

By Senator Torres

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1 A bill to be entitled
2 An act relating to homeowners' associations dispute
3 resolution; providing a short title; amending s.
4 720.311, F.S.; revising the form required for a
5 written demand to participate in presuit mediation;
6 requiring nonbinding arbitration in certain
7 homeowners' association disputes; providing
8 applicability and construction; requiring that a
9 judicial proceeding be initiated within a specified
10 timeframe after the entry of an arbitrator's final
11 decision; authorizing parties in certain disputes to
12 either file a dispute in court or elect to enter into
13 binding or nonbinding arbitration; providing
14 procedures for resolving such disputes; specifying
15 certain parties are entitled to seek recovery of
16 certain costs and fees; providing a contingent
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. This act may be cited as the "Homeowner
22 Protection and Empowerment Act."

23 Section 2. Subsection (2) of section 720.311, Florida
24 Statutes, is amended to read:

25 720.311 Dispute resolution.—

26 (2) (a) Disputes between an association and a parcel owner
27 regarding use of or changes to the parcel or the common areas
28 and other covenant enforcement disputes, disputes regarding
29 amendments to the association documents, disputes regarding

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30 meetings of the board and committees appointed by the board,
31 membership meetings not including election meetings, and access
32 to the official records of the association shall be the subject
33 of a demand for presuit mediation served by an aggrieved party
34 before the dispute is filed in court. Presuit mediation
35 proceedings must be conducted in accordance with the applicable
36 Florida Rules of Civil Procedure, and these proceedings are
37 privileged and confidential to the same extent as court-ordered
38 mediation. Disputes subject to presuit mediation under this
39 section shall not include the collection of any assessment,
40 fine, or other financial obligation, including attorney's fees
41 and costs, claimed to be due or any action to enforce a prior
42 mediation settlement agreement between the parties. Also, in any
43 dispute subject to presuit mediation under this section where
44 emergency relief is required, a motion for temporary injunctive
45 relief may be filed with the court without first complying with
46 the presuit mediation requirements of this section. After any
47 issues regarding emergency or temporary relief are resolved, the
48 court may either refer the parties to a mediation program
49 administered by the courts or require mediation under this
50 section. An arbitrator or judge may not consider any information
51 or evidence arising from the presuit mediation proceeding except
52 in a proceeding to impose sanctions for failure to attend a
53 presuit mediation session or to enforce a mediated settlement
54 agreement. Persons who are not parties to the dispute may not
55 attend the presuit mediation conference without the consent of
56 all parties, except for counsel for the parties and a corporate
57 representative designated by the association. When mediation is
58 attended by a quorum of the board, such mediation is not a board

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59 meeting for purposes of notice and participation set forth in s.
60 720.303. An aggrieved party shall serve on the responding party
61 a written demand to participate in presuit mediation in
62 substantially the following form:

63
64 STATUTORY OFFER TO PARTICIPATE

65
66 IN PRESUIT MEDIATION

67
68 The alleged aggrieved party,, hereby
69 demands that, as the responding
70 party, engage in mandatory presuit mediation in
71 connection with the following disputes, which by
72 statute are of a type that are subject to presuit
73 mediation:

74
75 (List specific nature of the dispute or disputes to be
76 mediated and the authority supporting a finding of a
77 violation as to each dispute.)

78
79 Under ~~Pursuant to~~ section 720.311, Florida Statutes,
80 this demand to resolve the dispute through presuit
81 mediation is required before a lawsuit can be filed
82 concerning the dispute. ~~Pursuant to the statute,~~ The
83 parties are required to engage in presuit mediation
84 with a neutral third-party mediator in order to
85 attempt to resolve this dispute without court action,
86 and the aggrieved party demands that you likewise
87 agree to this process. If you fail to participate in

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88 the mediation process, you will be required to
89 participate in mandatory nonbinding arbitration. After
90 the arbitrator issues a final decision, a suit may be
91 brought against you without further warning.

92
93 The process of mediation involves a supervised
94 negotiation process in which a trained, neutral third-
95 party mediator meets with both parties and assists
96 them in exploring possible opportunities for resolving
97 part or all of the dispute. By agreeing to participate
98 in presuit mediation, you are not bound in any way to
99 change your position. Furthermore, the mediator has no
100 authority to make any decisions in this matter or to
101 determine who is right or wrong and merely acts as a
102 facilitator to ensure that each party understands the
103 position of the other party and that all options for
104 reasonable settlement are fully explored.

