



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

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

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

73 | Section 1. Paragraph (b) of subsection (2) of section  
 74 | 468.436, Florida Statutes, is amended to read:

75 | 468.436 Disciplinary proceedings.—

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

78 | (b)1. Violation of any provision of this part.

79 | 2. Violation of any lawful order or rule rendered or  
 80 | adopted by the department or the council.

81 | 3. Being convicted of or pleading nolo contendere to a  
 82 | felony in any court in the United States.

83 | 4. Obtaining a license or certification or any other  
 84 | order, ruling, or authorization by means of fraud,

85 misrepresentation, or concealment of material facts.

86 5. Committing acts of gross misconduct or gross negligence  
87 in connection with the profession.

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

91 7. Failing to report to the division as required by s.  
92 720.303(13).

93 8. Violation of any provision of chapter 720 during the  
94 course of performing community association management services  
95 pursuant to a contract with a homeowners' association.

96 Section 2. Subsections (4), (5) and Paragraph (b) of  
97 subsection (6) of section 720.303, Florida Statutes, are  
98 amended, and subsection (13) is added to that section, to read:

99 720.303 Association powers and duties; meetings of board;  
100 official records; budgets; financial reporting; association  
101 funds; recalls.—

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

105 (a) Copies of any plans, specifications, permits, and  
106 warranties related to improvements constructed on the common  
107 areas or other property that the association is obligated to  
108 maintain, repair, or replace.

109 (b) A copy of the bylaws of the association and of each  
110 amendment to the bylaws.

111 (c) A copy of the articles of incorporation of the  
112 association and of each amendment thereto.

113 (d) A copy of the declaration of covenants and a copy of  
 114 each amendment thereto.

115 (e) A copy of the current rules of the homeowners'  
 116 association.

117 (f) The minutes of all meetings of the board of directors  
 118 and of the members, which minutes must be retained for at least  
 119 7 years.

120 (g) A current roster of all members and their mailing  
 121 addresses and parcel identifications. The association shall also  
 122 maintain the electronic mailing addresses and the numbers  
 123 designated by members for receiving notice sent by electronic  
 124 transmission of those members consenting to receive notice by  
 125 electronic transmission. The electronic mailing addresses and  
 126 numbers provided by unit owners to receive notice by electronic  
 127 transmission shall be removed from association records when  
 128 consent to receive notice by electronic transmission is revoked.  
 129 However, the association is not liable for an erroneous  
 130 disclosure of the electronic mail address or the number for  
 131 receiving electronic transmission of notices.

132 (h) All of the association's insurance policies or a copy  
 133 thereof, which policies must be retained for at least 7 years.

134 (i) A current copy of all contracts to which the  
 135 association is a party, including, without limitation, any  
 136 management agreement, lease, or other contract under which the  
 137 association has any obligation or responsibility. Bids received  
 138 by the association for work to be performed must also be  
 139 considered official records and must be kept for a period of 1  
 140 year.

141 (j) The financial and accounting records of the  
 142 association, kept according to good accounting practices. All  
 143 financial and accounting records must be maintained for a period  
 144 of at least 7 years. The financial and accounting records must  
 145 include:

146 1. Accurate, itemized, and detailed records of all  
 147 receipts and expenditures.

148 2. A current account and a periodic statement of the  
 149 account for each member, designating the name and current  
 150 address of each member who is obligated to pay assessments, the  
 151 due date and amount of each assessment or other charge against  
 152 the member, the date and amount of each payment on the account,  
 153 and the balance due.

154 3. All tax returns, financial statements, and financial  
 155 reports of the association.

156 4. Any other records that identify, measure, record, or  
 157 communicate financial information.

158 (k) A copy of the disclosure summary described in s.  
 159 720.401(1).

160 (l) All other written records of the association not  
 161 specifically included in the foregoing which are related to the  
 162 operation of the association.

163 (m) The association internal dispute resolution procedure.

