

Real Property, Probate and Trust Law Section

EXECUTIVE COUNCIL MEETING

SUPPLEMENTAL AGENDA

DECEMBER 8, 2018

- I. **Budget Committee - Updated 2019-2020 Budget (updated with corrections to General, Convention and ALO Budget calculations)**

- II. **Probate and Procedure Committee:**
 - a. **Action Item: Small Account Legislation**
 1. **Motion to waive Article VIII Section 4(A) of the Section Bylaws, which requires that proposed legislative positions be placed on the agenda and supporting documentation distributed to the Executive Council at least one week prior to the Executive Council meeting, to permit the Section to consider the revised Section position stated below.**

 2. **Motion to (A) amend the current position of RPPTL Section relating to small accounts to read as follows: Oppose proposed legislation that would allow banks or other financial institutions in Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, specifically including HB 1241/SB 892 unless safeguards are put in place to protect the rights and interests of persons rightfully entitled to the proceeds, the constitutional rights of the decedent to direct the disposition of his or her property, and the rights of creditors to recover debts through a probate proceeding; (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.**

- III. **Condominium and Planned Development Law Committee:**
 - a. **Action Item: Condominium pre-suit dispute resolution**
 1. **Motion to waive Article VIII Section 4(A) of the Section Bylaws, which requires that proposed legislative positions be placed on the agenda and supporting documentation distributed to the Executive Council at least one week prior to the Executive Council meeting, to permit the Section to consider the revised Section position stated below.**

 2. **Motion to (A) adopt as a Section legislative position support for proposed changes to Section 718.1255, F.S., pertaining to pre-suit resolution of condominium disputes, (B) find that such legislative position is within the purview of the RPPTL Section; and (C) expend Section funds in support of the proposed legislative position.**

Proposed Budget 18-19
Real Property Probate Trust Law Section

SUMMARY

Beginning Fund Balance	\$ 1,066,946	\$ 1,477,972	\$ 1,684,323	\$ 1,684,323	\$ 1,823,975	\$ 1,537,580
Net Operations *	141,554	277,789	5,285	(4,779)	(101,400)	(152,600)
Legislative Update	28,094	(34,438)	(49,995)	(23,622)	(46,700)	(29,395)
Convention	(70,543)	(161,847)	(97,850)	(81,136)	(150,400)	(139,400)
Attorney Trust Officer	249,512	(2,328)	76,650	135,203	38,700	65,500
CLI**	62,409	121,880	69,830	125,911	94,780	107,525
Attorney Loan Officer		5,291		(11,935)	(26,375)	(17,400)
Special Projects***	0	0	(112,500)	0	(95,000)	0
Ending Fund Balance #	\$ 1,477,972	\$ 1,684,323	\$ 1,575,743	\$ 1,823,965	\$ 1,537,580	\$ 1,371,810

* Net Operations other than Legis. Update, Convention, Attorney Trust Officer Conf. and CLI beginning in 16-17.

** CLI was previously included in CLE roll up reflected in Net Operations from the General Tab until 2015-2016.

*** Special projects was previously in Net Oper. from the Gen. Tab until 2016-2017. In 16-17 Budget for Spec. Proj. was returned to Gen.

Includes small adjustments for rounding differences

'@ The original budget adopted by the section was revised to accommodate the new process developed for TFB overhead.

THE FLORIDA BAR
Real Property, Probate and Trust Law General
Budget 2019-2020

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3001-Annual Fees	\$608,400	\$616,160	\$597,000	\$597,000	600,000
3002-Affiliate Fees	4,980	7,440	4,400	4,400	5,000
Total Fee Revenue	613,380	623,600	601,400	601,400	605,000
3301-Registration-Live	134,539	169,726	170,000	170,000	220,000
3331-Registration-Ticket	(245)				
Total Registration Revenue	134,294	169,726	170,000	170,000	220,000
3351-Sponsorships	186,363	211,750	180,000	180,000	180,000
3391 Section Profit Split	321,485	226,705	210,000	250,000	260,000
3392-Section Differential	23,040	27,480	25,000	27,000	25,000
Other Event Revenue	530,888	465,935	415,000	457,000	465,000
3561-Advertising	7,998	16,560	20,000	8,000	12,000
Advertising & Subscription Revenue	7,998	16,560	20,000	8,000	12,000
3899-Investment Allocation	150,494	112,048	38,419	101,383	50,000
Non-Operating Income	150,494	112,048	38,419	101,383	50,000
Total Revenue	1,437,054	1,387,869	1,244,819	1,337,783	1,352,000
4131-Telephone Expense	1,847	535	1,400	2,000	2,000
4134-Web Services	42,377	35,811	52,500	75,000	75,000
4301-Photocopying			300	300	300
4311-Office Supplies	521	1,684	700	700	1000
Total Staff & Office Expense	44,745	38,030	54,900	78,000	78,300
5051-Credit Card Fees	3,159	12,274	3,500	12,000	12,000
5101-Consultants	109,538	120,000	120,000	120,000	120,000
5581-Legislative Consultant Travel**	NEW	NEW	NEW	NEW	15,000
5121-Printing-Outside	42,072	49,796	73,500	118,500	120,000
5199-Other Contract Services		46,279	30,000	10,000	10,000
Total Contract Services	154,769	228,349	227,000	260,500	277,000

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
5501-Employee Travel	11,851	13,799	12,000	12,000	16,000
5531-Board/Off/Memb Travel	28,291	22,977	25,000	35,000	20,000
Total Travel	40,142	36,776	37,000	47,000	36,000
6001-Post 1st Class/Bulk	1,330	26,671	2,000	2,000	2,000
6101-Products Purch for Sale	30,000				0
6311-Mtgs General Meeting	490,751	649,814	510,000	550,000	600,000
6325-Mtgs Hospitality	29,821	49,654	30,000	35,000	35,000
6361-Mtgs Entertainment	7,007				
6399-Mtgs Other		6,543	19,000	19,000	15,000
6401-Speaker Expense	2,168		1,000	7,500	7,500
6451-Committee Expense	86,756	93,897	100,000	100,000	110,000
6531-Brd/Off Special Project		4,994	85,300	35,000	50,000
6599-Brd/Off Other	3,490	5,772	10,000	11,000	11,000
7001-Grant/Award/Donation	11,903	16,414	22,200	28,500	8,000
5521-Law School Programming*	NEW	NEW	NEW	NEW	5,500
5522-Professional Outreach*	NEW	NEW	NEW	NEW	3,000
5520-Diversity Initiatives*	NEW	NEW	NEW	NEW	12,000
7011-Scholarship/Fellowship	18,591	22,669	32,500	27,000	27,000
7999-Other Operating Exp	2,000	(1,000)		5,000	5,000
8901-Eliminated IntFund Exp	3,000	3,250		0	0
Total Other Expense	686,817	878,678	812,000	820,000	891,000
8021-Section Admin Fee	207,623	209,770	203,715	207,500	220,000
8101-Printing In-House	24,869	1,687	1,000	1,000	2,000
8111-Meetings Services		50			0
Total Admin & Internal Expense	232,492	211,507	204,715	208,500	222,000
9692-Transfer Out-Council of Sections	300	300	300	300	300
Total InterFund Transfers Out	300	300	300	300	300
Total Expense	1,159,265	1,393,640	1,335,915	1,414,300	1,504,600
Net Income	277,789	(5,771)	(91,096)	(76,517)	(152,600)

2016-17	2017-18	2017-18	2018-19	2019-20
Actual	Actual	Budget	Budget	Budget

*The Grant/Award-Donation Line item has been split out to three new line items including Law School Programming, Professional Outreach, and Diversity Initiatives.

** The Legislative Consultant Travel Line Item has been added in 2019-20

THE FLORIDA BAR
Real Property Construction Law Institute
2019-2020 Budget

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	\$87,820	\$96,185	\$70,000	\$80,000	90,000
3331-Registration-Ticket	2,657	2,730	1,300	2,000	2,000
Total Registration Revenue	90,477	98,915	71,300	82,000	92,000
3351-Sponsorships	173,665	183,575	170,000	170,000	190,000
3392-Section Differential	(1,020)				0
Other Event Revenue	172,645	183,575	170,000	170,000	190,000
3401-Sales-CD/DVD	24,835	16,243	4,000	15,000	15,000
3411-Sales-Published Materials	540	1,260	500	500	500
Sales, Rents & Royalties Revenue	25,375	17,503	4,500	15,500	15,500
3699-Other Operating Revenue			800	800	800
Other Revenue Sources			800	800	800
Total Revenue	288,497	299,993	246,600	268,300	298,300
5051-Credit Card Fees	3,515	2,147	2,500	4,000	4,000
5181-Speaker Honorarium		1,500	1,500	1,000	5,000
Total Contract Services	3,515	3,647	4,000	5,000	9,000
5501-Employee Travel	1,163	2,034	1,350	1,500	2,000
5571-Speaker Travel	3,017	2,083	4,000	4,000	4,000
Total Travel	4,180	4,117	5,350	5,500	6,000
6001-Post 1st Class/Bulk	6	5	25	25	25
6021-Post Express Mail	152	161	45	45	200
6319-Mtgs Other Functions		19,020	12,400	18,000	15,000
6321-Mtgs Meals	49,083	50,596	35,000	50,000	50,000

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
6325-Mtgs Hospitality	35,955	37,496	55,000	30,000	40,000
6341-Mtgs Equip Rental	25,802	21,666	23,700	22,000	25,000
6399-Mtgs Other	17,277				0
6401-Speaker Expense	8,646	6,004	7,900	10,900	12,000
7999-Other Operating Exp	412	1,556	2,600		1,500
Total Other Expense	137,333	136,504	136,670	130,970	143,725
8011-Administration CLE	14,300	25,000	25,000	25,000	25,000
8101-Printing In-House	1,832	1,292	850	2,000	2,000
8131-A/V Services	2,836	2,947	2,600	3,250	3,250
8141-Journal/News Service	2,471	425	1,650	1,650	1,650
8171-Course Approval Fee	150	150	150	150	150
Total Admin & Internal Expense	21,589	29,814	30,250	32,050	32,050
Total Expense	166,617	174,082	176,270	173,520	190,775
Net Income	121,880	125,911	70,330	94,780	107,525

THE FLORIDA BAR
 RPPTL Legislative Update
 Budget 2019 -2020

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3321-Registration-Webcast	\$16,385	\$7,007	\$20,000	\$15,000	15,000
Total Registration Revenue	16,385	7,007	20,000	15,000	15,000
3341-Exhibit Fees	6,100	15,000	12,500	14,000	14,000
3351-Sponsorships		700			0
Other Event Revenue	6,100	15,700	12,500	14,000	14,000
3401-Sales-CD/DVD	36,000	34,526	20,500	34,000	34,000
3411-Sales-Published Materials	1,400	950	1,000	500	500
Sales, Rents & Royalties Revenue	37,400	35,476	21,500	34,500	34,500
Total Revenue	59,885	58,183	54,000	63,500	63,500
4111-Rent Equipment	10,013	10,653			
4301-Photocopying			50	50	100
4311-Office Supplies			150	150	150
Total Staff & Office Expense	10,013	10,653	200	200	250
5031-A/V Services	1,495		1,495	1,500	1,495
5051-Credit Card Fees	647	1,288	700	1,270	2,000
5121-Printing-Outside	13,831	3,341	16,200	4,500	5,000
5199-Other Contract Services	4,661	2,318			0
Total Contract Services	20,634	6,947	18,395	7,270	8,495
5501-Employee Travel	1,962	1,204	2,200	2,000	3,000
5571-Speaker Travel	1,216	342	500	1,300	1,500
Total Travel	3,178	1,546	2,700	3,300	4,500
6001-Post 1st Class/Bulk	9	31	50	50	50

