

By Representatives Goodlette, Brown, Fasano, Merchant,
Jones, Fiorentino, Warner, Cosgrove, Bilirakis, Sublette, Gay,
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1 A bill to be entitled
2 An act relating to homeowners' associations and
3 cooperatives; amending ss. 607.0802 and
4 617.0802, F.S.; providing that certain persons
5 may be deemed members of the association and
6 eligible to serve as a director of a
7 condominium association, cooperative
8 association, homeowners' association, or mobile
9 homeowners' association under certain
10 circumstances; amending s. 617.301, F.S.;
11 redefining the term "homeowners' association"
12 for the purposes of the Florida Not For Profit
13 Corporation Act to include a mobile home
14 subdivision; providing that provisions
15 currently governed by the act relating to the
16 purpose and scope of homeowners' associations,
17 powers and duties, right of owners to peaceably
18 assemble, meetings, transition of homeowners'
19 associations' control in a community,
20 assessments and charges, agreements,
21 recreational leaseholds, dispute resolutions,
22 and covenants would apply to mobile home
23 subdivisions; amending s. 719.103, F.S.;
24 defining the terms "special assessment,"
25 "voting certificate," and "voting interests"
26 for the purposes of the Cooperative Act;
27 amending s. 719.1035, F.S.; providing that all
28 provisions of the cooperative documents are
29 enforceable equitable servitudes, run with the
30 land, and are effective until the cooperative
31 is terminated; amending s. 719.104, F.S.;

1 revising language with respect to commingling;
2 providing for easements; amending s. 719.1055,
3 F.S.; revising the amount of votes necessary to
4 amend the cooperative documents; providing
5 additional requirements with respect to
6 amendments; amending s. 719.106, F.S.;
7 providing requirements with respect to
8 insurance and fidelity bonds; creating s.
9 719.115, F.S.; providing limitations on
10 liability of unit owners; creating s. 719.116,
11 F.S.; providing that cooperatives are
12 residential property for certain purposes;
13 amending ss. 849.085 and 849.0931, F.S;
14 including cooperatives within the provisions of
15 law relating to penny-ante games and bingo;
16 providing an effective date.

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

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20 Section 1. Section 607.0802, Florida Statutes, is
21 amended to read:

22 607.0802 Qualifications of directors.--

23 (1) Directors must be natural persons who are 18 years
24 of age or older but need not be residents of this state or
25 shareholders of the corporation unless the articles of
26 incorporation or bylaws so require. The articles of
27 incorporation or bylaws may prescribe additional
28 qualifications for directors.

29 (2) In the event that the eligibility to serve as a
30 member of the board of directors of a condominium association,
31 cooperative association, homeowners' association, or mobile

1 homeowners' association is restricted to membership in such
2 association and membership is appurtenant to ownership of a
3 unit, parcel, or mobile home, a grantor of a trust described
4 in s. 733.707(3), or if no grantor, a beneficiary as defined
5 in s. 737.303(4)(b) of a trust which owns a unit, parcel, or
6 mobile home shall be deemed a member of the association and
7 eligible to serve as a director of the condominium
8 association, cooperative association, homeowners' association,
9 or mobile homeowners' association, provided that said
10 beneficiary occupies the unit, parcel, or mobile home.

11 Section 2. Section 617.0802, Florida Statutes, is
12 amended to read:

13 617.0802 Qualifications of directors.--

14 (1) Directors must be natural persons who are 18 years
15 of age or older but need not be residents of this state or
16 members of the corporation unless the articles of
17 incorporation or bylaws so require. The articles of
18 incorporation or the bylaws may prescribe additional
19 qualifications for directors.

20 (2) In the event that the eligibility to serve as a
21 member of the board of directors of a condominium association,
22 cooperative association, homeowners' association, or mobile
23 homeowners' association is restricted to membership in such
24 association and membership is appurtenant to ownership of a
25 unit, parcel, or mobile home, a grantor of a trust described
26 in s. 733.707(3), or if no grantor, a beneficiary as defined
27 in s. 737.303(4)(b) of a trust which owns a unit, parcel, or
28 mobile home shall be deemed a member of the association and
29 eligible to serve as a director of the condominium
30 association, cooperative association, homeowners' association,
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1 or mobile homeowners' association, provided that said
2 beneficiary occupies the unit, parcel, or mobile home.