164 (5) INSPECTION AND COPYING OF RECORDS.—The official  
 165 records shall be maintained within the state for at least 7  
 166 years and shall be made available to a parcel owner for  
 167 inspection or photocopying within 45 miles of the community or  
 168 within the county in which the association is located within 10

PCB BPRS 13-03

ORIGINAL

2013

169 business days after receipt by the board or its designee of a  
170 written request ~~must be open to inspection and available for~~  
171 ~~photocopying by members or their authorized agents at reasonable~~  
172 ~~times and places within 10 business days after receipt of a~~  
173 ~~written request for access.~~ This subsection may be complied with  
174 by having a copy of the official records available for  
175 inspection or copying in the community, or the association may  
176 offer the option of making the records available to a parcel  
177 owner electronically via the Internet or by allowing the records  
178 to be viewed in electronic format on a computer screen and  
179 printed upon request. If the association has a photocopy machine  
180 available where the records are maintained, it must provide  
181 parcel owners with copies on request during the inspection if  
182 the entire request is limited to no more than 25 pages. The  
183 association must also allow a member to take photographic images  
184 of such records with a camera or other electronic device at no  
185 charge.

186 (a) The failure of an association to provide access to the  
187 records within 10 business days after receipt of a written  
188 request submitted by certified mail, return receipt requested,  
189 creates a rebuttable presumption that the association willfully  
190 failed to comply with this subsection.

191 (b) A member who is denied access to official records is  
192 entitled to the actual damages or minimum damages for the  
193 association's willful failure to comply with this subsection.  
194 The minimum damages are to be \$50 per calendar day up to 10  
195 days, the calculation to begin on the 11th business day after  
196 receipt of the written request. The failure to permit inspection

197 entitles any person prevailing in an enforcement action to  
 198 recover reasonable attorney's fees from the person in control of  
 199 the records who, directly or indirectly, wrongfully denied  
 200 access to the records.

201 (c) The association may adopt reasonable written rules  
 202 governing the frequency, time, location, notice, records to be  
 203 inspected, and manner of inspections, but may not require a  
 204 parcel owner to demonstrate any proper purpose for the  
 205 inspection, state any reason for the inspection, or limit a  
 206 parcel owner's right to inspect records to less than one 8-hour  
 207 business day per month. ~~The association may impose fees to cover~~  
 208 ~~the costs of providing copies of the official records,~~  
 209 ~~including, without limitation, the costs of copying.~~ The  
 210 association may charge up to 50 cents per page for copies made  
 211 on the association's photocopier. If the association does not  
 212 have a photocopy machine available where the records are kept,  
 213 or if the records requested to be copied exceed 25 pages in  
 214 length, the association may have copies made by an outside  
 215 vendor or association management company personnel and may  
 216 charge the actual cost of copying, ~~including any reasonable~~  
 217 ~~costs involving personnel fees and charges at an hourly rate for~~  
 218 ~~vendor or employee time to cover administrative costs to the~~  
 219 ~~vendor or association.~~ The association shall maintain an  
 220 adequate number of copies of the recorded governing documents,  
 221 to ensure their availability to members and prospective members.  
 222 Notwithstanding this paragraph, the following records are not  
 223 accessible to members or parcel owners:

- 224 1. Any record protected by the lawyer-client privilege as

225 described in s. 90.502 and any record protected by the work-  
 226 product privilege, including, but not limited to, a record  
 227 prepared by an association attorney or prepared at the  
 228 attorney's express direction which reflects a mental impression,  
 229 conclusion, litigation strategy, or legal theory of the attorney  
 230 or the association and which was prepared exclusively for civil  
 231 or criminal litigation or for adversarial administrative  
 232 proceedings or which was prepared in anticipation of such  
 233 litigation or proceedings until the conclusion of the litigation  
 234 or proceedings.

235         2. Information obtained by an association in connection  
 236 with the approval of the lease, sale, or other transfer of a  
 237 parcel.

238         3. Personnel records of the association's employees,  
 239 including, but not limited to, disciplinary, payroll, health,  
 240 and insurance records. For purposes of this subparagraph, the  
 241 term "personnel records" does not include written employment  
 242 agreements with an association employee or budgetary or  
 243 financial records that indicate the compensation paid to an  
 244 association employee.

