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A bill to be entitled

An act relating to homeowners' associations; amending s. 34.01, F.S.; expanding county court jurisdiction for certain disputes; amending s. 720.301, F.S.; providing and revising definitions; conforming cross references; amending s. 720.302, F.S.; authorizing alternative methods for resolution of certain disputes; conforming cross references; amending s. 720.303, F.S.; providing criminal penalties for certain acts by board members of homeowners' associations; authorizing certain associations to enforce certain deed restrictions; providing members with certain rights at all meetings; providing guidelines for notice, and delivery of notice, for certain meetings; providing criteria for petitioning the board; providing certain documents to be included in financial and accounting records; providing certain members with access to copies of certain documents; authorizing members access to certain records for a fee; excluding certain records from member access; providing criteria for the preparation of annual financial reports; prohibiting use of association funds to defend certain actions or proceedings; providing requirements, criteria, procedures, and limitations for recall of board directors and their removal from office; amending s. 720.304, F.S.; authorizing homeowners to display certain flags on certain occasions; providing legislative intent; prohibiting certain lawsuits arising from parcel owners' appearances and presentations before a governmental entity; providing a definition; authorizing the construction of ramps for entrance and egress under

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30 certain conditions; authorizing owners to display signs
31 provided by a contractor for security services under
32 certain conditions; amending s. 720.305, F.S.; prohibiting
33 fines from becoming liens against parcels; providing for
34 attorney's fees and costs in actions to recover a fine;
35 creating s. 720.3055, F.S.; providing requirements for
36 association contracts for certain products and services;
37 authorizing certain associations to opt out of such
38 requirements under certain circumstances; providing
39 exceptions; amending s. 720.306, F.S.; providing meeting
40 notice requirements; providing members with the right to
41 speak at meetings; requiring arbitration of certain
42 election disputes; amending s. 720.311, F.S.; revising
43 certain dispute resolution provisions; providing
44 guidelines for the filing of alternative dispute
45 resolutions; providing for mandatory mediation or
46 arbitration under certain circumstances; providing
47 requirements, procedures, and limitations; providing for
48 fees; providing for award of attorney's fees and costs;
49 requiring the Division of Florida Land Sales,
50 Condominiums, and Mobile Homes of the Department of
51 Business and Professional Regulation to develop a
52 certification and training program for mediators and
53 arbitrators; providing program requirements; requiring the
54 division to develop an education program for certain
55 purposes; transferring, renumbering, and amending s.
56 689.26, F.S.; revising the disclosure summary to be
57 presented to a prospective parcel owner; providing
58 circumstances under which a contract may be voided;

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59 specifying nonapplication of certain provisions of law;
 60 transferring and renumbering s. 689.265, F.S., relating to
 61 financial reports required of certain residential
 62 subdivision developers; creating s. 720.402, F.S.;
 63 providing a cause of action for damages for reliance on
 64 certain false or misleading information; authorizing
 65 recovery of attorney's fees under certain circumstances;
 66 creating s. 720.501, F.S.; providing for certain
 67 warranties to associations from developers; providing a
 68 definition; preserving certain rights; providing
 69 requirements; amending ss. 316.00825, 498.025, and
 70 558.002, F.S.; conforming cross references; providing for
 71 internal organization of ch. 720, F.S.; providing an
 72 effective date.

73

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

75

76 Section 1. Subsection (1) of section 34.01, Florida
 77 Statutes, is amended to read:

78 34.01 Jurisdiction of county court.--

79 (1) County courts shall have original jurisdiction:

80 (a) In all misdemeanor cases not cognizable by the circuit
 81 courts;

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

83 ~~and~~

84 (c) Of all actions at law in which the matter in
 85 controversy does not exceed the sum of \$15,000, exclusive of
 86 interest, costs, and attorney's fees, except those within the
 87 exclusive jurisdiction of the circuit courts. The party

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88 instituting any civil action, suit, or proceeding pursuant to
 89 this paragraph where the amount in controversy is in excess of
 90 \$5,000 shall pay to the clerk of the county court the filing
 91 fees and service charges in the same amounts and in the same
 92 manner as provided in s. 28.241; and

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

96 Section 2. Section 720.301, Florida Statutes, is amended
 97 to read:

98 720.301 Definitions.--As used in ss. 720.301-720.501
 99 ~~720.301-720.312~~, the term:

100 (1) "Assessment" or "amenity fee" means a sum or sums of
 101 money payable to the association, to the developer or other
 102 owner of common areas, or to recreational facilities and other
 103 properties serving the parcels by the owners of one or more
 104 parcels as authorized in the governing documents, which if not
 105 paid by the owner of a parcel, can result in a lien against the
 106 parcel.

107 (2) "Common area" means all real property within a
 108 community which is owned or leased by an association or
 109 dedicated for use or maintenance by the association or its
 110 members, including, regardless of whether title has been
 111 conveyed to the association:

112 (a) Real property the use of which is dedicated to the
 113 association or its members by a recorded plat; or

114 (b) Real property committed by a declaration of covenants
 115 to be leased or conveyed to the association.

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116 (3) "Community" means the real property that is or will be
 117 subject to a declaration of covenants which is recorded in the
 118 county where the property is located. The term "community"
 119 includes all real property, including undeveloped phases, that
 120 is or was the subject of a development-of-regional-impact
 121 development order, together with any approved modification
 122 thereto.

123 (4) "Declaration of covenants," or "declaration," means a
 124 recorded written instrument in the nature of covenants running
 125 with the land which subjects the land comprising the community
 126 to the jurisdiction and control of an association or
 127 associations in which the owners of the parcels, or their
 128 association representatives, must be members.

129 (5) "Developer" means a person or entity that:

- 130 (a) Creates the community served by the association; or
- 131 (b) Succeeds to the rights and liabilities of the person
 132 or entity that created the community served by the association,
 133 provided that such is evidenced in writing.

134 (6) "Division" means the Division of Florida Land Sales,
 135 Condominiums, and Mobile Homes of the Department of Business and
 136 Professional Regulation.

137 ~~(7)(6)~~ "Governing documents" means:

- 138 (a) The recorded declaration of covenants for a community,
 139 and all duly adopted and recorded amendments, supplements, and
 140 recorded exhibits thereto; and

- 141 (b) The articles of incorporation and bylaws of the
 142 homeowners' association, and any duly adopted amendments
 143 thereto.

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144 ~~(8)(7)~~ "Homeowners' association" or "association" means a
 145 Florida corporation responsible for the operation of a community
 146 or a mobile home subdivision in which the voting membership is
 147 made up of parcel owners or their agents, or a combination
 148 thereof, and in which membership is a mandatory condition of
 149 parcel ownership, and which is authorized to impose assessments
 150 that, if unpaid, may become a lien on the parcel. The term
 151 "homeowners' association" does not include a community
 152 development district or other similar special taxing district
 153 created pursuant to statute.

154 ~~(9)(8)~~ "Member" means a member of an association, and may
 155 include, but is not limited to, a parcel owner or an association
 156 representing parcel owners or a combination thereof, and shall
 157 include any person or entity obligated by the governing
 158 documents to pay an assessment or amenity fee.

159 ~~(10)(9)~~ "Parcel" means a platted or unplatted lot, tract,
 160 unit, or other subdivision of real property within a community,
 161 as described in the declaration:

- 162 (a) Which is capable of separate conveyance; and
- 163 (b) Of which the parcel owner, or an association in which
- 164 the parcel owner must be a member, is obligated:
 - 165 1. By the governing documents to be a member of an
 - 166 association that serves the community; and
 - 167 2. To pay to the homeowners' association assessments that,
 - 168 if not paid, may result in a lien.

169 ~~(11)(10)~~ "Parcel owner" means the record owner of legal
 170 title to a parcel.

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171 (12)~~(11)~~ "Voting interest" means the voting rights
 172 distributed to the members of the homeowners' association,
 173 pursuant to the governing documents.

174 Section 3. Subsection (2) of section 720.302, Florida
 175 Statutes, is amended to read:

176 720.302 Purposes, scope, and application.--

177 (2) The Legislature recognizes that it is not in the best
 178 interest of homeowners' associations or the individual
 179 association members thereof to create or impose a bureau or
 180 other agency of state government to regulate the affairs of
 181 homeowners' associations. However, in accordance with s.
 182 720.311, the Legislature finds that homeowners' associations and
 183 their individual members will benefit from an expedited
 184 alternative process for resolution of election and recall
 185 disputes and presuit mediation of other disputes involving
 186 covenant enforcement and authorizes the division to hear,
 187 administer, and determine these disputes as set forth in this
 188 chapter. Further, the Legislature recognizes that certain
 189 contract rights have been created for the benefit of homeowners'
 190 associations and members thereof before the effective date of
 191 this act and that ss. 720.301-720.501 ~~720.301-720.312~~ are not
 192 intended to impair such contract rights, including, but not
 193 limited to, the rights of the developer to complete the
 194 community as initially contemplated.

