

By the Committee on Regulated Industries and Senators
Saunders, Latvala, Webster, McKay, Carlton, Cowin, Kurth,
Brown-Waite, Bronson and Sebesta

315-1775-99

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

1 certain trust grantors or beneficiaries to
2 serve on condominium, cooperative, homeowners',
3 or mobile homeowners' association boards of
4 directors; amending s. 617.301, F.S.;
5 redefining the term "homeowners' association,"
6 for purposes of the regulation thereof, to
7 include corporations responsible for the
8 operation of a mobile home subdivision;
9 amending s. 617.0601, F.S.; providing that
10 certain provisions in bylaws, rules, or other
11 regulations are void; creating s. 723.0751,
12 F.S.; providing for creation of mobile home
13 subdivision homeowners' associations; providing
14 for participation in mobile home park mobile
15 homeowners' associations; providing an
16 effective date.

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

19

20 Section 1. Paragraph (b) of subsection (2) and
21 subsection (5) of section 849.085, Florida Statutes, are
22 amended to read:

23 849.085 Certain penny-ante games not crimes;
24 restrictions.--

25 (2) As used in this section:

26 (b) "Dwelling" means residential premises owned or
27 rented by a participant in a penny-ante game and occupied by
28 such participant or the common elements or common recreational
29 areas of a condominium, cooperative, residential subdivision,
30 or mobile home park of which a participant in a penny-ante
31 game is a unit owner, or the facilities of an organization

1 which is tax exempt under s. 501(c)(7) of the Internal Revenue
2 Code. The term "dwelling" also includes a college dormitory
3 room or the common recreational area of a college dormitory or
4 a publicly owned community center owned by a municipality or
5 county.

6 (5) The conduct of any penny-ante game within the
7 common elements or common recreation area of a condominium,
8 cooperative, residential subdivision, or mobile home park or
9 the conduct of any penny-ante game within the dwelling of an
10 eligible organization as defined in subsection (2) or within a
11 publicly owned community center owned by a municipality or
12 county creates no civil liability for damages arising from the
13 penny-ante game on the part of a condominium association,
14 cooperative association, a homeowners' association as defined
15 in s. 617.301, mobile home owner's association, dwelling
16 owner, or municipality or county or on the part of a unit
17 owner who was not a participant in the game.

18 Section 2. Subsection (4) and subsection (11) of
19 section 849.0931, Florida Statutes, are amended to read:

20 849.0931 Bingo authorized; conditions for conduct;
21 permitted uses of proceeds; limitations.--

22 (4) The right of a condominium association, a
23 cooperative association, a homeowners' association as defined
24 in s. 617.301 a mobile home owners' association, a group of
25 residents of a mobile home park as defined in chapter 723, or
26 a group of residents of a mobile home park or recreational
27 vehicle park as defined in chapter 513 to conduct bingo is
28 conditioned upon the return of the net proceeds from such
29 games to players in the form of prizes after having deducted
30 the actual business expenses for such games for articles
31 designed for and essential to the operation, conduct, and

1 playing of bingo. Any net proceeds remaining after paying
2 prizes may be donated by the association to a charitable,
3 nonprofit, or veterans' organization which is exempt from
4 federal income tax under the provisions of s. 501(c) of the
5 Internal Revenue Code to be used in such recipient
6 organization's charitable, civic, community, benevolent,
7 religious, or scholastic works or similar activities or, in
8 the alternative, such remaining proceeds shall be used as
9 specified in subsection (3).

10 (11) Bingo games may be held only on the following
11 premises:

12 (a) Property owned by the charitable, nonprofit, or
13 veterans' organization.

14 (b) Property owned by the charitable, nonprofit, or
15 veterans' organization that will benefit by the proceeds.

16 (c) Property leased for a period of not less than 1
17 year by a charitable, nonprofit, or veterans' organization,
18 providing the lease or rental agreement does not provide for
19 the payment of a percentage of the proceeds generated at such
20 premises to the lessor or any other party and providing the
21 rental rate for such premises does not exceed the rental rates
22 charged for similar premises in the same locale.