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
6021-Post Express Mail	464	364	500	500	500
6321-Mtgs Meals	40,410			55,500	45,000
6325-Mtgs Hospitality	8,405	819	42,000	1,500	1,500
6341-Mtgs Equip Rental		52,556	14,500	13,500	15,000
6401-Speaker Expense	5,222	2,651	13,500	6,600	5,000
7001-Grant/Award/Donation		220	4,600		5,000
7999-Other Operating Exp	470	55		500	500
Total Other Expense	54,980	56,696	75,150	78,150	72,550
8011-Administration CLE	500	2,000	1,000	1,000	1,000
8101-Printing In-House	2	7	350	300	350
8131-A/V Services	4,043	3,806	4,000	6,000	4,000
8141-Journal/News Service	824		1,600	1,600	1,600
8171-Course Approval Fee	150	150	150	150	150
Total Admin & Internal Expense	5,519	5,963	7,100	9,050	7,100
Total Expense	94,324	81,805	103,545	97,970	92,895
Net Income	(34,439)	(23,622)	(49,545)	(34,470)	(29,395)

* Please note: The 2017-18 Legislative Update Meals expense line item was incorrectly added to the 6341 Equipment Rental Line item.

THE FLORIDA BAR
 RPPTL Attorney Trust Officer Liaison Conference
 2019 -2020 Budget

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	(\$65)	\$163,336	\$160,700	\$150,000	160,000
3331-Registration-Ticket	1,079	3,154	10,000	10,000	10,000
Total Registration Revenue	1,014	166,490	170,700	160,000	170,000
3341-Exhibit Fees	400	77,300	60,000	40,000	60,000
3351-Sponsorships	(2,550)	69,000	60,000	60,000	60,000
Other Event Revenue	(2,150)	146,300	120,000	100,000	120,000
3401-Sales-CD/DVD	7,040	8,140	3,000	3,000	5,000
3411-Sales-Published Materials	3,300	480	1,000	1,000	1,000
Sales, Rents & Royalties Revenue	10,340	8,620	4,000	4,000	6,000
Total Revenue	9,204	321,410	294,700	264,000	296,000
4111-Rent Equipment	1,750	33,115		17,000	0
Total Staff & Office Expense	1,750	33,115		17,000	0
5051-Credit Card Fees	796	7,115	2,750	8,000	8,000
5121-Printing-Outside	870	5	2,500	3,500	2,500
Total Contract Services	1,666	7,120	5,250	11,500	10,500
5501-Employee Travel		2,108	2,000	3,000	2,000
5571-Speaker Travel	1,235	1,248	4,000	4,000	4,000
Total Travel	1,235	3,356	6,000	7,000	6,000
6001-Post 1st Class/Bulk	3	9	1,000		1,000
6021-Post Express Mail	99	81	150	150	150
6319-Mtgs Other Functions		9,881	8,000	8,000	10,000
6321-Mtgs Meals		43,182	42,000	57,000	57,000

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
6325-Mtgs Hospitality		64,445	100,000	85,000	85,000
6341-Mtgs Equip Rental	(1,750)	(12,626)	17,000		17,000
6401-Speaker Expense	2,904	2,862		4,100	4,100
7999-Other Operating Exp	1	1,475	4,100		1,000
Total Other Expense	1,257	109,309	172,250	154,250	175,250
8011-Administration CLE		25,000	25,000	25,000	25,000
8101-Printing In-House		1,386	2,000	2,000	2,000
8131-A/V Services	5,475	5,621	5,200	6,200	7,000
8141-Journal/News Service		850	1,600	1,600	1,600
8171-Course Approval Fee	150	450	750	750	150
Total Admin & Internal Expense	5,625	33,307	34,550	35,550	35,750
Total Expense	11,533	186,207	218,050	225,300	227,500
Net Income	(2,329)	135,203	76,650	38,700	68,500

THE FLORIDA BAR
RPPTL Convention
2019-20 Budget

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	\$58,157	\$57,838	\$40,000	\$45,000	50,000
Total Registration Revenue	58,157	57,838	40,000	45,000	50,000
3341-Exhibit Fees	6,250	8,000	10,000	10,000	10,000
3351-Sponsorships	(175)		10,000	10,000	10,000
Other Event Revenue	6,075	8,000	20,000	20,000	20,000
Total Revenue	64,232	65,838	60,000	65,000	70,000
4111-Rent Equipment	15,027	20,523	21,000	21,000	20,000
4311-Office Supplies		11	0		
Total Staff & Office Expense	15,027	20,534	21,000	21,000	20,000
5051-Credit Card Fees	1,073	1,757	900	1,200	3,000
Total Contract Services	1,073	1,757	900	1,200	3,000
5501-Employee Travel	1,597	2,786	2,500	2,500	2,500
Total Travel	1,597	2,786	2,500	2,500	2,500
6001-Post 1st Class/Bulk	305	200	20	500	500
6321-Mtgs Meals	200,746	111,107	125,000	175,000	150,000
6341-Mtgs Equip Rental	NEW	NEW	NEW	NEW	20,000
6361-Mtgs Entertainment	7,331	10,605	8,000	14,000	13,000
Total Other Expense	208,382	121,912	133,020	189,500	183,500
8101-Printing In-House			400	400	400
Total Admin & Internal Expense			400	400	400
Total Expense	226,079	146,989	157,820	214,600	209,400

	2016-17	2017-18	2017-18	2018-19	2019-20
	Actual	Actual	Budget	Budget	Budget
Net Income	(161,847)	(81,151)	(97,820)	(149,600)	(139,400)

THE FLORIDA BAR
RPPTL Attorney Loan Officer
Budget 2019 -2020

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
3301-Registration-Live	\$250	\$8,075	\$17,500	\$12,000	15,000
Total Registration Revenue	250	8,075	17,500	12,000	15,000
3341-Exhibit Fees	2,875	(1,375)	4,000	5,000	5,000
3351-Sponsorships	3,000	7,500	5,000	5,000	5,000
Other Event Revenue	5,875	6,125	9,000	10,000	10,000
3401-Sales-CD/DVD					2,000
Total Revenue	6,125	14,200	26,500	22,000	27,000
5051-Credit Card Fees	105	377	500	500	500
Total Contract Services	105	377	500	500	500
5501-Employee Travel		1,203	700	2,000	1,500
5571-Speaker Travel		712	0		1,000
Total Travel		1,915	700	2,000	2,500
6321-Mtgs Meals		5,380	23,000	25,000	12,500
6325-Mtgs Hospitality		8,087			7,000
6341-Mtgs Equip Rental		4,826	2,000	5,000	5,000
6401-Speaker Expense		535	2,000	2,000	3,000
7999-Other Operating Exp	154		3,725	3,725	2,000
Total Other Expense	154	18,828	30,725	35,725	29,500
8011-Administration CLE		5,000	5,000	10,000	10,000
8101-Printing In-House		15			200
8131-A/V Services					550
8141-Journal/News Service	425				1,000
8171-Course Approval Fee	150		150	150	150

	2016-17 Actual	2017-18 Actual	2017-18 Budget	2018-19 Budget	2019-20 Budget
Total Admin & Internal Expense	575	5,015	5,150	10,150	11,900
Total Expense	834	26,135	37,075	48,375	44,400
Net Income	5,291	(11,935)	(10,575)	(26,375)	(17,400)

**Supplement to Executive Council Agenda
December 8, 2018**

Probate and Trust Division

Action Items:

(1) Motion to waive Article VIII Section 4(A) of the Section Bylaws, which requires that proposed legislative positions be placed on the agenda and supporting documentation distributed to the Executive Council at least one week prior to the Executive Council meeting, to permit the Section to consider the revised Section position stated below.

(2) Motion to (a) amend the current position of RPPTL Section relating to small accounts to read as follows: Oppose proposed legislation that would allow banks or other financial institutions in Florida to distribute funds from any account in the name of the decedent (with no pay-on-death or survivor designation) in the absence of an appropriate probate proceeding or other court proceeding, ~~specifically including HB 1241/SB 892~~ unless safeguards are put in place to protect the rights and interests of persons rightfully entitled to the proceeds, the constitutional rights of the decedent to direct the disposition of his or her property, and the rights of creditors to recover debts through a probate proceeding; (b) find that such revised position is within the purview of the Section; and (c) expend funds in support of the revised legislative position.

Small Account Legislation - 2019

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

Section 1. Section 655.795, Florida Statutes, is created to read:

655.795 Payment to successor without court proceedings.—

(1)(a) A financial institution in this state may pay to the surviving successor of a decedent, without any court proceedings, order, or judgment authorizing the payment, the funds on deposit in all qualified accounts of the decedent at the financial institution if the total amount of such funds does not exceed \$10,000. The financial institution may make such payment no sooner than 45 days after the date of the decedent's death.

(b) For purposes of this section, the term:

1. "surviving successor" means:

a. The surviving spouse of the decedent;

b. If the decedent did not leave a surviving spouse, an adult child of the decedent; or

c. If the decedent did not leave a surviving spouse or adult child, the parent of the decedent.

2. "qualified account" means a depository account or certificate of deposit held in the sole name of the decedent with no pay on death or other survivor designation.

(c) The surviving successor must provide to the financial institution a certified copy of the decedent's death certificate and a sworn affidavit that includes the following:

1. A statement attesting that the surviving successor is the surviving spouse, adult child, or parent of the decedent. if the surviving successor is an adult child, the affidavit must attest that the decedent left no surviving spouse. if the surviving successor is a parent, the affidavit must attest that the decedent left no surviving spouse or adult children. If the surviving successor is an adult child or parent, the affidavit must also indicate either that there are no other surviving successor or that the written consent of the other surviving successors to the withdrawal by the surviving successor is attached.

2. The date of death and the address of the last residence of the decedent.

3. A statement attesting that the total amount of qualified accounts on deposit with the financial institution does not exceed \$10,000.

4. A statement acknowledging that a personal representative has not been appointed to administer the estate of the decedent and that no probate or summary

administration procedures have been commenced with respect to the estate of the decedent.

5. A statement attesting either that the affiant has no knowledge of the existence of any unpaid creditor of the decedent or that the written consent of all known creditors of the decedent to the withdrawal by the surviving successor is attached.

6. A statement acknowledging that the payment of the funds constitutes a full release and discharge of the financial institution for the amount paid and that the surviving successor indemnifies the financial institution against claims; demands; expenses, including attorney fees and court costs; losses; or damages incurred by the financial institution for taking any action, or failing to take an action, in connection with the payment of the funds.