245         4. Medical records of parcel owners or community  
 246 residents.

247         5. Social security numbers, driver's license numbers,  
 248 credit card numbers, electronic mailing addresses, telephone  
 249 numbers, facsimile numbers, emergency contact information, any  
 250 addresses for a parcel owner other than as provided for  
 251 association notice requirements, and other personal identifying  
 252 information of any person, excluding the person's name, parcel

253 designation, mailing address, and property address. However, an  
 254 owner may consent in writing to the disclosure of protected  
 255 information described in this subparagraph. The association is  
 256 not liable for the disclosure of information that is protected  
 257 under this subparagraph if the information is included in an  
 258 official record of the association and is voluntarily provided  
 259 by an owner and not requested by the association.

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

262 7. The software and operating system used by the  
 263 association which allows the manipulation of data, even if the  
 264 owner owns a copy of the same software used by the association.  
 265 The data is part of the official records of the association.

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

278 (6) BUDGETS.—

279 (b) In addition to annual operating expenses, the budget  
 280 may include reserve accounts for capital expenditures and

281 deferred maintenance for which the association is responsible.  
 282 The budget must designate the components for which the reserve  
 283 accounts may be used. If reserve accounts are not established  
 284 pursuant to paragraph (d), funding of such reserves is limited  
 285 to the extent that the governing documents limit increases in  
 286 assessments, including reserves. If the budget of the  
 287 association includes reserve accounts established pursuant to  
 288 paragraph (d), such reserves shall be determined, maintained,  
 289 and waived in the manner provided in this subsection. Once an  
 290 association provides for reserve accounts pursuant to paragraph  
 291 (d), the association shall thereafter determine, maintain, and  
 292 waive reserves in compliance with this subsection. This section  
 293 does not preclude the termination of a reserve account  
 294 established pursuant to this paragraph upon approval of a  
 295 majority of the total voting interests of the association. Upon  
 296 such approval, the terminating reserve account shall be removed  
 297 from the budget.

298 (13) REPORTING REQUIREMENT.—The community association  
 299 manager, or a director of the association or his or her designee  
 300 when there is no community association manager, shall report to  
 301 the division by November 22, 2013, and annually thereafter, in a  
 302 manner and form prescribed by the division.

- 303 (a) The following information shall be submitted:
- 304 1. The legal name of the association.
  - 305 2. The Federal Employee Identification Number of the  
 306 association.
  - 307 3. The mailing and physical addresses of the association.
  - 308 4. The number of parcels.

309       5. The total amount of revenues and expenses from the  
 310 annual budget of the association.

311       (b) In addition to (a), the following information shall by  
 312 submitted for associations in which control of the association  
 313 has not been transitioned to nondeveloper members, as set forth  
 314 in s. 720.307:

- 315           1. The legal name of the developer.
- 316           2. The mailing address of the developer.
- 317           3. The number of parcels the developer owns as of the date  
 318 of reporting.

319       (c) By October 1, 2013, the department shall establish and  
 320 implement a registration system through an Internet website that  
 321 provides for the reporting requirements of paragraphs (a) and  
 322 (b).

323       (d) On December 1, 2013, the department shall submit a  
 324 report to the Governor, the President of the Senate, and the  
 325 Speaker of the House of Representatives providing the detail of  
 326 the homeowner association data reported pursuant to this  
 327 subsection.

328       (e) The department is authorized to adopt rules pursuant to  
 329 ss. 120.536(1) and 120.54 to implement the provisions of this  
 330 subsection.

331       Section 3. Section 720.3033, Florida Statutes, is created  
 332 to read:

333       720.3033 Officers and directors.—

334       (1) (a) Within 90 days after being elected or appointed to  
 335 the board, each director shall certify in writing to the  
 336 secretary of the association that he or she has read the

337 association's declaration of covenants, articles of  
 338 incorporation, bylaws, and current written rules and policies;  
 339 that he or she will work to uphold such documents and policies  
 340 to the best of his or her ability; and that he or she will  
 341 faithfully discharge his or her fiduciary responsibility to the  
 342 association's members.

