the department shall~~
304 ~~conduct mandatory binding arbitration of election disputes~~
305 ~~between a member and an association pursuant to s. 718.1255 and~~
306 ~~rules adopted by the division. Neither election disputes nor~~
307 ~~recall disputes are eligible for presuit mediation; these~~
308 ~~disputes shall be arbitrated by the department. At the~~
309 ~~conclusion of the proceeding, the department shall charge the~~
310 ~~parties a fee in an amount adequate to cover all costs and~~
311 ~~expenses incurred by the department in conducting the~~
312 ~~proceeding. Initially, the petitioner shall remit a filing fee~~
313 ~~of at least \$200 to the department. The fees paid to the~~
314 ~~department shall become a recoverable cost in the arbitration~~
315 ~~proceeding, and the prevailing party in an arbitration~~
316 ~~proceeding shall recover its reasonable costs and attorney~~
317 ~~attorney's fees in an amount found reasonable by the community~~
318 ~~association hearing officer ~~arbitrator~~. The department shall~~
319 ~~adopt rules to effectuate the purposes of this section.~~

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320 ~~(2)(a) Disputes between an association and a parcel owner~~
321 ~~regarding use of or changes to the parcel or the common areas~~
322 ~~and other covenant enforcement disputes, disputes regarding~~
323 ~~amendments to the association documents, disputes regarding~~
324 ~~meetings of the board and committees appointed by the board,~~
325 ~~membership meetings not including election meetings, and access~~
326 ~~to the official records of the association shall be the subject~~
327 ~~of a demand for presuit mediation served by an aggrieved party~~
328 ~~before the dispute is filed in court. Presuit mediation~~
329 ~~proceedings must be conducted in accordance with the applicable~~
330 ~~Florida Rules of Civil Procedure, and these proceedings are~~
331 ~~privileged and confidential to the same extent as court-ordered~~
332 ~~mediation. Disputes subject to presuit mediation under this~~
333 ~~section shall not include the collection of any assessment,~~
334 ~~fine, or other financial obligation, including attorney's fees~~
335 ~~and costs, claimed to be due or any action to enforce a prior~~
336 ~~mediation settlement agreement between the parties. Also, in any~~
337 ~~dispute subject to presuit mediation under this section where~~
338 ~~emergency relief is required, a motion for temporary injunctive~~
339 ~~relief may be filed with the court without first complying with~~
340 ~~the presuit mediation requirements of this section. After any~~
341 ~~issues regarding emergency or temporary relief are resolved, the~~
342 ~~court may either refer the parties to a mediation program~~
343 ~~administered by the courts or require mediation under this~~
344 ~~section. An arbitrator or judge may not consider any information~~
345 ~~or evidence arising from the presuit mediation proceeding except~~
346 ~~in a proceeding to impose sanctions for failure to attend a~~
347 ~~presuit mediation session or to enforce a mediated settlement~~
348 ~~agreement. Persons who are not parties to the dispute may not~~

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349 ~~attend the presuit mediation conference without the consent of~~
 350 ~~all parties, except for counsel for the parties and a corporate~~
 351 ~~representative designated by the association. When mediation is~~
 352 ~~attended by a quorum of the board, such mediation is not a board~~
 353 ~~meeting for purposes of notice and participation set forth in s.~~
 354 ~~720.303. An aggrieved party shall serve on the responding party~~
 355 ~~a written demand to participate in presuit mediation in~~
 356 ~~substantially the following form:~~

357 ~~STATUTORY OFFER TO PARTICIPATE~~

358
359 ~~IN PRESUIT MEDIATION~~

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

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

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

377 ~~The process of mediation involves a supervised negotiation~~

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

388 ~~If an agreement is reached, it shall be reduced to writing and~~
389 ~~becomes a binding and enforceable commitment of the parties. A~~
390 ~~resolution of one or more disputes in this fashion avoids the~~
391 ~~need to litigate these issues in court. The failure to reach an~~
392 ~~agreement, or the failure of a party to participate in the~~
393 ~~process, results in the mediator declaring an impasse in the~~
394 ~~mediation, after which the aggrieved party may proceed to court~~
395 ~~on all outstanding, unsettled disputes. If you have failed or~~
396 ~~refused to participate in the entire mediation process, you will~~
397 ~~not be entitled to recover attorney's fees, even if you prevail.~~
398 ~~The aggrieved party has selected and hereby lists five certified~~
399 ~~mediators who we believe to be neutral and qualified to mediate~~
400 ~~the dispute. You have the right to select any one of these~~
401 ~~mediators. The fact that one party may be familiar with one or~~
402 ~~more of the listed mediators does not mean that the mediator~~
403 ~~cannot act as a neutral and impartial facilitator. Any mediator~~
404 ~~who cannot act in this capacity is required ethically to decline~~
405 ~~to accept engagement. The mediators that we suggest, and their~~
406 ~~current hourly rates, are as follows:~~