(d) The financial institution is not required to determine whether the contents of the sworn affidavit are truthful. The payment of funds by the financial institution to the surviving successor constitutes a full release and discharge of the financial institution for the amount paid. No person has a right or cause of action against a financial institution because of such payment, and the surviving successor must indemnify and hold harmless the financial institution against claims; demands; expenses, including attorney fees and court costs; losses; or damages incurred by the financial institution for taking any action, or failing to take an action, in connection with the affidavit or the payment.

(e) The surviving successor who withdraws funds, is personally liable:

1. To the creditors of the decedent to the extent of the amount paid.

2. To the personal representative of the decedent to the extent of the amount paid.

3. If a personal representative has not been appointed, to the other intestate heirs of the decedent, to the extent of excess of the amount paid over the amount that is properly attributable to the intestate share of the surviving successor.

4. If the personal representative has been discharged, to the devisees of the estate to the extent of excess of the amount paid over the amount that would have been devised to the surviving successor.

(f) Personal liability of the surviving successor under this section is not barred by s 733.710.

(g) In addition to any other penalty provided by general law, a person who knowingly makes a false statement in a sworn affidavit given to a financial institution pursuant to this section commits theft pursuant to s. 812.014.

(2) The surviving successor may use the following affidavit form to fulfill the requirements of paragraph (1)(c):

AFFIDAVIT UNDER SECTION 655.795, FLORIDA STATUTES, TO OBTAIN
BANK PROPERTY OF DECEASED ACCOUNTHOLDER:
...(Name of deceased)...

State of

County of

Before me, the undersigned authority, personally appeared Affiant ..(name of Affiant)...
of ...(residential address of affiant)...,who has been sworn and says the following statements
are true:

1. Affiant is (initial one response)

.... The surviving spouse of the deceased.

.... A surviving adult child of the deceased, and the deceased left no surviving spouse
and no other surviving adult children.

.... A surviving adult child of the deceased, and the deceased left no surviving spouse.
The written consents of the other adult children of the deceased to allow Affiant to withdraw
the Funds are attached.

.... A surviving parent of the deceased, and the deceased left no surviving spouse, no
adult children, and no other surviving parent.

.... A surviving parent of the deceased, and the deceased left no surviving spouse and no
adult children. The written consent of the other surviving parent of the deceased to allow
Affiant to withdraw the Funds is attached.

2. As shown in the certified death certificate, the date of death was ...(date if death)...
and the last address of the deceased was ...(last address)...

3. A personal representative has not been appointed to administer the estate of the
deceased and no probate or summary administration procedures have been commenced with
respect to the estate of the decedent.

4. (initial one response)

.... Affiant has no knowledge of the existence of any unpaid creditor of the decedent.

.... The written consent of all creditors of the decedent known by the affiant to the
withdrawal by the surviving successor is attached.

5. Affiant is entitled to payment of the deceased's deposit accounts (the "Funds") held by the Financial Institution: ...(name of financial institution)..., which amount does not cumulatively exceed \$10,000. Affiant requests full payment from the Financial Institution.

6. The payment of the Funds constitutes a full release and discharge of the Financial Institution for the amount paid.

7. Individually and as the affiant, Affiant agrees to indemnify the Financial Institution and hold it free and harmless from any and all claims; demands; expenses, including attorney fees and court costs; losses; or damages incurred by the Financial Institution for any action taken, or failure to take an action, in connection with this Affidavit and the payment of the Funds to Affiant or as instructed by Affiant.

By ...(signature of Affiant)...

Sworn to and subscribed before me this ... day of...(month)..., ...(year).., by ...(name of Affiant)..., who is personally known to me or produced ...(form of identification)... as identification, and did take an oath.

...(signature of Notary Public)...

(Print, type, or stamp name of Notary Public)

My Commission Expires:

...(date of expiration of commission)...

(3) This section supersedes any conflicting provision of the Florida Probate Code.

Section 2. This act shall take effect July 1, 2019.

WHITE PAPER

BILL TO AMEND TO REPLACE MANDATORY PRE-SUIT MEDIATION OF DISPUTES IN CONDOMINIUM, COOPERATIVE AND HOMEOWNERS' ASSOCIATIONS WITH MANDATORY PRE-SUIT MEDIATION AND PROVIDE CERTAIN LIMITED DISPUTES BE FILED DIRECTLY IN COUNTY COURT - PROPOSED REVISIONS TO SECTION 34.01, 718.112, SECTION 718.117, SECTION 718.1255, SECTION 718.303, SECTION 719.106, SECTION 719.1255 SECTION 720.303, SECTION 720.306 AND SECTION 720.311, FLORIDA STATUTES

DRAFT OF DECEMBER 7, 2018

1. SUMMARY

The proposed bill will serve to eliminate the mandatory non-binding arbitration of certain disputes in condominium and cooperative associations with the Florida Division of Condominiums and replace non-binding arbitration with non-binding mediation with private mediators or board certified attorneys in Condominium and Planned Development Law. The proposed bill also provides that certain disputes (records, elections and recalls) will now be filed directly with the county court. The proposed bill removes jurisdiction from Florida Division of Condominiums for all disputes, including election and recall disputes in homeowners' associations. The proposed bill reflects the current situation in Florida that the Division of Condominiums no longer manages disputes in a condominium, cooperative or homeowners' association in an efficient, timely and cost-effective manner, which only serves to increase the cost of litigation for the parties.

2. CURRENT SITUATION

The current handling of disputes by the Division of Condominiums through mandatory pre-suit arbitration no longer takes place in an efficient, timely and cost-effective manner. Delays are routine and extensive in most disputes filed with the Division of Condominiums, often exceeding several months without any type of response. Rulings from the Division often are unclear and do not properly address the legal issues of the dispute. This leads to increased costs of litigation and compliance with final orders that are often deficient in substantive legal analysis. Importantly, litigation involving disputes handled by the Division has become costly due to the extensive delays in resolving cases and the issuance of rulings that only serve to prolong litigation due to the lack of proper legal analysis. Mandatory pre-suit arbitration actions filed with the Division are treated like litigation by the affected parties and this often leads to the sides being unwilling to try and resolve the dispute at its earliest stages. Parties are often required to file for presuit arbitration on matters outside of the scope of the jurisdiction of the Division simply to get an order confirming the Division does not have jurisdiction. This filing is required to avoid

getting a motion to dismiss filed in the civil action for failing to submit the dispute to presuit arbitration with the Division.

The limited mandatory pre-suit mediations that currently exists in Section 720.311 has allowed for numerous disputes to be resolved or substantially narrowed prior to litigation since the parties are required to meet and discuss settlement of the matter before a lawsuit is filed. Numerous practitioners report that having the member and association meet prior to the commencement of litigation increases the likelihood of settlement at the outset, but also opens a dialogue between the two sides that often facilitates a resolution to the litigation.

3. EFFECT OF PROPOSED CHANGE

The proposed change serves to recognize the essential role alternative dispute resolution has in today's society by preserving the mandatory role of pre-suit dispute resolution. The draft proposal requires the member and the association to meet at mediation prior to litigation and forces the sides to discuss the nature of the dispute and the potential options for resolution. The draft proposal also allows for attorneys who are board certified in Condominium and Planned Development Law to serve as mediators for disputes involving a community association and its member since many of the disputes involve specific and nuanced areas of law that require a unique level of expertise. Those disputes that require immediate resolution, such as access to official records, election disputes and recalls of board members are allowed to be filed directly in county court under the summary procedure process to provide for a prompt resolution. The draft proposal also makes a stylistic change to Section 718.112 by indenting the Section to make it easier to read. Finally, the draft proposal amends Section 718.303 to mirror Section 720.305 and provide that attorneys' fees are recoverable in all actions at law or equity. These changes will allow for a more efficient and expedited resolution of a substantial majority of most disputes, allowing for savings of time and costs.

4. ANALYSIS

The following describes the changes being proposed:

a. Section 34.01(1)(d) is amended to provide the county courts with jurisdiction over disputes involving official records, elections, recalls and any dispute involving a condominium, cooperative or homeowners' association that is not resolved at mediation.

b. Section 718.112 provides that disputes involving the recall of a member of the board of directors is now filed in county court and not with the Division. The reliance on rules adopted by the Division to fill vacancies is deleted and now vacancies after a recall are filled in accordance with the bylaws.

c. Section 718.117(16) is deleted so contests involving a plan of termination are no longer filed with the Division and the parties can proceed directly to court and must be filed within 90 days from the date of the filing of the plan of termination.

d. Section 718.1255 replaces the mandatory pre-suit arbitration of disputes with the Division with mandatory pre-suit mediation with private mediators or board certified attorneys in Condominium and Planned Development Law. It also specifically provides disputes regarding official records, elections and recalls are filed directly in county court.

e. Section 718.303(1) is amended to be harmonized with Section 720.305 and provide that all actions at law or equity are subject to prevailing party attorneys' fees.

f. Section 719.106(f) is amended to mirror Section 718.112(2)(j) for how recalls are certified and disputes involving recalls are to be filed directly in county court. Recalls are now effective on delivery of the recall petition, provided it is facially valid.

g. Section 719.1255 removes the Division from having jurisdiction over disputes and provides disputes are handled pursuant to Section 718.1255.

h. Section 720.303(10)(d)-(l) removes recalls from the Division's jurisdiction and provides recall disputes will be filed in county court.

i. Section 720.306(9)(c) removes election disputes from the Division's jurisdiction and provides recall disputes will be filed in county court.

j. Section 720.311 maintains the mandatory pre-suit mediation of certain disputes while clarifying disputes involving official records, elections and recalls are filed directly in county court. The changes also allows for board certified attorneys in Condominium and Planned Development Law to serve as mediators.

5. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

The proposal does not have a direct fiscal impact on local governments. The state government will recognize savings from the elimination of the arbitration section of the Division of Condominiums.

6. DIRECT IMPACT ON PRIVATE SECTOR

This proposal will allow for disputes between a member and an association to be initially addressed in a manner that is more informal and allows for the two sides to work together to resolve the dispute rather than having to immediately litigate the dispute. The

only exceptions are for elections and recalls as these disputes require immediate resolution and will now be filed directly with the county court.

7. CONSTITUTIONAL ISSUES

There is a potential constitutional issue fixed by this proposal where a person was denied access to the courts of Florida by the mandatory and final nature of arbitration involving election and recall disputes.

8. OTHER INTERESTED PARTIES

The Florida Division of Condominiums and Alternative Dispute Resolution Section have an interest in this proposed legislation.

1 A bill to be entitled

2 An act relating to _____; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 **Section 1.** Section 34.01(d) is amended to read as follows:

7 (d) Of disputes occurring in condominium associations as described
8 in s. 718.1255, in cooperative associations as described in s.
9 719.1255 and in the homeowners' associations as described in
10 s. 720.311(2) (a), which shall be concurrent with jurisdiction of
11 the circuit courts unless otherwise provided.