343 (b) The written certification is valid for the  
 344 uninterrupted tenure of the director on the board. A director  
 345 who does not timely file the written certification shall be  
 346 suspended from the board until he or she complies with the  
 347 requirement. The board may temporarily fill the vacancy during  
 348 the period of suspension.

349 (c) The secretary shall retain each director's written  
 350 certification for inspection by the members for 5 years after  
 351 the director's election. However, the failure to have the  
 352 written certification on file does not affect the validity of  
 353 any board action.

354 (2) If the association enters into a contract or other  
 355 transaction with any of its directors or a corporation, firm,  
 356 association, or other entity in which an association director is  
 357 also a director or officer or is financially interested, the  
 358 board must:

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

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

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

364 (d) At the next regular or special meeting of the members,

365 disclose the existence of the contract or other transaction to  
 366 the members. Upon motion of any member, the contract or  
 367 transaction shall be brought up for a vote and may be canceled  
 368 by a majority vote of the members present. If the members cancel  
 369 the contract, the association is only liable for the reasonable  
 370 value of goods and services provided up to the time of  
 371 cancellation and is not liable for any termination fee,  
 372 liquidated damages, or other penalty for such cancellation.

373 (3) An officer, director, or manager may not solicit,  
 374 offer to accept, or accept anything or service of value for  
 375 which consideration has not been provided for his or her benefit  
 376 or for the benefit of a member of his or her immediate family,  
 377 from any person providing or proposing to provide goods or  
 378 services to the association. Any officer, director, or manager  
 379 who knowingly solicits, offers to accept, or accepts any thing  
 380 or service of value must be removed from office. The vacancy  
 381 shall be filled according to law until the end of the period of  
 382 the end of the director's term of office. However, this  
 383 paragraph does not prohibit an officer, director, or manager  
 384 from accepting food to be consumed at a business meeting with a  
 385 value of less than \$25 per individual or services or items  
 386 received in connection with trade fairs or education programs.

387 (4) A director or officer charged by information or  
 388 indictment with a felony theft or embezzlement offense involving  
 389 the association's funds or property must be removed from office.  
 390 The vacancy shall be filled according to law until the end of  
 391 the period of the suspension or the end of the director's term  
 392 of office, whichever occurs first. A director or officer who has

393 criminal charges pending may not be appointed or elected to a  
 394 position as a director or officer. However, if the charges are  
 395 resolved without a finding of guilt or without acceptance of a  
 396 plea of guilty or nolo contendere, the director or officer shall  
 397 be reinstated for any remainder of his or her term of office.

398 (5) An association with total annual revenues of more than  
 399 \$500,000 shall maintain insurance or a fidelity bond for all  
 400 persons who control or disburse funds of the association. The  
 401 insurance policy or fidelity bond must cover the maximum funds  
 402 that will be in the custody of the association or its management  
 403 agent at any one time. As used in this subsection, the term  
 404 "persons who control or disburse funds of the association"  
 405 includes, but is not limited to, persons authorized to sign  
 406 checks on behalf of the association, and the president,  
 407 secretary, and treasurer of the association. The association  
 408 shall bear the cost of any insurance or bond.

409 Section 4. Subsection (1) of section 720.307, Florida  
 410 Statutes, is amended; subsections (2), (3), and (4) of section  
 411 720.307, Florida Statutes, are renumbered as subsections (3),  
 412 (4), and (5), respectively; and subsection (2) is added to that  
 413 section, to read:

414 720.307 Transition of association control in a community.—  
 415 With respect to homeowners' associations:

416 (1) Members other than the developer are entitled to elect  
 417 at least a majority of the members of the board of directors of  
 418 the homeowners' association when the earlier of the following  
 419 events occurs:

420 (a) Three months after 90 percent of the parcels in all

421 phases of the community that will ultimately be operated by the  
 422 homeowners' association have been conveyed to members; ~~or~~

