

By Representative Goodlette

1                                   A bill to be entitled  
2           An act relating to homeowner's associations and  
3           cooperatives; amending s. 617.301, F.S.;  
4           redefining the term "homeowners' association"  
5           for the purposes of the Florida Not For Profit  
6           Corporation Act to include a mobile home  
7           subdivision; providing that provisions  
8           currently governed by the act relating to the  
9           purpose and scope of homeowners' associations,  
10          powers and duties, right of owners to peaceably  
11          assemble, meetings, transition of homeowners'  
12          associations' control in a community,  
13          assessments and charges, agreements,  
14          recreational leaseholds, dispute resolutions,  
15          and covenants would apply to mobile home  
16          subdivisions; amending s. 719.103, F.S.;  
17          defining the terms "special assessment,"  
18          "voting certificate," and "voting interests"  
19          for the purposes of the Cooperative Act;  
20          amending s. 719.1035, F.S.; providing that all  
21          provisions of the cooperative documents are  
22          enforceable equitable servitudes, run with the  
23          land, and are effective until the cooperative  
24          is terminated; amending s. 719.104, F.S.;  
25          revising language with respect to commingling;  
26          providing for easements; amending s. 719.1055,  
27          F.S.; revising the amount of votes necessary to  
28          amend the cooperative documents; providing  
29          additional requirements with respect to  
30          amendments; amending s. 719.106, F.S.;  
31          providing requirements with respect to

1 insurance and fidelity bonds; creating s.  
2 719.115, F.S.; providing limitations on  
3 liability of unit owners; creating s. 719.116,  
4 F.S.; providing that cooperatives are  
5 residential property for certain purposes;  
6 amending ss. 849.085 and 849.0931, F.S;  
7 including cooperatives within the provisions of  
8 law relating to penny-ante games and bingo;  
9 providing an effective date.

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

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13 Section 1. Subsection (7) of section 617.301, Florida  
14 Statutes, is amended to read:

15 617.301 Homeowners' associations; definitions.--As  
16 used in ss. 617.301-617.312, the term:

17 (7) "Homeowners' association" or "association" means a  
18 Florida corporation responsible for the operation of a  
19 community or a mobile home subdivision in which the voting  
20 membership is made up of parcel owners or their agents, or a  
21 combination thereof, and in which membership is a mandatory  
22 condition of parcel ownership, and which is authorized to  
23 impose assessments that, if unpaid, may become a lien on the  
24 parcel. The term "homeowners' association" does not include a  
25 community development district or other similar special taxing  
26 district created pursuant to statute.

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28 Section 2. Subsections (22) and (23) of section  
29 719.103, Florida Statutes, 1998 Supplement, are renumbered as  
30 subsections (23) and (24), respectively, and new subsections  
31 (22), (25), and (26) are added to said section to read:

31 719.103 Definitions.--As used in this chapter:

1       (22) "Special assessment" means any assessment levied  
2 against unit owners other than the assessment required by a  
3 budget adopted annually.

4       (25) "Voting certificate" means a document which  
5 designates one of the record title owners, or the corporate,  
6 partnership, or entity representative who is authorized to  
7 vote on behalf of a cooperative unit that is owned by more  
8 than one owner or by any entity.

9       (26) "Voting interests" means the voting rights  
10 distributed to the association members as provided for in the  
11 Articles of Incorporation.

12       Section 3. Section 719.1035, Florida Statutes, 1998  
13 Supplement, is amended to read:

14       719.1035 Creation of cooperatives.--

15       (1) The date when cooperative existence shall commence  
16 is upon commencement of corporate existence of the cooperative  
17 association as provided in s. 607.0203. The cooperative  
18 documents must be recorded in the county in which the  
19 cooperative is located before property may be conveyed or  
20 transferred to the cooperative. All persons who have any  
21 record interest in any mortgage encumbering the interest in  
22 the land being submitted to cooperative ownership must either  
23 join in the execution of the cooperative documents or execute,  
24 with the requirements for deed, and record, a consent to the  
25 cooperative documents or an agreement subordinating their  
26 mortgage interest to the cooperative documents. Upon creation  
27 of a cooperative, the developer or association shall file the  
28 recording information with the division within 30 working days  
29 on a form prescribed by the division.

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1       (2) All provisions of the cooperative documents are  
2 enforceable equitable servitudes, run with the land, and are  
3 effective until the cooperative is terminated.

