

By Senator Torres

15-01727-22

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1                   A bill to be entitled  
2           An act relating to levying of fines by homeowners'  
3           associations; amending s. 720.305, F.S.; removing the  
4           authority of a homeowners' association to levy fines;  
5           conforming provisions to changes made by the act;  
6           amending ss. 720.306 and 720.311, F.S.; conforming  
7           provisions to changes made by the act; providing an  
8           effective date.

9  
10   Be It Enacted by the Legislature of the State of Florida:

11  
12           Section 1. Section 720.305, Florida Statutes, is amended to  
13   read:

14           720.305 Obligations of members; remedies at law or in  
15   equity; ~~levy of fines and~~ suspension of use rights.-

16           (1) Each member and the member's tenants, guests, and  
17   invitees, and each association, are governed by, and must comply  
18   with, this chapter, the governing documents of the community,  
19   and the rules of the association. Actions at law or in equity,  
20   or both, to redress alleged failure or refusal to comply with  
21   these provisions may be brought by the association or by any  
22   member against:

23           (a) The association;

24           (b) A member;

25           (c) Any director or officer of an association who willfully  
26   and knowingly fails to comply with these provisions; and

27           (d) Any tenants, guests, or invitees occupying a parcel or  
28   using the common areas.

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30 The prevailing party in any such litigation is entitled to  
31 recover reasonable attorney fees and costs. A member prevailing  
32 in an action between the association and the member under this  
33 section, in addition to recovering his or her reasonable  
34 attorney fees, may recover additional amounts as determined by  
35 the court to be necessary to reimburse the member for his or her  
36 share of assessments levied by the association to fund its  
37 expenses of the litigation. This relief does not exclude other  
38 remedies provided by law. This section does not deprive any  
39 person of any other available right or remedy.

40 ~~(2) An association may levy reasonable fines. A fine may~~  
41 ~~not exceed \$100 per violation against any member or any member's~~  
42 ~~tenant, guest, or invitee for the failure of the owner of the~~  
43 ~~parcel or its occupant, licensee, or invitee to comply with any~~  
44 ~~provision of the declaration, the association bylaws, or~~  
45 ~~reasonable rules of the association unless otherwise provided in~~  
46 ~~the governing documents. A fine may be levied by the board for~~  
47 ~~each day of a continuing violation, with a single notice and~~  
48 ~~opportunity for hearing, except that the fine may not exceed~~  
49 ~~\$1,000 in the aggregate unless otherwise provided in the~~  
50 ~~governing documents. A fine of less than \$1,000 may not become a~~  
51 ~~lien against a parcel. In any action to recover a fine, the~~  
52 ~~prevailing party is entitled to reasonable attorney fees and~~  
53 ~~costs from the nonprevailing party as determined by the court.~~

54 (a) An association may suspend, for a reasonable period of  
55 time, the right of a member, or a member's tenant, guest, or  
56 invitee, to use common areas and facilities for the failure of  
57 the owner of the parcel or its occupant, licensee, or invitee to  
58 comply with any provision of the declaration, the association

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59 bylaws, or reasonable rules of the association. This paragraph  
60 does not apply to that portion of common areas used to provide  
61 access or utility services to the parcel. A suspension may not  
62 prohibit an owner or tenant of a parcel from having vehicular  
63 and pedestrian ingress to and egress from the parcel, including,  
64 but not limited to, the right to park.