105
106 If an agreement is reached, it shall be reduced to
107 writing and becomes a binding and enforceable
108 commitment of the parties. A resolution of one or more
109 disputes in this fashion avoids the need to litigate
110 these issues in court. The failure to reach an
111 agreement, or the failure of a party to participate in
112 the process, results in the mediator declaring an
113 impasse in the mediation, after which time the parties
114 shall enter into mandatory nonbinding arbitration.
115 After the arbitrator issues a final decision, the
116 aggrieved party may proceed to court on all

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117 outstanding, unsettled disputes. If you have failed or
118 refused to participate in the entire mediation
119 process, you will not be entitled to recover attorney
120 ~~attorney's~~ fees, even if you prevail.

121
122 The aggrieved party has selected and hereby lists five
123 certified mediators who we believe to be neutral and
124 qualified to mediate the dispute. You have the right
125 to select any one of these mediators. The fact that
126 one party may be familiar with one or more of the
127 listed mediators does not mean that the mediator
128 cannot act as a neutral and impartial facilitator. Any
129 mediator who cannot act in this capacity is required
130 ethically to decline to accept engagement. The
131 mediators that we suggest, and their current hourly
132 rates, are as follows:

133
134 (List the names, addresses, telephone numbers, and
135 hourly rates of the mediators. Other pertinent
136 information about the background of the mediators may
137 be included as an attachment.)

138
139 You may contact the offices of these mediators to
140 confirm that the listed mediators will be neutral and
141 will not show any favoritism toward either party. The
142 Florida Supreme Court can provide you a list of
143 certified mediators.

144
145 Unless otherwise agreed by the parties, section

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146 720.311(2)(b), Florida Statutes, requires that the
147 parties share the costs of presuit mediation equally,
148 including the fee charged by the mediator. An average
149 mediation may require three to four hours of the
150 mediator's time, including some preparation time, and
151 the parties would need to share equally the mediator's
152 fees as well as their own attorney ~~attorney's~~ fees if
153 they choose to employ an attorney in connection with
154 the mediation. However, use of an attorney is not
155 required and is at the option of each party. The
156 mediators may require the advance payment of some or
157 all of the anticipated fees. The aggrieved party
158 hereby agrees to pay or prepay one-half of the
159 mediator's estimated fees and to forward this amount
160 or such other reasonable advance deposits as the
161 mediator requires for this purpose. Any funds
162 deposited will be returned to you if these are in
163 excess of your share of the fees incurred.

164
165 To begin your participation in presuit mediation to
166 try to resolve the dispute and avoid further legal
167 action, please sign below and clearly indicate which
168 mediator is acceptable to you. We will then ask the
169 mediator to schedule a mutually convenient time and
170 place for the mediation conference to be held. The
171 mediation conference must be held within 90 ~~ninety~~
172 ~~(90)~~ days after ~~of~~ this date, unless extended by
173 mutual written agreement. In the event that you fail
174 to respond within 20 days after ~~from~~ the date of this

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175 letter, or if you fail to agree to at least one of the
 176 mediators that we have suggested or to pay or prepay
 177 to the mediator one-half of the costs involved, you
 178 will be required to participate in mandatory
 179 nonbinding arbitration. After the arbitrator issues a
 180 final decision, the aggrieved party is ~~will be~~
 181 authorized to proceed with the filing of a lawsuit
 182 against you without further notice and may seek an
 183 award of attorney ~~attorney's~~ fees or costs incurred in
 184 attempting to obtain mediation.

185
 186 Therefore, please give this matter your immediate
 187 attention. By law, your response must be mailed by
 188 certified mail, return receipt requested, and by
 189 first-class mail to the address shown on this demand.

190
 191
 192

193
 194 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR
 195 AGREEMENT TO THAT CHOICE.

196
 197 AGREEMENT TO MEDIATE

198
 199 The undersigned hereby agrees to participate in
 200 presuit mediation and agrees to attend a mediation
 201 conducted by the following mediator or mediators who
 202 are listed above as someone who would be acceptable to
 203 mediate this dispute:

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(List acceptable mediator or mediators.)

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

.....

Signature of responding party #1

.....

Telephone contact information

.....

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

(b) Service of the statutory demand to participate in presuit mediation is ~~shall be~~ effected by sending a letter in substantial conformity with the above form by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the association. The responding party has 20 days after ~~from~~ the date of the mailing of the statutory demand to serve a response to the aggrieved party in writing. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory demand. Notwithstanding the foregoing,

