

By Senators Saunders, Latvala, Webster, McKay, Carlton, Cowin,
Kurth, Brown-Waite, Bronson and Sebesta

25-377A-99

1 A bill to be entitled
2 An act relating to residential property;
3 amending s. 849.085, F.S.; authorizing certain
4 penny-ante games to be conducted in common
5 areas of a cooperative; amending s. 849.0931,
6 F.S.; authorizing bingo games to be conducted
7 by cooperative associations; amending s.
8 719.103, F.S.; defining the terms "special
9 assessment," "voting certificate," and "voting
10 interests" for purposes of regulation of
11 cooperatives; amending s. 719.1035, F.S.;
12 providing legal effect of cooperative
13 documents; amending s. 719.104, F.S.; providing
14 guidelines for investment of cooperative
15 association funds; providing for granting,
16 modifying, or moving easements; amending s.
17 719.1055, F.S.; changing the voting requirement
18 for modifying cooperative documents;
19 prescribing requirements for such amendments;
20 amending s. 719.106, F.S.; authorizing
21 insurance in lieu of fidelity bonding;
22 providing standards for such insurance or
23 bonds; creating s. 719.115, F.S.; providing
24 limitation of unit owners' liability; creating
25 s. 719.116, F.S.; declaring cooperatives to be
26 residential property; amending ss. 607.0802,
27 617.0802, F.S.; providing eligibility of
28 certain trust grantors or beneficiaries to
29 serve on condominium, cooperative, homeowners',
30 or mobile homeowners' association boards of
31 directors; amending s. 617.301, F.S.;

1 redefining the term "homeowners' association,"
2 for purposes of the regulation thereof, to
3 include corporations responsible for the
4 operation of a mobile home subdivision;
5 providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Subsections (2) and (5) of section 849.085,
10 Florida Statutes, are amended to read:

11 849.085 Certain penny-ante games not crimes;
12 restrictions.--

13 (2) As used in this section, the term:

14 (a) "Penny-ante game" means a game or series of games
15 of poker, pinochle, bridge, rummy, canasta, hearts, dominoes,
16 or mah-jongg in which the winnings of any player in a single
17 round, hand, or game do not exceed \$10 in value.

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 2. Subsection (4) of section 849.0931, Florida
9 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 3. Present subsections (22) and (23) of
31 section 719.103, Florida Statutes, 1998 Supplement, are

1 renumbered as subsections (23) and (24), respectively, and new
2 subsections (22), (25), and (26) are added to that section, to
3 read:

4 719.103 Definitions.--As used in this chapter:

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

8 ~~(23)~~~~(22)~~ "Unit" means a part of the cooperative
9 property which is subject to exclusive use and possession. A
10 unit may be improvements, land, or land and improvements
11 together, as specified in the cooperative documents.

12 ~~(24)~~~~(23)~~ "Unit owner" or "owner of a unit" means the
13 person holding a share in the cooperative association and a
14 lease or other muniment of title or possession of a unit that
15 is granted by the association as the owner of the cooperative
16 property.

17 (25) "Voting certificate" means a document that
18 designates one of the record title owners or the corporate,
19 partnership, or entity representative who is authorized to
20 vote on behalf of a cooperative unit that is owned by more
21 than one family or by any entity.

22 (26) "Voting interests" means the voting rights
23 distributed to the association members as provided for in the
24 articles of incorporation.

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

27 719.1035 Creation of cooperatives.--

28 (1) The date when cooperative existence shall commence
29 is upon commencement of corporate existence of the cooperative
30 association as provided in s. 607.0203. The cooperative
31 documents must be recorded in the county in which the

1 cooperative is located before property may be conveyed or
2 transferred to the cooperative. All persons who have any
3 record interest in any mortgage encumbering the interest in
4 the land being submitted to cooperative ownership must either
5 join in the execution of the cooperative documents or execute,
6 with the requirements for deed, and record, a consent to the
7 cooperative documents or an agreement subordinating their
8 mortgage interest to the cooperative documents. Upon creation
9 of a cooperative, the developer or association shall file the
10 recording information with the division within 30 working days
11 on a form prescribed by the division.