65 (b) A ~~fine or~~ suspension levied by the board of  
66 administration may not be imposed unless the board first  
67 provides at least 14 days' notice to the parcel owner and, if  
68 applicable, any occupant, licensee, or invitee of the parcel  
69 owner, sought to be ~~fin~~ed or suspended and an opportunity for a  
70 hearing before a committee of at least three members appointed  
71 by the board who are not officers, directors, or employees of  
72 the association, or the spouse, parent, child, brother, or  
73 sister of an officer, director, or employee. If the committee,  
74 by majority vote, does not approve a proposed ~~fine or~~  
75 suspension, the proposed ~~fine or~~ suspension may not be imposed.  
76 The role of the committee is limited to determining whether to  
77 confirm or reject the ~~fine or~~ suspension levied by the board. ~~If~~  
78 ~~the proposed fine or suspension levied by the board is approved~~  
79 ~~by the committee, the fine payment is due 5 days after notice of~~  
80 ~~the approved fine is provided to the parcel owner and, if~~  
81 ~~applicable, to any occupant, licensee, or invitee of the parcel~~  
82 ~~owner.~~ The association must provide written notice of such ~~fine~~  
83 ~~or~~ suspension by mail or hand delivery to the parcel owner and,  
84 if applicable, to any occupant, licensee, or invitee of the  
85 parcel owner.

86 (3) If a member is more than 90 days delinquent in paying  
87 any fee, ~~fine,~~ or other monetary obligation due to the

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88 association, the association may suspend the rights of the  
89 member, or the member's tenant, guest, or invitee, to use common  
90 areas and facilities until the fee,~~fine,~~ or other monetary  
91 obligation is paid in full. This subsection does not apply to  
92 that portion of common areas used to provide access or utility  
93 services to the parcel. A suspension may not prohibit an owner  
94 or tenant of a parcel from having vehicular and pedestrian  
95 ingress to and egress from the parcel, including, but not  
96 limited to, the right to park. The notice and hearing  
97 requirements under subsection (2) do not apply to a suspension  
98 imposed under this subsection.

99 (4) An association may suspend the voting rights of a  
100 parcel or member for the nonpayment of any fee,~~fine,~~ or other  
101 monetary obligation due to the association that is more than 90  
102 days delinquent. A voting interest or consent right allocated to  
103 a parcel or member which has been suspended by the association  
104 shall be subtracted from the total number of voting interests in  
105 the association, which shall be reduced by the number of  
106 suspended voting interests when calculating the total percentage  
107 or number of all voting interests available to take or approve  
108 any action, and the suspended voting interests shall not be  
109 considered for any purpose, including, but not limited to, the  
110 percentage or number of voting interests necessary to constitute  
111 a quorum, the percentage or number of voting interests required  
112 to conduct an election, or the percentage or number of voting  
113 interests required to approve an action under this chapter or  
114 pursuant to the governing documents. The notice and hearing  
115 requirements under subsection (2) do not apply to a suspension  
116 imposed under this subsection. The suspension ends upon full

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117 payment of all obligations currently due or overdue to the  
118 association.

119 (5) All suspensions imposed pursuant to subsection (3) or  
120 subsection (4) must be approved at a properly noticed board  
121 meeting. Upon approval, the association must notify the parcel  
122 owner and, if applicable, the parcel's occupant, licensee, or  
123 invitee by mail or hand delivery.

124 (6) The suspensions permitted by paragraph (2)(a) and  
125 subsections (3) and (4) apply to a member and, when appropriate,  
126 the member's tenants, guests, or invitees, even if the  
127 delinquency or failure that resulted in the suspension arose  
128 from less than all of the multiple parcels owned by a member.

129 Section 2. Paragraph (b) of subsection (9) of section  
130 720.306, Florida Statutes, is amended to read:

131 720.306 Meetings of members; voting and election  
132 procedures; amendments.—

133 (9) ELECTIONS AND BOARD VACANCIES.—

134 (b) A person who is delinquent in the payment of any fee,  
135 ~~fine~~, or other monetary obligation to the association on the day  
136 that he or she could last nominate himself or herself or be  
137 nominated for the board may not seek election to the board, and  
138 his or her name shall not be listed on the ballot. A person  
139 serving as a board member who becomes more than 90 days  
140 delinquent in the payment of any fee,~~fine~~, or other monetary  
141 obligation to the association shall be deemed to have abandoned  
142 his or her seat on the board, creating a vacancy on the board to  
143 be filled according to law. For purposes of this paragraph, the  
144 term "any fee,~~fine~~, or other monetary obligation" means any  
145 delinquency to the association with respect to any parcel. A

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146 person who has been convicted of any felony in this state or in  
147 a United States District or Territorial Court, or has been  
148 convicted of any offense in another jurisdiction which would be  
149 considered a felony if committed in this state, may not seek  
150 election to the board and is not eligible for board membership  
151 unless such felon's civil rights have been restored for at least  
152 5 years as of the date on which such person seeks election to  
153 the board. The validity of any action by the board is not  
154 affected if it is later determined that a person was ineligible  
155 to seek election to the board or that a member of the board is  
156 ineligible for board membership.