195 Section 4. Section 720.303, Florida Statutes, is amended
 196 to read:

197 720.303 Association powers and duties; meetings of board;
 198 official records; budgets; financial reporting; association
 199 funds; recalls.--

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200 (1) POWERS AND DUTIES.—An association which operates a
 201 community as defined in s. 720.301, must be operated by an
 202 association that is a Florida corporation. After October 1,
 203 1995, the association must be incorporated and the initial
 204 governing documents must be recorded in the official records of
 205 the county in which the community is located. An association may
 206 operate more than one community. The officers and directors of
 207 an association have a fiduciary relationship to the members who
 208 are served by the association. It is the intent of the
 209 Legislature that nothing in this subsection be construed as
 210 providing for or removing a requirement of a fiduciary
 211 relationship between any manager employed by the association and
 212 the parcel owners. An officer, director, or manager who,
 213 otherwise than as provided by law for the proper discharge of
 214 his or her duties, directly or indirectly demands, seeks,
 215 receives, accepts, or agrees to receive or accept anything of
 216 value personally for or because of any act performed or to be
 217 performed by such official or person on behalf of the
 218 association commits a misdemeanor of the first degree,
 219 punishable as provided in s. 775.082 or s. 775.083. Any person
 220 who directly or indirectly gives, offers, or promises anything
 221 of value to any officer, director, or manager for or because of
 222 any official act performed or to be performed by such person on
 223 behalf of the association commits a misdemeanor of the first
 224 degree, punishable as provided in s. 775.082 or s. 775.083. The
 225 powers and duties of an association include those set forth in
 226 this chapter and, except as expressly limited or restricted in
 227 this chapter, those set forth in the governing documents. After
 228 control of the association is obtained by members ~~unit owners~~

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229 other than the developer, the association may institute,
 230 maintain, settle, or appeal actions or hearings in its name on
 231 behalf of all members concerning matters of common interest to
 232 the members, including, but not limited to, the common areas;
 233 roof or structural components of a building, or other
 234 improvements for which the association is responsible;
 235 mechanical, electrical, or plumbing elements serving an
 236 improvement or building for which the association is
 237 responsible; representations of the developer pertaining to any
 238 existing or proposed commonly used facility; and protesting ad
 239 valorem taxes on commonly used facilities. The association may
 240 defend actions in eminent domain or bring inverse condemnation
 241 actions. Before commencing litigation against any party in the
 242 name of the association involving amounts in controversy in
 243 excess of \$100,000, the association must obtain the affirmative
 244 approval of a majority of the voting interests at a meeting of
 245 the membership at which a quorum has been attained. This
 246 subsection does not limit any statutory or common-law right of
 247 any individual member or class of members to bring any action
 248 without participation by the association. A member does not have
 249 authority to act for the association by virtue of being a
 250 member. An association may have more than one class of members
 251 and may issue membership certificates. An association of 15 or
 252 fewer parcel owners may enforce only the requirements of those
 253 deed restrictions established prior to the purchase of each
 254 parcel upon an affected parcel owner or owners.

255 (2) BOARD MEETINGS.--

256 (a) A meeting of the board of directors of an association
 257 occurs whenever a quorum of the board gathers to conduct

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258 association business. All meetings of the board must be open to
259 all members except for meetings between the board and its
260 attorney with respect to proposed or pending litigation where
261 the contents of the discussion would otherwise be governed by
262 the attorney-client privilege.

263 (b) Each member has the right to attend all meetings of
264 the board and to speak on any matter placed on the agenda by
265 petition of the voting interests for at least 3 minutes each.
266 The association may adopt reasonable written rules, consistent
267 with this paragraph, expanding the right of members to speak and
268 governing the frequency, duration, and other manner of member
269 statements, which rules may include the requirement of a sign-up
270 sheet for members wishing to speak. Notwithstanding any other
271 law, the requirement that board meetings and committee meetings
272 be open to the members is not applicable to meetings between the
273 board or a committee and the association's attorney, with
274 respect to meetings of the board held for the purpose of
275 discussing personnel matters.

276 (c) The bylaws shall provide for giving notice to parcel
277 owners and members of all board meetings. If the bylaws do not
278 specify the manner for giving notice, the following shall apply:

279 1. Notices of all board meetings must be posted in a
280 conspicuous place in the community at least 48 hours in advance
281 of a meeting, except in an emergency. In the alternative, if
282 notice is not posted in a conspicuous place in the community,
283 notice of each board meeting must be mailed or delivered to each
284 member at least 7 days before the meeting, except in an
285 emergency. Notwithstanding this general notice requirement, for
286 communities with more than 100 members, the bylaws may provide

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287 for a reasonable alternative to posting or mailing of notice for
 288 each board meeting, including publication of notice, provision
 289 of a schedule of board meetings, or the conspicuous posting and
 290 repeated broadcasting of the notice on a closed-circuit cable
 291 television system serving the homeowners' association. However,
 292 if broadcast notice is used in lieu of a notice posted
 293 physically in the community, the notice must be broadcast at
 294 least four times every broadcast hour of each day that a posted
 295 notice is otherwise required. When broadcast notice is provided,
 296 the notice and agenda must be broadcast in a manner and for a
 297 sufficient continuous length of time so as to allow an average
 298 reader to observe the notice and read and comprehend the entire
 299 content of the notice and the agenda. The bylaws or amended
 300 bylaws may provide for giving notice by electronic transmission
 301 in a manner authorized by law for meetings of the board of
 302 directors, committee meetings requiring notice under this
 303 section, and annual and special meetings of the members;
 304 however, a member must consent in writing to receiving notice by
 305 electronic transmission.

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

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

325 (d) If 20 percent of the total voting interests petition
 326 the board to address an item of business, the board shall, at
 327 its next board meeting or special meeting, but not later than 60
 328 days after the receipt of the petition, take the petitioned item
 329 up on its agenda. The board shall give all members notice of the
 330 meeting at which the petitioned item shall be addressed in
 331 accordance with the 14-day notice requirement pursuant to
 332 subparagraph (c)2. Each member shall have the right to speak for
 333 at least 3 minutes on each item placed on the agenda by
 334 petition, provided that the member signs the sign-up sheet, if
 335 one is required, or submits a written request to speak prior to
 336 the meeting. Other than addressing the item at the meeting, the
 337 board is not obligated to take any other action requested by the
 338 petition.

339 (3) MINUTES.--Minutes of all meetings of the members of an
 340 association and of the board of directors of an association must
 341 be maintained in written form or in another form that can be
 342 converted into written form within a reasonable time. A vote or
 343 abstention from voting on each matter voted upon for each

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344 director present at a board meeting must be recorded in the
 345 minutes.

346 (4) OFFICIAL RECORDS.--The association shall maintain each
 347 of the following items, when applicable, which constitute the
 348 official records of the association:

349 (a) Copies of any plans, specifications, permits, and
 350 warranties related to improvements constructed on the common
 351 areas or other property that the association is obligated to
 352 maintain, repair, or replace.

353 (b) A copy of the bylaws of the association and of each
 354 amendment to the bylaws.

355 (c) A copy of the articles of incorporation of the
 356 association and of each amendment thereto.

357 (d) A copy of the declaration of covenants and a copy of
 358 each amendment thereto.

359 (e) A copy of the current rules of the homeowners'
 360 association.

361 (f) The minutes of all meetings of the board of directors
 362 and of the members, which minutes must be retained for at least
 363 7 years.

364 (g) A current roster of all members and their mailing
 365 addresses and parcel identifications. The association shall also
 366 maintain the electronic mailing addresses and the numbers
 367 designated by members for receiving notice sent by electronic
 368 transmission of those members consenting to receive notice by
 369 electronic transmission. The electronic mailing addresses and
 370 numbers provided by unit owners to receive notice by electronic
 371 transmission shall be removed from association records when
 372 consent to receive notice by electronic transmission is revoked.

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373 However, the association is not liable for an erroneous
 374 disclosure of the electronic mail address or the number for
 375 receiving electronic transmission of notices.

