

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.; requiring nonbinding arbitration in  
5           certain homeowners' association disputes; authorizing  
6           the parties to initiate a judicial proceeding;  
7           providing procedures for certain homeowners'  
8           association disputes that do not require nonbinding  
9           arbitration; conforming provisions to changes made by  
10          the act; providing a contingent effective date.

11  
12   Be It Enacted by the Legislature of the State of Florida:

13  
14          Section 1. This act may be cited as the "Homeowner  
15 Protection and Empowerment Act."

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

18          720.311 Dispute resolution.—

19          (2) (a) Disputes between an association and a parcel owner  
20          regarding use of or changes to the parcel or the common areas  
21          and other covenant enforcement disputes, disputes regarding  
22          amendments to the association documents, disputes regarding  
23          meetings of the board and committees appointed by the board,  
24          membership meetings not including election meetings, and access  
25          to the official records of the association shall be the subject

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

51 association. When mediation is attended by a quorum of the  
 52 board, such mediation is not a board meeting for purposes of  
 53 notice and participation set forth in s. 720.303. An aggrieved  
 54 party shall serve on the responding party a written demand to  
 55 participate in presuit mediation in substantially the following  
 56 form:

57 STATUTORY OFFER TO PARTICIPATE

58

59 IN PRESUIT MEDIATION

60 The alleged aggrieved party, ....., hereby demands  
 61 that ....., as the responding party, engage in  
 62 mandatory presuit mediation in connection with the following  
 63 disputes, which by statute are of a type that are subject to  
 64 presuit mediation:

65 (List specific nature of the dispute or disputes to be mediated  
 66 and the authority supporting a finding of a violation as to each  
 67 dispute.)

68 Under ~~Pursuant to~~ section 720.311, Florida Statutes, this demand  
 69 to resolve the dispute through presuit mediation is required  
 70 before a lawsuit can be filed concerning the dispute. ~~Pursuant~~  
 71 ~~to the statute,~~ The parties are required to engage in presuit  
 72 mediation with a neutral third-party mediator in order to  
 73 attempt to resolve this dispute without court action, and the  
 74 aggrieved party demands that you likewise agree to this process.  
 75 If you fail to participate in the mediation process, you will be

76 | required to participate in mandatory nonbinding arbitration.  
77 | After the arbitrator issues a final decision, a suit may be  
78 | brought against you without further warning.  
79 | The process of mediation involves a supervised negotiation  
80 | process in which a trained, neutral third-party mediator meets  
81 | with both parties and assists them in exploring possible  
82 | opportunities for resolving part or all of the dispute. By  
83 | agreeing to participate in presuit mediation, you are not bound  
84 | in any way to change your position. Furthermore, the mediator  
85 | has no authority to make any decisions in this matter or to  
86 | determine who is right or wrong and merely acts as a facilitator  
87 | to ensure that each party understands the position of the other  
88 | party and that all options for reasonable settlement are fully  
89 | explored.  
90 | If an agreement is reached, it shall be reduced to writing and  
91 | becomes a binding and enforceable commitment of the parties. A  
92 | resolution of one or more disputes in this fashion avoids the  
93 | need to litigate these issues in court. The failure to reach an  
94 | agreement, or the failure of a party to participate in the  
95 | process, results in the mediator declaring an impasse in the  
96 | mediation, after which time the parties shall enter into  
97 | mandatory nonbinding arbitration. After the arbitrator issues a  
98 | final decision, the aggrieved party may proceed to court on all  
99 | outstanding, unsettled disputes. If you have failed or refused  
100 | to participate in the entire mediation process, you will not be

101 entitled to recover attorney ~~attorney's~~ fees, even if you  
102 prevail.

103 The aggrieved party has selected and hereby lists five certified  
104 mediators who we believe to be neutral and qualified to mediate  
105 the dispute. You have the right to select any one of these  
106 mediators. The fact that one party may be familiar with one or  
107 more of the listed mediators does not mean that the mediator  
108 cannot act as a neutral and impartial facilitator. Any mediator  
109 who cannot act in this capacity is required ethically to decline  
110 to accept engagement. The mediators that we suggest, and their  
111 current hourly rates, are as follows:

112 (List the names, addresses, telephone numbers, and hourly rates  
113 of the mediators. Other pertinent information about the  
114 background of the mediators may be included as an attachment.)

115 You may contact the offices of these mediators to confirm that  
116 the listed mediators will be neutral and will not show any  
117 favoritism toward either party. The Florida Supreme Court can  
118 provide you a list of certified mediators.

