

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Regulatory Reform
2 Subcommittee

3 Representative Beltran offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (b) of subsection (2) of section
8 720.305, Florida Statutes, is amended to read:

9 720.305 Obligations of members; remedies at law or in
10 equity; levy of fines and suspension of use rights.—

11 (2) An association may levy reasonable fines. A fine may
12 not exceed \$100 per violation against any member or any member's
13 tenant, guest, or invitee for the failure of the owner of the
14 parcel or its occupant, licensee, or invitee to comply with any
15 provision of the declaration, the association bylaws, or
16 reasonable rules of the association unless otherwise provided in

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17 the governing documents. A fine may be levied by the board for
18 each day of a continuing violation, with a single notice and
19 opportunity for hearing, except that the fine may not exceed
20 \$1,000 in the aggregate unless otherwise provided in the
21 governing documents. A fine of less than \$1,000 may not become a
22 lien against a parcel. In any action to recover a fine, the
23 prevailing party is entitled to reasonable attorney fees and
24 costs from the nonprevailing party as determined by the court.

25 (b)1. A fine or suspension levied by the board of
26 administration may not be imposed unless the board first
27 provides at least 14 days' notice to the parcel owner and, if
28 applicable, any occupant, licensee, or invitee of the parcel
29 owner, sought to be fined or suspended, and provides written
30 notice of an opportunity for a hearing before a fine and
31 suspension committee of at least three members appointed by the
32 board who are not officers, directors, or employees of the
33 association, or the spouse, parent, child, brother, or sister of
34 an officer, director, or employee. Such hearing must be
35 conducted within 14 days after the board of administration
36 receives a written request for a hearing by the parcel owner or
37 the occupant, licensee, or invitee of the parcel owner sought to
38 be fine or suspended, unless the parcel owner or the occupant,
39 licensee, or invitee of the parcel owner sought to be fined or
40 suspended requests a later date in writing. The request can be
41 made by United States mail, hand delivery, or by e-mail to the

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42 board, a manager, the fine and suspension committee, or a
43 designated officer. The parcel owner, occupant, licensee, or
44 invitee sought to be fined or suspended has a right to appear
45 before the fine and suspension committee and may do so in person
46 or by telephone, real-time videoconferencing, or similar real-
47 time electronic or video communication. If the fine and
48 suspension committee, by majority vote, does not approve a
49 proposed fine or suspension or reduce a fine or suspension, the
50 proposed fine or suspension may not be imposed. The role of the
51 fine and suspension committee is limited to determining whether
52 to confirm, ~~or~~ reject, or reduce the fine or suspension levied
53 by the board. If the proposed fine or suspension levied by the
54 board is approved by the fine and suspension committee, the fine
55 payment is due 5 days after notice of the approved fine is
56 provided to the parcel owner and, if applicable, to any
57 occupant, licensee, or invitee of the parcel owner. The
58 association must provide written notice of such fine or
59 suspension by United States mail or hand delivery to the parcel
60 owner and, if applicable, to any occupant, licensee, or invitee
61 of the parcel owner. The association must also provide the
62 written notice by electronic transmission to the parcel owner's
63 e-mail address, if the parcel owner's e-mail address is
64 maintained in the association's official records.

65 2. Within 3 days after receiving written notice that the
66 fine or suspension was approved by the fine and suspension

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67 committee, a parcel owner or, if applicable, the occupant,
68 licensee, or invitee of the parcel owner, who is fined or
69 suspended may appeal the fine or suspension by providing written
70 notice of such appeal to the board, a manager, the fine and
71 suspension committee, or a designated officer by United States
72 mail, hand delivery, or e-mail.

73 3. An association must give a parcel owner or, if
74 applicable, any occupant, licensee, or invitee of the parcel
75 owner, who appeals a fine or suspension, an opportunity for a
76 hearing before an appeals committee made up of at least five
77 members appointed by the board who are not officers, directors,
78 employees of the association, or members of the fine and
79 suspension committee, or the spouse, parent, child, brother, or
80 sister of an officer, director, employee, or member of the fine
81 and suspension committee. The parcel owner or the occupant,
82 licensee, or invitee of the parcel owner fined or suspended has
83 a right to appear before the appeals committee and may do so in
84 person or by telephone, real-time videoconferencing, or similar
85 real-time electronic or video communication. The role of the
86 appeals committee is limited to determining whether to confirm,
87 reject, or reduce the fine or suspension levied by the board and
88 confirmed by the fine and suspension committee. If the appeals
89 committee, by majority vote, does not approve the fine or
90 suspension or reduce the fine or suspension, the fine or
91 suspension may not be imposed. If the violation that resulted in