23 (d) Property owned by a municipality or a county when
24 the governing authority has, by appropriate ordinance or
25 resolution, specifically authorized the use of such property
26 for the conduct of such games.

27 (e) With respect to bingo games conducted by a
28 condominium association, cooperative association, a
29 homeowners' association as defined in s. 617.301, a mobile
30 home owners' association, a group of residents of a mobile
31 home park as defined in chapter 723, or a group of residents

1 of a mobile home park or recreational vehicle park as defined
2 in chapter 513, property owned by the association, property
3 owned by the residents of the mobile home park or recreational
4 vehicle park, or property which is a common area located
5 within the condominium, mobile home park, or recreational
6 vehicle park.

7 Section 3. Present subsections (22) and (23) of
8 section 719.103, Florida Statutes, 1998 Supplement, are
9 renumbered as subsections (23) and (24), respectively, and new
10 subsections (22), (25), and (26) are added to that section, to
11 read:

12 719.103 Definitions.--As used in this chapter:

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

16 (23)~~(22)~~ "Unit" means a part of the cooperative
17 property which is subject to exclusive use and possession. A
18 unit may be improvements, land, or land and improvements
19 together, as specified in the cooperative documents.

20 (24)~~(23)~~ "Unit owner" or "owner of a unit" means the
21 person holding a share in the cooperative association and a
22 lease or other muniment of title or possession of a unit that
23 is granted by the association as the owner of the cooperative
24 property.

25 (25) "Voting certificate" means a document that
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 family 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 4. 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 5. Subsection (7) of section 719.104, Florida
26 Statutes, 1998 Supplement, is amended, and a new subsection
27 (11) is added to that section, to read:

28 719.104 Cooperatives; access to units; records;
29 financial reports; assessments; purchase of leases.--

30 (7) COMMINGLING.--All funds shall be maintained
31 separately in the association's name. Reserve and operating

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

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

26 Section 6. Subsections (2) and (3) of section
27 719.1055, Florida Statutes, are amended, and subsection (4) is
28 added to that section, to read:

29 719.1055 Amendment of cooperative documents;
30 alteration and acquisition of property.--

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

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

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

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

27 (b) A provision of the cooperative documents may not
28 be revised or amended by reference to its title or number
29 only. Proposals to amend existing provisions of the
30 cooperative documents must contain the full text of the
31 provision to be amended; new words shall be inserted in the

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

10 (c) Nonmaterial errors or omissions in the amendment
11 process will not invalidate an otherwise properly adopted
12 amendment.

13 Section 7. Paragraph (k) of subsection (1) of section
14 719.106, Florida Statutes, 1998 Supplement, is amended to
15 read:

16 719.106 Bylaws; cooperative ownership.--

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

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

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

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

10 719.115 Limitation of liability.--

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

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

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

26 Section 9. Section 719.116, Florida Statutes, is
27 created to read:

28 719.116 Cooperatives as residential property.--For
29 purposes of property and casualty insurance risk
30 classification, cooperatives shall be classified as
31 residential property.

1 Section 10. Section 607.0802, Florida Statutes, is
2 amended to read:

3 607.0802 Qualifications of directors.--

4 (1) Directors must be natural persons who are 18 years
5 of age or older but need not be residents of this state or
6 shareholders of the corporation unless the articles of
7 incorporation or bylaws so require. The articles of
8 incorporation or bylaws may prescribe additional
9 qualifications for directors.

10 (2) If the eligibility to serve as a member of the
11 board of directors of a condominium association, cooperative
12 association, homeowners' association, or mobile homeowners'
13 association is restricted to membership in such association
14 and membership is appurtenant to ownership of a unit, parcel,
15 or mobile home, a grantor of a trust described in s.
16 733.707(3) or a beneficiary as defined in s. 737.303(4)(b) of
17 a trust that owns a unit, parcel, or mobile home shall be
18 deemed a member of the association and eligible to serve as a
19 director of the condominium association, cooperative
20 association, homeowners' association, or mobile homeowners'
21 association, provided that such beneficiary occupies the unit,
22 parcel, or mobile home.