423 (b) Such other percentage of the parcels has been conveyed  
 424 to members, or such other date or event has occurred, as is set  
 425 forth in the governing documents in order to comply with the  
 426 requirements of any governmentally chartered entity with regard  
 427 to the mortgage financing of parcels;:-

428 (c) Two years after the developer has ceased construction  
 429 or ceased to offer parcels for sale in the ordinary course of  
 430 business;

431 (d) When the developer has abandoned or deserted its~~or~~  
 432 her responsibility to maintain and complete the advertised  
 433 amenities or infrastructure. There is a rebuttable presumption  
 434 that the developer has abandoned and deserted the property, if  
 435 the developer has not engaged in construction or sale of  
 436 properties or has paid nothing in assessments or guaranteed  
 437 amounts under s. 720.308 for a period of more than 2 years.

438 (e) When the developer files a petition seeking protection  
 439 in bankruptcy under chapter 7 of the United States Bankruptcy  
 440 Code, 11 U.S.C. chapter 7.

441 (f) When the developer loses title to the property either  
 442 through a foreclosure action or the transfer of a deed in lieu  
 443 of foreclosure.

444 (g) When a receiver for the developer is appointed by a  
 445 circuit court and is not discharged within 30 days after such  
 446 appointment, unless the court determines within 30 days after  
 447 appointment of the receiver that transfer of control would be  
 448 detrimental to the association or its members.

449  
 450 For purposes of this section, the term "members other than the  
 451 developer" shall not include builders, contractors, or others  
 452 who purchase a parcel for the purpose of constructing  
 453 improvements thereon for resale.

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

459 Section 5. Subsection (1) of section 720.3075, Florida  
 460 Statutes, is amended to read:

461 720.3075 Prohibited clauses in association documents.—

462 (1) It is declared that the public policy of this state  
 463 prohibits the inclusion or enforcement of certain types of  
 464 clauses in homeowners' association documents, including  
 465 declaration of covenants, articles of incorporation, bylaws, or  
 466 any other document of the association which binds members of the  
 467 association, which either have the effect of or provide that:

468 (a) A developer has the unilateral ability and right to  
 469 make changes to the homeowners' association documents after the  
 470 transition of homeowners' association control in a community  
 471 from the developer to the nondeveloper members, as set forth in  
 472 s. 720.307, has occurred.

473 (b) A homeowners' association is prohibited or restricted  
 474 from filing a lawsuit against the developer, or the homeowners'  
 475 association is otherwise effectively prohibited or restricted  
 476 from bringing a lawsuit against the developer.

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

482 (d) A developer has the right to make changes to the  
 483 homeowners' association documents without a majority vote of  
 484 nondeveloper members that increase liabilities of homeowners or  
 485 limit the rights of homeowners to amenities or common areas  
 486 after 70 percent of the parcels in all phases of the community  
 487 that ultimately will be operated by the homeowners' association  
 488 have been conveyed to nondeveloper members.

489  
 490 Such clauses are declared null and void as against the public  
 491 policy of this state.

492 Section 6. Section 720.311, Florida Statutes, is amended  
 493 to read:

494 720.311 Dispute resolution.—

495 (1) The Legislature finds that alternative dispute  
 496 resolution has made progress in reducing court dockets and  
 497 trials and in offering a more efficient, cost-effective option  
 498 to litigation. The filing of any petition for arbitration or the  
 499 participation in an internal dispute resolution process ~~erving~~  
 500 ~~of a demand for presuit mediation~~ as provided for in this  
 501 section shall toll the applicable statute of limitations.