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92 the fine or suspension is corrected before the hearing, the
93 appeals committee must reduce the fine or suspension by at least
94 50 percent. The association must provide written notice of the
95 appeals committee's decision by United States mail or hand
96 delivery to the parcel owner and, if applicable, to the
97 occupant, licensee, or invitee of the parcel owner who received
98 the fine or suspension. The association must also provide the
99 written notice by electronic transmission to the parcel owner's
100 e-mail address, if the parcel owner's e-mail address is
101 maintained in the association's official records. Payment of a
102 fine that is appealed in compliance with this paragraph is due 5
103 days after notice of the appeals committee's decision is
104 provided to the parcel owner and, if applicable, to the
105 occupant, licensee, or invitee of the parcel owner.

106 Section 2. Paragraph (a) of subsection (2) of section
107 720.311, Florida Statutes, is amended and subsection (3) is
108 added to that section to read:

109 720.311 Dispute resolution.—

110 (2)(a) Disputes between an association and a parcel owner
111 regarding use of or changes to the parcel or the common areas
112 and other covenant enforcement disputes, disputes regarding
113 amendments to the association documents, disputes regarding
114 meetings of the board and committees appointed by the board,
115 membership meetings not including election meetings, and access
116 to the official records of the association must ~~shall~~ be the

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117 subject of a demand for presuit mediation served by an aggrieved
118 party or a petition for nonbinding arbitration as provided in
119 subsection (3) before the dispute is filed in court. Presuit
120 mediation proceedings must be conducted in accordance with the
121 applicable Florida Rules of Civil Procedure, and these
122 proceedings are privileged and confidential to the same extent
123 as court-ordered mediation. Disputes subject to presuit
124 mediation under this section may ~~shall~~ not include the
125 collection of any assessment, fine, or other financial
126 obligation, including attorney ~~attorney's~~ fees and costs,
127 claimed to be due or any action to enforce a prior mediation
128 settlement agreement between the parties. Also, in any dispute
129 subject to presuit mediation under this section where emergency
130 relief is required, a motion for temporary injunctive relief may
131 be filed with the court without first complying with the presuit
132 mediation requirements of this section. After any issues
133 regarding emergency or temporary relief are resolved, the court
134 may either refer the parties to a mediation program administered
135 by the courts or require mediation under this section. An
136 arbitrator or judge may not consider any information or evidence
137 arising from the presuit mediation proceeding except in a
138 proceeding to impose sanctions for failure to attend a presuit
139 mediation session or to enforce a mediated settlement agreement.
140 Persons who are not parties to the dispute may not attend the
141 presuit mediation conference without the consent of all parties,

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142 | except for counsel for the parties and a corporate
143 | representative designated by the association. When mediation is
144 | attended by a quorum of the board, such mediation is not a board
145 | meeting for purposes of notice and participation set forth in s.
146 | 720.303. An aggrieved party must ~~shall~~ serve on the responding
147 | party a written demand to participate in presuit mediation in
148 | substantially the following form:

149 | STATUTORY OFFER TO PARTICIPATE
150 | IN PRESUIT MEDIATION

151 | The alleged aggrieved party,, hereby demands
152 | that, as the responding party, engage in
153 | mandatory presuit mediation in connection with the following
154 | disputes, which by statute are of a type that are subject to
155 | presuit mediation:

156 | (List specific nature of the dispute or disputes to be mediated
157 | and the authority supporting a finding of a violation as to each
158 | dispute.)

159 | Pursuant to section 720.311, Florida Statutes, this demand to
160 | resolve the dispute through presuit mediation is required before
161 | a lawsuit can be filed concerning the dispute. Pursuant to the
162 | statute, the parties are required to engage in presuit mediation
163 | with a neutral third-party mediator in order to attempt to
164 | resolve this dispute without court action, and the aggrieved

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165 party demands that you likewise agree to this process. If you
166 fail to participate in the mediation process, suit may be
167 brought against you without further warning.

168 The process of mediation involves a supervised negotiation
169 process in which a trained, neutral third-party mediator meets
170 with both parties and assists them in exploring possible
171 opportunities for resolving part or all of the dispute. By
172 agreeing to participate in presuit mediation, you are not bound
173 in any way to change your position. Furthermore, the mediator
174 has no authority to make any decisions in this matter or to
175 determine who is right or wrong and merely acts as a facilitator
176 to ensure that each party understands the position of the other
177 party and that all options for reasonable settlement are fully
178 explored.