12 **Section 2.** Section 718.103(12) is amended to read as follows:

13 (12) "Condominium Documents" means the Declaration, Bylaws,
14 Articles of Incorporation and Rules and Regulations of an
15 Association adopted pursuant to authority granted by the
16 Declaration, Bylaws, Articles of Incorporation or applicable law.

17 **Section 3.** Section 718.112(2) (j) is amended to read as follows:

18 (j) Recall of board members.—Subject to s. 718.301, any
19 member of the board of administration may be recalled and removed
20 from office with or without cause by the vote or agreement in
21 writing by a majority of all the voting interests. A special
22 meeting of the unit owners to recall a member or members of the
23 board of administration may be called by 10 percent of the voting

24 interests giving notice of the meeting as required for a meeting of
25 unit owners, and the notice shall state the purpose of the meeting.
26 Electronic transmission may not be used as a method of giving
27 notice of a meeting called in whole or in part for this purpose.

28 1. If the recall is approved by a majority of all voting
29 interests by a vote at a meeting, the recall will be effective as
30 provided in this paragraph. The board shall duly notice and hold a
31 board meeting within 5 full business days after the adjournment of
32 the unit owner meeting to recall one or more board members. Such
33 member or members shall be recalled effective immediately upon
34 conclusion of the board meeting, provided that the recall is
35 facially valid. A recalled member must turn over to the board,
36 within 10 full business days after the vote, any and all records
37 and property of the association in their possession.

38 2. If the proposed recall is by an agreement in writing
39 by a majority of all voting interests, the agreement in writing or
40 a copy thereof shall be served on the association by certified mail
41 or by personal service in the manner authorized by chapter 48 and
42 the Florida Rules of Civil Procedure. The board of administration
43 shall duly notice and hold a meeting of the board within 5 full
44 business days after receipt of the agreement in writing. Such
45 member or members shall be recalled effective immediately upon the

46 conclusion of the board meeting, provided that the recall is
47 facially valid. A recalled member must turn over to the board,
48 within 10 full business days, any and all records and property of
49 the association in their possession.

50 3. If the board fails to duly notice and hold a board
51 meeting within 5 full business days after service of an agreement
52 in writing or within 5 full business days after the adjournment of
53 the unit owner recall meeting, the recall shall be deemed effective
54 and the board members so recalled shall turn over to the board
55 within 10 full business days after the vote any and all records and
56 property of the association.

57 4. If the board fails to duly notice and hold the
58 required meeting or at the conclusion of the meeting determines
59 that the recall is not facially valid, the unit owner
60 representative may file ~~a petition~~ an action pursuant to s.
61 718.1255 challenging the board's failure to act or challenging the
62 board's determination on facial validity. The ~~petition~~ action must
63 be filed within 60 days after the expiration of the applicable 5-
64 full-business-day period. The review of a ~~petition~~ action under
65 this subparagraph is limited to the sufficiency of service on the
66 board and the facial validity of the written agreement or ballots
67 filed.

68 5. If a vacancy occurs on the board as a result of a
69 recall or removal and less than a majority of the board members are
70 removed, the vacancy may be filled by the affirmative vote of a
71 majority of the remaining directors, notwithstanding any provision
72 to the contrary contained in this subsection. If vacancies occur on
73 the board as a result of a recall and a majority or more of the
74 board members are removed, the vacancies shall be filled in
75 accordance with the bylaws ~~procedural rules to be adopted by the~~
76 ~~division, which rules need not be consistent with this subsection.~~
77 ~~The rules must provide procedures governing the conduct of the~~
78 ~~recall election as well as the operation of the association during~~
79 ~~the period after a recall but before the recall election.~~

80 6. A board member who has been recalled may file ~~a~~
81 ~~petition~~ an action pursuant to s. 718.1255 challenging the validity
82 of the recall. The ~~petition~~ action must be filed within 60 days
83 after the recall. The association and the unit owner representative
84 shall be named as the ~~respondents~~ defendants. The ~~petition~~ action
85 may challenge the facial validity of the written agreement or
86 ballots filed or the substantial compliance with the procedural
87 requirements for the recall. If the ~~arbitrator~~ court determines the
88 recall was invalid, the petitioning board member shall immediately
89 be reinstated and the recall is null and void. A board member who

90 is successful in challenging a recall is entitled to recover
91 reasonable attorney fees and costs from the ~~respondents~~ defendants.
92 The ~~arbitrator may~~ court shall award reasonable attorney fees and
93 costs to the ~~respondents~~ defendants if they prevail, if the
94 ~~arbitrator~~ court makes a finding that the ~~petitioner's~~ plaintiff's
95 claim is frivolous.

96 7. ~~The division may not accept for filing~~ No action may
97 be filed regarding a recall petition, whether filed pursuant to
98 subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph
99 6. when there are 60 or fewer days until the scheduled reelection
100 of the board member sought to be recalled or when 60 or fewer days
101 have elapsed since the election of the board member sought to be
102 recalled.

103 **Section 4.** Section 718.112(2)(k) is amended to read as follows:

104 (k) ~~Arbitration~~ Mediation.— There shall be a provision for
105 mandatory ~~nonbinding arbitration~~ mediation as provided for in s.
106 718.1255 for any residential condominium.

107 **Section 5.** Section 718.117(16) is amended to read as follows.

108 (Substantial rewording of statute. See current version of Section
109 718.117(16) for present text) :

110 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a
111 plan of termination by filing an action in the circuit court where

112 the condominium is located within (90) days from the date of the
113 filing of the plan of termination.

114 **Section 6.** Section 718.1255 is amended to read as follows:
115 (Substantial rewording of statute. See current version of Section
116 718.1255 for present text):

117 718.1255 Alternative dispute resolution; mandatory presuit
118 mediation; legislative findings.—

119 (1) DEFINITIONS.—As used in this section, the term “dispute” means
120 any disagreement between two or more parties that involves:

121 (a) The authority of the board of directors, under this chapter or
122 association document to:

- 123 1. Require any owner to take any action, or not to take any
124 action, involving that owner’s unit or the appurtenances thereto.
- 125 2. Alter or add to a common area or element.

126 (b) The failure of a governing body, when required by this chapter
127 or an association document, to:

- 128 1. To maintain common elements, association property or portions
129 of the unit for which the association is responsible.
- 130 2. Give adequate notice of meetings or other actions.
- 131 3. Properly conduct meetings of the board and committees appointed
132 by the board, membership meetings but not any election held at a
133 meeting.

134 4. Allow inspection of books and records.

135 (c) For purposes of this section, mediator shall be defined as a
136 person who has been certified pursuant to the requirements
137 established by the Florida Supreme Court as a circuit civil court
138 mediator.

139 "Dispute" does not include any disagreement that primarily
140 involves: title to any unit or common element; the interpretation
141 or enforcement of any warranty; the levy of a fee or assessment, or
142 the collection of an assessment levied against a party; the
143 eviction or other removal of a tenant from a unit; alleged breaches
144 of fiduciary duty by one or more directors; seeking damages or
145 claims for damages to a unit based upon the alleged failure of the
146 association to maintain the common elements or condominium
147 property.

148 (2) LEGISLATIVE FINDINGS.—

149 The Legislature finds that alternative dispute resolution has been
150 making progress in reducing court dockets and trials and in
151 offering a more efficient, cost-effective option to court
152 litigation. However, the Legislature also finds that alternative
153 dispute resolution should not be used as a mechanism to encourage
154 the filing of frivolous or nuisance suits. The serving of a demand
155 for presuit mediation as provided for in this section shall toll

156 the applicable statute of limitations until thirty (30) days after
157 the declaration by the mediator of the mediation being concluded
158 and no agreement having been reached, ten (10) days after the
159 expiration of the time for a party to accept presuit mediation, or
160 the conclusion of the time period under this section during which
161 mediation must be conducted.

162 (3) MANDATORY PRESUIT MEDIATION OF DISPUTES.—

163 (a) As a condition precedent to suit being filed in court, disputes
164 between an association and a unit owner are required to be mediated
165 as set forth herein. Presuit mediation proceedings must be
166 conducted in accordance with the applicable Florida Rules of Civil
167 Procedure and Chapter 44, Florida Statutes, which proceedings under
168 this section are privileged and confidential to the same extent as
169 court-ordered mediation. Disputes subject to the condition
170 precedent of mediation before filing suit include all disputes
171 between an association and a unit owner except the collection of
172 any assessment, fine, or other financial obligation (including
173 attorney's fees and costs) claimed to be due, an action to enforce
174 a prior mediation settlement agreement between the parties, and
175 suits where preliminary injunctive relief is requested
176 Notwithstanding the ability to file suit for injunctive relief
177 without first conducting mediation, the court hearing the request

178 for injunctive relief shall refer the parties to mediation once the
179 injunctive relief issues are determined, and in its discretion, may
180 refer the parties to a mediation program administered by the courts
181 or require mediation under this section. Presuit mediation
182 conducted under this section is confidential to the fullest extent
183 provided by law. Except for counsel for the parties, a corporate
184 representative(s) designated by the association and if applicable,
185 a representative from the association's insurance carrier, persons
186 who are not parties to the dispute may not attend the presuit
187 mediation conference without the consent of all parties. When
188 mediation is attended by a quorum of the board, such mediation is
189 not a board meeting for purposes of notice and participation as set
190 forth in s. 718.112. An aggrieved party shall serve on the
191 responding party a written demand to participate in presuit
192 mediation in substantially the following form:

193 STATUTORY OFFER TO PARTICIPATE

194 IN PRESUIT MEDIATION

195 The alleged aggrieved party, _____, hereby demands that _____, as the
196 responding party, engage in mandatory presuit mediation in
197 connection with the following disputes, which by statute are of a
198 type that are subject to presuit mediation:
199 (List specific nature of the dispute or disputes to be mediated and

200 the authority supporting a finding of a violation as to each
201 dispute.)

202 Pursuant to section 718.1255, Florida Statutes, this demand to
203 resolve the dispute through presuit mediation is required before a
204 lawsuit can be filed concerning the dispute. Pursuant to the
205 statute, the parties are required to engage in presuit mediation
206 with a neutral third-party mediator in order to attempt to resolve
207 this dispute without court action, and the aggrieved party demands
208 that you likewise agree to this process. If you fail to participate
209 in the mediation process, suit may be brought against you without
210 further warning.

211 The process of mediation involves a supervised negotiation process
212 in which a trained, neutral third-party mediator meets with both
213 parties and assists them in exploring possible opportunities for
214 resolving part or all of the dispute. By agreeing to participate in
215 presuit mediation, you are not bound in any way to change your
216 position. Furthermore, the mediator has no authority to make any
217 decisions in this matter or to determine who is right or wrong and
218 merely acts as a facilitator to ensure that each party understands
219 the position of the other party and that all options for reasonable
220 settlement are fully explored.

221 If an agreement is reached, the agreement shall be reduced to

222 writing and signed at which time the agreement becomes a binding
223 and enforceable contract between the parties. A resolution of one
224 or more disputes in this fashion avoids the need to litigate those
225 issues in court. The failure of a party to participate in the
226 process or the failure of the parties to reach an agreement during
227 the mediation process, results in the aggrieved party being able to
228 proceed to court on all outstanding, unsettled disputes. If you
229 have failed or refused to participate in the entire mediation
230 process, you will not be entitled to recover your attorney's fees,
231 even if you prevail during the court process.