119 Unless otherwise agreed by the parties, section 720.311(2)(b),  
120 Florida Statutes, requires that the parties share the costs of  
121 presuit mediation equally, including the fee charged by the  
122 mediator. An average mediation may require three to four hours  
123 of the mediator's time, including some preparation time, and the  
124 parties would need to share equally the mediator's fees as well  
125 as their own attorney ~~attorney's~~ fees if they choose to employ

126 an attorney in connection with the mediation. However, use of an  
127 attorney is not required and is at the option of each party. The  
128 mediators may require the advance payment of some or all of the  
129 anticipated fees. The aggrieved party hereby agrees to pay or  
130 prepay one-half of the mediator's estimated fees and to forward  
131 this amount or such other reasonable advance deposits as the  
132 mediator requires for this purpose. Any funds deposited will be  
133 returned to you if these are in excess of your share of the fees  
134 incurred.

135 To begin your participation in presuit mediation to try to  
136 resolve the dispute and avoid further legal action, please sign  
137 below and clearly indicate which mediator is acceptable to you.  
138 We will then ask the mediator to schedule a mutually convenient  
139 time and place for the mediation conference to be held. The  
140 mediation conference must be held within 90 ~~ninety (90)~~ days  
141 after ~~of~~ this date, unless extended by mutual written agreement.  
142 In the event that you fail to respond within 20 days after ~~from~~  
143 the date of this letter, or if you fail to agree to at least one  
144 of the mediators that we have suggested or to pay or prepay to  
145 the mediator one-half of the costs involved, you will be  
146 required to participate in mandatory nonbinding arbitration.  
147 After the arbitrator issues a final decision, the aggrieved  
148 party is ~~will be~~ authorized to proceed with the filing of a  
149 lawsuit against you without further notice and may seek an award  
150 of attorney ~~attorney's~~ fees or costs incurred in attempting to

151 obtain mediation.

152 Therefore, please give this matter your immediate attention. By  
153 law, your response must be mailed by certified mail, return  
154 receipt requested, and by first-class mail to the address shown  
155 on this demand.

156 .....

157 .....

158 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO  
159 THAT CHOICE.

160 AGREEMENT TO MEDIATE

161 The undersigned hereby agrees to participate in presuit  
162 mediation and agrees to attend a mediation conducted by the  
163 following mediator or mediators who are listed above as someone  
164 who would be acceptable to mediate this dispute:

165 (List acceptable mediator or mediators.)

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

169 .....

170 Signature of responding party #1

171 .....

172 Telephone contact information

173 .....

174 Signature and telephone contact information of responding party  
175 #2 (if applicable) (if property is owned by more than one person,

176 | all owners must sign)

177 |       (b) Service of the statutory demand to participate in  
178 | presuit mediation is ~~shall be~~ effected by sending a letter in  
179 | substantial conformity with the above form by certified mail,  
180 | return receipt requested, with an additional copy being sent by  
181 | regular first-class mail, to the address of the responding party  
182 | as it last appears on the books and records of the association.  
183 | The responding party has 20 days after ~~from~~ the date of the  
184 | mailing of the statutory demand to serve a response to the  
185 | aggrieved party in writing. The response shall be served by  
186 | certified mail, return receipt requested, with an additional  
187 | copy being sent by regular first-class mail, to the address  
188 | shown on the statutory demand. Notwithstanding the foregoing,  
189 | once the parties have agreed on a mediator, the mediator may  
190 | reschedule the mediation for a date and time mutually convenient  
191 | to the parties. The parties shall share the costs of presuit  
192 | mediation equally, including the fee charged by the mediator, if  
193 | any, unless the parties agree otherwise, and the mediator may  
194 | require advance payment of its reasonable fees and costs. The  
195 | failure of any party to respond to a demand or response, to  
196 | agree upon a mediator, to make payment of fees and costs within  
197 | the time established by the mediator, or to appear for a  
198 | scheduled mediation session without the approval of the mediator  
199 | constitutes, ~~shall constitute~~ the failure or refusal to  
200 | participate in the mediation process and operates ~~shall operate~~



201 as an impasse in the presuit mediation by such party, requiring  
202 both parties to participate in mandatory nonbinding arbitration.  
203 After the arbitrator issues a final decision, the aggrieved  
204 party may ~~entitling the other party to~~ proceed in court and ~~to~~  
205 seek an award of the costs and fees associated with the  
206 mediation. Additionally, notwithstanding ~~the provisions of any~~  
207 other law or document, persons who fail or refuse to participate  
208 in the entire mediation process may not recover attorney  
209 ~~attorney's~~ fees and costs in subsequent litigation relating to  
210 the dispute. If any presuit mediation session cannot be  
211 scheduled and conducted within 90 days after the offer to  
212 participate in mediation was filed, an impasse is ~~shall be~~  
213 deemed to have occurred unless both parties agree to extend this  
214 deadline.