4           Section 4. Subsection (7) of section 719.104, Florida  
5 Statutes, 1998 Supplement, is amended, present subsection (9)  
6 is renumbered as subsection (10), and a new subsection (9) is  
7 added to said section to read:

8           719.104 Cooperatives; access to units; records;  
9 financial reports; assessments; purchase of leases.--

10          (7) COMMINGLING.--All funds shall be maintained  
11 separately in the association's name. Reserve and operating  
12 funds of the association shall not be commingled unless  
13 combined for investment purposes. This subsection is not meant  
14 to prohibit prudent investment of association funds even if  
15 combined with operating or other reserve funds of the same  
16 association, but such funds must be accounted for separately,  
17 and the combined account balance may not, at any time, be less  
18 than the amount identified as reserve funds in the combined  
19 account.No manager or business entity required to be licensed  
20 or registered under s. 468.432, or an agent, employee,  
21 officer, or director of a cooperative association may  
22 commingle any association funds with his or her own funds or  
23 with the funds of any other cooperative association or  
24 community association as defined in s. 468.431.

25          (9) EASEMENTS.--Unless prohibited by the cooperative  
26 documents, the board of administration has the authority,  
27 without the joinder of any unit owner, to grant, modify, or  
28 move any easement, if the easement constitutes part of or  
29 crosses the common areas or association property. This  
30 subsection does not authorize the board of administration to  
31 modify, move, or vacate any easement created in whole or in

1 part for the use or benefit of anyone other than the unit  
2 owners, or crossing the property of anyone other than the unit  
3 owners, without the consent or approval of those other persons  
4 having the use or benefit of the easement, as required by law  
5 or by the instrument creating the easement.

6 Section 5. Subsections (2) and (3) of section  
7 719.1055, Florida Statutes, are amended and subsection (4) is  
8 added to said section to read:

9 719.1055 Amendment of cooperative documents;  
10 alteration and acquisition of property.--

11 (2) Unless a lower number is provided in the  
12 cooperative documents or unless such action is expressly  
13 prohibited by the articles of incorporation or bylaws of the  
14 cooperative, the acquisition of real property by the  
15 association, and material alterations or substantial additions  
16 to such property by the association shall not be deemed to  
17 constitute a material alteration or modification of the  
18 appurtenances to the unit if such action is approved by  
19 two-thirds ~~75 percent~~ of the total voting interests of the  
20 cooperative.

21 (3)(a) Unless other procedures are provided in the  
22 cooperative documents or such action is expressly prohibited  
23 by the articles of incorporation or bylaws of the cooperative,  
24 the association may materially alter, convert, lease, or  
25 modify the common areas of the mobile home cooperative if the  
26 action is approved by two-thirds ~~75 percent~~ of the total  
27 voting interests of the cooperative.

28 (b) The association may change the configuration or  
29 size of a unit only if the action is approved by the affected  
30 unit owners and by two-thirds ~~75 percent~~ of the total voting  
31 interests of the cooperative.

1       (4)(a) If the cooperative documents fail to provide a  
2 method of amendment, the documents may be amended as to all  
3 matters except those described in subsection (1) if the  
4 amendment is approved by the owners of not less than  
5 two-thirds of the units.

6       (b) No provision of the cooperative documents shall e  
7 revised or amended by reference to its title or number only.  
8 Proposals to amend existing provisions of the cooperative  
9 documents shall contain the full text of the provision to be  
10 amended, new words shall be inserted in the text and  
11 underlined, and words to be deleted shall be lined through  
12 with hyphens. However, if the proposed change is so extensive  
13 that this procedure would hinder, rather than assist, the  
14 understanding of the proposed amendment, it is not necessary  
15 to use underlining and hyphens as indicators of words added or  
16 deleted, but instead, a notation must be inserted immediately  
17 preceding the proposed amendment in substantially the  
18 following language: "Substantial rewording of document. See  
19 provision       for present text."

20       (c) Nonmaterial errors or omissions in the amendment  
21 process will not invalidate an otherwise properly promulgated  
22 amendment.

23       Section 6. Paragraph (k) of subsection (1) of section  
24 719.106, Florida Statutes, 1998 Supplement, is amended to  
25 read:

26       719.106 Bylaws; cooperative ownership.--

27       (1) MANDATORY PROVISIONS.--The bylaws or other  
28 cooperative documents shall provide for the following, and if  
29 they do not, they shall be deemed to include the following:

30       (k) Insurance or fidelity bonds.--The association  
31 shall obtain and maintain adequate insurance or ~~provision for~~

1 ~~the~~ fidelity bonding of all persons who control or disburse  
2 funds of the association. The insurance policy or fidelity  
3 bond must cover the maximum funds that will be in the custody  
4 of the association or its management agent at any one time.As  
5 used in this paragraph section, the term "persons who control  
6 or disburse funds of the association" includes, but is not  
7 limited to,~~means~~ those individuals authorized to sign checks,  
8 and the president, secretary, and treasurer of the  
9 association. ~~If an association's annual gross receipts do not~~  
10 ~~exceed \$100,000, the bond shall be in the principal sum of not~~  
11 ~~less than \$10,000 for each such person. If an association's~~  
12 ~~annual gross receipts exceed \$100,000 but do not exceed~~  
13 ~~\$300,000, the bond shall be in the principal sum of \$30,000~~  
14 ~~for each such person. If an association's annual gross~~  
15 ~~receipts are greater than \$300,000, the bond shall be in the~~  
16 ~~principal sum of not less than \$50,000 for each such person.~~  
17 The association shall bear the cost of bonding.