232 The aggrieved party has selected and hereby lists five Florida
233 Supreme Court Circuit Civil certified mediators who the aggrieved
234 party believes be qualified to mediate the dispute. You have the
235 right to select any one of these mediators. The fact that one party
236 may be familiar with one or more of the listed mediators does not
237 mean that the mediator cannot act as a neutral and impartial
238 facilitator. Any mediator who cannot act in this capacity is
239 required ethically to decline to accept engagement. The mediators
240 that we suggest, and their current hourly rates, are as follows:
241 (List the names, physical addresses, e-mail addresses, telephone
242 numbers, and hourly rates of the mediators. Other pertinent
243 information about the background of the mediators may be included

244 as an attachment, including whether the mediator is board certified
245 by The Florida Bar in any practice area (e.g., Condominium and
246 Planned Development Law). By mutual agreement, we can also select
247 a mediator other than one of the certified circuit court civil
248 mediators named above. As an alternative to the above-named
249 mediators If we both agree, the alternative mediator is not
250 required to be certified as a mediator by the Florida Supreme
251 Court. I propose the following person(s) who to serve as the
252 mediator. (List the names, physical addresses, e-mail addresses,
253 telephone numbers and hourly rates of the alternative mediators.
254 Other pertinent information about the background of the alternative
255 mediators may be included as an attachment.

256 You may contact the offices of these mediators to confirm that the
257 listed mediators will be neutral and will not show any favoritism
258 toward either party. The Florida Supreme Court can provide you a
259 list of mediators who are certified in the area of Circuit Civil
260 law.

261 Unless otherwise agreed by the parties, section 718.1255(3)(b),
262 Florida Statutes, requires that the parties share the costs of
263 presuit mediation equally, including the fee charged by the
264 mediator. An average mediation may require three to four hours of
265 the mediator's time, including some preparation time, and the

266 parties will need to equally share the mediator's fees. Parties who
267 chose to hire an attorney will pay their own attorney's fees
268 without a guarantee that the court will issue an award for
269 reimbursement of their fees. However, use of an attorney is not
270 required and is at the option of each party. The mediator may
271 require the advance payment of some or all of the anticipated fees.
272 The aggrieved party hereby agrees to pay (or prepay if requested by
273 the mediator) one-half of the mediator's estimated fees and to
274 forward this amount or such other reasonable advance deposits as
275 the mediator requires. Any funds deposited by you will be returned
276 to you if deposited funds are in excess of the cost of your share
277 of the fees incurred.
278 To begin your participation in presuit mediation to try to resolve
279 the dispute and avoid further legal action, please sign below and
280 clearly indicate which mediator is acceptable to you. We will then
281 ask the mediator to schedule a mutually convenient time and place
282 for the mediation conference to be held. The mediation conference
283 must be held within ninety (90) days from the date of acceptance of
284 presuit mediation, unless extended by mutual written agreement. In
285 the event that you fail to respond within 30 days from the date of
286 this letter, or if you fail to agree to at least one of the
287 mediators that we have suggested or to pay or prepay to the

288 mediator one-half of the fees involved, the aggrieved party is
289 authorized to proceed with the filing of a lawsuit against you
290 without further notice and may then seek an award of attorney's
291 fees or costs incurred in attempting to mediate this dispute.
292 Therefore, please give this matter your immediate attention. By
293 law, your response must be mailed by certified mail, return receipt
294 requested, and by first-class mail to the address shown on this
295 demand.

296 _____

297 _____

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

300 AGREEMENT TO MEDIATE

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

305 (List acceptable mediator or mediators.)

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

309 _____

310 Signature of responding party #1
311 _____
312 Telephone contact information
313 _____
314 Signature and telephone contact information of responding party #2
315 (if applicable) (if property is owned by more than one person, all
316 owners must sign)
317 (b) Service of the statutory demand to participate in presuit
318 mediation shall be effected by sending a letter in substantial
319 conformity with the above form by certified mail, return receipt
320 requested, with an additional copy being sent by regular first-
321 class mail, to the address of the responding party as it last
322 appears on the books and records of the association. The
323 responding party has 30 days from the date of the mailing of the
324 statutory demand to serve a response to the aggrieved party in
325 writing. The response shall be sent by certified mail, return
326 receipt requested, with an additional copy being sent by regular
327 first-class mail, to the address shown on the statutory demand.
328 Once the parties have selected a mediator, the mediator shall
329 schedule the mediation for a date and time mutually convenient to
330 the parties. Each proposed mediator shall be available at no extra
331 charge, i.e., no travel time nor travel cost being charged, in the

332 county in which the condominium is located or within 40 miles of
333 the condominium. The parties may, but are not obligated, to agree
334 to an alternative mediator. If presuit mediation session cannot be
335 scheduled and concluded within 90 days after from the date of
336 acceptance of presuit mediation and there is no agreement between
337 the parties to extend this 90 day deadline, the condition precedent
338 of conducting mediation prior to filing suit is satisfied and the
339 aggrieved party may file suit.

340 The parties shall share the costs of presuit mediation
341 equally, including the fee charged by the mediator (if any) unless
342 the parties agree otherwise, and the mediator may require advance
343 payment of its reasonable fees and costs which shall also be shared
344 equally. The failure of any party to respond to a demand or
345 response, to agree upon a mediator, to pay fees and costs within
346 the time established by the mediator, or to fail to appear for a
347 scheduled mediation session without the approval of the mediator,
348 shall constitute the failure or refusal to participate in the
349 mediation process and shall waive the condition precedent of
350 presuit mediation thereby entitling the other party to proceed in
351 court and to seek an award of the costs and fees associated with
352 the mediation. Additionally and notwithstanding the provisions of
353 any other law, document or contractual provision, persons who fail

354 or refuse to participate in the entire mediation process may not
355 recover attorney's fees and costs in subsequent litigation relating
356 to the dispute. The preceding sentence shall be capitalized, bold
357 letters in a font size larger than any other used in the statutory
358 demand.

359 (c) If presuit mediation as described in paragraph (a) is not
360 successful in resolving all issues between the parties, any party
361 may file suit regarding the unresolved dispute in a court of
362 competent jurisdiction. As to any issue or dispute that is not
363 resolved at presuit mediation, and as to any issue that is settled
364 at presuit mediation but is thereafter subject to an action seeking
365 enforcement of the mediation settlement, the prevailing party in
366 any subsequent litigation or proceeding shall be entitled to an
367 award of all costs and attorney's fees incurred in the presuit
368 mediation process.

369 (d) A mediator shall be authorized to conduct mediation under this
370 section only if he or she has been certified as a Circuit Civil
371 mediator pursuant to the requirements established by the Florida
372 Supreme Court. Settlement agreements resulting from mediation shall
373 not have precedential value in proceedings involving parties other
374 than those participating in the mediation to support either a claim
375 or defense in other disputes.

376 (4) DISPUTES INVOLVING ELECTIONS FOR THE BOARD OF ADMINISTRATION
377 OR RECALL OF BOARD MEMBERS.— Any dispute challenging the legality
378 of the election of any director of the board of administration or
379 the recall of any member of a board of administration shall be
380 filed as a summary proceeding pursuant to s. 51.011 and in any such
381 action the prevailing party is entitled to recover reasonable
382 attorney fees and costs. Any action filed pursuant to this
383 paragraph shall be tried without a jury.

384 (6) APPLICABILITY.—This section does not apply to a nonresidential
385 condominium unless otherwise specifically provided for in the
386 declaration of the nonresidential condominium.

387 **Section 7.** Section 718.303(1) is amended to read as follows: (1)
388 Each unit owner, each tenant and other invitee, and each
389 association is governed by, and must comply with the provisions of,
390 this chapter, the declaration, the documents creating the
391 association, and the association bylaws which shall be deemed
392 expressly incorporated into any lease of a unit. Actions at law or
393 in equity ~~for damages or for injunctive relief~~, or both, for
394 failure to comply with these provisions may be brought by the
395 association or by a unit owner against:

396 (a) The association.

397 (b) A unit owner.

398 (c) Directors designated by the developer, for actions taken
399 by them before control of the association is assumed by unit owners
400 other than the developer.

401 (d) Any director who willfully and knowingly fails to comply
402 with these provisions.

403 (e) Any tenant leasing a unit, and any other invitee
404 occupying a unit.

405 The prevailing party in any such action or in any action in
406 which the purchaser claims a right of voidability based upon
407 contractual provisions as required in s. 718.503(1)(a) is entitled
408 to recover reasonable attorney's fees. A unit owner prevailing in
409 an action between the association and the unit owner under this
410 section, in addition to recovering his or her reasonable attorney's
411 fees, may recover additional amounts as determined by the court to
412 be necessary to reimburse the unit owner for his or her share of
413 assessments levied by the association to fund its expenses of the
414 litigation. This relief does not exclude other remedies provided by
415 law. Actions arising under this subsection may not be deemed to be
416 actions for specific performance.

417 **Section 6. Section 719.106(1)(f) is amended to read as**
418 **follows:**

419 (f) *Recall of board members.*—Subject to s. 719.301, any

420 member of the board of administration may be recalled and removed
421 from office with or without cause by the vote or agreement in
422 writing by a majority of all the voting interests. A special
423 meeting of the voting interests to recall any member of the board
424 of administration may be called by 10 percent of the unit owners
425 giving notice of the meeting as required for a meeting of unit
426 owners, and the notice shall state the purpose of the meeting.
427 Electronic transmission may not be used as a method of giving
428 notice of a meeting called in whole or in part for this purpose.

429 1. If the recall is approved by a majority of all voting
430 interests by a vote at a meeting, the recall shall be effective as
431 provided in this paragraph. The board shall duly notice and hold a
432 board meeting within 5 full business days after the adjournment of
433 the unit owner meeting to recall one or more board members. At the
434 meeting, the board shall either certify the recall, in which case
435 such member or members shall be recalled effective immediately and
436 shall turn over to the board within 5 full business days any and
437 all records and property of the association in their possession, or
438 shall proceed as set forth in subparagraph 3.

439 2. If the proposed recall is by an agreement in writing by a
440 majority of all voting interests, the agreement in writing or a
441 copy thereof shall be served on the association by certified mail

442 or by personal service in the manner authorized by chapter 48 and
443 the Florida Rules of Civil Procedure. The board of administration
444 shall duly notice and hold a meeting of the board within 5 full
445 business days after receipt of the agreement in writing. ~~At the~~
446 ~~meeting, the board shall either certify the written agreement to~~
447 ~~recall members of the board, in which case such members shall be~~
448 ~~recalled effective immediately and shall turn over to the board,~~
449 ~~within 5 full business days, any and all records and property of~~
450 ~~the association in their possession, or proceed as described in~~
451 ~~subparagraph 3.~~ Such member or members shall be recalled effective
452 immediately upon the conclusion of the board meeting, provided that
453 the recall is facially valid. A recalled member must turn over to
454 the board, within 10 full business days, any and all records and
455 property of the association in their possession.