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

378 (i) A current copy of all contracts to which the
 379 association is a party, including, without limitation, any
 380 management agreement, lease, or other contract under which the
 381 association has any obligation or responsibility. Bids received
 382 by the association for work to be performed must also be
 383 considered official records and must be kept for a period of 1
 384 year.

385 (j) The financial and accounting records of the
 386 association, kept according to good accounting practices. All
 387 financial and accounting records must be maintained for a period
 388 of at least 7 years. The financial and accounting records must
 389 include:

390 1. Accurate, itemized, and detailed records of all
 391 receipts and expenditures.

392 2. A current account and a periodic statement of the
 393 account for each member, designating the name and current
 394 address of each member who is obligated to pay assessments, the
 395 due date and amount of each assessment or other charge against
 396 the member, the date and amount of each payment on the account,
 397 and the balance due.

398 3. All tax returns, financial statements, and financial
 399 reports of the association.

400 4. Any other records that identify, measure, record, or
 401 communicate financial information.

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402 (k) A copy of the disclosure summary described in s.
 403 720.401(2).

404 (l) All other written records of the association not
 405 specifically included in the foregoing that are related to the
 406 operation of the association.

407 (5) INSPECTION AND COPYING OF RECORDS.--The official
 408 records shall be maintained within the state and must be open to
 409 inspection and available for photocopying by members or their
 410 authorized agents at reasonable times and places within 10
 411 business days after receipt of a written request for access.
 412 This subsection may be complied with by having a copy of the
 413 official records available for inspection or copying in the
 414 community. If the association has a photocopy machine available
 415 where the records are maintained, the association must provide
 416 parcel owners with copies on request during the inspection if
 417 the entire request is limited to 25 pages.

418 (a) The failure of an association to provide access to the
 419 records within 10 business days after receipt of a written
 420 request creates a rebuttable presumption that the association
 421 willfully failed to comply with this subsection.

422 (b) A member who is denied access to official records is
 423 entitled to the actual damages or minimum damages for the
 424 association's willful failure to comply with this subsection.
 425 The minimum damages are to be \$50 per calendar day up to 10
 426 days, the calculation to begin on the 11th business day after
 427 receipt of the written request.

428 (c) The association may adopt reasonable written rules
 429 governing the frequency, time, location, notice, and manner of
 430 inspections and records to be inspected but may not impose a

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431 requirement that a parcel owner demonstrate any proper purpose
432 for the inspection or state any reason for the inspection or
433 limit a parcel owner's right to inspect records to less than one
434 8-hour business day per month. The association, ~~and~~ may impose
435 fees to cover the costs of providing copies of the official
436 records, including, without limitation, the costs of copying.
437 The association may charge up to 50 cents per page for copies
438 made on the association's photocopier machine. If the association
439 does not have a photocopier machine available where the records
440 are kept, or if the records requested to be copied exceed 25
441 pages in length, the association may have copies made by an
442 outside vendor and may charge the actual cost of copying. The
443 association shall maintain an adequate number of copies of the
444 recorded governing documents, to ensure their availability to
445 members and prospective members, ~~and may charge only its actual~~
446 ~~costs for reproducing and furnishing these documents to those~~
447 ~~persons who are entitled to receive them. Notwithstanding the~~
448 ~~provisions of this paragraph, the following records shall not be~~
449 ~~accessible to members or parcel owners:~~

450 1. Any record protected by the lawyer-client privilege as
451 described in s. 90.502 and any record protected by the work-
452 product privilege, including, but not limited to, any record
453 prepared by an association attorney or prepared at the
454 attorney's express direction, which reflects a mental
455 impression, conclusion, litigation strategy, or legal theory of
456 the attorney or the association, and which was prepared
457 exclusively for civil or criminal litigation or for adversarial
458 administrative proceedings, or which was prepared in
459 anticipation of imminent civil or criminal litigation or

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460 imminent adversarial administrative proceedings until the
 461 conclusion of the litigation or adversarial administrative
 462 proceedings.

463 2. Information obtained by an association in connection
 464 with the approval of the lease, sale, or other transfer of a
 465 parcel.

466 3. Disciplinary, health, insurance, and personnel records
 467 of the association's employees.

468 4. Medical records of parcel owners or community
 469 residents.

470 (6) BUDGETS.--The association shall prepare an annual
 471 budget. The budget must reflect the estimated revenues and
 472 expenses for that year and the estimated surplus or deficit as
 473 of the end of the current year. The budget must set out
 474 separately all fees or charges for recreational amenities,
 475 whether owned by the association, the developer, or another
 476 person. The association shall provide each member with a copy of
 477 the annual budget or a written notice that a copy of the budget
 478 is available upon request at no charge to the member. The copy
 479 must be provided to the member within the time limits set forth
 480 in subsection (5).

481 (7) FINANCIAL REPORTING.--The association shall prepare an
 482 annual financial report within 60 days after the close of the
 483 fiscal year. The association shall, within the time limits set
 484 forth in subsection (5), provide each member with a copy of the
 485 annual financial report or a written notice that a copy of the
 486 financial report is available upon request at no charge to the
 487 member. Financial reports shall be prepared as follows:

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488 (a) An association that meets the criteria of this
 489 paragraph shall prepare or cause to be prepared a complete set
 490 of financial statements in accordance with generally accepted
 491 accounting principles. The financial statements shall be based
 492 on the association's total annual revenues, as follows:

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

496 2. An association with total annual revenues of at least
 497 \$200,000, but less than \$400,000, shall prepare reviewed
 498 financial statements.

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

501 (b) An association with total annual revenues of less than
 502 \$100,000 shall prepare a report of cash receipts and
 503 expenditures.

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

509 (d) A report of cash receipts and disbursements must
 510 disclose the amount of receipts by accounts and receipt
 511 classifications and the amount of expenses by accounts and
 512 expense classifications, including, but not limited to, the
 513 following, as applicable: costs for security, professional, and
 514 management fees and expenses; taxes; costs for recreation
 515 facilities; expenses for refuse collection and utility services;
 516 expenses for lawn care; costs for building maintenance and

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517 repair; insurance costs; administration and salary expenses; and
 518 reserves if maintained by the association.

519 (e) If 20 percent of the parcel owners petition the board
 520 for a level of financial reporting higher than that required by
 521 this section, the association shall duly notice and hold a
 522 meeting of members within 30 days after receipt of the petition
 523 for the purpose of voting on raising the level of reporting for
 524 that fiscal year. Upon approval of a majority of the total
 525 voting interests of the parcel owners, the association shall
 526 amend the budget or adopt a special assessment to pay for the
 527 financial report regardless of any provision to the contrary in
 528 the governing documents, and shall prepare or cause to be
 529 prepared the following statements, which shall be provided
 530 within 90 days after the meeting or the end of the fiscal year,
 531 whichever occurs later:

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

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

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

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

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

545 2. A report of cash receipts and expenditures or a

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546 compiled financial statement in lieu of a reviewed or audited
 547 financial statement; or

548 3. A report of cash receipts and expenditures, a compiled
 549 financial statement, or a reviewed financial statement in lieu
 550 of an audited financial statement. The financial report must
 551 consist of either:

552 ~~(a) Financial statements presented in conformity with~~
 553 ~~generally accepted accounting principles; or~~

554 ~~(b) A financial report of actual receipts and~~
 555 ~~expenditures, cash basis, which report must show:~~

556 ~~1. The amount of receipts and expenditures by~~
 557 ~~classification; and~~

558 ~~2. The beginning and ending cash balances of the~~
 559 ~~association.~~

560 (8) ASSOCIATION FUNDS; COMMINGLING.--

561 (a) All association funds held by a developer shall be
 562 maintained separately in the association's name. Reserve and
 563 operating funds of the association shall not be commingled prior
 564 to turnover except the association may jointly invest reserve
 565 funds; however, such jointly invested funds must be accounted
 566 for separately.

567 (b) No developer in control of a homeowners' association
 568 shall commingle any association funds with his or her funds or
 569 with the funds of any other homeowners' association or community
 570 association.

571 (c) Association funds may not be utilized by a developer
 572 to defend a civil or criminal action, administrative proceeding,
 573 or arbitration proceeding that has been filed against the
 574 developer or directors appointed to the association board by the

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575 developer, even when the subject of the action or proceeding
 576 concerns the operation of the developer-controlled association.

577 (9) APPLICABILITY.--Sections 617.1601-617.1604 do not
 578 apply to a homeowners' association in which the members have the
 579 inspection and copying rights set forth in this section.