3 Section 3. Subsection (7) of section 617.301, Florida
4 Statutes, is amended to read:

5 617.301 Homeowners' associations; definitions.--As
6 used in ss. 617.301-617.312, the term:

7 (7) "Homeowners' association" or "association" means a
8 Florida corporation responsible for the operation of a
9 community or a mobile home subdivision in which the voting
10 membership is made up of parcel owners or their agents, or a
11 combination thereof, and in which membership is a mandatory
12 condition of parcel ownership, and which is authorized to
13 impose assessments that, if unpaid, may become a lien on the
14 parcel. The term "homeowners' association" does not include a
15 community development district or other similar special taxing
16 district created pursuant to statute.

17 Section 4. Subsections (22) and (23) of section
18 719.103, Florida Statutes, 1998 Supplement, are renumbered as
19 subsections (23) and (24), respectively, and new subsections
20 (22), (25), and (26) are added to said section to read:

21 719.103 Definitions.--As used in this chapter:

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

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

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1 (26) "Voting interests" means the voting rights
2 distributed to the association members as provided for in the
3 Articles of Incorporation.

4 Section 5. Section 719.1035, Florida Statutes, 1998
5 Supplement, is amended to read:

6 719.1035 Creation of cooperatives.--

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

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

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

29 719.104 Cooperatives; access to units; records;
30 financial reports; assessments; purchase of leases.--

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

16 (9) EASEMENTS.--Unless prohibited by the cooperative
17 documents, the board of administration has the authority,
18 without the joinder of any unit owner, to grant, modify, or
19 move any easement, if the easement constitutes part of or
20 crosses the common areas or association property. This
21 subsection does not authorize the board of administration to
22 modify, move, or vacate any easement created in whole or in
23 part for the use or benefit of anyone other than the unit
24 owners, or crossing the property of anyone other than the unit
25 owners, without the consent or approval of those other persons
26 having the use or benefit of the easement, as required by law
27 or by the instrument creating the easement.

28 Section 7. Subsections (2) and (3) of section
29 719.1055, Florida Statutes, are amended and subsection (4) is
30 added to said section to read:
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1 719.1055 Amendment of cooperative documents;
2 alteration and acquisition of property.--

3 (2) Unless a lower number is provided in the
4 cooperative documents or unless such action is expressly
5 prohibited by the articles of incorporation or bylaws of the
6 cooperative, the acquisition of real property by the
7 association, and material alterations or substantial additions
8 to such property by the association shall not be deemed to
9 constitute a material alteration or modification of the
10 appurtenances to the unit if such action is approved by
11 two-thirds ~~75 percent~~ of the total voting interests of the
12 cooperative.

13 (3)(a) Unless other procedures are provided in the
14 cooperative documents or such action is expressly prohibited
15 by the articles of incorporation or bylaws of the cooperative,
16 the association may materially alter, convert, lease, or
17 modify the common areas of the mobile home cooperative if the
18 action is approved by two-thirds ~~75 percent~~ of the total
19 voting interests of the cooperative.

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

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

29 (b) No provision of the cooperative documents shall be
30 revised or amended by reference to its title or number only.
31 Proposals to amend existing provisions of the cooperative

1 documents shall contain the full text of the provision to be
2 amended, new words shall be inserted in the text and
3 underlined, and words to be deleted shall be lined through
4 with hyphens. However, if the proposed change is so extensive
5 that this procedure would hinder, rather than assist, the
6 understanding of the proposed amendment, it is not necessary
7 to use underlining and hyphens as indicators of words added or
8 deleted, but instead, a notation must be inserted immediately
9 preceding the proposed amendment in substantially the
10 following language: "Substantial rewording of document. See
11 provision _____ for present text."

12 (c) Nonmaterial errors or omissions in the amendment
13 process will not invalidate an otherwise properly promulgated
14 amendment.

15 Section 8. Paragraph (k) of subsection (1) of section
16 719.106, Florida Statutes, 1998 Supplement, is amended to
17 read:

18 719.106 Bylaws; cooperative ownership.--

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

22 (k) Insurance or fidelity bonds.--The association
23 shall obtain and maintain adequate insurance or ~~provision for~~
24 ~~the~~ fidelity bonding of all persons who control or disburse
25 funds of the association. The insurance policy or fidelity
26 bond must cover the maximum funds that will be in the custody
27 of the association or its management agent at any one time.As
28 used in this paragraph ~~section~~, the term "persons who control
29 or disburse funds of the association" includes, but is not
30 limited to, ~~means~~ those individuals authorized to sign checks,
31 and the president, secretary, and treasurer of the

1 ~~association. If an association's annual gross receipts do not~~
2 ~~exceed \$100,000, the bond shall be in the principal sum of not~~
3 ~~less than \$10,000 for each such person. If an association's~~
4 ~~annual gross receipts exceed \$100,000 but do not exceed~~
5 ~~\$300,000, the bond shall be in the principal sum of \$30,000~~
6 ~~for each such person. If an association's annual gross~~
7 ~~receipts are greater than \$300,000, the bond shall be in the~~
8 ~~principal sum of not less than \$50,000 for each such person.~~
9 The association shall bear the cost of bonding.