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407 ~~(List the names, addresses, telephone numbers, and hourly rates~~
408 ~~of the mediators. Other pertinent information about the~~
409 ~~background of the mediators may be included as an attachment.)~~
410 ~~You may contact the offices of these mediators to confirm that~~
411 ~~the listed mediators will be neutral and will not show any~~
412 ~~favoritism toward either party. The Florida Supreme Court can~~
413 ~~provide you a list of certified mediators.~~
414 ~~Unless otherwise agreed by the parties, section 720.311(2)(b),~~
415 ~~Florida Statutes, requires that the parties share the costs of~~
416 ~~presuit mediation equally, including the fee charged by the~~
417 ~~mediator. An average mediation may require three to four hours~~
418 ~~of the mediator's time, including some preparation time, and the~~
419 ~~parties would need to share equally the mediator's fees as well~~
420 ~~as their own attorney's fees if they choose to employ an~~
421 ~~attorney in connection with the mediation. However, use of an~~
422 ~~attorney is not required and is at the option of each party. The~~
423 ~~mediators may require the advance payment of some or all of the~~
424 ~~anticipated fees. The aggrieved party hereby agrees to pay or~~
425 ~~prepay one-half of the mediator's estimated fees and to forward~~
426 ~~this amount or such other reasonable advance deposits as the~~
427 ~~mediator requires for this purpose. Any funds deposited will be~~
428 ~~returned to you if these are in excess of your share of the fees~~
429 ~~incurred.~~
430 ~~To begin your participation in presuit mediation to try to~~
431 ~~resolve the dispute and avoid further legal action, please sign~~
432 ~~below and clearly indicate which mediator is acceptable to you.~~
433 ~~We will then ask the mediator to schedule a mutually convenient~~
434 ~~time and place for the mediation conference to be held. The~~
435 ~~mediation conference must be held within ninety (90) days of~~

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436 ~~this date, unless extended by mutual written agreement. In the~~
 437 ~~event that you fail to respond within 20 days from the date of~~
 438 ~~this letter, or if you fail to agree to at least one of the~~
 439 ~~mediators that we have suggested or to pay or prepay to the~~
 440 ~~mediator one half of the costs involved, the aggrieved party~~
 441 ~~will be authorized to proceed with the filing of a lawsuit~~
 442 ~~against you without further notice and may seek an award of~~
 443 ~~attorney's fees or costs incurred in attempting to obtain~~
 444 ~~mediation.~~

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

449
 450

451 ~~RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO~~
 452 ~~THAT CHOICE.~~

453 ~~AGREEMENT TO MEDIATE~~

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

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

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

462

463 ~~Signature of responding party #1~~

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465 ~~Telephone contact information~~

466 ~~.....~~

467 ~~Signature and telephone contact information of responding party~~
468 ~~#2 (if applicable) (if property is owned by more than one person,~~
469 ~~all owners must sign)~~

470 ~~(b) Service of the statutory demand to participate in~~
471 ~~presuit mediation shall be effected by sending a letter in~~
472 ~~substantial conformity with the above form by certified mail,~~
473 ~~return receipt requested, with an additional copy being sent by~~
474 ~~regular first-class mail, to the address of the responding party~~
475 ~~as it last appears on the books and records of the association.~~
476 ~~The responding party has 20 days from the date of the mailing of~~
477 ~~the statutory demand to serve a response to the aggrieved party~~
478 ~~in writing. The response shall be served by certified mail,~~
479 ~~return receipt requested, with an additional copy being sent by~~
480 ~~regular first-class mail, to the address shown on the statutory~~
481 ~~demand. Notwithstanding the foregoing, once the parties have~~
482 ~~agreed on a mediator, the mediator may reschedule the mediation~~
483 ~~for a date and time mutually convenient to the parties. The~~
484 ~~parties shall share the costs of presuit mediation equally,~~
485 ~~including the fee charged by the mediator, if any, unless the~~
486 ~~parties agree otherwise, and the mediator may require advance~~
487 ~~payment of its reasonable fees and costs. The failure of any~~
488 ~~party to respond to a demand or response, to agree upon a~~
489 ~~mediator, to make payment of fees and costs within the time~~
490 ~~established by the mediator, or to appear for a scheduled~~
491 ~~mediation session without the approval of the mediator, shall~~
492 ~~constitute the failure or refusal to participate in the~~
493 ~~mediation process and shall operate as an impasse in the presuit~~