179 If an agreement is reached, it shall be reduced to writing and
180 becomes a binding and enforceable commitment of the parties. A
181 resolution of one or more disputes in this fashion avoids the
182 need to litigate these issues in court. The failure to reach an
183 agreement, or the failure of a party to participate in the
184 process, results in the mediator declaring an impasse in the
185 mediation, after which the aggrieved party may proceed to court
186 on all outstanding, unsettled disputes. If you have failed or
187 refused to participate in the entire mediation process, you will

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188 not be entitled to recover attorney ~~attorney's~~ fees, even if you
189 prevail.

190 The aggrieved party has selected and hereby lists five certified
191 mediators who we believe to be neutral and qualified to mediate
192 the dispute. You have the right to select any one of these
193 mediators. The fact that one party may be familiar with one or
194 more of the listed mediators does not mean that the mediator
195 cannot act as a neutral and impartial facilitator. Any mediator
196 who cannot act in this capacity is required ethically to decline
197 to accept engagement. The mediators that we suggest, and their
198 current hourly rates, are as follows:

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

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

206 Unless otherwise agreed by the parties, section 720.311(2)(b),
207 Florida Statutes, requires that the parties share the costs of
208 presuit mediation equally, including the fee charged by the
209 mediator. An average mediation may require three to four hours
210 of the mediator's time, including some preparation time, and the

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211 parties would need to share equally the mediator's fees as well
212 as their own attorney ~~attorney's~~ fees if they choose to employ
213 an attorney in connection with the mediation. However, use of an
214 attorney is not required and is at the option of each party. The
215 mediators may require the advance payment of some or all of the
216 anticipated fees. The aggrieved party hereby agrees to pay or
217 prepay one-half of the mediator's estimated fees and to forward
218 this amount or such other reasonable advance deposits as the
219 mediator requires for this purpose. Any funds deposited will be
220 returned to you if these are in excess of your share of the fees
221 incurred.

222 To begin your participation in presuit mediation to try to
223 resolve the dispute and avoid further legal action, please sign
224 below and clearly indicate which mediator is acceptable to you.
225 We will then ask the mediator to schedule a mutually convenient
226 time and place for the mediation conference to be held. The
227 mediation conference must be held within ninety (90) days after
228 ~~of~~ this date, unless extended by mutual written agreement. In
229 the event that you fail to respond within 20 days after ~~from~~ the
230 date of this letter, or if you fail to agree to at least one of
231 the mediators that we have suggested or to pay or prepay to the
232 mediator one-half of the costs involved, the aggrieved party
233 will be authorized to proceed with the filing of a lawsuit
234 against you without further notice and may seek an award of

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235 attorney ~~attorney's~~ fees or costs incurred in attempting to
236 obtain mediation.

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

241

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243 RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO
244 THAT CHOICE.

245 AGREEMENT TO MEDIATE

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

250 (List acceptable mediator or mediators.)

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

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255 Signature of responding party #1

256

257 Telephone contact information

258

259 Signature and telephone contact information of responding party
260 #2 (if applicable) (if property is owned by more than one person,
261 all owners must sign)

262 (3) In lieu of initiating presuit mediation under this
263 section, an aggrieved party may submit a dispute subject to
264 presuit mediation under subsection (2) to nonbinding arbitration
265 in accordance with s. 718.1255.

266 Section 3. Section 720.319, Florida Statutes, is
267 created to read:

268 720.319 Homeowners' association ombudsman.-

269 (1) ADMINISTRATION; APPOINTMENT; LOCATION.-

270 (a) There is created an Office of the Homeowners'
271 Association Ombudsman to be located, for administrative
272 purposes, within the Department of Business and Professional
273 Regulation. The functions of the office shall be funded by the
274 General Appropriations Act.

275 (b) The Governor shall appoint the ombudsman. The
276 ombudsman must be an attorney admitted to practice before the
277 Florida Supreme Court and shall serve at the pleasure of the
278 Governor. The ombudsman, an officer, or a full-time employee of

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279 the ombudsman's office may not actively engage in any other
280 business or profession that directly or indirectly relates to or
281 conflicts with his or her work in the ombudsman's office; serve
282 as the representative, or an executive, officer, or employee, of
283 any political party, executive committee, or other governing
284 body of a political party; receive remuneration for activities
285 on behalf of any candidate for public office; or engage in
286 soliciting votes or other activities on behalf of a candidate
287 for public office. The ombudsman, an officer, or a full-time
288 employee of the ombudsman's office may not become a candidate
289 for election to public office unless he or she first resigns
290 from his or her office or employment.

291 (c) The ombudsman shall maintain his or her principal
292 office at a place convenient to the department, which will
293 enable the ombudsman to expeditiously carry out the duties and
294 functions of his or her office. The ombudsman may establish
295 branch offices elsewhere in the state upon the concurrence of
296 the Governor.