10 Section 9. Section 719.115, Florida Statutes, is
11 created to read:

12 719.115 Limitation of liability.--

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

17 (2) The owner of a unit may be personally liable for
18 acts or omissions of the association in relation to the use of
19 the common areas, but only to the extent of his or her pro
20 rata share of the liability in the same percentage of his or
21 her designated portion of the common expenses and then in no
22 case shall the liability exceed the value of his or her unit.

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

28 Section 10. Section 719.116, Florida Statutes, is
29 created to read:

30 719.116 Cooperatives as residential property.--For
31 purposes of property and casualty insurance risk

1 classification, cooperatives shall be classified as
2 residential property.

3 Section 11. Paragraph (b) of subsection (2) and
4 subsection (5) of section 849.085, Florida Statutes, are
5 amended to read:

6 849.085 Certain penny-ante games not crimes;
7 restrictions.--

8 (2) As used in this section:

9 (b) "Dwelling" means residential premises owned or
10 rented by a participant in a penny-ante game and occupied by
11 such participant or the common elements or common ~~recreational~~
12 areas of a condominium, cooperative, or mobile home park of
13 which a participant in a penny-ante game is a unit owner, or
14 the facilities of an organization which is tax exempt under s.
15 501(c)(7) of the Internal Revenue Code. The term "dwelling"
16 also includes a college dormitory room or the common
17 recreational area of a college dormitory or a publicly owned
18 community center owned by a municipality or county.

19 (5) The conduct of any penny-ante game within the
20 common elements or common ~~recreation~~ area of a condominium,
21 cooperative, or mobile home park or the conduct of any
22 penny-ante game within the dwelling of an eligible
23 organization as defined in subsection (2) or within a publicly
24 owned community center owned by a municipality or county
25 creates no civil liability for damages arising from the
26 penny-ante game on the part of a condominium association,
27 cooperative association, mobile home owner's association,
28 dwelling owner, or municipality or county or on the part of a
29 unit owner who was not a participant in the game.

30 Section 12. Subsection (4) of section 849.0931,
31 Florida Statutes, is amended to read:

1 849.0931 Bingo authorized; conditions for conduct;
2 permitted uses of proceeds; limitations.--

3 (4) The right of a condominium association, a
4 cooperative association, a mobile home owners' association, a
5 group of residents of a mobile home park as defined in chapter
6 723, or a group of residents of a mobile home park or
7 recreational vehicle park as defined in chapter 513 to conduct
8 bingo is conditioned upon the return of the net proceeds from
9 such games to players in the form of prizes after having
10 deducted the actual business expenses for such games for
11 articles designed for and essential to the operation, conduct,
12 and playing of bingo. Any net proceeds remaining after paying
13 prizes may be donated by the association to a charitable,
14 nonprofit, or veterans' organization which is exempt from
15 federal income tax under the provisions of s. 501(c) of the
16 Internal Revenue Code to be used in such recipient
17 organization's charitable, civic, community, benevolent,
18 religious, or scholastic works or similar activities or, in
19 the alternative, such remaining proceeds shall be used as
20 specified in subsection (3).

21 Section 13. This act shall take effect upon becoming a
22 law.

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2 HOUSE SUMMARY
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4 Provides that described persons shall be deemed a member
5 of the association and eligible to serve as a director of
6 the condominium association, cooperative association,
7 homeowners' association, or mobile homeowners'
8 association under certain circumstances.
9
10 Redefines the term "homeowners' association" for the
11 purposes of the Florida Not For Profit Corporation Act to
12 include a mobile home subdivision.
13
14 Defines the terms "special assessment," "voting
15 certificate," and "voting interests" for the purposes of
16 the Cooperative Act. Provides that all provisions of the
17 cooperative documents are enforceable equitable
18 servitudes, run with the land, and are effective until
19 the cooperative is terminated. Revises language with
20 respect to cooperative associations to provide
21 requirements concerning commingling and to provide for
22 easements. Revises the amount of votes necessary to amend
23 the cooperative documents and to provide additional
24 requirements with respect to amendments to such
25 documents. Provides requirements with respect to
26 insurance and fidelity bonds. Provides limitations on
27 liability of unit owners. Provides that for the purposes
28 of property and casualty insurance risk classifications,
29 cooperatives are classified as residential property.
30
31 Includes cooperatives within the provisions of law
relating to penny-ante games and bingo. See bill for
details.