

By Senator Forman

32-108C-98

1 A bill to be entitled
2 An act relating to homeowners' associations;
3 amending s. 617.301, F.S.; providing a
4 definition; amending s. 617.303, F.S.;
5 specifying the location of board meetings;
6 prohibiting commingling of association funds;
7 amending s. 617.305, F.S.; requiring written
8 notice of delinquent accounts; amending s.
9 617.307, F.S.; providing time for members other
10 than a developer to elect a majority of members
11 of the board of directors; requiring the
12 developer to deliver specific documents to the
13 newly elected board; creating s. 617.3075,
14 F.S.; prohibiting certain clauses in
15 homeowners' association documents; creating s.
16 617.3076, F.S.; requiring developers, owners,
17 and real estate agents and brokers to make
18 certain disclosures; providing a disclosure
19 form; providing buyers' remedies for a
20 developer's refusal to provide required
21 disclosure; creating s. 617.30765, F.S.;
22 requiring homeowners' associations to be
23 incorporated; creating s. 617.3077, F.S.;
24 providing for the establishment, funding, and
25 use of reserve and operating accounts; amending
26 s. 617.309, F.S.; prohibiting certain contracts
27 entered into between a developer and other
28 parties; amending s. 617.311, F.S.; defining
29 the term "dispute"; providing for voluntary
30 binding arbitration of disputes; amending s.
31 689.26, F.S.; modifying disclosure summary

1 form; providing for signing and mailing of the
2 disclosure summary form; providing an effective
3 date.

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

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7 Section 1. Present subsections (5), (6), (7), (8),
8 (9), (10), and (11) of section 617.301, Florida Statutes, are
9 redesignated as subsections (6), (7), (8), (9), (10), (11),
10 and (12), respectively, and a new subsection (5) is added to
11 that section to read:

12 617.301 Homeowners' associations; definitions.--As
13 used in ss. 617.301-617.312, the term:

14 (5) "Division" means the Division of Florida Land
15 Sales, Condominiums, and Mobile Homes of the Department of
16 Business and Professional Regulation.

17 Section 2. Subsection (2) of section 617.303, Florida
18 Statutes, is amended, present subsection (8) of that section
19 is redesignated as subsection (9), and a new subsection (8) is
20 added to that section to read:

21 617.303 Association powers and duties; meetings of
22 board; official records; budgets; financial reporting.--

23 (2) BOARD MEETINGS.--A meeting of the board of
24 directors of an association occurs whenever a quorum of the
25 board gathers to conduct association business at a location
26 within the county in which the community is located. All
27 meetings of the board must be open to all members except for
28 meetings between the board and its attorney with respect to
29 proposed or pending litigation where the contents of the
30 discussion would otherwise be governed by the attorney-client
31 privilege. Notices of all board meetings must be posted in a

1 conspicuous place in the community at least 48 hours in
2 advance of a meeting, except in an emergency. In the
3 alternative, if notice is not posted in a conspicuous place in
4 the community, notice of each board meeting must be mailed or
5 delivered to each member at least 7 days before the meeting,
6 except in an emergency. Notwithstanding this general notice
7 requirement, for communities with more than 100 members, the
8 bylaws may provide for a reasonable alternative to posting or
9 mailing of notice for each board meeting, including
10 publication of notice or provision of a schedule of board
11 meetings. An assessment may not be levied at a board meeting
12 unless the notice of the meeting includes a statement that
13 assessments will be considered and the nature of the
14 assessments. Directors may not vote by proxy or by secret
15 ballot at board meetings, except that secret ballots may be
16 used in the election of officers. This subsection also
17 applies to the meetings of any committee or other similar
18 body, when a final decision will be made regarding the
19 expenditure of association funds, and to any body vested with
20 the power to approve or disapprove architectural decisions
21 with respect to a specific parcel of residential property
22 owned by a member of the community.

23 (8) COMMINGLING.--

24 (a) All funds must be maintained separately in the
25 association's name. Reserve and operating funds of the
26 association may not be commingled, except that an association
27 may jointly invest reserve funds in investment grade
28 securities. However, such jointly invested funds must be
29 accounted for separately.

30 (b) A manager, developer, or business entity required
31 to be licensed or registered under s. 468.432 and an agent,

1 employee, officer, or director of the homeowners' association
2 or developer in control of a homeowners' association may not
3 commingle any association funds with personal funds or with
4 the funds of any other homeowners' association or community
5 association as defined in s. 468.431.