456 ~~3. If the board determines not to certify the written~~
457 ~~agreement to recall members of the board, or does not certify the~~
458 ~~recall by a vote at a meeting, the board shall, within 5 full~~
459 ~~business days after the board meeting, file with the division a~~
460 ~~petition for binding arbitration pursuant to the procedures of~~
461 ~~s. 719.1255. For purposes of this paragraph, the unit owners who~~
462 ~~voted at the meeting or who executed the agreement in writing shall~~
463 ~~constitute one party under the petition for arbitration. If the~~

464 ~~arbitrator certifies the recall as to any member of the board, the~~
465 ~~recall shall be effective upon mailing of the final order of~~
466 ~~arbitration to the association. If the association fails to comply~~
467 ~~with the order of the arbitrator, the division may take action~~
468 ~~pursuant to s. 719.501. Any member so recalled shall deliver to the~~
469 ~~board any and all records and property of the association in the~~
470 ~~member's possession within 5 full business days after the effective~~
471 ~~date of the recall.~~

472 43. If the board fails to duly notice and hold a board
473 meeting within 5 full business days after service of an agreement
474 in writing or within 5 full business days after the adjournment of
475 the unit owner recall meeting, the recall shall be deemed effective
476 and the board members so recalled shall immediately turn over to
477 the board any and all records and property of the association.

478 54. If the board fails to duly notice and hold the required
479 meeting ~~or fails to file the required petition, the unit owner~~
480 ~~representative may file a petition pursuant to~~
481 ~~s. 719.1255 challenging the board's failure to act. The petition~~
482 ~~must be filed within 60 days after the expiration of the applicable~~
483 ~~5 full business day period. The review of a petition under this~~
484 ~~subparagraph is limited to the sufficiency of service on the board~~
485 ~~and the facial validity of the written agreement or ballots filed~~

486 or at the conclusion of the meeting determines that the recall is
487 not facially valid, the unit owner representative may file an
488 action pursuant to s. 718.1255 challenging the board's failure to
489 act or challenging the board's determination on facial validity.
490 The action must be filed within 60 days after the expiration of the
491 applicable 5-full-business-day period. The review of an action
492 under this subparagraph is limited to the sufficiency of service on
493 the board and the facial validity of the written agreement or
494 ballots filed.

495 ~~65. If a vacancy occurs on the board as a result of a recall~~
496 ~~and less than a majority of the board members are removed, the~~
497 ~~vacancy may be filled by the affirmative vote of a majority of the~~
498 ~~remaining directors, notwithstanding any provision to the contrary~~
499 ~~contained in this chapter. If vacancies occur on the board as a~~
500 ~~result of a recall and a majority or more of the board members are~~
501 ~~removed, the vacancies shall be filled in accordance with~~
502 ~~procedural rules to be adopted by the division, which rules need~~
503 ~~not be consistent with this chapter. The rules must provide~~
504 ~~procedures governing the conduct of the recall election as well as~~
505 ~~the operation of the association during the period after a recall~~
506 ~~but before the recall election.~~ If a vacancy occurs on the board
507 as a result of a recall or removal and less than a majority of the

508 board members are removed, the vacancy may be filled by the
509 affirmative vote of a majority of the remaining directors,
510 notwithstanding any provision to the contrary contained in this
511 subsection. If vacancies occur on the board as a result of a recall
512 and a majority or more of the board members are removed, the
513 vacancies shall be filled in accordance with the bylaws ~~procedural~~
514 rules to be adopted by the division, which rules need not be
515 consistent with this subsection. The rules must provide procedures
516 governing the conduct of the recall election as well as the
517 operation of the association during the period after a recall but
518 before the recall election.

519 76. A board member who has been recalled may file a ~~petition~~
520 action pursuant to s. 719.1255 challenging the validity of the
521 recall. The ~~petition~~ action must be filed within 60 days after the
522 recall is deemed certified. The association and the unit owner
523 representative shall be named as the ~~respondents~~ defendants. The
524 action may challenge the facial validity of the written agreement
525 or ballots filed or the substantial compliance with the procedural
526 requirements for the recall. If the court determines the recall was
527 invalid, the petitioning board member shall immediately be
528 reinstated and the recall is null and void. A board member who is
529 successful in challenging a recall is entitled to recover

530 reasonable attorney fees and costs from the defendants. The court
531 shall award reasonable attorney fees and costs to the defendants if
532 they prevail, if the court makes a finding that the plaintiff's
533 claim is frivolous.

534 ~~§7. The division may not accept for filing~~ No action may be
535 filed regarding a recall petition, whether filed pursuant to
536 subparagraph 1., subparagraph 2., subparagraph 5., or subparagraph
537 7. and regardless of whether the recall was certified, when there
538 are 60 or fewer days until the scheduled reelection of the board
539 member sought to be recalled or when 60 or fewer days have not
540 elapsed since the election of the board member sought to be
541 recalled.

542 **Section 8.** Section 719.106(1)(1) is amended to read as follows:

543 (1) ~~Arbitration~~ Mediation.—There shall be a provision for
544 mandatory nonbinding ~~arbitration~~ mediation of internal disputes
545 arising from the operation of the cooperative in accordance with
546 s. 719.1255.

547 **Section 9.** Section 719.1255 is amended to read as follows:

548 719.1255 Alternative resolution of disputes.— ~~The Division of~~
549 ~~Florida Condominiums, Timeshares, and Mobile Homes of the~~
550 ~~Department of Business and Professional Regulation shall provide~~
551 ~~for~~ ~~a~~ Alternative dispute resolution shall be provided for in

552 accordance with s. 718.1255.

553 **Section 10.** Section 720.303(10) is amended to read as follows:

554 (10) RECALL OF DIRECTORS.—

555 (a)1. Regardless of any provision to the contrary contained
556 in the governing documents, subject to the provisions of s. 720.307
557 regarding transition of association control, any member of the
558 board of directors may be recalled and removed from office with or
559 without cause by a majority of the total voting interests.

560 2. When the governing documents, including the declaration,
561 articles of incorporation, or bylaws, provide that only a specific
562 class of members is entitled to elect a board director or
563 directors, only that class of members may vote to recall those
564 board directors so elected.

565 (b)1. Board directors may be recalled by an agreement in
566 writing or by written ballot without a membership meeting. The
567 agreement in writing or the written ballots, or a copy thereof,
568 shall be served on the association by certified mail or by personal
569 service in the manner authorized by chapter 48 and the Florida
570 Rules of Civil Procedure.

571 2. The board shall duly notice and hold a meeting of the
572 board within 5 full business days after receipt of the agreement in
573 writing or written ballots. At the meeting, the board shall either

574 certify the written ballots or written agreement to recall a
575 director or directors of the board, in which case such director or
576 directors shall be recalled effective immediately and shall turn
577 over to the board within 5 full business days any and all records
578 and property of the association in their possession, or proceed as
579 described in paragraph (d).

580 3. When it is determined by the department pursuant to
581 binding arbitration proceedings that an initial recall effort was
582 defective, written recall agreements or written ballots used in the
583 first recall effort and not found to be defective may be reused in
584 one subsequent recall effort. However, in no event is a written
585 agreement or written ballot valid for more than 120 days after it
586 has been signed by the member.

587 4. Any rescission or revocation of a member's written recall
588 ballot or agreement must be in writing and, in order to be
589 effective, must be delivered to the association before the
590 association is served with the written recall agreements or
591 ballots.

592 5. The agreement in writing or ballot shall list at least as
593 many possible replacement directors as there are directors subject
594 to the recall, when at least a majority of the board is sought to
595 be recalled; the person executing the recall instrument may vote

596 for as many replacement candidates as there are directors subject
597 to the recall.

598 (c)1. If the declaration, articles of incorporation, or
599 bylaws specifically provide, the members may also recall and remove
600 a board director or directors by a vote taken at a meeting. If so
601 provided in the governing documents, a special meeting of the
602 members to recall a director or directors of the board of
603 administration may be called by 10 percent of the voting interests
604 giving notice of the meeting as required for a meeting of members,
605 and the notice shall state the purpose of the meeting. Electronic
606 transmission may not be used as a method of giving notice of a
607 meeting called in whole or in part for this purpose.

608 2. The board shall duly notice and hold a board meeting
609 within 5 full business days after the adjournment of the member
610 meeting to recall one or more directors. At the meeting, the board
611 shall certify the recall, in which case such member or members
612 shall be recalled effective immediately and shall turn over to the
613 board within 5 full business days any and all records and property
614 of the association in their possession, or shall proceed as set
615 forth in paragraph (d).

616 (d) If the board determines not to certify the written
617 agreement or written ballots to recall a director or directors of

618 the board or does not certify the recall by a vote at a meeting,
619 the board shall, within 5 full business days after the meeting,
620 file ~~with the department a petition for binding arbitration~~ suit
621 pursuant to the applicable procedures in ss. 718.112(2)(j) and
622 718.1255 ~~and the rules adopted thereunder~~. For the purposes of this
623 section, the members who voted at the meeting or who executed the
624 agreement in writing shall constitute one party under the ~~petition~~
625 ~~for arbitration~~ action. If the ~~arbitrator~~ court certifies the
626 recall as to any director or directors of the board, the recall
627 will be effective upon ~~mailing~~ entry of the final order ~~of~~
628 ~~arbitration to the association~~. The director or directors so
629 recalled shall deliver to the board any and all records of the
630 association in their possession within 5 full business days after
631 the effective date of the recall.

632 (e) If a vacancy occurs on the board as a result of a recall
633 and less than a majority of the board directors are removed, the
634 vacancy may be filled by the affirmative vote of a majority of the
635 remaining directors, notwithstanding any provision to the contrary
636 contained in this subsection or in the association documents. If
637 vacancies occur on the board as a result of a recall and a majority
638 or more of the board directors are removed, the vacancies shall be
639 filled by members voting in favor of the recall; if removal is at a

640 meeting, any vacancies shall be filled by the members at the
641 meeting. If the recall occurred by agreement in writing or by
642 written ballot, members may vote for replacement directors in the
643 same instrument in accordance with procedural rules adopted by the
644 division, which rules need not be consistent with this subsection.

645 (f) If the board fails to duly notice and hold a board
646 meeting within 5 full business days after service of an agreement
647 in writing or within 5 full business days after the adjournment of
648 the member recall meeting, the recall shall be deemed effective and
649 the board directors so recalled shall immediately turn over to the
650 board all records and property of the association.

651 (g) If the board fails to duly notice and hold the required
652 meeting or fails to file the required ~~petition~~ action, the unit
653 owner representative may file a ~~petition~~ action pursuant to s.
654 718.1255 challenging the board's failure to act. The ~~petition~~
655 action must be filed within 60 days after the expiration of the
656 applicable 5-full-business-day period. The review of a ~~petition~~
657 action under this paragraph is limited to the sufficiency of
658 service on the board and the facial validity of the written
659 agreement or ballots filed.

