

720.311 Dispute resolution.—

(1) The Legislature finds that alternative dispute resolution has made progress in reducing court dockets and trials and in offering a more efficient, cost-effective option to litigation. The filing of any petition for arbitration or the serving of a demand for presuit mediation as provided for in this section shall toll the applicable statute of limitations. Any recall dispute filed with the department under s. [720.303](#)(10) shall be conducted by the department in accordance with the provisions of ss. [718.112](#)(2)(j) and [718.1255](#) and the rules adopted by the division. In addition, the department shall conduct binding arbitration of election disputes between a member and an association in accordance with s. [718.1255](#) and rules adopted by the division. Election disputes and recall disputes are not eligible for presuit mediation; these disputes must be arbitrated by the department or filed in a court of competent jurisdiction. At the conclusion of an arbitration proceeding, the department shall charge the parties a fee in an amount adequate to cover all costs and expenses incurred by the department in conducting the proceeding. Initially, the petitioner shall remit a filing fee of at least \$200 to the department. The fees paid to the department shall become a recoverable cost in the arbitration proceeding, and the prevailing party in an arbitration proceeding shall recover its reasonable costs and attorney fees in an amount found reasonable by the arbitrator. The department shall adopt rules to effectuate the purposes of this section.

(2)(a) Disputes between an association and a parcel owner regarding use of or changes to the parcel or the common areas and other covenant enforcement disputes, disputes regarding amendments to the association documents, disputes regarding meetings of the board and committees appointed by the board, membership meetings not including election meetings, and access to the official records of the association shall be the subject of a demand for presuit mediation served by an aggrieved party before the dispute is filed in court. Presuit mediation proceedings must be conducted in accordance with the applicable Florida Rules of Civil Procedure, and these proceedings are privileged and confidential to the same extent as court-ordered mediation. Disputes subject to presuit mediation under this section shall not include the collection of any assessment, fine, or other financial obligation, including attorney's fees and costs, claimed to be due or any action to enforce a prior mediation settlement agreement between the parties. Also, in any dispute subject to presuit mediation under this section where emergency relief is required, a motion for temporary injunctive relief may be filed with the court without first complying with the presuit mediation requirements of this section. After any issues regarding emergency or temporary relief are resolved, the court may either refer the parties to a mediation program administered by the courts or require mediation under this section. An arbitrator or judge may not consider any information or evidence arising from the presuit mediation proceeding except in a proceeding to impose sanctions for failure to attend a presuit mediation session or to enforce a mediated settlement agreement. Persons who are not parties to the dispute may not attend

the presuit mediation conference without the consent of all parties, except for counsel for the parties and a corporate representative designated by the association. When mediation is attended by a quorum of the board, such mediation is not a board meeting for purposes of notice and participation set forth in s. [720.303](#). An aggrieved party shall serve on the responding party a written demand to participate in presuit mediation in substantially the following form:

STATUTORY OFFER TO PARTICIPATE
IN PRESUIT MEDIATION

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

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

Pursuant to section [720.311](#), Florida Statutes, this demand to resolve the dispute through presuit mediation is required before a lawsuit can be filed concerning the dispute. Pursuant to the statute, the parties are required to engage in presuit mediation with a neutral third-party mediator in order to attempt to resolve this dispute without court action, and the aggrieved party demands that you likewise agree to this process. If you fail to participate in the mediation process, suit may be brought against you without further warning.

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

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

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

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

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

Unless otherwise agreed by the parties, section [720.311\(2\)\(b\)](#), Florida Statutes, requires that the parties share the costs of presuit mediation equally, including the fee charged by the mediator. An average mediation may require three to four hours of the mediator's time, including some preparation time, and the parties would need to share equally the mediator's fees as well as their own attorney's fees if they choose to employ an attorney in connection with the mediation. However, use of an attorney is not required and is at the option of each party. The mediators may require the advance payment of some or all of the anticipated fees. The aggrieved party hereby agrees to pay or prepay one-half of the mediator's estimated fees and to forward this amount or such other reasonable advance deposits as the mediator requires for this purpose. Any funds deposited will be returned to you if these are in excess of your share of the fees incurred.

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

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

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

AGREEMENT TO MEDIATE

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

(List acceptable mediator or mediators.)

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

Signature of responding party #1

Telephone contact information

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

(b) Service of the statutory demand to participate in presuit mediation shall be effected by sending a letter in substantial conformity with the above form by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address of the responding party as it last appears on the books and records of the association. The responding party has 20 days from the date of the mailing of the statutory demand to serve a response to the aggrieved party in writing. The response shall be served by certified mail, return receipt requested, with an additional copy being sent by regular first-class mail, to the address shown on the statutory demand. Notwithstanding the foregoing, once the parties have agreed on a mediator, the mediator may reschedule the mediation for a date and time mutually convenient to the parties. The parties shall share the costs of presuit mediation equally, including the fee charged by the mediator, if

any, unless the parties agree otherwise, and the mediator may require advance payment of its reasonable fees and costs. The failure of any party to respond to a demand or response, to agree upon a mediator, to make payment of fees and costs within the time established by the mediator, or to appear for a scheduled mediation session without the approval of the mediator, shall constitute the failure or refusal to participate in the mediation process and shall operate as an impasse in the presuit mediation by such party, entitling the other party to proceed in court and to seek an award of the costs and fees associated with the mediation. Additionally, notwithstanding the provisions of any other law or document, persons who fail or refuse to participate in the entire mediation process may not recover attorney's fees and costs in subsequent litigation relating to the dispute. If any presuit mediation session cannot be scheduled and conducted within 90 days after the offer to participate in mediation was filed, an impasse shall be deemed to have occurred unless both parties agree to extend this deadline.

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

(d) A mediator or arbitrator shall be authorized to conduct mediation or arbitration under this section only if he or she has been certified as a circuit court civil mediator or arbitrator, respectively, pursuant to the requirements established by the Florida Supreme Court. Settlement agreements resulting from mediation shall not have precedential value in proceedings involving parties other than those participating in the mediation to support either a claim or defense in other disputes.

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

History.—s. 61, ch. 95-274; s. 50, ch. 2000-258; s. 23, ch. 2004-345; s. 20, ch. 2004-353; s. 16, ch. 2007-173; s. 24, ch. 2021-99.

Note.—Former s. 617.311.