6 Section 3. Subsection (5) is added to section 617.305,
7 Florida Statutes, to read:

8 617.305 Obligations of members; remedies at law or in
9 equity; levy of fines and suspension of use rights; failure to
10 fill sufficient number of vacancies on board of directors to
11 constitute a quorum; appointment of receiver upon petition of
12 any member.--

13 (5) Before any additional fees or charges, excluding
14 late fees, are imposed for a delinquent assessment, including
15 the suspension of voting privileges as described in subsection
16 (3), written notice of a member's delinquency must be mailed
17 within 30 days after the delinquency or within the time
18 prescribed in the governing documents of the community if the
19 governing document's requirements are more restrictive. Notice
20 is sufficient if mailed to the parcel owner at the address
21 that the developer initially identifies for that purpose, or,
22 if no address is given, to the address provided on the deed of
23 record.

24 Section 4. Section 617.307, Florida Statutes, is
25 amended to read:

26 617.307 Transition of homeowners' association control
27 in a community.--With respect to homeowners' associations as
28 defined in s. 617.301:

29 (1) Members other than the developer are entitled to
30 elect at least a majority of the members of the board of
31

1 directors of the homeowners' association when the earlier of
2 the following events occurs:

3 (a) Three months after 90 percent of the parcels have
4 been granted a certificate of occupancy, provided that the
5 total number of parcels will be calculated as only those
6 parcels which were platted, site-planned, or otherwise
7 approved by the appropriate governmental authority before the
8 sale of the first unit in all phases of the community that
9 will ultimately be operated by the homeowners' association
10 have been conveyed to members; or

11 (b) Such other percentage of the parcels has been
12 granted a certificate of occupancy conveyed to members, or
13 such other date or event has occurred, as is set forth in the
14 governing documents in order to comply with the requirements
15 of any governmentally chartered entity with regard to the
16 mortgage financing of parcels; or.

17 (c) Thirty-six consecutive months have elapsed since
18 the developer last completed a home in the community.

19 ~~(2)(c)~~ For purposes of this section, the term "members
20 other than the developer" shall not include builders,
21 contractors, or others who purchase a parcel for the purpose
22 of constructing improvements thereon for resale.

23 ~~(3)(2)~~ The developer is entitled to elect at least one
24 member of the board of directors of the homeowners'
25 association as long as the developer holds for sale in the
26 ordinary course of business at least 5 percent of the parcels
27 in all phases of the community. After the developer
28 relinquishes control of the homeowners' association, the
29 developer may exercise the right to vote any developer-owned
30 voting interests in the same manner as any other member,
31 except for purposes of reacquiring control of the homeowners'

1 association or selecting the majority of the members of the
2 board of directors.

3 (4) At the time the members are entitled to elect at
4 least a majority of the members of the board of directors of
5 the homeowners' association, the developer shall at the
6 developer's expense immediately deliver the following
7 documents to the board:

8 (a) All deeds to common property owned by the
9 association;

10 (b) The association's original declarations of
11 covenants and restrictions;

12 (c) A certified copy of the articles of incorporation
13 of the association;

14 (d) A copy of the bylaws;

15 (e) The minute books including all minutes;

16 (f) The books and records of the association;

17 (g) All policies, rules, and regulations that have
18 been adopted;

19 (h) Evidence of resignations of directors who are
20 required to resign because the developer is required to
21 relinquish control of the association;

22 (i) The financial records of the association from the
23 date of incorporation through the date of turnover;

24 (j) An accounting of association funds and the control
25 thereof;

26 (k) A description of all tangible property of the
27 association;

28 (l) A copy of all contracts that are in force with the
29 association as one of the parties;

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- 1 (m) A list of the names, addresses, and telephone
2 numbers of all contractors, subcontractors, or others in the
3 employ of the association;
4 (n) All insurance policies;
5 (o) Any permits issued to the association by
6 governmental bodies;
7 (p) All warranties in effect;
8 (q) A complete roster of the homeowners and their
9 mailing addresses, telephone numbers, and section and lot
10 numbers;
11 (r) A plat map or survey showing all common property
12 owned by the association;
13 (s) Employment and service contracts in effect; and
14 (t) All other contracts to which the association is a
15 party.
16 (5) Within 12 months after takeover, financial
17 statements from the date of incorporation through the date of
18 turnover must be given to the board of directors. The
19 financial statements must be:
20 (a) Compiled if the annual budget of the homeowners'
21 association is under \$400,000; or
22 (b) Reviewed if the annual budget is \$400,000 or
23 greater.
24 ~~(6)~~~~(3)~~ This section does not apply to a homeowners'
25 association in existence on the effective date of this act, or
26 to a homeowners' association, no matter when created, if such
27 association is created in a community that is included in an
28 effective development-of-regional-impact development order as
29 of the effective date of this act, together with any approved
30 modifications thereof.
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1 Section 5. Section 617.3075, Florida Statutes, is
2 created to read:

3 617.3075 Prohibited clauses in homeowners' association
4 documents.--

5 (1) The inclusion or enforcement of any of the
6 following clauses in a homeowners' association document,
7 including declaration of covenants, articles of incorporation,
8 by-laws, or any other documents of the association which bind
9 members of the association, is contrary to the public policy
10 of this state and is prohibited:

11 (a) A clause that provides a developer with the
12 unilateral ability and right to make changes to the
13 homeowners' association's documents after the transition of
14 homeowners' association's control in a community from the
15 developer to the nondeveloper members, as set forth in s.
16 617.307, has occurred.

17 (b) A clause that prohibits a homeowners' association
18 from filing a lawsuit against the developer.

19 (c) A clause whereby the developer is entitled to cast
20 votes in an amount that exceeds one vote per lot or that
21 exceeds the voting power of any other owner of an equal amount
22 of property after the transition of homeowners' association
23 control in a community from the developer to the nondeveloper
24 members, as set forth in s. 617.307.

25 (d) A clause that authorizes a developer to veto any
26 action taken by the homeowners' association after the
27 transition of the homeowners' association's control in a
28 community from the developer to the nondeveloper members, as
29 set forth in s. 617.307, has occurred unless action taken is
30 detrimental to sales or construction activities. A developer

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1 must own land in the community in which the homeowners'
2 association has authority.

3 (2) The provisions of subsection (1) apply to clauses
4 created on or after the effective date of this act.

5 Section 6. Section 617.3076, Florida Statutes, is
6 created to read:

7 617.3076 Obligation to make disclosures.--

8 (1) A developer, real estate agent or broker, or the
9 parcel owner, if the sale is by an owner that is not the
10 developer, shall make available to all prospective purchasers
11 copies of current governing documents, including copies of
12 standards from sales contracts, articles of incorporation,
13 by-laws, rules, restrictive covenants, and any other document
14 then in effect which governs the rights or duties of
15 homeowners. A developer shall make the governing documents
16 available for inspection during normal business hours. The
17 developer, real estate agent or broker, or the parcel owner,
18 if the sale is by an owner that is not the developer, shall
19 make copies of the governing documents available to
20 prospective purchasers upon request. The prospective purchaser
21 is obligated to pay the reasonable cost of copying, but such
22 costs may not exceed the lesser of 15 cents per page or \$75
23 for copies of all governing documents.

24 (2) After the transition of homeowners' association
25 control in a community from the developer to the nondeveloper
26 members, as set forth in s. 617.307, an association must
27 compile, at least once every 3 years, all governing documents,
28 including copies of standards from sale contracts, articles of
29 incorporation, by-laws, rules, restrictive covenants, and any
30 other document then in effect which governs the rights or
31 duties of homeowners. If there have been no changes made to

1 the governing documents during the 3-year period, the
2 association shall provide a statement on homeowner's
3 association stationary that no changes have been made and
4 attach the statement to the governing documents.

5 (3) A prospective parcel owner in a community must be
6 presented a disclosure summary before executing the contract
7 for sale. The disclosure summary must be in a form
8 substantially similar to the following form:

9
10 DISCLOSURE SUMMARY

11 FOR

12 (NAME OF COMMUNITY)

13
14 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU
15 WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

16 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
17 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN
18 THIS COMMUNITY.

19 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
20 ASSOCIATION, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

21 4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT
22 IN A LIEN ON YOUR PROPERTY.

23 5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR
24 LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED
25 FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS'
26 ASSOCIATION. (If such obligation exists, then the amount of
27 the current obligation shall be set forth.)

28 6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED
29 WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.

30 7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM
31 ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER,

1 YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION
2 GOVERNING DOCUMENTS.

3 8. I (WE), THE UNDERSIGNED, HAVE RECEIVED AND REVIEWED
4 THE DOCUMENTS CITED ABOVE AND AGREE TO THE CONDITIONS
5 CONTAINED THEREIN.

6 DATE: PURCHASER
7 PURCHASER

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9 The disclosure must be supplied by the developer, or if the
10 sale is by an owner that is not the developer, by the parcel
11 owner or real estate agent or broker. A separate copy of this
12 disclosure statement must be signed at the time of closing and
13 mailed by the seller to the homeowners' association address.