502 (2) Any recall dispute filed with the department pursuant  
 503 to s. 720.303(10) shall be conducted by the department in  
 504 accordance with the provisions of ss. 718.112(2)(j) and 718.1255

505 and the rules adopted by the division. In addition, the  
 506 department shall conduct mandatory binding arbitration of  
 507 election disputes between a member and an association pursuant  
 508 to s. 718.1255 and rules adopted by the division. Neither  
 509 election disputes nor recall disputes are eligible for internal  
 510 dispute resolution ~~presuit mediation~~; these disputes shall be  
 511 arbitrated by the department. At the conclusion of the  
 512 proceeding, the department shall charge the parties a fee in an  
 513 amount adequate to cover all costs and expenses incurred by the  
 514 department in conducting the proceeding. Initially, the  
 515 petitioner shall remit a filing fee of at least \$200 to the  
 516 department. The fees paid to the department shall become a  
 517 recoverable cost in the arbitration proceeding, and the  
 518 prevailing party in an arbitration proceeding shall recover its  
 519 reasonable costs and attorney's fees in an amount found  
 520 reasonable by the arbitrator. The department shall adopt rules  
 521 to effectuate the purposes of this section.

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

526 (a) The procedure shall meet the following minimum  
 527 criteria:

- 528 1. The procedure must be in writing.
- 529 2. A member of the association may not be charged a fee to  
 530 participate in the procedure.
- 531 3. The procedure may be initiated by either party to a  
 532 dispute.

533 4. Requests to initial the procedure shall be in writing.

534 5. The procedure must make use of prompt deadlines, and  
535 shall specify the maximum time for the association to respond to  
536 requests to initiate the procedure.

537 6. If the procedure is initiated by a member, the  
538 association shall participate in the procedure.

539 7. If the procedure is initiated by the association, the  
540 member may elect not to participate in the procedure.

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

543 9. If the dispute is resolved other than by agreement of  
544 the parties, the member shall have the right to appeal to the  
545 association's board of directors.

546 10. Whenever feasible, neutral third parties should be  
547 used to facilitate resolution.

548 11. The procedure may not prevent the member from engaging  
549 an attorney or other representative.

550 (b) If the association has not adopted an internal dispute  
551 resolution process meeting the requirements of paragraph (a),  
552 the following procedure shall apply. Either party to a dispute  
553 may initiate the following procedure:

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

556 2. A member of an association may refuse a request to meet  
557 and confer. The association may not refuse a request to meet and  
558 confer.

559 3. The association's board of directors shall deliver a  
560 written response to a request from a member within 5 business

561 days. The response shall designate a member of the board to meet  
562 and confer with the member and include contact information for  
563 that member.

564 4. The parties shall meet at a mutually convenient time  
565 and place to explain their positions and confer in good faith in  
566 an effort to resolve the dispute within 30 days of the initial  
567 request. The parties may extend this time period by agreement.

568 5. A resolution of the dispute agreed to by the parties  
569 shall be memorialized in writing and signed by the parties,  
570 including the board designee on behalf of the association.

571 6. A member may not be charged a fee to participate in the  
572 procedure.

573 (c) A resolution of the dispute, which is not in conflict  
574 with the law or governing documents, shall bind the association  
575 and is judicially enforceable. A written agreement signed by the  
576 parties, which is not in conflict with the law or governing  
577 documents, shall bind the parties and is judicially enforceable.

578 ~~(2) (a) Disputes between an association and a parcel owner~~  
579 ~~regarding use of or changes to the parcel or the common areas~~  
580 ~~and other covenant enforcement disputes, disputes regarding~~  
581 ~~amendments to the association documents, disputes regarding~~  
582 ~~meetings of the board and committees appointed by the board,~~  
583 ~~membership meetings not including election meetings, and access~~  
584 ~~to the official records of the association shall be the subject~~  
585 ~~of a demand for presuit mediation served by an aggrieved party~~  
586 ~~before the dispute is filed in court. Presuit mediation~~  
587 ~~proceedings must be conducted in accordance with the applicable~~  
588 ~~Florida Rules of Civil Procedure, and these proceedings are~~