580 (10) RECALL OF BOARD DIRECTORS.--

581 (a)1. Notwithstanding any provision contained in the
 582 governing documents, subject to the provisions of s. 720.307
 583 regarding transition of association control, any member of the
 584 board of directors may be recalled and removed from office with
 585 or without cause by a majority of the total voting interests.

586 2. When the governing documents, including the
 587 declaration, articles of incorporation, or bylaws, provide that
 588 only a specific class of members is entitled to elect a board
 589 director or directors, only that class of members may vote to
 590 recall those board directors so elected.

591 (b)1. Board directors may be recalled by an agreement in
 592 writing or by written ballot without a membership meeting. The
 593 agreement in writing or the written ballots, or a copy thereof,
 594 shall be served on the association by certified mail or by
 595 personal service in the manner authorized by chapter 48 and the
 596 Florida Rules of Civil Procedure.

597 2. The board shall duly notice and hold a meeting of the
 598 board within 5 full business days after receipt of the agreement
 599 in writing or written ballots. At the meeting, the board shall
 600 either certify the written ballots or written agreement to
 601 recall a director or directors of the board, in which case such
 602 director or directors shall be recalled effective immediately
 603 and shall turn over to the board within 5 full business days any

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604 and all records and property of the association in their
605 possession, or proceed as described in paragraph (d).

606 3. When it is determined by the division pursuant to
607 binding arbitration proceedings that an initial recall effort
608 was defective, written agreements or written ballots used in the
609 first recall effort and not found to be defective may be reused
610 in one subsequent recall effort. However, in no event shall a
611 written agreement or written ballot be valid for more than 120
612 days after it has been signed by the member.

613 4. Any rescission or revocation of a member's written
614 ballot or written agreement must be in writing and, in order to
615 be effective, must be delivered to the association prior to the
616 association being served with the written agreements or written
617 ballots.

618 5. The agreement in writing or by ballot shall list at
619 least as many possible replacement directors as there are
620 directors subject to the recall, when at least a majority of the
621 board is sought to be recalled; the person executing the recall
622 instrument may vote for as many replacement candidates as there
623 are directors subject to the recall.

624 (c)1. If the declaration, articles of incorporation, or
625 bylaws specifically provide, the members may also recall and
626 remove a director or directors by a vote taken at a meeting. If
627 so provided in the governing documents, a special meeting of the
628 members to recall a director or directors of the board of
629 administration may be called by 10 percent of the voting
630 interests giving notice of the meeting as required for a meeting
631 of members, and the notice shall state the purpose of the
632 meeting. Electronic transmission may not be used as a method of

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633 giving notice of a meeting called in whole or in part for this
 634 purpose.

635 2. The board shall duly notice and hold a board meeting
 636 within 5 full business days of the adjournment of the member
 637 meeting to recall one or more directors. At the meeting, the
 638 board shall either certify the recall, in which case such
 639 director or directors shall be recalled effective immediately
 640 and shall turn over to the board within 5 full business days any
 641 and all records and property of the association in their
 642 possession, or shall proceed as set forth in paragraph (d).

643 (d) If the board determines not to certify the written
 644 agreement or written ballots to recall a director or directors
 645 of the board or does not certify the recall by a vote at a
 646 meeting, the board shall, within 5 full business days after the
 647 meeting, file with the division a petition for binding
 648 arbitration pursuant to the applicable procedures in ss.
 649 718.1255 and 718.112(2)(j) and the rules adopted thereunder. For
 650 the purposes of this section, the members who voted at the
 651 meeting or who executed the agreement in writing shall
 652 constitute one party under the petition for arbitration. If the
 653 arbitrator certifies the recall as to any director or directors
 654 of the board, the recall will be effective upon mailing of the
 655 final order of arbitration to the association. The director or
 656 directors so recalled shall deliver to the board any and all
 657 records of the association in their possession within 5 full
 658 business days after the effective date of the recall.

659 (e) If a vacancy occurs on the board as a result of a
 660 recall and less than a majority of the board directors are
 661 removed, the vacancy may be filled by the affirmative vote of a

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662 majority of the remaining directors, notwithstanding any
663 provision to the contrary contained in this subsection or in the
664 governing documents. If vacancies occur on the board as a result
665 of a recall and a majority or more of the board of directors are
666 removed, the vacancies shall be filled by members voting in
667 favor of the recall. If the removal is at a meeting, any
668 vacancies shall be filled by the members at the meeting. If the
669 recall occurred by agreement in writing or by written ballot,
670 members may vote for replacement directors in the same
671 instrument in accordance with procedural rules adopted by the
672 division, which rules need not be consistent with this
673 subsection.

674 (f) If the board fails to duly notice and hold a board
675 meeting within 5 full business days after service of an
676 agreement in writing or within 5 full business days after the
677 adjournment of the director recall meeting, the recall shall be
678 deemed effective and the board of directors so recalled shall
679 immediately turn over to the board any and all records and
680 property of the association.

681 (g) If a director who is removed fails to relinquish his
682 or her office or turn over records as required under this
683 section, the circuit court in the county where the association
684 maintains its principal office may, upon the petition of the
685 association, summarily order the director to relinquish his or
686 her office and turn over all association records upon
687 application of the association.

688 (h) The minutes of the board meeting at which the board
689 decides whether to certify the recall are an official
690 association record. The minutes shall record the date and time

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691 of the meeting, the decision of the board, and the vote count
 692 taken on each board member subject to the recall. In addition,
 693 when the board decides not to certify the recall, as to each
 694 vote rejected, the minutes shall identify the parcel number and
 695 the specific reason for each such rejection.

696 (i) When the recall of more than one board director is
 697 sought, the written agreement, ballot, or vote at a meeting
 698 shall provide for a separate vote for each board director sought
 699 to be recalled.

700 Section 5. Section 720.304, Florida Statutes, is amended
 701 to read:

702 720.304 Right of owners to peaceably assemble; display of
 703 flag; SLAPP suits prohibited; construction of access ramps;
 704 display of security signs.--

705 (1) All common areas and recreational facilities serving
 706 any homeowners' association shall be available to parcel owners
 707 in the homeowners' association served thereby and their invited
 708 guests for the use intended for such common areas and
 709 recreational facilities. The entity or entities responsible for
 710 the operation of the common areas and recreational facilities
 711 may adopt reasonable rules and regulations pertaining to the use
 712 of such common areas and recreational facilities. No entity or
 713 entities shall unreasonably restrict any parcel owner's right to
 714 peaceably assemble or right to invite public officers or
 715 candidates for public office to appear and speak in common areas
 716 and recreational facilities.

717 (2) Any homeowner may display one portable, removable
 718 United States flag or official flag of the State of Florida in a
 719 respectful manner, and, on Armed Forces Day, Memorial Day, Flag

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720 Day, Independence Day, and Veterans Day, may display in a
 721 respectful manner portable, removable official flags, not larger
 722 than 4 1/2 feet by 6 feet, that represent the United States
 723 Army, Navy, Air Force, Marine Corps, or Coast Guard, regardless
 724 of any declaration rules or requirements dealing with flags or
 725 decorations.

726 (3) Any owner prevented from exercising rights guaranteed
 727 by subsection (1) or subsection (2) may bring an action in the
 728 appropriate court of the county in which the alleged
 729 infringement occurred, and, upon favorable adjudication, the
 730 court shall enjoin the enforcement of any provision contained in
 731 any homeowners' association document or rule that operates to
 732 deprive the owner of such rights.

733 (4) It is the intent of the Legislature to protect the
 734 right of parcel owners to exercise their rights to instruct
 735 their representatives and petition for redress of grievances
 736 before the various governmental entities of this state as
 737 protected by the First Amendment to the United States
 738 Constitution and s. 5, Art. I of the State Constitution. The
 739 Legislature recognizes that strategic lawsuits against public
 740 participation, or "SLAPP" suits, as they are typically called,
 741 have occurred when members of the homeowners' association are
 742 sued by individuals, business entities, or governmental entities
 743 arising out of a parcel owner's appearance and presentation
 744 before a governmental entity on matters related to the
 745 homeowners' association. However, it is the public policy of
 746 this state that governmental entities, business organizations,
 747 and individuals not engage in SLAPP suits because such actions
 748 are inconsistent with the right of parcel owners to participate

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749 in the state's institutions of government. Therefore, the
 750 Legislature finds and declares that prohibiting such lawsuits by
 751 governmental entities, business entities, and individuals
 752 against parcel owners who address matters concerning their
 753 homeowners' association will preserve this fundamental state
 754 policy, preserve the constitutional rights of parcel owners, and
 755 ensure the continuation of representative government in this
 756 state. It is the intent of the Legislature that such lawsuits be
 757 expeditiously disposed of by the courts.