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

15 Section 5. Subsection (7) of section 719.104, Florida
16 Statutes, 1998 Supplement, is amended, and a new subsection
17 (11) is added to that section, to read:

18 719.104 Cooperatives; access to units; records;
19 financial reports; assessments; purchase of leases.--

20 (7) COMMINGLING.--All funds shall be maintained
21 separately in the association's name. Reserve and operating
22 funds of the association shall not be commingled unless
23 combined for investment purposes. This subsection is not meant
24 to prohibit prudent investment of association funds even if
25 combined with operating or other reserve funds of the same
26 association, but such funds must be accounted for separately,
27 and the combined account balance may not, at any time, be less
28 than the amount identified as reserve funds in the combined
29 account.No manager or business entity required to be licensed
30 or registered under s. 468.432, or an agent, employee,
31 officer, or director of a cooperative association may

1 commingle any association funds with his or her own funds or
2 with the funds of any other cooperative association or
3 community association as defined in s. 468.431.

4 (11) EASEMENTS.--Unless prohibited by the cooperative
5 documents, the board of administration has the authority,
6 without the joinder of any unit owner, to grant, modify, or
7 move any easement, if the easement constitutes part of or
8 crosses the common areas or association property. This
9 subsection does not authorize the board of administration to
10 modify, move, or vacate any easement created in whole or in
11 part for the use or benefit of anyone other than the unit
12 owners, or crossing the property of anyone other than the unit
13 owners, without the consent or approval of those other persons
14 having the use or benefit of the easement as required by law
15 or by the instrument creating the easement.

16 Section 6. Subsections (2) and (3) of section
17 719.1055, Florida Statutes, are amended, and subsection (4) is
18 added to that section, to read:

19 719.1055 Amendment of cooperative documents;
20 alteration and acquisition of property.--

21 (2) Unless a lower number is provided in the
22 cooperative documents or unless such action is expressly
23 prohibited by the articles of incorporation or bylaws of the
24 cooperative, the acquisition of real property by the
25 association, and material alterations or substantial additions
26 to such property by the association shall not be deemed to
27 constitute a material alteration or modification of the
28 appurtenances to the unit if such action is approved by
29 two-thirds ~~75 percent~~ of the total voting interests of the
30 cooperative.

31

1 (3)(a) Unless other procedures are provided in the
2 cooperative documents or such action is expressly prohibited
3 by the articles of incorporation or bylaws of the cooperative,
4 the association may materially alter, convert, lease, or
5 modify the common areas of the mobile home cooperative if the
6 action is approved by two-thirds ~~75 percent~~ of the total
7 voting interests of the cooperative.

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

12 (4)(a) If the cooperative documents fail to provide a
13 method of amendment, the documents may be amended as to all
14 matters except those described in subsection (1) if the
15 amendment is approved by the owners of not fewer than
16 two-thirds of the units.

17 (b) A provision of the cooperative documents may not
18 be revised or amended by reference to its title or number
19 only. Proposals to amend existing provisions of the
20 cooperative documents must contain the full text of the
21 provision to be amended; new words shall be inserted in the
22 text and underlined; and words to be deleted shall be lined
23 through with hyphens. However, if the proposed change is so
24 extensive that this procedure would hinder, rather than
25 assist, the understanding of the proposed amendment, it is not
26 necessary to use underlining and hyphens as indicators of
27 words added or deleted, but instead a notation must be
28 inserted immediately preceding the proposed amendment in
29 substantially the following language: "Substantial rewording
30 of document. See provision for present text."

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1 (c) Nonmaterial errors or omissions in the amendment
2 process will not invalidate an otherwise properly adopted
3 amendment.