PCB BPRS 13-03

ORIGINAL

2013

589 ~~privileged and confidential to the same extent as court-ordered~~  
 590 ~~mediation. Disputes subject to presuit mediation under this~~  
 591 ~~section shall not include the collection of any assessment,~~  
 592 ~~fine, or other financial obligation, including attorney's fees~~  
 593 ~~and costs, claimed to be due or any action to enforce a prior~~  
 594 ~~mediation settlement agreement between the parties. Also, in any~~  
 595 ~~dispute subject to presuit mediation under this section where~~  
 596 ~~emergency relief is required, a motion for temporary injunctive~~  
 597 ~~relief may be filed with the court without first complying with~~  
 598 ~~the presuit mediation requirements of this section. After any~~  
 599 ~~issues regarding emergency or temporary relief are resolved, the~~  
 600 ~~court may either refer the parties to a mediation program~~  
 601 ~~administered by the courts or require mediation under this~~  
 602 ~~section. An arbitrator or judge may not consider any information~~  
 603 ~~or evidence arising from the presuit mediation proceeding except~~  
 604 ~~in a proceeding to impose sanctions for failure to attend a~~  
 605 ~~presuit mediation session or to enforce a mediated settlement~~  
 606 ~~agreement. Persons who are not parties to the dispute may not~~  
 607 ~~attend the presuit mediation conference without the consent of~~  
 608 ~~all parties, except for counsel for the parties and a corporate~~  
 609 ~~representative designated by the association. When mediation is~~  
 610 ~~attended by a quorum of the board, such mediation is not a board~~  
 611 ~~meeting for purposes of notice and participation set forth in s.~~  
 612 ~~720.303. An aggrieved party shall serve on the responding party~~  
 613 ~~a written demand to participate in presuit mediation in~~  
 614 ~~substantially the following form:~~

615 ~~STATUTORY OFFER TO PARTICIPATE~~

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~~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~~

PCB BPRS 13-03

ORIGINAL

2013

642 ~~determine who is right or wrong and merely acts as a facilitator~~  
 643 ~~to ensure that each party understands the position of the other~~  
 644 ~~party and that all options for reasonable settlement are fully~~  
 645 ~~explored.~~

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

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

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

PCB BPRS 13-03

ORIGINAL

2013

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

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

688 ~~To begin your participation in presuit mediation to try to~~  
689 ~~resolve the dispute and avoid further legal action, please sign~~  
690 ~~below and clearly indicate which mediator is acceptable to you.~~  
691 ~~We will then ask the mediator to schedule a mutually convenient~~  
692 ~~time and place for the mediation conference to be held. The~~  
693 ~~mediation conference must be held within ninety (90) days of~~  
694 ~~this date, unless extended by mutual written agreement. In the~~

PCB BPRS 13-03

ORIGINAL

2013

695 ~~event that you fail to respond within 20 days from the date of~~  
696 ~~this letter, or if you fail to agree to at least one of the~~  
697 ~~mediators that we have suggested or to pay or prepay to the~~  
698 ~~mediator one-half of the costs involved, the aggrieved party~~  
699 ~~will be authorized to proceed with the filing of a lawsuit~~  
700 ~~against you without further notice and may seek an award of~~  
701 ~~attorney's fees or costs incurred in attempting to obtain~~  
702 ~~mediation.~~

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

707 ~~.....~~  
708 ~~.....~~

709 ~~RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO~~  
710 ~~THAT CHOICE.~~

711 ~~AGREEMENT TO MEDIATE~~

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

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

717 ~~I/we further agree to pay or prepay one-half of the mediator's~~  
718 ~~fees and to forward such advance deposits as the mediator may~~

PCB BPRS 13-03

ORIGINAL

2013

719 ~~require for this purpose.~~

720 ~~.....~~

721 ~~Signature of responding party #1~~

722 ~~.....~~

723 ~~Telephone contact information~~

724 ~~.....~~

725 ~~Signature and telephone contact information of responding party~~  
726 ~~#2 (if applicable) (if property is owned by more than one person,~~  
727 ~~all owners must sign)~~