758 (a) As used in this subsection, "governmental entity"
 759 means the state, including the executive, legislative, and
 760 judicial branches of government and the independent
 761 establishments of the state, counties, or municipalities,
 762 districts, authorities, boards, commissions, or any agencies of
 763 these branches, which are subject to chapter 286.

764 (b) No governmental entity, business organization, or
 765 individual in this state shall file or cause to be filed,
 766 through its employees or agents, any lawsuit, cause of action,
 767 claim, cross-claim, or counterclaim against a parcel owner
 768 without merit and solely because such parcel owner has exercised
 769 the right to instruct his or her representatives or the right to
 770 petition for redress of grievances before the various
 771 governmental entities of this state, as protected by the First
 772 Amendment to the United States Constitution and s. 5, Art. I of
 773 the State Constitution.

774 (c) A parcel owner sued by a governmental entity, business
 775 organization, or individual in violation of this section has a
 776 right to an expeditious resolution of a claim that the suit is
 777 in violation of this section. A parcel owner may petition the

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778 court for an order dismissing the action or granting final
779 judgment in favor of that parcel owner. The petitioner may file
780 a motion for summary judgment, together with supplemental
781 affidavits, seeking a determination that the governmental
782 entity's, business organization's, or individual's lawsuit has
783 been brought in violation of this section. The governmental
784 entity, business organization, or individual shall thereafter
785 file its response and any supplemental affidavits. As soon as
786 practicable, the court shall set a hearing on the petitioner's
787 motion, which shall be held at the earliest possible time after
788 the filing of the governmental entity's, business
789 organization's, or individual's response. The court may award
790 the parcel owner sued by the governmental entity, business
791 organization, or individual actual damages arising from the
792 governmental entity's, individual's, or business organization's
793 violation of this act. A court may treble the damages awarded to
794 a prevailing parcel owner and shall state the basis for the
795 treble damages award in its judgment. The court shall award the
796 prevailing party reasonable attorney's fees and costs incurred
797 in connection with a claim that an action was filed in violation
798 of this section.

799 (d) Homeowners' associations shall not expend association
800 funds in prosecuting a SLAPP suit against a parcel owner.

801 (5)(a) Any homeowner may construct an access ramp when a
802 resident or occupant has a medical necessity or disability that
803 requires a ramp for egress and ingress under the following
804 conditions:

805 1. The ramp must be as unobtrusive as possible, designed
806 to blend in as aesthetically as practicable, and be reasonably

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807 sized to fit the intended use.

808 2. Plans for the ramp must be submitted in advance to the
 809 homeowners' association. The association may make reasonable
 810 requests to modify the design to achieve architectural
 811 consistency with surrounding structures and surfaces.

812 (b) The homeowner must submit to the association an
 813 affidavit from a physician attesting to the medical necessity or
 814 disability of the resident or occupant of the home requiring the
 815 access ramp. Certification used for the purposes of s. 320.0848
 816 shall be sufficient to meet the affidavit requirement.

817 (6) Any homeowner may display a sign of a reasonable size
 818 provided by a contractor for security services within 10 feet of
 819 any entrance to the home.

820 Section 6. Subsection (2) of section 720.305, Florida
 821 Statutes, is amended to read:

822 720.305 Obligations of members; remedies at law or in
 823 equity; levy of fines and suspension of use rights; collection
 824 of attorney's fees; failure to fill sufficient number of
 825 vacancies on board of directors to constitute a quorum;
 826 appointment of receiver upon petition of any member.--

827 (2) If the governing documents so provide, an association
 828 may suspend, for a reasonable period of time, the rights of a
 829 member or a member's tenants, guests, or invitees, or both, to
 830 use common areas and facilities and may levy reasonable fines,
 831 not to exceed \$100 per violation, against any member or any
 832 tenant, guest, or invitee. A fine may be levied on the basis of
 833 each day of a continuing violation, with a single notice and
 834 opportunity for hearing, except that no such fine shall exceed
 835 \$1,000 in the aggregate unless otherwise provided in the

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836 governing documents. No fine shall become a lien against a
 837 parcel. In any action to recover a fine, the prevailing party
 838 shall be entitled to collect reasonable attorney's fees and
 839 costs from the nonprevailing party as determined by the court.

840 (a) A fine or suspension may not be imposed without notice
 841 of at least 14 days to the person sought to be fined or
 842 suspended and an opportunity for a hearing before a committee of
 843 at least three members appointed by the board who are not
 844 officers, directors, or employees of the association, or the
 845 spouse, parent, child, brother, or sister of an officer,
 846 director, or employee. If the committee, by majority vote, does
 847 not approve a proposed fine or suspension, it may not be
 848 imposed.

849 (b) The requirements of this subsection do not apply to
 850 the imposition of suspensions or fines upon any member because
 851 of the failure of the member to pay assessments or other charges
 852 when due if such action is authorized by the governing
 853 documents.

854 (c) Suspension of common-area-use rights shall not impair
 855 the right of an owner or tenant of a parcel to have vehicular
 856 and pedestrian ingress to and egress from the parcel, including,
 857 but not limited to, the right to park.

858 Section 7. Section 720.3055, Florida Statutes, is created
 859 to read:

860 720.3055 Contracts for products and services; in writing;
 861 bids; exceptions.--

862 (1) All contracts as further described in this section or
 863 any contract that is not to be fully performed within 1 year
 864 after the making thereof for the purchase, lease, or renting of

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865 materials or equipment to be used by the association in
866 accomplishing its purposes under this chapter or the governing
867 documents, and all contracts for the provision of services,
868 shall be in writing. If a contract for the purchase, lease, or
869 renting of materials or equipment, or for the provision of
870 services, requires payment by the association that exceeds 10
871 percent of the total annual budget of the association, including
872 reserves, the association shall obtain competitive bids for the
873 materials, equipment, or services. Nothing contained in this
874 section shall be construed to require the association to accept
875 the lowest bid.

876 (2)(a) Notwithstanding the foregoing, contracts with
877 employees of the association and contracts for attorney,
878 accountant, architect, community association manager, engineer,
879 and landscape architect services are not subject to the
880 provisions of this section.

881 (b) A contract executed before October 1, 2004, and any
882 renewal thereof is not subject to the competitive bid
883 requirements of this section. If a contract was awarded under
884 the competitive bid procedures of this section, any renewal of
885 that contract is not subject to such competitive bid
886 requirements if the contract contains a provision that allows
887 the board to cancel the contract on 30 days' notice. Materials,
888 equipment, or services provided to an association under a local
889 government franchise agreement by a franchise holder are not
890 subject to the competitive bid requirements of this section. A
891 contract with a manager, if made by a competitive bid, may be
892 made for up to 3 years. An association whose declaration or
893 bylaws provide for competitive bidding for services may operate

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894 under the provisions of such declaration or bylaws in lieu of
 895 this section if those provisions are not less stringent than the
 896 requirements of this section.

897 (3) Nothing contained in this section is intended to limit
 898 the ability of an association to obtain needed products and
 899 services in an emergency.

900 (4) This section shall not apply if the business entity
 901 with which the association desires to enter into a contract is
 902 the only source of supply within the county serving the
 903 association.

904 (5) Nothing contained in this section shall excuse a party
 905 contracting to provide maintenance or management services from
 906 compliance with s. 720.309.

907 Section 8. Subsections (5) through (8) of section 720.306,
 908 Florida Statutes, are renumbered as subsections (7) through
 909 (10), respectively, present subsection (7) is amended, and new
 910 subsections (5) and (6) are added to said section, to read:

911 720.306 Meetings of members; voting and election
 912 procedures; amendments.--

913 (5) NOTICE OF MEETINGS.--The bylaws shall provide for
 914 giving notice to members of all member meetings. If the bylaws
 915 do not provide such notice, they shall be deemed to provide the
 916 following: the association shall give all parcel owners and
 917 members actual notice of all membership meetings, which shall be
 918 mailed, delivered, or electronically transmitted to the parcel
 919 owners and members not fewer than 14 days prior to the meeting.
 920 Evidence of compliance with this 14-day notice shall be made by
 921 an affidavit executed by the person providing the notice and
 922 filed upon execution among the official records of the

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923 association. In addition to mailing, delivering, or
 924 electronically transmitting the notice of any meeting, the
 925 association may, by reasonable rule, adopt a procedure for
 926 conspicuously posting and repeatedly broadcasting the notice and
 927 the agenda on a closed-circuit cable television system serving
 928 the association. When broadcast notice is provided, the notice
 929 and agenda must be broadcast in a manner and for a sufficient
 930 continuous length of time so as to allow an average reader to
 931 observe the notice and read and comprehend the entire content of
 932 the notice and the agenda.