23 Section 11. Section 617.0802, Florida Statutes, is
24 amended to read:

25 617.0802 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 members of the corporation unless the articles of
29 incorporation or bylaws so require. The articles of
30 incorporation or the 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 a beneficiary as defined in s. 737.303(4)(b) of
8 a trust that owns a unit, parcel, or mobile home shall be
9 deemed a member of the association and eligible to serve as a
10 director of the condominium association, cooperative
11 association, homeowners' association, or mobile homeowners'
12 association, provided that such beneficiary occupies the unit,
13 parcel, or mobile home.

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

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

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

28 Section 13. Subsection (7) is added to section
29 617.0601, Florida Statutes, to read:

30 617.0601 Members, generally.--

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1 (7) Where the articles of incorporation expressly
2 limit membership in the corporation to property owners within
3 specific measurable geographic boundaries and where the
4 corporation has been formed for the benefit of all of those
5 property owners, no such property owner shall be denied
6 membership, provided that such property owner, once admitted
7 to membership, shall comply with the terms and conditions of
8 membership. Any bylaws, rules, or other regulations to the
9 contrary are deemed void and any persons excluded from
10 membership by such bylaws, rules, or other regulations are
11 deemed members with full rights, including the right, by the
12 majority, or as otherwise provided in the articles of
13 incorporation, to call for a meeting of the membership.

14 Section 14. Section 723.0751, Florida Statutes, is
15 created to read:

16 723.0751 Mobile home subdivision homeowners'
17 association.--

18 (1) If no homeowners' association has been created
19 pursuant to ss. 617.301-617.312 to operate a mobile home
20 subdivision, the owners of lots in such mobile home
21 subdivision shall be authorized to create a mobile home
22 subdivision homeowners' association in the manner prescribed
23 in ss. 723.075, 723.076, and 723.078, which shall have the
24 powers and duties, to the extent applicable, set forth in ss.
25 723.002(2) and 723.074.

26 (2) Rights granted to the owners of lots in a mobile
27 home subdivision in ss. 723.002(2) and 723.074 may be
28 exercised through an association created or authorized
29 pursuant to this section for the owners of lots who are
30 members of the mobile home subdivision homeowners'
31 association.

1 (3) When the owners of lots in a mobile home
2 subdivision share common areas, recreational facilities,
3 roads, and other amenities, with the owners of mobile homes in
4 a mobile home park and the mobile home owners have created a
5 mobile homeowners' association pursuant to ss.

6 723.075-723.079, that mobile homeowners' association shall be
7 the authorized representative of owners of lots in the mobile
8 home subdivision provided that:

9 (a) The members of the mobile homeowners' association
10 have, by majority vote, authorized the inclusion of
11 subdivision lot owners in the mobile home park homeowners'
12 association; and

13 (b) The owners of lots in the mobile home subdivision
14 are entitled to vote only on matters that affect their rights
15 contained in ss. 723.002(2) and 723.074.

16 Section 15. This act shall take effect July 1, 1999.

17
18 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
19 COMMITTEE SUBSTITUTE FOR
20 SB 814

21 The Committee Substitute for SB 814:

22 -Includes cooperative associations, and homeowners'
23 associations in the authorization to conduct penny-ante and
bingo games.

24 -Clarifies that the cooperative association is to bear the
25 cost of insurance, as it is already required to do with
bonding.

26 -Deletes "if there is no grantor" on the basis that a trust
27 cannot be created without a grantor.

28 -Provides that where corporate membership is limited to
29 certain property owners and the corporation has been formed
for the benefit of those property owners, no such property
owner can be excluded from corporate membership.

30 -Authorizes mobile home subdivision homeowners to create a
31 mobile home subdivision homeowners' association pursuant to
the mobile home park homeowners' association statutes.