728 ~~(b) Service of the statutory demand to participate in~~  
729 ~~presuit mediation shall be effected by sending a letter in~~  
730 ~~substantial conformity with the above form by certified mail,~~  
731 ~~return receipt requested, with an additional copy being sent by~~  
732 ~~regular first-class mail, to the address of the responding party~~  
733 ~~as it last appears on the books and records of the association.~~  
734 ~~The responding party has 20 days from the date of the mailing of~~  
735 ~~the statutory demand to serve a response to the aggrieved party~~  
736 ~~in writing. The response shall be served by certified mail,~~  
737 ~~return receipt requested, with an additional copy being sent by~~  
738 ~~regular first-class mail, to the address shown on the statutory~~  
739 ~~demand. Notwithstanding the foregoing, once the parties have~~  
740 ~~agreed on a mediator, the mediator may reschedule the mediation~~  
741 ~~for a date and time mutually convenient to the parties. The~~  
742 ~~parties shall share the costs of presuit mediation equally,~~  
743 ~~including the fee charged by the mediator, if any, unless the~~  
744 ~~parties agree otherwise, and the mediator may require advance~~

PCB BPRS 13-03

ORIGINAL

2013

745 ~~payment of its reasonable fees and costs. The failure of any~~  
746 ~~party to respond to a demand or response, to agree upon a~~  
747 ~~mediator, to make payment of fees and costs within the time~~  
748 ~~established by the mediator, or to appear for a scheduled~~  
749 ~~mediation session without the approval of the mediator, shall~~  
750 ~~constitute the failure or refusal to participate in the~~  
751 ~~mediation process and shall operate as an impasse in the presuit~~  
752 ~~mediation by such party, entitling the other party to proceed in~~  
753 ~~court and to seek an award of the costs and fees associated with~~  
754 ~~the mediation. Additionally, notwithstanding the provisions of~~  
755 ~~any other law or document, persons who fail or refuse to~~  
756 ~~participate in the entire mediation process may not recover~~  
757 ~~attorney's fees and costs in subsequent litigation relating to~~  
758 ~~the dispute. If any presuit mediation session cannot be~~  
759 ~~scheduled and conducted within 90 days after the offer to~~  
760 ~~participate in mediation was filed, an impasse shall be deemed~~  
761 ~~to have occurred unless both parties agree to extend this~~  
762 ~~deadline.~~

763 ~~(c) If presuit mediation as described in paragraph (a) is~~  
764 ~~not successful in resolving all issues between the parties, the~~  
765 ~~parties may file the unresolved dispute in a court of competent~~  
766 ~~jurisdiction or elect to enter into binding or nonbinding~~  
767 ~~arbitration pursuant to the procedures set forth in s. 718.1255~~  
768 ~~and rules adopted by the division, with the arbitration~~  
769 ~~proceeding to be conducted by a department arbitrator or by a~~  
770 ~~private arbitrator certified by the department. If all parties~~  
771 ~~do not agree to arbitration proceedings following an~~  
772 ~~unsuccessful presuit mediation, any party may file the dispute~~

773 ~~in court. A final order resulting from nonbinding arbitration is~~  
 774 ~~final and enforceable in the courts if a complaint for trial de~~  
 775 ~~novo is not filed in a court of competent jurisdiction within 30~~  
 776 ~~days after entry of the order. As to any issue or dispute that~~  
 777 ~~is not resolved at presuit mediation, and as to any issue that~~  
 778 ~~is settled at presuit mediation but is thereafter subject to an~~  
 779 ~~action seeking enforcement of the mediation settlement, the~~  
 780 ~~prevailing party in any subsequent arbitration or litigation~~  
 781 ~~proceeding shall be entitled to seek recovery of all costs and~~  
 782 ~~attorney's fees incurred in the presuit mediation process.~~

783 ~~(d) A mediator or arbitrator shall be authorized to~~  
 784 ~~conduct mediation or arbitration under this section only if he~~  
 785 ~~or she has been certified as a circuit court civil mediator or~~  
 786 ~~arbitrator, respectively, pursuant to the requirements~~  
 787 ~~established by the Florida Supreme Court. Settlement agreements~~  
 788 ~~resulting from mediation shall not have precedential value in~~  
 789 ~~proceedings involving parties other than those participating in~~  
 790 ~~the mediation to support either a claim or defense in other~~  
 791 ~~disputes.~~

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

799 Section 7. This act shall take effect July 1, 2013.