660 (h) If a director who is removed fails to relinquish his or
661 her office or turn over records as required under this section, the

662 ~~ircuit~~ county court in the county where the association maintains
663 its principal office may, upon the petition of the association,
664 summarily order the director to relinquish his or her office and
665 turn over all association records upon application of the
666 association.

667 (i) The minutes of the board meeting at which the board
668 decides whether to certify the recall are an official association
669 record. The minutes must record the date and time of the meeting,
670 the decision of the board, and the vote count taken on each board
671 member subject to the recall. In addition, when the board decides
672 not to certify the recall, as to each vote rejected, the minutes
673 must identify the parcel number and the specific reason for each
674 such rejection.

675 (j) When the recall of more than one board director is
676 sought, the written agreement, ballot, or vote at a meeting shall
677 provide for a separate vote for each board director sought to be
678 recalled.

679 (k) A board member who has been recalled may file an petition
680 action pursuant to ss. 718.112(2)(j) and 718.1255 ~~and the rules~~
681 ~~adopted challenging the validity of the recall~~. The petition must
682 be filed within 60 days after the recall is deemed certified. The
683 association and the unit owner representative shall be named as

684 respondents.

685 (1) ~~The division may not accept for filing~~ No action may be
686 filed regarding a recall petition, whether filed pursuant to
687 paragraph (b), paragraph (c), paragraph (g), or paragraph (k) and
688 regardless of whether the recall was certified, when there are 60
689 or fewer days until the scheduled reelection of the board member
690 sought to be recalled or when 60 or fewer days have not elapsed
691 since the election of the board member sought to be recalled.

692 **Section 11.** 720.306(9)(c) is amended to read as follows:

693 (9) ELECTIONS AND BOARD VACANCIES.—

694 (c) Any election dispute between a member and an association
695 ~~must~~ shall be ~~submitted~~ filed ~~to mandatory binding arbitration with~~
696 ~~the division~~ with the county court where the association maintains
697 is principal office. Such proceedings must be conducted in the
698 manner provided by s. 718.1255 ~~and the procedural rules adopted by~~
699 ~~the division~~. Unless otherwise provided in the bylaws, any vacancy
700 occurring on the board before the expiration of a term may be
701 filled by an affirmative vote of the majority of the remaining
702 directors, even if the remaining directors constitute less than a
703 quorum, or by the sole remaining director. In the alternative, a
704 board may hold an election to fill the vacancy, in which case the
705 election procedures must conform to the requirements of the

706 governing documents. Unless otherwise provided in the bylaws, a
707 board member appointed or elected under this section is appointed
708 for the unexpired term of the seat being filled. Filling vacancies
709 created by recall is governed by s. 720.303(10) ~~and rules adopted~~
710 ~~by the division.~~

711 **Section 12.** 720.311 Dispute resolution.—

712 (1) DEFINITIONS.—As used in this section, the term “dispute”
713 means any disagreement between two or more parties that involves:

714 (a) The authority of the board of directors, under this chapter or
715 association document to:

716 1. Require any owner to take any action, or not to take any
717 action, involving that owner’s parcel.

718 2. Alter or add to a common area.

719 (b) The failure of a governing body, when required by this chapter
720 or an association document, to:

721 1. Properly enforce the governing documents.

722 2. Give adequate notice of meetings or other actions.

723 3. Properly conduct meetings of the board and committees appointed
724 by the board, membership meetings not including election meetings.

725 4. To maintain a common area.

726 (c) For purposes of this section, a mediator is defined as a
727 person who has been certified by the Florida Supreme Court for

728 Circuit Civil mediation matters.

729 "Dispute" does not include any disagreement that primarily
730 involves title to any unit or common area; the interpretation or
731 enforcement of any warranty; the levy of a fee or assessment, or
732 the collection of an assessment levied against a party; the
733 eviction or removal of a tenant or occupier from a parcel; an
734 alleged breach of fiduciary duty by one or more directors; or
735 claims for damages to a parcel based upon the alleged failure of
736 the association to maintain the common area or association
737 property.

738 (2) The Legislature finds that alternative dispute resolution
739 has made progress in reducing court dockets and trials and in
740 offering a more efficient, cost-effective option to litigation. The
741 ~~filing of any petition for arbitration or the~~ serving of a demand
742 for presuit mediation as provided for in this section shall toll
743 the applicable statute of limitations until thirty (30) days after
744 the declaration by the mediator of the mediation being concluded
745 and no agreement having been reached, ten (10) days after the
746 expiration of the time for a party to accept presuit mediation, or
747 the conclusion of the time period under this section during which
748 mediation must be conducted. Any recall ~~dispute action filed with~~
749 ~~the department pursuant to s. 720.303(10)~~ shall be conducted ~~by the~~

750 ~~department~~ in accordance with the provisions of ss. 718.112(2) (j)
751 and 718.1255 ~~and the rules adopted by the division. In addition,~~
752 ~~the department shall conduct mandatory binding arbitration of~~
753 ~~election disputes between a member and an association pursuant to~~
754 ~~s. 718.1255 and rules adopted by the division.~~ Neither election
755 disputes nor recall disputes are eligible for presuit mediation;
756 ~~these disputes shall be arbitrated by the department. At the~~
757 ~~conclusion of the proceeding, the department shall charge the~~
758 ~~parties a fee in an amount adequate to cover all costs and expenses~~
759 ~~incurred by the department in conducting the proceeding. Initially,~~
760 ~~the petitioner shall remit a filing fee of at least \$200 to the~~
761 ~~department. The fees paid to the department shall become a~~
762 ~~recoverable cost in the arbitration proceeding, and the prevailing~~
763 ~~party in an arbitration proceeding shall recover its reasonable~~
764 ~~costs and attorney's fees in an amount found reasonable by the~~
765 ~~arbitrator. The department shall adopt rules to effectuate the~~
766 ~~purposes of this section.~~

767 (23) (a) Disputes between an association and a parcel owner
768 regarding use of or changes to the parcel or the common areas and
769 other covenant enforcement disputes, disputes regarding amendments
770 to the association documents, disputes regarding meetings of the
771 board and committees appointed by the board, membership meetings

772 not including election meetings, and access to the official records
773 of the association shall be the subject of a demand for presuit
774 mediation served by an aggrieved party before the dispute is filed
775 in court. Presuit mediation proceedings must be conducted in
776 accordance with the applicable Florida Rules of Civil Procedure and
777 Chapter 44, Florida Statutes, and these proceedings are privileged
778 and confidential to the same extent as court-ordered mediation.
779 Disputes subject to presuit mediation under this section shall not
780 include the collection of any assessment, fine, or other financial
781 obligation, including attorney's fees and costs, claimed to be due
782 or any action to enforce a prior mediation settlement agreement
783 between the parties. Also, in any dispute subject to presuit
784 mediation under this section where ~~emergency~~ preliminary injunctive
785 relief is required, a motion for temporary injunctive relief may be
786 filed with the court without first complying with the presuit
787 mediation requirements of this section. After any issues regarding
788 ~~emergency or temporary~~ preliminary injunctive relief are resolved,
789 the court may either refer the parties to a mediation program
790 administered by the courts or require mediation under this section.
791 An arbitrator or judge may not consider any information or evidence
792 arising from the presuit mediation proceeding except in a
793 proceeding to impose sanctions for failure to attend a presuit

794 mediation session or to enforce a mediated settlement agreement.
795 Persons who are not parties to the dispute may not attend the
796 presuit mediation conference without the consent of all parties,
797 except for counsel for the parties, ~~and~~ a corporate
798 representative(s) designated by the association and representative
799 from the association's insurance carrier, if applicable. When
800 mediation is attended by a quorum of the board, such mediation is
801 not a board meeting for purposes of notice and participation set
802 forth in s. 720.303. An aggrieved party shall serve on the
803 responding party a written demand to participate in presuit
804 mediation in substantially the following form:

805 STATUTORY OFFER TO PARTICIPATE

806 IN PRESUIT MEDIATION

807 The alleged aggrieved party, , hereby demands that ,
808 as the responding party, engage in mandatory presuit mediation in
809 connection with the following disputes, which by statute are of a
810 type that are subject to presuit mediation:

811 (List specific nature of the dispute or disputes to be
812 mediated and the authority supporting a finding of a violation as
813 to each dispute.)

814 Pursuant to section 720.311, Florida Statutes, this demand to
815 resolve the dispute through presuit mediation is required before a

816 lawsuit can be filed concerning the dispute. Pursuant to the
817 statute, the parties are required to engage in presuit mediation
818 with a neutral third-party mediator in order to attempt to resolve
819 this dispute without court action, and the aggrieved party demands
820 that you likewise agree to this process. If you fail to participate
821 in the mediation process, suit may be brought against you without
822 further warning.

823 The process of mediation involves a supervised negotiation
824 process in which a trained, neutral third-party mediator meets with
825 both parties and assists them in exploring possible opportunities
826 for resolving part or all of the dispute. By agreeing to
827 participate in presuit mediation, you are not bound in any way to
828 change your position. Furthermore, the mediator has no authority to
829 make any decisions in this matter or to determine who is right or
830 wrong and merely acts as a facilitator to ensure that each party
831 understands the position of the other party and that all options
832 for reasonable settlement are fully explored.

833 If an agreement is reached, it shall be reduced to writing and
834 becomes a binding and enforceable commitment of the parties. A
835 resolution of one or more disputes in this fashion avoids the need
836 to litigate these issues in court. The failure to reach an
837 agreement, or the failure of a party to participate in the process,

838 results in the mediator declaring an impasse in the mediation,
839 after which the aggrieved party may proceed to court on all
840 outstanding, unsettled disputes. If you have failed or refused to
841 participate in the entire mediation process, you will not be
842 entitled to recover attorney's fees, even if you prevail.

843 The aggrieved party has selected and hereby lists five
844 certified mediators who we believe to be neutral and qualified to
845 mediate the dispute. You have the right to select any one of these
846 mediators. The fact that one party may be familiar with one or more
847 of the listed mediators does not mean that the mediator cannot act
848 as a neutral and impartial facilitator. Any mediator who cannot act
849 in this capacity is required ethically to decline to accept
850 engagement. The mediators that we suggest, and their current hourly
851 rates, are as follows:

852 (List the names, physical addresses, e-mail addresses,
853 addresses, telephone numbers, and hourly rates of the mediators.
854 Other pertinent information about the background of the mediators
855 may be included as an attachment, including whether the mediator is
856 board certified by The Florida Bar (e.g., Condominium and Planned
857 Development Law.) By mutual agreement and during the time to
858 accept presuit mediation, we can also select a mediator other than
859 one of the certified circuit court civil mediators named above. As

860 an alternative to the above-named mediators, if we both agree, the
861 alternative mediator is not required to be certified as a mediator
862 pursuant to the requirements established by the Florida Supreme
863 Court. I propose the following person(s) who to serve as the
864 mediator. (List the names, physical addresses, e-mail addresses
865 addresses, telephone numbers and hourly rates of the alternative
866 mediators. Other pertinent information about the background of the
867 alternative mediators may be included as an attachment.