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494 ~~mediation by such party, entitling the other party to proceed in~~
495 ~~court and to seek an award of the costs and fees associated with~~
496 ~~the mediation. Additionally, notwithstanding the provisions of~~
497 ~~any other law or document, persons who fail or refuse to~~
498 ~~participate in the entire mediation process may not recover~~
499 ~~attorney's fees and costs in subsequent litigation relating to~~
500 ~~the dispute. If any presuit mediation session cannot be~~
501 ~~scheduled and conducted within 90 days after the offer to~~
502 ~~participate in mediation was filed, an impasse shall be deemed~~
503 ~~to have occurred unless both parties agree to extend this~~
504 ~~deadline.~~

505 ~~(c) If presuit mediation as described in paragraph (a) is~~
506 ~~not successful in resolving all issues between the parties, the~~
507 ~~parties may file the unresolved dispute in a court of competent~~
508 ~~jurisdiction or elect to enter into binding or nonbinding~~
509 ~~arbitration pursuant to the procedures set forth in s. 718.1255~~
510 ~~and rules adopted by the division, with the arbitration~~
511 ~~proceeding to be conducted by a department arbitrator or by a~~
512 ~~private arbitrator certified by the department. If all parties~~
513 ~~do not agree to arbitration proceedings following an~~
514 ~~unsuccessful presuit mediation, any party may file the dispute~~
515 ~~in court. A final order resulting from nonbinding arbitration is~~
516 ~~final and enforceable in the courts if a complaint for trial de~~
517 ~~novo is not filed in a court of competent jurisdiction within 30~~
518 ~~days after entry of the order. As to any issue or dispute that~~
519 ~~is not resolved at presuit mediation, and as to any issue that~~
520 ~~is settled at presuit mediation but is thereafter subject to an~~
521 ~~action seeking enforcement of the mediation settlement, the~~
522 ~~prevailing party in any subsequent arbitration or litigation~~

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523 ~~proceeding shall be entitled to seek recovery of all costs and~~
524 ~~attorney's fees incurred in the presuit mediation process.~~

525 ~~(d) A mediator or arbitrator shall be authorized to conduct~~
526 ~~mediation or arbitration under this section only if he or she~~
527 ~~has been certified as a circuit court civil mediator or~~
528 ~~arbitrator, respectively, pursuant to the requirements~~
529 ~~established by the Florida Supreme Court. Settlement agreements~~
530 ~~resulting from mediation shall not have precedential value in~~
531 ~~proceedings involving parties other than those participating in~~
532 ~~the mediation to support either a claim or defense in other~~
533 ~~disputes.~~

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

541 Section 3. Subsection (1) of section 34.01, Florida
542 Statutes, is amended to read:

543 34.01 Jurisdiction of county court.—

544 (1) County courts shall have original jurisdiction:

545 (a) In all misdemeanor cases not cognizable by the circuit
546 courts;

547 (b) Of all violations of municipal and county ordinances;

548 (c) Of all actions at law in which the matter in
549 controversy does not exceed the sum of \$15,000, exclusive of
550 interest, costs, and attorney ~~attorney's~~ fees, except those
551 within the exclusive jurisdiction of the circuit courts; and

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552 (d) Of disputes occurring in the homeowners' associations
553 as described in s. 720.311 ~~s. 720.311(2)(a)~~, which shall be
554 concurrent with jurisdiction of the circuit courts.