18 Section 7. Section 719.115, Florida Statutes, is  
19 created to read:

20 719.115 Limitation of liability.--

21 (1) The liability of the owner of a unit for common  
22 expenses is limited to the amounts for which he or she is  
23 assessed for common expenses from time to time in accordance  
24 with this chapter, the cooperative documents, and the bylaws.

25 (2) The owner of a unit may be personally liable for  
26 acts or omissions of the association in relation to the use of  
27 the common areas, but only to the extent of his or her pro  
28 rata share of the liability in the same percentage of his or  
29 her designated portion of the common expenses and then in no  
30 case shall the liability exceed the value of his or her unit.

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1           (3) In any legal action in which the association may  
2 be exposed to liability in excess of insurance coverage  
3 protecting it and the unit owners, the association shall give  
4 notice of the exposure within a reasonable time to all unit  
5 owners and they shall have the right to intervene and defend.

6           Section 8. Section 719.116, Florida Statutes, is  
7 created to read:

8           719.116 Cooperatives as residential property.--For  
9 purposes of property and casualty insurance risk  
10 classification, cooperatives shall be classified as  
11 residential property.

12           Section 9. Paragraph (b) of subsection (2) and  
13 subsection (5) of section 849.085, Florida Statutes, are  
14 amended to read:

15           849.085 Certain penny-ante games not crimes;  
16 restrictions.--

17           (2) As used in this section:

18           (b) "Dwelling" means residential premises owned or  
19 rented by a participant in a penny-ante game and occupied by  
20 such participant or the common elements or ~~common recreational~~  
21 areas of a condominium, cooperative, or mobile home park of  
22 which a participant in a penny-ante game is a unit owner, or  
23 the facilities of an organization which is tax exempt under s.  
24 501(c)(7) of the Internal Revenue Code. The term "dwelling"  
25 also includes a college dormitory room or the common  
26 recreational area of a college dormitory or a publicly owned  
27 community center owned by a municipality or county.

28           (5) The conduct of any penny-ante game within the  
29 common elements or ~~common recreation~~ area of a condominium,  
30 cooperative, or mobile home park or the conduct of any  
31 penny-ante game within the dwelling of an eligible



1 organization as defined in subsection (2) or within a publicly  
2 owned community center owned by a municipality or county  
3 creates no civil liability for damages arising from the  
4 penny-ante game on the part of a condominium association,  
5 cooperative association, mobile home owner's association,  
6 dwelling owner, or municipality or county or on the part of a  
7 unit owner who was not a participant in the game.

8 Section 10. Subsection (4) of section 849.0931,  
9 Florida Statutes, is amended to read:

10 849.0931 Bingo authorized; conditions for conduct;  
11 permitted uses of proceeds; limitations.--

12 (4) The right of a condominium association, a  
13 cooperative association, a mobile home owners' association, a  
14 group of residents of a mobile home park as defined in chapter  
15 723, or a group of residents of a mobile home park or  
16 recreational vehicle park as defined in chapter 513 to conduct  
17 bingo is conditioned upon the return of the net proceeds from  
18 such games to players in the form of prizes after having  
19 deducted the actual business expenses for such games for  
20 articles designed for and essential to the operation, conduct,  
21 and playing of bingo. Any net proceeds remaining after paying  
22 prizes may be donated by the association to a charitable,  
23 nonprofit, or veterans' organization which is exempt from  
24 federal income tax under the provisions of s. 501(c) of the  
25 Internal Revenue Code to be used in such recipient  
26 organization's charitable, civic, community, benevolent,  
27 religious, or scholastic works or similar activities or, in  
28 the alternative, such remaining proceeds shall be used as  
29 specified in subsection (3).

30 Section 11. This act shall take effect upon becoming a  
31 law.

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HOUSE SUMMARY

Redefines the term "homeowners' association" for the purposes of the Florida Not For Profit Corporation Act to include a mobile home subdivision.

Defines the terms "special assessment," "voting certificate," and "voting interests" for the purposes of the Cooperative Act. Provides that all provisions of the cooperative documents are enforceable equitable servitudes, run with the land, and are effective until the cooperative is terminated. Revises language with respect to cooperative associations to provide requirements concerning commingling and to provide for easements. Revises the amount of votes necessary to amend the cooperative documents and to provide additional requirements with respect to amendments to such documents. Provides requirements with respect to insurance and fidelity bonds. Provides limitations on liability of unit owners. Provides that for the purposes of property and casualty insurance risk classifications, cooperatives are classified as residential property.

Includes cooperatives within the provisions of law relating to penny-ante games and bingo. See bill for details.