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233 once the parties have agreed on a mediator, the mediator may
234 reschedule the mediation for a date and time mutually convenient
235 to the parties. The parties shall share the costs of presuit
236 mediation equally, including the fee charged by the mediator, if
237 any, unless the parties agree otherwise, and the mediator may
238 require advance payment of its reasonable fees and costs. The
239 failure of any party to respond to a demand or response, to
240 agree upon a mediator, to make payment of fees and costs within
241 the time established by the mediator, or to appear for a
242 scheduled mediation session without the approval of the mediator
243 constitutes, ~~shall constitute~~ the failure or refusal to
244 participate in the mediation process and operates ~~shall operate~~
245 as an impasse in the presuit mediation by such party, requiring
246 both parties to participate in mandatory nonbinding arbitration.
247 After the arbitrator issues a final decision, the aggrieved
248 party may ~~entitling the other party to~~ proceed in court and ~~to~~
249 seek an award of the costs and fees associated with the
250 mediation. Additionally, notwithstanding ~~the provisions of~~ any
251 other law or document, persons who fail or refuse to participate
252 in the entire mediation process may not recover attorney
253 ~~attorney's~~ fees and costs in subsequent litigation relating to
254 the dispute. If any presuit mediation session cannot be
255 scheduled and conducted within 90 days after the offer to
256 participate in mediation was filed, an impasse is ~~shall be~~
257 deemed to have occurred unless both parties agree to extend this
258 deadline.

259 (c) If presuit mediation as described in paragraph (a) is
260 not successful in resolving all issues between the parties, the
261 parties shall ~~may file the unresolved dispute in a court of~~

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262 ~~competent jurisdiction or elect to enter into mandatory binding~~
263 ~~or nonbinding arbitration under pursuant to the procedures set~~
264 ~~forth in s. 718.1255 and rules adopted by the division, with the~~
265 ~~arbitration proceeding to be conducted by a department~~
266 ~~arbitrator or by a private arbitrator certified by the~~
267 ~~department. Any party to the dispute may petition the division~~
268 ~~for nonbinding arbitration. This paragraph does not apply to~~
269 ~~disputes regarding use of or changes to the parcel or the common~~
270 ~~areas and other covenant enforcement disputes. This paragraph~~
271 ~~does not prohibit the parties from proceeding in a trial de novo~~
272 ~~unless the parties agreed that the arbitration is binding. A~~
273 ~~judicial proceeding must be initiated within 30 days after the~~
274 ~~entry of the final decision of the arbitrator. If a judicial~~
275 ~~proceeding is initiated, the final decision of the arbitrator is~~
276 ~~admissible into evidence at the trial de novo If all parties do~~
277 ~~not agree to arbitration proceedings following an unsuccessful~~
278 ~~presuit mediation, any party may file the dispute in court. A~~
279 ~~final order resulting from nonbinding arbitration is final and~~
280 ~~enforceable in the courts if a complaint for trial de novo is~~
281 ~~not filed in a court of competent jurisdiction within 30 days~~
282 ~~after entry of the order. As to any issue or dispute that is not~~
283 ~~resolved at presuit mediation, and as to any issue that is~~
284 ~~settled at presuit mediation but is thereafter subject to an~~
285 ~~action seeking enforcement of the mediation settlement, the~~
286 ~~prevailing party in any subsequent arbitration or litigation~~
287 ~~proceeding shall be entitled to seek recovery of all costs and~~
288 ~~attorney's fees incurred in the presuit mediation process.~~

289 (d) If presuit mediation, as described in paragraph (a), is
290 not successful in resolving all issues between the parties in

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291 disputes regarding use of or changes to the parcel or the common
292 areas and other covenant enforcement disputes, the parties may
293 file the unresolved dispute in a court of competent jurisdiction
294 or elect to enter into binding or nonbinding arbitration under
295 the procedures in s. 718.1255 and rules adopted by the division.
296 If the parties enter into arbitration, the arbitration
297 proceedings shall be conducted by a department arbitrator or a
298 private arbitrator certified by the department. If all parties
299 do not agree to arbitration proceedings following an
300 unsuccessful presuit mediation, any party may file the dispute
301 in court. A final order resulting from nonbinding arbitration is
302 final and enforceable in court if a complaint for a trial de
303 novo is not filed in a court of competent jurisdiction within 30
304 days after entry of the order. As to any issue or dispute
305 regarding use of or changes to the parcel or the common areas
306 and other covenant enforcement that is not resolved at presuit
307 mediation, and as to any issue that is settled at presuit
308 mediation but is thereafter subject to an action seeking
309 enforcement of the mediation settlement, the prevailing party in
310 any subsequent arbitration or judicial proceeding is entitled to
311 seek recovery of all costs and attorney fees incurred in the
312 presuit mediation process.

313 (e) ~~(d)~~ A mediator or arbitrator is ~~shall be~~ authorized to
314 conduct mediation or arbitration under this section only if he
315 or she has been certified as a circuit court civil mediator or
316 arbitrator, respectively, pursuant to the requirements
317 established by the Florida Supreme Court. Settlement agreements
318 resulting from mediation may ~~shall~~ not have precedential value
319 in proceedings involving parties other than those participating

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320 in the mediation to support either a claim or defense in other
321 disputes.

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

329 Section 3. This act shall take effect July 1, 2020, but
330 only if SB ___ or similar legislation takes effect, if such
331 legislation is adopted in the same legislative session or an
332 extension thereof and becomes a law.