14 (4) The developer, or the parcel owner if the sale is
15 by an owner that is not a developer, shall supply all
16 governing documents to the buyer no later than the date of the
17 contract. The buyer has 24 hours to review the governing
18 documents after executing the contract before the contract
19 becomes binding.

20 (5) If a developer fails to provide a buyer to whom a
21 parcel is conveyed with a copy of the governing documents as
22 required by this section, the buyer may rescind the contract
23 without penalty at any time up to 15 days after receipt of the
24 governing documents from the developer.

25 Section 7. Section 617.30765, Florida Statutes, is
26 created to read:

27 617.30765 Creation of homeowners'
28 association.--Homeowners' associations must be incorporated
29 under chapter 617. This incorporation must be recorded with
30 the Department of State prior to the sale or occupancy of a
31 home.

1 Section 8. Section 617.3077, Florida Statutes, is
2 created to read:

3 617.3077 Reserve and operating accounts.--

4 (1) At the time the association is created, the
5 association shall establish reserve accounts for all expected
6 expenditures of deferred maintenance, repairs, or replacement
7 of common property for which the association will ultimately
8 be responsible under the terms of the purchase agreement or
9 the association's governing documents. The reserve accounts
10 shall be funded in amounts calculated as follows:

11 (a) When the association is ultimately responsible for
12 repairing, maintaining, or replacing roadways or parking lots
13 in the community development, the association shall fund a
14 paving reserve account. The reserve account shall be funded
15 annually in an amount not less than 5 percent of the current
16 estimated cost to pave all roads for which the association is
17 responsible.

18 (b) When the association is ultimately responsible for
19 the exterior of the common property including individual
20 parcels, a common property account shall be funded. The
21 reserve account shall be funded annually in an amount not less
22 than 20 percent of the current estimated cost of all expenses
23 for which the association is responsible.

24 (c) When the association is ultimately responsible for
25 the upkeep, maintenance, and repair of a clubhouse; tennis,
26 racquetball, basketball, or rollerblading court; or
27 recreational facility, a reserve account for the expected
28 amount of maintenance and repairs that would normally be
29 required to be done at intervals of less than once per year
30 shall be funded.

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1 (d) When the association is ultimately responsible for
2 the maintenance of a pool or pools, a reserve for the
3 resurfacing of the pool annually in an amount not less than 20
4 percent of the estimated cost to resurface the pool shall be
5 funded.

6 (e) The association may establish and fund additional
7 reserve accounts for the maintenance, repair, or replacement
8 of other common property or common property components for
9 which the association will ultimately be responsible.

10 (2) The use of reserve account funds is limited as
11 follows:

12 (a) Reserve account funds may be expended only for
13 substantial maintenance, repair, or replacement of common
14 property or common property specific components for which the
15 funds were originally deposited, unless, after assumption of
16 control of the association by parcel owners other than the
17 developer, two-thirds of a quorum or two-thirds of the voting
18 members of the association, whichever is greater, at a duly
19 noticed meeting, vote to expend the funds for other purposes.

20 (b) The reserve accounts shall be established in the
21 name of the association at a bank, savings and loan
22 association, or trust company located in the county in which
23 the community is located, and the funds may not be commingled
24 with other funds.

25 (3) At the time the association is created, a separate
26 operating account shall be established in the name of the
27 association at a bank, savings and loan association, or trust
28 company located in the county in which the community is
29 located, and the funds therein shall not be commingled with
30 other funds.

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1 (4) The reserve accounts specified in this section
2 must be maintained by the association throughout its existence
3 unless waived by a majority of the homeowners' association's
4 members.

5 Section 9. Section 617.309, Florida Statutes, is
6 amended to read:

7 617.309 Agreements entered into by the association;
8 developer.--

9 (1) Any grant or reservation made by any document, and
10 any contract with a term in excess of 10 years made by an
11 association before control of the association is turned over
12 to the members other than the developer, which provide for
13 operation, maintenance, or management of the association or
14 common areas must be fair and reasonable.

15 (2) A developer that is responsible for the upkeep,
16 maintenance, and repair of any aspect of a community may not
17 contract with other contractors, subcontractors, management
18 companies, or other entities that are affiliated with or
19 subsidiary to a business owned or managed by the developer to
20 provide upkeep, maintenance, or repair services unless the
21 charge for such services is at a rate that is competitive with
22 rates charged by independent contractors in the community.