555 Section 4. Subsection (16) of section 718.117, Florida
556 Statutes, is amended to read:

557 718.117 Termination of condominium.—

558 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a
559 plan of termination by initiating a petition for mandatory
560 nonbinding arbitration pursuant to s. 718.1255 within 90 days
561 after the date the plan is recorded. A unit owner or lienor may
562 only contest the fairness and reasonableness of the
563 apportionment of the proceeds from the sale among the unit
564 owners, that the liens of the first mortgages of unit owners
565 other than the bulk owner have not or will not be satisfied to
566 the extent required by subsection (3), or that the required vote
567 to approve the plan was not obtained. A unit owner or lienor who
568 does not contest the plan within the 90-day period is barred
569 from asserting or prosecuting a claim against the association,
570 the termination trustee, any unit owner, or any successor in
571 interest to the condominium property. In an action contesting a
572 plan of termination, the person contesting the plan has the
573 burden of pleading and proving that the apportionment of the
574 proceeds from the sale among the unit owners was not fair and
575 reasonable or that the required vote was not obtained. The
576 apportionment of sale proceeds is presumed fair and reasonable
577 if it was determined pursuant to the methods prescribed in
578 subsection (12). The community association hearing officer
579 ~~arbitrator~~ shall determine the rights and interests of the
580 parties in the apportionment of the sale proceeds. If the

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581 community association hearing officer ~~arbitrator~~ determines that
582 the apportionment of sales proceeds is not fair and reasonable,
583 the community association hearing officer ~~arbitrator~~ may void
584 the plan or may modify the plan to apportion the proceeds in a
585 fair and reasonable manner pursuant to this section based upon
586 the proceedings and order the modified plan of termination to be
587 implemented. If the community association hearing officer
588 ~~arbitrator~~ determines that the plan was not properly approved,
589 or that the procedures to adopt the plan were not properly
590 followed, the community association hearing officer ~~arbitrator~~
591 may void the plan or grant other relief it deems just and
592 proper. The community association hearing officer ~~arbitrator~~
593 shall automatically void the plan upon a finding that any of the
594 disclosures required in subparagraph (3)(c)5. are omitted,
595 misleading, incomplete, or inaccurate. Any challenge to a plan,
596 other than a challenge that the required vote was not obtained,
597 does not affect title to the condominium property or the vesting
598 of the condominium property in the trustee, but shall only be a
599 claim against the proceeds of the plan. In any such action, the
600 prevailing party shall recover reasonable attorney fees and
601 costs.

602 Section 5. Paragraph (f) of subsection (1) of section
603 719.106, Florida Statutes, is amended to read:

604 719.106 Bylaws; cooperative ownership.—

605 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
606 documents shall provide for the following, and if they do not,
607 they shall be deemed to include the following:

608 (f) *Recall of board members.*—Subject to s. 719.301, any
609 member of the board of administration may be recalled and

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610 removed from office with or without cause by the vote or
611 agreement in writing by a majority of all the voting interests.
612 A special meeting of the voting interests to recall any member
613 of the board of administration may be called by 10 percent of
614 the unit owners giving notice of the meeting as required for a
615 meeting of unit owners, and the notice shall state the purpose
616 of the meeting. Electronic transmission may not be used as a
617 method of giving notice of a meeting called in whole or in part
618 for this purpose.

619 1. If the recall is approved by a majority of all voting
620 interests by a vote at a meeting, the recall shall be effective
621 as provided in this paragraph. The board shall duly notice and
622 hold a board meeting within 5 full business days after the
623 adjournment of the unit owner meeting to recall one or more
624 board members. At the meeting, the board shall either certify
625 the recall, in which case such member or members shall be
626 recalled effective immediately and shall turn over to the board
627 within 5 full business days any and all records and property of
628 the association in their possession, or shall proceed as set
629 forth in subparagraph 3.

630 2. If the proposed recall is by an agreement in writing by
631 a majority of all voting interests, the agreement in writing or
632 a copy thereof shall be served on the association by certified
633 mail or by personal service in the manner authorized by chapter
634 48 and the Florida Rules of Civil Procedure. The board of
635 administration shall duly notice and hold a meeting of the board
636 within 5 full business days after receipt of the agreement in
637 writing. At the meeting, the board shall either certify the
638 written agreement to recall members of the board, in which case

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639 such members shall be recalled effective immediately and shall
640 turn over to the board, within 5 full business days, any and all
641 records and property of the association in their possession, or
642 proceed as described in subparagraph 3.