297 (2) POWERS AND DUTIES.—The ombudsman has the powers
298 necessary to carry out the duties of his or her office,
299 including, but not limited to:

300 (a) Employing professional and clerical staff as necessary
301 for the efficient operation of the office.

302 (b) Preparing and issuing reports and recommendations to
303 the Governor, the department, the President of the Senate, and

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304 the Speaker of the House of Representatives on any matter or
305 subject within the jurisdiction of chapter 720.

306 (c) Acting as a liaison between the department, parcel
307 owners, boards of directors, board members, community
308 association managers, and other affected parties. The ombudsman
309 shall develop policies and procedures to assist parcel owners,
310 boards of directors, board members, community association
311 managers, and other affected parties to understand their rights
312 and responsibilities, as set forth in this chapter, and the
313 governing documents that govern their respective associations.
314 The ombudsman shall coordinate and assist in the preparation and
315 adoption of educational and reference material, and shall
316 endeavor to coordinate with private or volunteer providers of
317 these services, so that the availability of these resources is
318 made known to the largest possible audience.

319 (d) Monitoring and reviewing procedures and disputes
320 concerning elections or meetings.

321 (e) Providing resources to assist members of boards of
322 directors and officers of associations to carry out their powers
323 and duties consistent with this chapter and the governing
324 documents that govern the association.

325 (f) Encouraging and facilitating voluntary meetings
326 between parcel owners, boards of directors, board members,
327 community association managers, and other affected parties when
328 the meetings may assist in resolving a dispute within a

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329 homeowners' association before a person submits a dispute for a
330 formal or administrative remedy. It is the intent of the
331 Legislature that the ombudsman act as a neutral resource for
332 both the rights and responsibilities of parcel owners,
333 associations, and board members.

334 (g) Assisting with the resolution of disputes between
335 parcel owners and the association, or between parcel owners, if
336 applicable.

337 (3) ELECTION MONITORING.—

338 (a) Fifteen percent of the total voting interests in a
339 homeowners' association, or six parcel owners, whichever is
340 greater, may petition the ombudsman to appoint an election
341 monitor to attend the annual meeting of the parcel owners and
342 conduct the election of directors.

343 (b) The ombudsman shall appoint a division employee, a
344 person who specializes in homeowners' association election
345 monitoring, or an attorney licensed to practice in the state as
346 the election monitor.

347 (c) The association must pay all costs associated with the
348 election monitoring process.

349 (d) The division must adopt a rule establishing procedures
350 for the appointment of election monitors and the scope and
351 extent of the monitor's role in the election process.

352 Section 4. This act shall take effect July 1, 2022.

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T I T L E A M E N D M E N T
Remove everything before the enacting clause and insert:
An act relating to homeowners' associations; amending
s. 720.305, F.S.; requiring the board of
administration to provide written notice of the
opportunity for certain hearings to certain persons;
requiring certain hearings to be held within a
specified time after certain persons receive a written
request for such hearing; providing how a written
request may be provided to certain persons;
authorizing certain persons to attend the hearing in
certain ways; authorizing a fine and suspension
committee to reduce a fine or suspension levied by the
board; providing an appeals process for certain fines
and suspensions; requiring an appeal to be heard
before a committee within a specified time after
certain persons receive written notice of the appeal;
providing how written notice of an appeal may be
provided to certain persons; providing for the
composition of an appeals committee; authorizing
certain persons to attend the appeals committee and
providing the ways that such persons may attend;
specifying the role of the appeals committee;
specifying when a fine or suspension may not be

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379 imposed; requiring the appeals committee to reduce the
380 fine or suspension by a specified percentage under
381 certain circumstances; requiring the association to
382 provide written notice, in specified ways, to certain
383 persons of the decision of the appeals committee;
384 specifying when payment of a fine that is appealed is
385 due; amending s. 720.311, F.S.; authorizing parties to
386 initiate nonbinding arbitration rather than presuit
387 mediation for certain disputes; creating s. 720.319,
388 F.S.; creating the Office of the Homeowners'
389 Association Ombudsman within the Department of
390 Business and Professional Regulation; providing for
391 funding of the office; directing the Governor to
392 appoint the ombudsman; requiring the ombudsman to be
393 an attorney; prohibiting the ombudsman, officers, and
394 full-time employees from holding certain positions,
395 engaging in certain activities, or receiving certain
396 remuneration; providing for the principal location of
397 the ombudsman's office; authorizing the ombudsman to
398 establish branch offices under specified
399 circumstances; providing for the powers and duties of
400 the ombudsman; providing for the administration of an
401 election monitoring process; requiring the Division of
402 Florida Condominiums, Timeshares, and Mobile Homes to
403 adopt certain rules; providing an effective date.

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