157 Section 3. Paragraph (a) of subsection (2) of section  
158 720.311, Florida Statutes, is amended to read:

159 720.311 Dispute resolution.—

160 (2) (a) Disputes between an association and a parcel owner  
161 regarding use of or changes to the parcel or the common areas  
162 and other covenant enforcement disputes, disputes regarding  
163 amendments to the association documents, disputes regarding  
164 meetings of the board and committees appointed by the board,  
165 membership meetings not including election meetings, and access  
166 to the official records of the association shall be the subject  
167 of a demand for presuit mediation served by an aggrieved party  
168 before the dispute is filed in court. Presuit mediation  
169 proceedings must be conducted in accordance with the applicable  
170 Florida Rules of Civil Procedure, and these proceedings are  
171 privileged and confidential to the same extent as court-ordered  
172 mediation. Disputes subject to presuit mediation under this  
173 section shall not include the collection of any assessment,  
174 ~~fine,~~ or other financial obligation, including attorney

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175 ~~attorney's~~ fees and costs, claimed to be due or any action to  
 176 enforce a prior mediation settlement agreement between the  
 177 parties. Also, in any dispute subject to presuit mediation under  
 178 this section where emergency relief is required, a motion for  
 179 temporary injunctive relief may be filed with the court without  
 180 first complying with the presuit mediation requirements of this  
 181 section. After any issues regarding emergency or temporary  
 182 relief are resolved, the court may either refer the parties to a  
 183 mediation program administered by the courts or require  
 184 mediation under this section. An arbitrator or judge may not  
 185 consider any information or evidence arising from the presuit  
 186 mediation proceeding except in a proceeding to impose sanctions  
 187 for failure to attend a presuit mediation session or to enforce  
 188 a mediated settlement agreement. Persons who are not parties to  
 189 the dispute may not attend the presuit mediation conference  
 190 without the consent of all parties, except for counsel for the  
 191 parties and a corporate representative designated by the  
 192 association. When mediation is attended by a quorum of the  
 193 board, such mediation is not a board meeting for purposes of  
 194 notice and participation set forth in s. 720.303. An aggrieved  
 195 party shall serve on the responding party a written demand to  
 196 participate in presuit mediation in substantially the following  
 197 form:

198  
 199           STATUTORY OFFER TO PARTICIPATE  
 200           IN PRESUIT MEDIATION  
 201

202           The alleged aggrieved party, ....., hereby  
 203           demands that ....., as the responding

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204 party, engage in mandatory presuit mediation in  
205 connection with the following disputes, which by  
206 statute are of a type that are subject to presuit  
207 mediation:

208

209 (List specific nature of the dispute or disputes to be  
210 mediated and the authority supporting a finding of a  
211 violation as to each dispute.)

212

213 Pursuant to section 720.311, Florida Statutes, this  
214 demand to resolve the dispute through presuit  
215 mediation is required before a lawsuit can be filed  
216 concerning the dispute. Pursuant to the statute, the  
217 parties are required to engage in presuit mediation  
218 with a neutral third-party mediator in order to  
219 attempt to resolve this dispute without court action,  
220 and the aggrieved party demands that you likewise  
221 agree to this process. If you fail to participate in  
222 the mediation process, suit may be brought against you  
223 without further warning.