643 3. If the board determines not to certify the written
644 agreement to recall members of the board, or does not certify
645 the recall by a vote at a meeting, the board shall, within 5
646 full business days after the board meeting, file with the
647 division a petition for binding arbitration pursuant to the
648 procedures of s. 719.1255. For purposes of this paragraph, the
649 unit owners who voted at the meeting or who executed the
650 agreement in writing shall constitute one party under the
651 petition for arbitration. If the community association hearing
652 officer ~~arbitrator~~ certifies the recall as to any member of the
653 board, the recall shall be effective upon mailing of the final
654 order of arbitration to the association. If the association
655 fails to comply with the order of the community association
656 hearing officer ~~arbitrator~~, the division may take action
657 pursuant to s. 719.501. Any member so recalled shall deliver to
658 the board any and all records and property of the association in
659 the member's possession within 5 full business days after the
660 effective date of the recall.

661 4. If the board fails to duly notice and hold a board
662 meeting within 5 full business days after service of an
663 agreement in writing or within 5 full business days after the
664 adjournment of the unit owner recall meeting, the recall shall
665 be deemed effective and the board members so recalled shall
666 immediately turn over to the board any and all records and
667 property of the association.

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668 5. If the board fails to duly notice and hold the required
669 meeting or fails to file the required petition, the unit owner
670 representative may file a petition pursuant to s. 719.1255
671 challenging the board's failure to act. The petition must be
672 filed within 60 days after the expiration of the applicable 5-
673 full-business-day period. The review of a petition under this
674 subparagraph is limited to the sufficiency of service on the
675 board and the facial validity of the written agreement or
676 ballots filed.

677 6. If a vacancy occurs on the board as a result of a recall
678 and less than a majority of the board members are removed, the
679 vacancy may be filled by the affirmative vote of a majority of
680 the remaining directors, notwithstanding any provision to the
681 contrary contained in this chapter. If vacancies occur on the
682 board as a result of a recall and a majority or more of the
683 board members are removed, the vacancies shall be filled in
684 accordance with procedural rules to be adopted by the division,
685 which rules need not be consistent with this chapter. The rules
686 must provide procedures governing the conduct of the recall
687 election as well as the operation of the association during the
688 period after a recall but before the recall election.

689 7. A board member who has been recalled may file a petition
690 pursuant to s. 719.1255 challenging the validity of the recall.
691 The petition must be filed within 60 days after the recall is
692 deemed certified. The association and the unit owner
693 representative shall be named as the respondents.

694 8. The division may not accept for filing a recall
695 petition, whether filed pursuant to subparagraph 1.,
696 subparagraph 2., subparagraph 5., or subparagraph 7. and

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697 regardless of whether the recall was certified, when there are
698 60 or fewer days until the scheduled reelection of the board
699 member sought to be recalled or when 60 or fewer days have not
700 elapsed since the election of the board member sought to be
701 recalled.

702 Section 6. Paragraph (d) of subsection (10) of section
703 720.303, Florida Statutes, is amended to read:

704 720.303 Association powers and duties; meetings of board;
705 official records; budgets; financial reporting; association
706 funds; recalls.—

707 (10) RECALL OF DIRECTORS.—

708 (d) If the board determines not to certify the written
709 agreement or written ballots to recall a director or directors
710 of the board or does not certify the recall by a vote at a
711 meeting, the board shall, within 5 full business days after the
712 meeting, file with the department a petition for binding
713 arbitration pursuant to the applicable procedures in ss.
714 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For
715 the purposes of this section, the members who voted at the
716 meeting or who executed the agreement in writing shall
717 constitute one party under the petition for arbitration. If the
718 community association hearing officer ~~arbitrator~~ certifies the
719 recall as to any director or directors of the board, the recall
720 will be effective upon mailing of the final order of arbitration
721 to the association. The director or directors so recalled shall
722 deliver to the board any and all records of the association in
723 their possession within 5 full business days after the effective
724 date of the recall.

725 Section 7. Paragraph (i) of subsection (2) of section

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726 723.078, Florida Statutes, is amended to read:

727 723.078 Bylaws of homeowners' associations.-

728 (2) The bylaws shall provide and, if they do not, shall be
729 deemed to include, the following provisions:

730 (i) *Recall of board members.*-Any member of the board of
731 directors may be recalled and removed from office with or
732 without cause by the vote of or agreement in writing by a
733 majority of all members. A special meeting of the members to
734 recall a member or members of the board of directors may be
735 called by 10 percent of the members giving notice of the meeting
736 as required for a meeting of members, and the notice shall state
737 the purpose of the meeting. Electronic transmission may not be
738 used as a method of giving notice of a meeting called in whole
739 or in part for this purpose.