933 (6) RIGHT TO SPEAK.--Members and parcel owners have the
 934 right to attend all membership meetings and to speak at any
 935 meeting with reference to all items opened for discussion or
 936 included on the agenda. Notwithstanding any provision to the
 937 contrary in the governing documents or any rules adopted by the
 938 board or by the membership, a member or parcel owner has the
 939 right to speak for at least 3 minutes on any item, provided the
 940 member or parcel owner submits a written request to speak prior
 941 to the meeting. The association may adopt written reasonable
 942 rules governing the frequency, duration, and other manner of
 943 member and parcel owner statements, which rules shall be
 944 consistent with this subsection.

945 (9)(7) ELECTIONS.--Elections of directors must be
 946 conducted in accordance with the procedures set forth in the
 947 governing documents of the association. All members of the
 948 association shall be eligible to serve on the board of
 949 directors, and a member may nominate himself or herself as a
 950 candidate for the board at a meeting where the election is to be
 951 held. Except as otherwise provided in the governing documents,

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952 boards of directors must be elected by a plurality of the votes
953 cast by eligible voters. Any election dispute between a member
954 and an association must be submitted to mandatory binding
955 arbitration with the division. Such proceedings shall be
956 conducted in the manner provided by s. 718.1255 and the
957 procedural rules adopted by the division.

958 Section 9. Section 720.311, Florida Statutes, is amended
959 to read:

960 720.311 Dispute resolution.--

961 (1) The Legislature finds that alternative dispute
962 resolution has made progress in reducing court dockets and
963 trials and in offering a more efficient, cost-effective option
964 to litigation. The filing of any petition for mediation or
965 arbitration provided for in this section shall toll the
966 applicable statute of limitations. Any recall dispute filed with
967 the division pursuant to s. 720.303(10) shall be conducted by
968 the division in accordance with the provisions of ss. 718.1255
969 and 718.112(2)(j) and the rules adopted by the division. In
970 addition, the division shall conduct mandatory binding
971 arbitration of election disputes between a member and an
972 association pursuant to s. 718.1255 and rules adopted by the
973 division. Neither election disputes nor recall disputes are
974 eligible for mediation; these disputes shall be arbitrated by
975 the division. At the conclusion of the proceeding, the division
976 shall charge the parties a fee in an amount adequate to cover
977 all costs and expenses incurred by the division in conducting
978 the proceeding. Initially, the petitioner shall remit a filing
979 fee of at least \$200 to the division. The fees paid to the
980 division shall become a recoverable cost in the arbitration

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981 proceeding. The prevailing party shall be paid its reasonable
 982 costs and attorney's fees in an amount found reasonable by the
 983 arbitrator. The division shall adopt rules to effectuate the
 984 purposes of this section.

985 (2)(a) Disputes between an association and a parcel owner
 986 regarding use of or changes to the parcel or the common areas
 987 and other covenant enforcement disputes, disputes regarding
 988 amendments to the governing documents, disputes regarding
 989 meetings of the board and committees appointed by the board,
 990 membership meetings not including election meetings, and access
 991 to the official records of the association shall be filed with
 992 the division for mandatory mediation prior to the disputes being
 993 filed in court. Mediation proceedings must be conducted in
 994 accordance with the applicable Florida Rules of Civil Procedure,
 995 and these proceedings are privileged and confidential to the
 996 same extent as court-ordered mediation. No arbitrator or judge
 997 shall consider any information or evidence arising from the
 998 mediation proceeding except in a proceeding to impose sanctions
 999 for failure to attend a mediation session. Persons who are not
 1000 parties to the dispute may not attend the mediation conference
 1001 without the consent of all parties, except for counsel for the
 1002 parties and a corporate representative designated by the
 1003 association. When mediation is attended by a quorum of the
 1004 board, such mediation is not a board meeting for purposes of
 1005 notice and participation set forth in s. 720.303. The division
 1006 shall conduct the proceedings through the use of division
 1007 mediators or refer the disputes to private mediators who have
 1008 been duly certified by the division as provided in paragraph
 1009 (c). The parties shall share the costs of mediation equally,

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1010 including the fee charged by the mediator, if any, unless the
 1011 parties agree otherwise. If a division mediator is used, the
 1012 division may charge such fee as is necessary to pay expenses of
 1013 the mediation, including, but not limited to, the salary and
 1014 benefits of the mediator and any travel expenses incurred. The
 1015 petitioner shall initially file with the division upon filing
 1016 the dispute a filing fee of \$200, which shall be used to defray
 1017 the costs of the mediation. At the conclusion of the mediation,
 1018 the division shall charge to the parties, to be shared equally
 1019 unless otherwise agreed by the parties, such further fees as are
 1020 necessary to fully reimburse the division for all expenses
 1021 incurred in the mediation.

1022 (b) If mediation as described in paragraph (a) is not
 1023 successful in resolving all issues between the parties, the
 1024 parties may file the unresolved dispute in a court of competent
 1025 jurisdiction or elect to enter into binding or nonbinding
 1026 arbitration pursuant to the procedures set forth in s. 718.1255
 1027 and rules adopted by the division, with the arbitration
 1028 proceeding to be conducted by a division arbitrator or by a
 1029 private arbitrator certified by the division. If all parties do
 1030 not agree to arbitration proceedings following an unsuccessful
 1031 mediation, any party may file the dispute in court. A final
 1032 order resulting from nonbinding arbitration is final and
 1033 enforceable in the courts if a complaint for trial de novo is
 1034 not filed in a court of competent jurisdiction within 30 days
 1035 after entry of the order.

1036 (c) The division shall develop a certification and
 1037 training program for private mediators and private arbitrators
 1038 that shall emphasize experience and expertise in the area of the

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1039 operation of community associations. A mediator or arbitrator
 1040 shall be certified by the division only if he or she has
 1041 attended at least 20 hours of training in mediation or
 1042 arbitration, as appropriate, and only if he or she has mediated
 1043 or arbitrated at least 10 disputes involving community
 1044 associations within the 5 years preceding the date of the
 1045 application, or if he or she has mediated or arbitrated 10
 1046 disputes in any area within the 5 years preceding the date of
 1047 the application and has completed 20 hours of training in
 1048 community association disputes. In order to be certified by the
 1049 division, a mediator must also be certified by the Florida
 1050 Supreme Court. The division may conduct the training and
 1051 certification program within the division or may contract with
 1052 an outside vendor to perform the training or certification. The
 1053 expenses of operating the training and certification program
 1054 shall be paid by the training fees, by the moneys and filing
 1055 fees generated by the arbitration of recall and election
 1056 disputes, and by the awarded fees in mediation of those disputes
 1057 referenced in this section. Initially, the Department of
 1058 Business and Professional Regulation should seek sufficient
 1059 funding to cover the startup costs of establishing the
 1060 certification and training program.

1061 (d) The mediation procedures provided by this subsection
 1062 may be used by a corporation in this state responsible for the
 1063 operation of a community in which the voting members are parcel
 1064 owners or their representatives, in which membership in the
 1065 corporation is not a mandatory condition of parcel ownership, or
 1066 which is not authorized to impose an assessment that may become
 1067 a lien on the parcel.