215 (c) If presuit mediation as described in paragraph (a) is  
216 not successful in resolving all issues between the parties, the  
217 parties shall ~~may file the unresolved dispute in a court of~~  
218 ~~competent jurisdiction or elect to enter into mandatory binding~~  
219 ~~or~~ nonbinding arbitration under ~~pursuant to~~ the procedures set  
220 forth in s. 718.1255 and rules adopted by the division, with the  
221 arbitration proceeding to be conducted by a department  
222 arbitrator or by a private arbitrator certified by the  
223 department. Any party to the dispute may petition the division  
224 for nonbinding arbitration. This paragraph does not apply to  
225 disputes regarding use of or changes to the parcel or the common

226 areas and other covenant enforcement disputes. This paragraph  
227 does not prohibit the parties from proceeding in a trial de novo  
228 unless the parties agreed that the arbitration is binding. A  
229 judicial proceeding must be initiated within 30 days after the  
230 entry of the final decision of the arbitrator. If a judicial  
231 proceeding is initiated, the final decision of the arbitrator is  
232 admissible into evidence at the trial de novo ~~If all parties do~~  
233 ~~not agree to arbitration proceedings following an unsuccessful~~  
234 ~~presuit mediation, any party may file the dispute in court. A~~  
235 ~~final order resulting from nonbinding arbitration is final and~~  
236 ~~enforceable in the courts if a complaint for trial de novo is~~  
237 ~~not filed in a court of competent jurisdiction within 30 days~~  
238 ~~after entry of the order. As to any issue or dispute that is not~~  
239 ~~resolved at presuit mediation, and as to any issue that is~~  
240 ~~settled at presuit mediation but is thereafter subject to an~~  
241 ~~action seeking enforcement of the mediation settlement, the~~  
242 ~~prevailing party in any subsequent arbitration or litigation~~  
243 ~~proceeding shall be entitled to seek recovery of all costs and~~  
244 ~~attorney's fees incurred in the presuit mediation process.~~

245 (d) If presuit mediation, as described in paragraph (a),  
246 is not successful in resolving all issues between the parties in  
247 disputes regarding use of or changes to the parcel or the common  
248 areas and other covenant enforcement disputes, the parties may  
249 file the unresolved dispute in a court of competent jurisdiction  
250 or elect to enter into binding or nonbinding arbitration under

251 the procedures in s. 718.1255 and rules adopted by the division.  
252 If the parties enter into arbitration, the arbitration  
253 proceedings shall be conducted by a department arbitrator or a  
254 private arbitrator certified by the department. If all parties  
255 do not agree to arbitration proceedings following an  
256 unsuccessful presuit mediation, any party may file the dispute  
257 in court. A final order resulting from nonbinding arbitration is  
258 final and enforceable in court if a complaint for a trial de  
259 novo is not filed in a court of competent jurisdiction within 30  
260 days after entry of the order. As to any issue or dispute  
261 regarding use of or changes to the parcel or the common areas  
262 and other covenant enforcement that is not resolved at presuit  
263 mediation, and as to any issue that is settled at presuit  
264 mediation but is thereafter subject to an action seeking  
265 enforcement of the mediation settlement, the prevailing party in  
266 any subsequent arbitration or judicial proceeding is entitled to  
267 seek recovery of all costs and attorney fees incurred in the  
268 presuit mediation process.

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

276 | in the mediation to support either a claim or defense in other  
277 | disputes.

278 |       (f)~~(e)~~ The presuit mediation procedures in ~~provided by~~  
279 | this subsection may be used by a Florida corporation responsible  
280 | for the operation of a community in which the voting members are  
281 | parcel owners or their representatives, in which membership in  
282 | the corporation is not a mandatory condition of parcel  
283 | ownership, or which is not authorized to impose an assessment  
284 | that may become a lien on the parcel.

285 |       Section 3. This act shall take effect July 1, 2020, but  
286 | only if HB 235 or similar legislation takes effect, if such  
287 | legislation is adopted in the same legislative session or an  
288 | extension thereof and becomes law.