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

872 Unless otherwise agreed by the parties, section 720.311(2)(b),
873 Florida Statutes, requires that the parties share the costs of
874 presuit mediation equally, including the fee charged by the
875 mediator. An average mediation may require three to four hours of
876 the mediator's time, including some preparation time, and the
877 parties would need to share equally the mediator's fees as well as
878 their own attorney's fees if they choose to employ an attorney in
879 connection with the mediation. However, use of an attorney is not
880 required and is at the option of each party. The mediators may
881 require the advance payment of some or all of the anticipated fees.

882 The aggrieved party hereby agrees to pay or prepay one-half of the
883 mediator's estimated fees and to forward this amount or such other
884 reasonable advance deposits as the mediator requires for this
885 purpose. Any funds deposited will be returned to you if these are
886 in excess of your share of the fees incurred.

887 To begin your participation in presuit mediation to try to
888 resolve the dispute and avoid further legal action, please sign
889 below and clearly indicate which mediator is acceptable to you. We
890 will then ask the mediator to schedule a mutually convenient time
891 and place for the mediation conference to be held. The mediation
892 conference must be held within ninety (90) days from the date of
893 acceptance of presuit mediation, unless extended by mutual written
894 agreement. In the event that you fail to respond within 20 days
895 from the date of this letter, or if you fail to agree to at least
896 one of the mediators that we have suggested or to pay or prepay to
897 the mediator one-half of the costs involved, the aggrieved party
898 will be authorized to proceed with the filing of a lawsuit against
899 you without further notice and may seek an award of attorney's fees
900 or costs incurred in attempting to obtain mediation.

901 Therefore, please give this matter your immediate attention.
902 By law, your response must be mailed by certified mail, return
903 receipt requested, and by first-class mail to the address shown on

BILL

ORIGINAL

YEAR

904 | this demand.

905

906

907 | RESPONDING PARTY: YOUR SIGNATURE INDICATES YOUR AGREEMENT TO
908 | THAT CHOICE.

909 | AGREEMENT TO MEDIATE

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

914 | (List acceptable mediator or mediators.)

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

918

919 | Signature of responding party #1

920

921 | Telephone contact information

922

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

926 (b) Service of the statutory demand to participate in presuit
927 mediation shall be effected by sending a letter in substantial
928 conformity with the above form by certified mail, return receipt
929 requested, with an additional copy being sent by regular first-
930 class mail, to the address of the responding party as it last
931 appears on the books and records of the association. The responding
932 party has ~~20~~ 30 days from the date of the mailing of the statutory
933 demand to serve a response to the aggrieved party in writing. The
934 response shall be ~~served~~ sent by certified mail, return receipt
935 requested, with an additional copy being sent by regular first-
936 class mail, to the address shown on the statutory demand.

937 Notwithstanding the foregoing, once the parties have agreed on
938 a mediator, the mediator may ~~reschedule~~ the mediation for a date
939 and time mutually convenient to the parties. Each proposed mediator
940 shall be available at no extra charge, i.e., no travel time nor
941 travel cost being charged, in the county in which the condominium
942 is located or within 40 miles of the condominium. The parties may,
943 but are not obligated, to agree to an alternative mediator. If
944 presuit mediation session cannot be scheduled and concluded within
945 90 days after from the date of acceptance of presuit mediation and
946 there is no agreement between the parties to extend this 90 day
947 deadline, the condition precedent of conducting mediation prior to

948 filing suit is satisfied and the aggrieved party may file suit.

949 The parties shall share the costs of presuit mediation
950 equally, including the fee charged by the mediator, if any, unless
951 the parties agree otherwise, and the mediator may require advance
952 payment of its reasonable fees and costs. The failure of any party
953 to respond to a demand or response, to agree upon a mediator, to
954 make payment of fees and costs within the time established by the
955 mediator, or to appear for a scheduled mediation session without
956 the approval of the mediator, shall constitute the failure or
957 refusal to participate in the mediation process and shall operate
958 as an impasse in the presuit mediation by such party, entitling the
959 other party to proceed in court and to seek an award of the costs
960 and fees associated with the mediation. Additionally,
961 notwithstanding the provisions of any other law or document,
962 persons who fail or refuse to participate in the entire mediation
963 process may not recover attorney's fees and costs in subsequent
964 litigation relating to the dispute. The preceding sentence shall
965 be capitalized, bold letters in a font size larger than any other
966 used in the statutory demand. ~~If any presuit mediation session~~
967 ~~cannot be scheduled and conducted within 90 days after the offer to~~
968 ~~participate in mediation was filed, an impasse shall be deemed to~~
969 ~~have occurred unless both parties agree to extend this deadline.~~

970 (c) If presuit mediation as described in paragraph (a) is not
971 successful in resolving all issues between the parties, ~~the parties~~
972 any party may file the unresolved dispute in a court of competent
973 jurisdiction ~~or elect to enter into binding or nonbinding~~
974 ~~arbitration pursuant to the procedures set forth in s. 718.1255 and~~
975 ~~rules adopted by the division, with the arbitration proceeding to~~
976 ~~be conducted by a department arbitrator or by a private arbitrator~~
977 ~~certified by the department. If all parties do not agree to~~
978 ~~arbitration proceedings following an unsuccessful presuit~~
979 ~~mediation, any party may file the dispute in court. A final order~~
980 ~~resulting from nonbinding arbitration is final and enforceable in~~
981 ~~the courts if a complaint for trial de novo is not filed in a court~~
982 ~~of competent jurisdiction within 30 days after entry of the order.~~
983 As to any issue or dispute that is not resolved at presuit
984 mediation, and as to any issue that is settled at presuit mediation
985 but is thereafter subject to an action seeking enforcement of the
986 mediation settlement, the prevailing party in any subsequent
987 arbitration or litigation proceeding shall be entitled to seek
988 recovery of all costs and attorney's fees incurred in the presuit
989 mediation process.

990 (d) A mediator ~~or arbitrator~~ shall be authorized to conduct
991 mediation or arbitration under this section only if he or she has

992 | been certified as a circuit court civil mediator ~~or arbitrator~~,
993 | respectively, pursuant to the requirements established by the
994 | Florida Supreme Court. Settlement agreements resulting from
995 | mediation shall not have precedential value in proceedings
996 | involving parties other than those participating in the mediation
997 | to support either a claim or defense in other disputes.

998 | (e) The presuit mediation procedures provided by this
999 | subsection may be used by a Florida corporation responsible for the
1000 | operation of a community in which the voting members are parcel
1001 | owners or their representatives, in which membership in the
1002 | corporation is not a mandatory condition of parcel ownership, or
1003 | which is not authorized to impose an assessment that may become a
1004 | lien on the parcel.

1005 | (4) DISPUTES INVOLVING ELECTIONS FOR THE BOARD OF ADMINISTRATION
1006 | OR RECALL OF BOARD MEMBERS.- Any dispute challenging the legality
1007 | of the election of any director of the board of directors or the
1008 | recall of any member of a board of directors shall be filed as a
1009 | summary proceeding pursuant to s. 51.011 and in any such action the
1010 | prevailing party is entitled to recover reasonable attorney fees
1011 | and costs. Any action filed pursuant to this paragraph shall be
1012 | tried without a jury.

1013 | **Section 13.** This act shall take effect July 1, 2019

LEGISLATIVE POSITION REQUEST FORM

GOVERNMENTAL AFFAIRS OFFICE

Date Form Received _____

GENERAL INFORMATION

Submitted By _____, Chair, _____ Committee of the Real Property Probate & Trust Law Section (RPPTL Approval Date _____, 20____)

Address _____
Telephone: (____) _____

Position Type Condominium and Planned Development Committee, a General Standing Committee of the RPPTL Section of The Florida Bar

CONTACTS

Board & Legislation Committee Appearance

S. Katherine Fraizer, Hill Ward Henderson, 101 East Kennedy Boulevard, Suite 3700, Tampa, Florida 33602, Telephone: (813) 227-8480, Email: Katherine.frazier@hwhlaw.com
Peter M. Dunbar, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: pdunbar@deanmead.com
Martha J. Edenfield, Dean, Mead & Dunbar, P.A., 215 South Monroe Street, Suite 815, Tallahassee, Florida 32301, Telephone: (850) 999-4100, Email: medenfield@deanmead.com

Appearances

Before Legislators (SAME) _____
(List name and phone # of those having face to face contact with Legislators)

**Meetings with
Legislators/staff** (SAME) _____
(List name and phone # of those having face to face contact with Legislators)

PROPOSED ADVOCACY

All types of partisan advocacy or nonpartisan technical assistance should be presented to the Board of Governors via this request form. All proposed legislation that has *not* been filed as a bill or a proposed committee bill (PCB) should be attached to this request in legislative format - Standing Board Policy 9.20(c). Contact the Governmental Affairs office with questions.

If Applicable,

List The Following N/A _____
(Bill or PCB #) (Bill or PCB Sponsor)

Indicate Position Support Oppose _____ Tech Asst. _____ Other _____

Proposed Wording of Position for Official Publication:

"Support replacing mandatory presuit arbitration with the Division of Condominiums for certain disputes between a condominium association and unit owner with mandatory presuit private mediation, including a change to Fla. Stat. 34.01, 718.013, 718.112, 718.117, 718.1255, 718.303, 720.303, 720.306 and 720.311."

Reasons For Proposed Advocacy:

[The Section has maintained a position opposing any legislation opposing amendments to §718.1255, Florida Statutes, or eliminating the jurisdiction of the Arbitration Division of the Department of Business and Professional Regulation's Division of Land Sales. The reason for this position is that at the time arbitration was targeted in 2004, there was a belief that the arbitration program for condominium disputes was working appropriately and protecting the citizens of Florida. Today, the arbitration program is no longer effective, consistent and efficient, substantially impacting the protections for the citizens of Florida. The proposed legislation replaces mandatory presuit arbitration in condominiums with mandatory presuit mediation.]

PRIOR POSITIONS TAKEN ON THIS ISSUE

Please indicate any prior Bar or section positions on this issue to include opposing positions. Contact the Governmental Affairs office if assistance is needed in completing this portion of the request form.

Most Recent Position [NONE?]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

Others
(May attach list if more than one) [NONE?]
(Indicate Bar or Name Section) (Support or Oppose) (Date)

REFERRALS TO OTHER SECTIONS, COMMITTEES OR LEGAL ORGANIZATIONS

The Legislation Committee and Board of Governors do not typically consider requests for action on a legislative position in the absence of responses from all potentially affected Bar groups or legal organizations - Standing Board Policy 9.50(c). Please include all responses with this request form.

Referrals

 The Alternative Dispute Resolution Section of The Florida Bar
(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

(Name of Group or Organization) (Support, Oppose or No Position)

Please submit completed Legislative Position Request Form, along with attachments, to the Governmental Affairs Office of The Florida Bar. Upon receipt, staff will further coordinate the scheduling for final Bar action of your request which usually involves separate appearances before the Legislation Committee and the Board of Governors unless otherwise advised. For information or assistance, please telephone (904) 561-5662 or 800-342-8060, extension 5662.