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1068 (3) The division shall develop an education program to
 1069 assist homeowners, associations, board members, and managers in
 1070 understanding and increasing awareness of the operation of
 1071 homeowners' associations pursuant to this chapter and in
 1072 understanding the use of alternative dispute resolution
 1073 techniques in resolving disputes between parcel owners and
 1074 associations or between owners. Such education program may
 1075 include the development of pamphlets and other written
 1076 instructional guides, the holding of classes and meetings by
 1077 division employees or outside vendors, as the division may
 1078 determine, and the creation and maintenance of an Internet
 1079 website containing instructional materials. The expenses of
 1080 operating the education program shall initially be paid by the
 1081 moneys and filing fees generated by the arbitration of recall
 1082 and election disputes and by the fees awarded in mediation of
 1083 those disputes referenced in this section. ~~At any time after the~~
 1084 ~~filing in a court of competent jurisdiction of a complaint~~
 1085 ~~relating to a dispute under ss. 720.301-720.312, the court may~~
 1086 ~~order that the parties enter mediation or arbitration~~
 1087 ~~procedures.~~

1088 Section 10. Section 689.26, Florida Statutes, is
 1089 transferred, renumbered as section 720.401, Florida Statutes,
 1090 and amended to read:

1091 720.401 ~~689.26~~ Prospective purchasers subject to
 1092 association membership requirement; disclosure required;
 1093 covenants; assessments; contract cancellation ~~voidability~~.--

1094 (1)(a) A prospective parcel owner in a community must be
 1095 presented a disclosure summary before executing the contract for

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1096 sale. The disclosure summary must be in a form substantially
 1097 similar to the following form:

1098
 1099 DISCLOSURE SUMMARY
 1100 FOR
 1101 (NAME OF COMMUNITY)
 1102

1103 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL
 1104 ~~(WILL)~~ ~~(WILL NOT)~~ BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS'
 1105 ASSOCIATION.

1106 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
 1107 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS
 1108 COMMUNITY.

1109 3. YOU WILL ~~(WILL)~~ ~~(WILL NOT)~~ BE OBLIGATED TO PAY
 1110 ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO
 1111 PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS \$_____
 1112 PER _____. YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL
 1113 ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS
 1114 MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS
 1115 \$_____ PER _____.

1116 4. YOU MAY ~~(WILL)~~ ~~(WILL NOT)~~ BE OBLIGATED TO PAY SPECIAL
 1117 ASSESSMENTS TO THE RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL
 1118 DISTRICT. ALL ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

1119 ~~5.4.~~ YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR
 1120 ASSESSMENTS LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD
 1121 RESULT IN A LIEN ON YOUR PROPERTY.

1122 ~~6.5.~~ THERE MAY BE ~~(IS)~~ ~~(IS NOT)~~ AN OBLIGATION TO PAY RENT
 1123 OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED
 1124 FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS'

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1125 ASSOCIATION. IF APPLICABLE, THE CURRENT AMOUNT IS \$_____ PER
 1126 _____. ~~(If such obligation exists, then the amount of the~~
 1127 ~~current obligation shall be set forth.)~~

1128 7.6. THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE
 1129 RESTRICTIVE COVENANTS ~~(CAN) (CANNOT) BE AMENDED~~ WITHOUT THE
 1130 APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE
 1131 ~~IF NO MANDATORY ASSOCIATION EXISTS,~~ PARCEL OWNERS.

1132 8.7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE
 1133 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
 1134 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
 1135 DOCUMENTS BEFORE PURCHASING PROPERTY.

1136 9.8. THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD
 1137 AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE
 1138 THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED
 1139 FROM THE DEVELOPER.

1140 DATE: PURCHASER:

1141 PURCHASER:

1142
 1143 The disclosure must be supplied by the developer, or by the
 1144 parcel owner if the sale is by an owner that is not the
 1145 developer. Any contract or agreement for sale shall refer to and
 1146 incorporate the disclosure summary and shall include, in
 1147 prominent language, a statement that the potential buyer should
 1148 not execute the contract or agreement until they have received
 1149 and read the disclosure summary required by this section.

1150 (b) Each contract entered into for the sale of property
 1151 governed by covenants subject to disclosure required by this
 1152 section must contain in conspicuous type a clause that states:
 1153

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1154 IF THE DISCLOSURE SUMMARY REQUIRED BY SECTION 720.401
 1155 ~~689.26~~, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE
 1156 PROSPECTIVE PURCHASER BEFORE EXECUTING THIS CONTRACT FOR SALE,
 1157 THIS CONTRACT IS VOIDABLE BY BUYER BY DELIVERING TO SELLER OR
 1158 SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF THE BUYER'S
 1159 INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE
 1160 DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST.
 1161 ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT.
 1162 BUYER'S RIGHT TO VOID THIS CONTRACT SHALL TERMINATE AT CLOSING.

1164 (c) If the disclosure summary is not provided to a
 1165 prospective purchaser before the purchaser executes a contract
 1166 for the sale of property governed by covenants that are subject
 1167 to disclosure pursuant to this section, the purchaser may void
 1168 the contract by delivering to the seller or the seller's agent
 1169 or representative written notice canceling the contract within 3
 1170 days after receipt of the disclosure summary or prior to
 1171 closing, whichever occurs first. This right may not be waived by
 1172 the purchaser but terminates at closing. A contract that does
 1173 not conform to the requirements of this subsection is voidable
 1174 at the option of the purchaser prior to closing.

1175 (2) This section does not apply to any association
 1176 regulated under chapter 718, chapter 719, chapter 721, or
 1177 chapter 723 or to a subdivider registered under chapter 498; and
 1178 also does not apply if disclosure regarding the association is
 1179 otherwise made in connection with the requirements of chapter
 1180 718, chapter 719, chapter 721, or chapter 723.

1181 Section 11. Section 689.265, Florida Statutes, is
 1182 transferred and renumbered as section 720.3086, Florida

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1183 Statutes, to read:

1184 720.3086 ~~689.265~~ Financial report.--In a residential
 1185 subdivision in which the owners of lots or parcels must pay
 1186 mandatory maintenance or amenity fees to the subdivision
 1187 developer or to the owners of the common areas, recreational
 1188 facilities, and other properties serving the lots or parcels,
 1189 the developer or owner of such areas, facilities, or properties
 1190 shall make public, within 60 days following the end of each
 1191 fiscal year, a complete financial report of the actual, total
 1192 receipts of mandatory maintenance or amenity fees received by
 1193 it, and an itemized listing of the expenditures made by it from
 1194 such fees, for that year. Such report shall be made public by
 1195 mailing it to each lot or parcel owner in the subdivision, by
 1196 publishing it in a publication regularly distributed within the
 1197 subdivision, or by posting it in prominent locations in the
 1198 subdivision. This section does not apply to amounts paid to
 1199 homeowner associations pursuant to chapter 617, chapter 718,
 1200 chapter 719, chapter 721, or chapter 723, or to amounts paid to
 1201 local governmental entities, including special districts.

1202 Section 12. Section 720.402, Florida Statutes, is created
 1203 to read:

1204 720.402 Publication of false or misleading information.--

1205 (1) Any person who, in reasonable reliance upon any
 1206 material statement or information that is false or misleading
 1207 and published by or under authority from the developer in
 1208 advertising and promotional materials, including, but not
 1209 limited to, a contract of purchaser, the declaration of
 1210 covenants, exhibits to a declaration of covenants, brochures,
 1211 and newspaper advertising, pays anything of value toward the

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1212 purchase of a parcel in a community located in this state shall
 1213 have a cause of action to rescind the contract or collect
 1214 damages from the developer for his or her loss prior to the
 1215 closing of the transaction. After the closing of the
 1216 transaction, the purchaser shall have a cause of action against
 1217 the developer for damages under this section from the time of
 1218 closing until 1 year after the date upon which the last of the
 1219 events described in paragraphs (a)-(d) occur:

1220 (a) The closing of the transaction;

1221 (b) The issuance by the applicable governmental authority
 1222 of a certificate of occupancy or other evidence of sufficient
 1223 completion of construction of the purchaser's residence to allow
 1224 lawful occupancy of the residence by the purchaser. In counties
 1225 or municipalities in which certificates of occupancy or other
 1226 evidences of completion sufficient to allow lawful occupancy are
 1227 not customarily issued, for the purposes of this section,
 1228 evidence of lawful occupancy shall be deemed to be given or
 1229 issued upon the date that such lawful occupancy of the residence
 1230 may be allowed under prevailing applicable laws, ordinances, or
 1231 statutes;

1232 (c) The completion by the developer of the common areas
 1233 and such recreational facilities, whether or not the same are
 1234 common areas, that the developer is obligated to complete or
 1235 provide under the terms of the written contract, governing
 1236 documents, or written agreement for purchase or lease of the
 1237 parcel; or

1238 (d) If there is not a written contract or agreement for
 1239 sale or lease of the parcel, the completion by the developer of
 1240 the common areas and such recreational facilities, whether or

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1241 not the same are common areas, that the developer would be
 1242 obligated to complete under any rule of law applicable to the
 1243 developer's obligation.

1244
 1245 Under no circumstances shall a cause of action created or
 1246 recognized under this section survive for a period of more than
 1247 5 years after the closing of the transaction.

1248 (2) In any action for relief under this section, the
 1249 prevailing party may recover reasonable attorney's fees. A
 1250 developer shall not expend association funds in the defense of
 1251 any suit under this section.