23 Section 10. Section 617.311, Florida Statutes, is
24 amended to read:

25 617.311 Alternative dispute resolution; voluntary
26 mediation; voluntary binding arbitration; legislative
27 findings.--

28 (1) LEGISLATIVE FINDINGS.--The Legislature finds that:

29 (a) Parcel owners are frequently at a disadvantage
30 when litigating against an association.

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1 (b) Alternative dispute resolution has been making
2 progress in reducing court dockets and trials and in offering
3 a more efficient, cost-effective option to court litigation.
4 However, the Legislature also finds that alternative dispute
5 resolution should not be used to encourage the filing of
6 frivolous or nuisance suits.

7 (c) There exists a need to develop a flexible means of
8 alternative dispute resolution that directs disputes to the
9 most efficient means of resolution.

10 (d) The high cost and significant delay of circuit
11 court litigation faced by parcel owners in the state can be
12 alleviated by requiring nonbinding arbitration and mediation
13 in appropriate cases, thereby reducing delay and attorney's
14 fees while preserving the right of either party to have its
15 case heard by a jury, if applicable, in a court of law.

16 (2) DEFINITIONS.--As used in this section:

17 (a) "Arbitration" means a process whereby a neutral
18 third person or panel, called an arbitrator or arbitration
19 panel, considers the facts and arguments presented by the
20 parties, which may be binding or nonbinding as provided by
21 this section.

22 (b) "Dispute" means any disagreement between two or
23 more parties that involves:

24 1. The authority of the board of directors, under this
25 chapter or association document, to:

26 a. Require any owner to take any action or not to take
27 any action involving that owner's parcel or the appurtenances
28 thereto.

29 b. Alter or add to a common area or element.

30 2. The failure of a governing body, when required by
31 this chapter or an association document, to:

- 1 a. Properly conduct elections.
2 b. Give adequate notice meetings or other actions.
3 c. Properly conduct meetings.
4 d. Allow inspection of books and records.
5

6 The term "dispute" does not include any disagreement that
7 primarily involves title to any parcel or common element; the
8 interpretation or enforcement of any warranty; the levy of a
9 fee or assessment, or the collection of an assessment levied
10 against a party; the eviction or other removal of a tenant
11 from a parcel; alleged breaches of fiduciary duty by one or
12 more directors; or claims for damages to a parcel based upon
13 the alleged failure of the association to maintain the common
14 elements or association property.

15 (3) VOLUNTARY MEDIATION.--Voluntary mediation through
16 Citizen Dispute Settlement Centers as provided in s. 44.201 is
17 encouraged.

18 (4) VOLUNTARY BINDING ARBITRATION.--

19 (a) Two or more parties who are involved in a dispute
20 may agree in writing to submit the controversy to voluntary
21 binding arbitration, in lieu of litigation of the issues
22 involved, prior to or after a lawsuit has been filed, provided
23 no constitutional issue is involved.

24 (b) If the parties have entered into an agreement that
25 provides for a method for the appointment of one or more
26 arbitrators, the division shall proceed with the appointment
27 as prescribed, except that at least one of the arbitrators,
28 who shall serve as the chief arbitrator, shall meet the
29 qualifications and training requirements adopted pursuant to
30 s. 44.106. In the absence of an agreement, or if the
31 agreement method fails or for any reason cannot be followed,

1 the division, on application of a party, shall appoint one or
2 more qualified arbitrators.

3 (c) The arbitrators shall be compensated by the
4 parties according to their agreement, but not at an amount
5 less than \$75 per day.

6 (d) Within 10 days of the submission of the request
7 for binding arbitration, the division shall provide for the
8 appointment of the arbitrator or arbitrators. Once appointed,
9 the arbitrators shall notify the parties of the time and place
10 for the hearing. The hearing must take place in the county in
11 which the homeowner resides.

12 (e) Application for voluntary binding arbitration
13 which is made to the court shall be filed and fees paid to the
14 clerk of court as if for complaints initiating civil actions.
15 The clerk of the court shall handle and account for these
16 matters in all respects as if they were civil actions, except
17 that the clerk of court shall keep separate the records of the
18 applications for voluntary binding arbitration from all other
19 civil actions.

20 (f) Filing of the application for binding arbitration
21 will toll the running of the applicable statutes of
22 limitation.