4 Section 7. Paragraph (k) of subsection (1) of section
5 719.106, Florida Statutes, 1998 Supplement, is amended to
6 read:

7 719.106 Bylaws; cooperative ownership.--

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

11 (k) Insurance or fidelity bonds.--The association
12 shall obtain and maintain adequate insurance or ~~provision for~~
13 ~~the~~ fidelity bonding of all persons who control or disburse
14 funds of the association. The insurance policy or fidelity
15 bond must cover the maximum funds that will be in the custody
16 of the association or its management agent at any one time.As
17 used in this paragraph section, the term "persons who control
18 or disburse funds of the association" includes, but is not
19 limited to,~~means~~ those individuals authorized to sign checks,
20 and the president, secretary, and treasurer of the
21 association. ~~If an association's annual gross receipts do not~~
22 ~~exceed \$100,000, the bond shall be in the principal sum of not~~
23 ~~less than \$10,000 for each such person. If an association's~~
24 ~~annual gross receipts exceed \$100,000 but do not exceed~~
25 ~~\$300,000, the bond shall be in the principal sum of \$30,000~~
26 ~~for each such person. If an association's annual gross~~
27 ~~receipts are greater than \$300,000, the bond shall be in the~~
28 ~~principal sum of not less than \$50,000 for each such person.~~
29 The association shall bear the cost of bonding.

30 Section 8. Section 719.115, Florida Statutes, is
31 created to read:

1 719.115 Limitation of liability.--

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

6 (2) The owner of a unit may be personally liable for
7 acts or omissions of the association in relation to the use of
8 the common areas, but only to the extent of his or her pro
9 rata share of the liability in the same percentage as his or
10 her designated portion of the common expenses, and then in no
11 case shall the liability exceed the value of his or her unit.

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

17 Section 9. Section 719.116, Florida Statutes, is
18 created to read:

19 719.116 Cooperatives as residential property.--For
20 purposes of property and casualty insurance risk
21 classification, cooperatives shall be classified as
22 residential property.

23 Section 10. Section 607.0802, Florida Statutes, is
24 amended to read:

25 607.0802 Qualifications of directors.--

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

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

14 Section 11. Section 617.0802, Florida Statutes, is
15 amended to read:

16 617.0802 Qualifications of directors.--

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

23 (2) If the eligibility to serve as a member of the
24 board of directors of a condominium association, cooperative
25 association, homeowners' association, or mobile homeowners'
26 association is restricted to membership in such association
27 and membership is appurtenant to ownership of a unit, parcel,
28 or mobile home, a grantor of a trust described in s.
29 733.707(3) or, if there is no grantor, a beneficiary as
30 defined in s. 737.303(4)(b) of a trust that owns a unit,
31 parcel, or mobile home shall be deemed a member of the

1 association and eligible to serve as a director of the
2 condominium association, cooperative association, homeowners'
3 association, or mobile homeowners' association, provided that
4 such beneficiary occupies the unit, parcel, or mobile home.

5 Section 12. Subsection (7) of section 617.301, Florida
6 Statutes, is amended to read:

7 617.301 Homeowners' associations; definitions.--As
8 used in ss. 617.301-617.312, the term:

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

19 Section 13. This act shall take effect July 1, 1999.

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22 SENATE SUMMARY

23 Provides for the treatment of cooperatives and
24 cooperative associations in the same manner as
25 condominiums and condominium associations with respect to
26 conducting penny-ante games and bingo; enforceability and
27 status of creating documents; commingling of funds for
28 investment; easements; amendment of documents; insurance
29 and fidelity bonding; limitation of unit owners'
30 liability; and status as residential property. Provides
31 that a homeowners' association of a mobile home
subdivision is an association for the purposes of laws
governing homeowners' associations. Provides eligibility
for certain grantors or beneficiaries of trusts to serve
on condominium, cooperative, homeowners', or mobile
homeowners' association boards of directors.