224

225 The process of mediation involves a supervised  
226 negotiation process in which a trained, neutral third-  
227 party mediator meets with both parties and assists  
228 them in exploring possible opportunities for resolving  
229 part or all of the dispute. By agreeing to participate  
230 in presuit mediation, you are not bound in any way to  
231 change your position. Furthermore, the mediator has no  
232 authority to make any decisions in this matter or to



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233 determine who is right or wrong and merely acts as a  
234 facilitator to ensure that each party understands the  
235 position of the other party and that all options for  
236 reasonable settlement are fully explored.

237  
238 If an agreement is reached, it shall be reduced to  
239 writing and becomes a binding and enforceable  
240 commitment of the parties. A resolution of one or more  
241 disputes in this fashion avoids the need to litigate  
242 these issues in court. The failure to reach an  
243 agreement, or the failure of a party to participate in  
244 the process, results in the mediator declaring an  
245 impasse in the mediation, after which the aggrieved  
246 party may proceed to court on all outstanding,  
247 unsettled disputes. If you have failed or refused to  
248 participate in the entire mediation process, you will  
249 not be entitled to recover attorney's fees, even if  
250 you prevail.

251  
252 The aggrieved party has selected and hereby lists five  
253 certified mediators who we believe to be neutral and  
254 qualified to mediate the dispute. You have the right  
255 to select any one of these mediators. The fact that  
256 one party may be familiar with one or more of the  
257 listed mediators does not mean that the mediator  
258 cannot act as a neutral and impartial facilitator. Any  
259 mediator who cannot act in this capacity is required  
260 ethically to decline to accept engagement. The  
261 mediators that we suggest, and their current hourly

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262 rates, are as follows:

263

264 (List the names, addresses, telephone numbers, and  
265 hourly rates of the mediators. Other pertinent  
266 information about the background of the mediators may  
267 be included as an attachment.)

268

269 You may contact the offices of these mediators to  
270 confirm that the listed mediators will be neutral and  
271 will not show any favoritism toward either party. The  
272 Florida Supreme Court can provide you a list of  
273 certified mediators.

274

275 Unless otherwise agreed by the parties, section  
276 720.311(2)(b), Florida Statutes, requires that the  
277 parties share the costs of presuit mediation equally,  
278 including the fee charged by the mediator. An average  
279 mediation may require three to four hours of the  
280 mediator's time, including some preparation time, and  
281 the parties would need to share equally the mediator's  
282 fees as well as their own attorney's fees if they  
283 choose to employ an attorney in connection with the  
284 mediation. However, use of an attorney is not required  
285 and is at the option of each party. The mediators may  
286 require the advance payment of some or all of the  
287 anticipated fees. The aggrieved party hereby agrees to  
288 pay or prepay one-half of the mediator's estimated  
289 fees and to forward this amount or such other  
290 reasonable advance deposits as the mediator requires

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291 for this purpose. Any funds deposited will be returned  
 292 to you if these are in excess of your share of the  
 293 fees incurred.

294  
 295 To begin your participation in presuit mediation to  
 296 try to resolve the dispute and avoid further legal  
 297 action, please sign below and clearly indicate which  
 298 mediator is acceptable to you. We will then ask the  
 299 mediator to schedule a mutually convenient time and  
 300 place for the mediation conference to be held. The  
 301 mediation conference must be held within ninety (90)  
 302 days of this date, unless extended by mutual written  
 303 agreement. In the event that you fail to respond  
 304 within 20 days from the date of this letter, or if you  
 305 fail to agree to at least one of the mediators that we  
 306 have suggested or to pay or prepay to the mediator  
 307 one-half of the costs involved, the aggrieved party  
 308 will be authorized to proceed with the filing of a  
 309 lawsuit against you without further notice and may  
 310 seek an award of attorney's fees or costs incurred in  
 311 attempting to obtain mediation.

312  
 313 Therefore, please give this matter your immediate  
 314 attention. By law, your response must be mailed by  
 315 certified mail, return receipt requested, and by  
 316 first-class mail to the address shown on this demand.

317  
 318 .....  
 319 .....

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

AGREEMENT TO MEDIATE

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

(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)

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