1252 Section 13. Section 720.501, Florida Statutes, is created
 1253 to read:

1254 720.501 Warranties.--

1255 (1)(a) The developer shall be deemed to have granted to
 1256 the homeowners' association an implied warranty of fitness and
 1257 merchantability for the purposes or uses intended as follows:

1258 1. As to the common areas and improvements thereon, a
 1259 warranty for 3 years commencing with the completion of the
 1260 building or improvement, or for 1 year after transfer of control
 1261 of the association from the developer to the members other than
 1262 the developer, but in no event for more than 5 years after
 1263 completion of the building or improvement.

1264 2. As to the personal property that is transferred with or
 1265 appurtenant to the common areas, a warranty for the same period
 1266 as that provided by the manufacturer of the personal property,
 1267 commencing with the date of transfer of the common areas to the
 1268 association.

1269 (b) The statute of limitations for any action in law or

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1270 equity that an association may have shall not begin to run until
 1271 the members other than the developer have elected a majority of
 1272 the members of the board.

1273 (2) For purposes of this section, the term "completion of
 1274 a building or improvement" means issuance of a certificate of
 1275 occupancy for the entire building or improvement, or the
 1276 equivalent authorization issued by the governmental body having
 1277 jurisdiction. In jurisdictions where no certificate of occupancy
 1278 or equivalent authorization is issued, "completion of a building
 1279 or improvement" means substantial completion of construction,
 1280 finishing, and equipping of the building or improvement
 1281 according to the plans and specifications.

1282 (3) The warranties provided by this section are
 1283 conditioned upon routine maintenance being performed unless the
 1284 maintenance is an obligation of the developer or a developer-
 1285 controlled association.

1286 (4) The warranties provided by this section shall inure to
 1287 the benefit of each owner and his or her successor owners and to
 1288 the benefit of the developer.

1289 (5) Nothing in this section affects a homeowners'
 1290 association as to which rights are established by transfer of
 1291 control and ownership rights of the common areas from the
 1292 developer to the homeowners' association prior to October 1,
 1293 2004.

1294 (6) The warranties provided by this section may be covered
 1295 by an insured warranty program underwritten by a licensed
 1296 insurance company registered in this state, provided such
 1297 warranty program meets the minimum requirements of this chapter.

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1298 Section 14. Paragraph (a) of subsection (1) of section
 1299 316.00825, Florida Statutes, is amended to read:

1300 316.00825 Closing and abandonment of roads; optional
 1301 conveyance to homeowners' association; traffic control
 1302 jurisdiction.--

1303 (1)(a) In addition to the authority provided in s. 336.12,
 1304 the governing body of the county may abandon the roads and
 1305 rights-of-way dedicated in a recorded residential subdivision
 1306 plat and simultaneously convey the county's interest in such
 1307 roads, rights-of-way, and appurtenant drainage facilities to a
 1308 homeowners' association for the subdivision, if the following
 1309 conditions have been met:

1310 1. The homeowners' association has requested the
 1311 abandonment and conveyance in writing for the purpose of
 1312 converting the subdivision to a gated neighborhood with
 1313 restricted public access.

1314 2. No fewer than four-fifths of the owners of record of
 1315 property located in the subdivision have consented in writing to
 1316 the abandonment and simultaneous conveyance to the homeowners'
 1317 association.

1318 3. The homeowners' association is both a corporation not
 1319 for profit organized and in good standing under chapter 617, and
 1320 a "homeowners' association" as defined in s. 720.301(8)~~(7)~~ with
 1321 the power to levy and collect assessments for routine and
 1322 periodic major maintenance and operation of street lighting,
 1323 drainage, sidewalks, and pavement in the subdivision.

1324 4. The homeowners' association has entered into and
 1325 executed such agreements, covenants, warranties, and other
 1326 instruments; has provided, or has provided assurance of, such

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1327 funds, reserve funds, and funding sources; and has satisfied
 1328 such other requirements and conditions as may be established or
 1329 imposed by the county with respect to the ongoing operation,
 1330 maintenance, and repair and the periodic reconstruction or
 1331 replacement of the roads, drainage, street lighting, and
 1332 sidewalks in the subdivision after the abandonment by the
 1333 county.

1334 Section 15. Paragraphs (g) and (h) of subsection (2) of
 1335 section 498.025, Florida Statutes, are amended to read:

1336 498.025 Exemptions.--

1337 (2) Except as provided in s. 498.022, the provisions of
 1338 this chapter do not apply to offers or dispositions of interests
 1339 in lots, parcels, or units contained in a recorded subdivision
 1340 plat, or resulting from the subdivision of land in accordance
 1341 with applicable local land development laws and regulations
 1342 pursuant to part II of chapter 163, including lots, parcels,
 1343 units, or interest vested under such part, if all of the
 1344 following conditions exist:

1345 (g) The contract for purchase or lease contains, and the
 1346 subdivider complies with, the following provisions:

1347 1. The purchaser must inspect the subdivided land prior to
 1348 the execution of the contract or lease.

1349 2. The purchaser shall have an absolute right to cancel
 1350 the contract or lease for any reason whatsoever for a period of
 1351 7 business days following the date on which the contract or
 1352 lease was executed by the purchaser.

1353 3. In the event the purchaser elects to cancel within the
 1354 period provided, all funds or other property paid by the
 1355 purchaser shall be refunded without penalty or obligation within

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1356 20 days of the receipt of the notice of cancellation by the
 1357 developer.

1358 4. All funds or property paid by the purchaser shall be
 1359 put in escrow until closing has occurred and the lease or deed
 1360 has been recorded.

1361 5. Unless otherwise timely canceled, closing shall occur
 1362 within 180 days of the date of execution of the contract by the
 1363 purchaser.

1364 6. When title is conveyed, said title shall be conveyed by
 1365 statutory warranty deed unencumbered by any lien or mortgage
 1366 except for any first purchase money mortgage given by the
 1367 purchaser and restrictions, covenants, or easements of record.

1368 7. The subdivider presents to the purchaser the disclosure
 1369 required by s. 720.401 ~~689.26~~ prior to the execution of the
 1370 contract or lease.

1371 (h) The agreement for deed contains, and the subdivider
 1372 complies with, the following provisions:

1373 1. The purchaser must inspect the subdivided land prior to
 1374 the execution of the agreement for deed.

1375 2. The purchaser shall have an absolute right to cancel
 1376 the agreement for deed for any reason whatsoever for a period of
 1377 7 business days following the date on which the agreement for
 1378 deed was executed by the purchaser.

1379 3. If the purchaser elects to cancel within the period
 1380 provided, all funds or other property paid by the purchaser
 1381 shall be refunded without penalty or obligation within 20 days
 1382 after the receipt of the notice of cancellation by the
 1383 developer.

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1384 4. All funds or ~~for~~ property paid by the purchaser shall
 1385 be put in escrow until the agreement for deed has been recorded
 1386 in the county in which the subdivision is located.

1387 5. Unless otherwise timely canceled, the agreement for
 1388 deed shall be recorded within 180 days after its execution by
 1389 the purchaser.

1390 6. Sale of lots in the subdivision shall be restricted
 1391 solely to residents of the state.

1392 7. The underlying mortgage or other ancillary documents
 1393 shall contain release provisions for the individual lot
 1394 purchased.

1395 8. The subdivider presents to the purchaser the disclosure
 1396 required by s. 720.401 ~~689.26~~ prior to the execution of the
 1397 agreement for deed.

1398 Section 16. Subsection (2) of section 558.002, Florida
 1399 Statutes, is amended to read:

1400 558.002 Definitions.--As used in this act, the term:

1401 (2) "Association" has the same meaning as in s.
 1402 718.103(2), s. 719.103(2), s. 720.301(8)~~(7)~~, or s. 723.025.

1403 Section 17. The Division of Statutory Revision is
 1404 requested to designate ss. 720.301-720.312, Florida Statutes, as
 1405 part I of chapter 720, Florida Statutes; to designate ss.
 1406 720.401 and 720.402, Florida Statutes, as part II of chapter
 1407 720, Florida Statutes, and entitle that part "DISCLOSURE PRIOR
 1408 TO SALE OF RESIDENTIAL PARCELS"; and to designate s. 720.501,
 1409 Florida Statutes, as part III of chapter 720, Florida Statutes,
 1410 and entitle that part "RIGHTS AND OBLIGATIONS OF DEVELOPERS."

1411 Section 18. This act shall take effect October 1, 2004.