23 (g) The chief arbitrator shall have such power to
24 administer oaths or affirmation and to conduct the proceedings
25 as the rules of court shall provide. At the request of any
26 party, the chief arbitrator shall issue subpoenas for the
27 attendance of witnesses and for the production of books,
28 records, documents, and other evidence and may apply to the
29 court for orders compelling attendance and production.
30 Subpoenas shall be served and shall be enforceable in the
31 manner provided by law.

1 (h) The hearing shall be conducted by all of the
2 arbitrators, but a majority may determine any question and
3 render a final decision.

4 (i) The Florida Evidence Code shall apply to all
5 proceedings under this section.

6 (j) An appeal shall be taken to the circuit court and
7 shall be limited to review on the record and not de novo, of:

8 1. Any alleged failure of the arbitrators to comply
9 with the applicable rules of procedure or evidence.

10 2. Any alleged partiality or misconduct by an
11 arbitrator prejudicing the rights of any party.

12 3. Whether the decision reaches a result contrary to
13 the Constitution of the United States or of the State of
14 Florida.

15
16 The harmless error doctrine shall apply in all appeals. No
17 further review shall be permitted unless a constitutional
18 issue is raised.

19 (k) If no appeal is taken within the time provided by
20 rules adopted by the Supreme Court, the decision shall be
21 referred to the presiding judge in the case, or if one has not
22 been assigned, then to the chief judge of the circuit for
23 assignment to a circuit judge, who shall enter such orders and
24 judgments as are required to carry out the terms of the
25 decision, which orders shall be enforceable by the contempt
26 powers of the court and for which judgments execution shall
27 issue on request of a party.

28 (5) COURT-ORDERED MEDIATION OR ARBITRATION.--The
29 Legislature finds that alternative dispute resolution has made
30 progress in reducing court dockets and trials and in offering
31 a more efficient, cost-effective option to litigation. At any

1 time after the filing in a court of competent jurisdiction of
2 a complaint relating to a dispute under ss. 617.301-617.312,
3 the court may order that the parties enter mediation or
4 arbitration procedures.

5 Section 11. Section 689.26, Florida Statutes, is
6 amended to read:

7 689.26 Prospective purchasers subject to association
8 membership requirement; disclosure required.--

9 (1) A prospective parcel owner in a community must be
10 presented a disclosure summary before executing the contract
11 for sale. The disclosure summary must be in a form
12 substantially similar to the following form:

13
14 DISCLOSURE SUMMARY
15 FOR
16 (NAME OF COMMUNITY)
17

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

20 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
21 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN
22 THIS COMMUNITY.

23 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
24 ASSOCIATION, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

25 4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT
26 IN A LIEN ON YOUR PROPERTY.

27 5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR
28 LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED
29 FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS'
30 ASSOCIATION. (If such obligation exists, then the amount of
31 the current obligation shall be set forth.)

1 6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED
2 WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.

3 7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM
4 ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER,
5 YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION
6 GOVERNING DOCUMENTS.

7 8. I (WE), THE UNDERSIGNED, HAVE RECEIVED THE
8 DOCUMENTS CITED ABOVE AND AGREE TO THE CONDITIONS CONTAINED
9 THEREIN.

10 DATE:

PURCHASER:

11 PURCHASER:

12
13 The disclosure must be supplied by the developer, or by the
14 parcel owner if the sale is by an owner that is not the
15 developer. A separate copy of this disclosure statement must
16 be signed at the time of closing and mailed by the seller to
17 the homeowners' association address if the association was
18 established under chapter 617.

19 (2) This section does not apply to any association
20 regulated under chapter 718, chapter 719, chapter 721, or
21 chapter 723 or to a subdivider registered under chapter 498;
22 and also does not apply if disclosure regarding the
23 association is otherwise made in connection with the
24 requirements of chapter 718, chapter 719, chapter 721, or
25 chapter 723.

26 Section 12. This act shall take effect July 1, 1998.
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SENATE SUMMARY

Amends law regulating homeowners' associations. Specifies location of board meetings. Requires written notice of a member's delinquency in paying fees before assessment of penalty. Prohibits commingling of association funds. Prescribes a time period for transition of homeowners' association control in a community from the developer to other members. Specifies clauses and declarations that may not be included in association documents because they are contrary to the public policy of the state. Requires developers to make certain disclosures. Prescribes a disclosure form. Provides remedies for buyers who do not receive the required disclosure. Requires that homeowners' associations be incorporated. Provides for the establishment, funding, and use of reserve and operating accounts. Prohibits a developer from contracting for upkeep or repair of a community with other entities that are affiliates or subsidiaries of a business owned or managed by the developer. Provides for mediation of disputes and revises the current arbitration process.