740 1. If the recall is approved by a majority of all members
741 by a vote at a meeting, the recall is effective as provided in
742 this paragraph. The board shall duly notice and hold a board
743 meeting within 5 full business days after the adjournment of the
744 member meeting to recall one or more board members. At the
745 meeting, the board shall either certify the recall, in which
746 case such member or members shall be recalled effective
747 immediately and shall turn over to the board within 5 full
748 business days any and all records and property of the
749 association in their possession, or shall proceed under
750 subparagraph 3.

751 2. If the proposed recall is by an agreement in writing by
752 a majority of all members, the agreement in writing or a copy
753 thereof shall be served on the association by certified mail or
754 by personal service in the manner authorized by chapter 48 and

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755 the Florida Rules of Civil Procedure. The board of directors
756 shall duly notice and hold a meeting of the board within 5 full
757 business days after receipt of the agreement in writing. At the
758 meeting, the board shall either certify the written agreement to
759 recall members of the board, in which case such members shall be
760 recalled effective immediately and shall turn over to the board,
761 within 5 full business days, any and all records and property of
762 the association in their possession, or shall proceed as
763 described in subparagraph 3.

764 3. If the board determines not to certify the written
765 agreement to recall members of the board, or does not certify
766 the recall by a vote at a meeting, the board shall, within 5
767 full business days after the board meeting, file with the
768 division a petition for binding arbitration pursuant to the
769 procedures of s. 723.1255. For purposes of this paragraph, the
770 members who voted at the meeting or who executed the agreement
771 in writing shall constitute one party under the petition for
772 arbitration. If the community association hearing officer
773 ~~arbitrator~~ certifies the recall of a member of the board, the
774 recall shall be effective upon mailing of the final order of
775 arbitration to the association. If the association fails to
776 comply with the order of the community association hearing
777 officer ~~arbitrator~~, the division may take action under s.
778 723.006. A member so recalled shall deliver to the board any and
779 all records and property of the association in the member's
780 possession within 5 full business days after the effective date
781 of the recall.

782 4. If the board fails to duly notice and hold a board
783 meeting within 5 full business days after service of an

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784 agreement in writing or within 5 full business days after the
785 adjournment of the members' recall meeting, the recall shall be
786 deemed effective and the board members so recalled shall
787 immediately turn over to the board all records and property of
788 the association.

789 5. If the board fails to duly notice and hold the required
790 meeting or fails to file the required petition, the member's
791 representative may file a petition pursuant to s. 723.1255
792 challenging the board's failure to act. The petition must be
793 filed within 60 days after expiration of the applicable 5-full-
794 business-day period. The review of a petition under this
795 subparagraph is limited to the sufficiency of service on the
796 board and the facial validity of the written agreement or
797 ballots filed.

798 6. If a vacancy occurs on the board as a result of a recall
799 and less than a majority of the board members are removed, the
800 vacancy may be filled by the affirmative vote of a majority of
801 the remaining directors, notwithstanding any other provision of
802 this chapter. If vacancies occur on the board as a result of a
803 recall and a majority or more of the board members are removed,
804 the vacancies shall be filled in accordance with procedural
805 rules to be adopted by the division, which rules need not be
806 consistent with this chapter. The rules must provide procedures
807 governing the conduct of the recall election as well as the
808 operation of the association during the period after a recall
809 but before the recall election.

810 7. A board member who has been recalled may file a petition
811 pursuant to s. 723.1255 challenging the validity of the recall.
812 The petition must be filed within 60 days after the recall is

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813 deemed certified. The association and the member's
814 representative shall be named as the respondents.

815 8. The division may not accept for filing a recall
816 petition, whether or not filed pursuant to this subsection, and
817 regardless of whether the recall was certified, when there are
818 60 or fewer days until the scheduled reelection of the board
819 member sought to be recalled or when 60 or fewer days have not
820 elapsed since the election of the board member sought to be
821 recalled.

822 Section 8. This act shall take effect July 1, 2018.