

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

CHAMBER ACTION

Senate

House

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

WD/2R  
04/14/2004 10:41 AM

.  
. .  
. .  
. .  
. .  
. .

---

Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

On page 4, between lines 19 and 20,

insert:

Section 3. Paragraph (d) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.--

(2) REQUIRED PROVISIONS.--The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(d) Unit owner meetings.--

1. There shall be an annual meeting of the unit owners. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term shall be filled by electing a new board member, and the election shall be by secret ballot; however, if the number of vacancies equals or exceeds the number of candidates, no election is required. If there is no provision in the bylaws for terms of the members of the board, the terms of all members of the

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 board shall expire upon the election of their successors at  
2 the annual meeting. Any unit owner desiring to be a candidate  
3 for board membership shall comply with subparagraph 3. A  
4 person who has been convicted of any felony by any court of  
5 record in the United States and who has not had his or her  
6 right to vote restored pursuant to law in the jurisdiction of  
7 his or her residence is not eligible for board membership. The  
8 validity of an action by the board is not affected if it is  
9 later determined that a member of the board is ineligible for  
10 board membership due to having been convicted of a felony.

11         2. The bylaws shall provide the method of calling  
12 meetings of unit owners, including annual meetings. Written  
13 notice, which notice must include an agenda, shall be mailed,  
14 hand delivered, or electronically transmitted to each unit  
15 owner at least 14 days prior to the annual meeting and shall  
16 be posted in a conspicuous place on the condominium property  
17 at least 14 continuous days preceding the annual meeting. Upon  
18 notice to the unit owners, the board shall by duly adopted  
19 rule designate a specific location on the condominium property  
20 or association property upon which all notices of unit owner  
21 meetings shall be posted; however, if there is no condominium  
22 property or association property upon which notices can be  
23 posted, this requirement does not apply. In lieu of or in  
24 addition to the physical posting of notice of any meeting of  
25 the unit owners on the condominium property, the association  
26 may, by reasonable rule, adopt a procedure for conspicuously  
27 posting and repeatedly broadcasting the notice and the agenda  
28 on a closed-circuit cable television system serving the  
29 condominium association. However, if broadcast notice is used  
30 in lieu of a notice posted physically on the condominium  
31 property, the notice and agenda must be broadcast at least

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 four times every broadcast hour of each day that a posted  
2 notice is otherwise required under this section. When  
3 broadcast notice is provided, the notice and agenda must be  
4 broadcast in a manner and for a sufficient continuous length  
5 of time so as to allow an average reader to observe the notice  
6 and read and comprehend the entire content of the notice and  
7 the agenda. Unless a unit owner waives in writing the right to  
8 receive notice of the annual meeting, such notice shall be  
9 hand delivered, mailed, or electronically transmitted to each  
10 unit owner. Notice for meetings and notice for all other  
11 purposes shall be mailed to each unit owner at the address  
12 last furnished to the association by the unit owner, or hand  
13 delivered to each unit owner. However, if a unit is owned by  
14 more than one person, the association shall provide notice,  
15 for meetings and all other purposes, to that one address which  
16 the developer initially identifies for that purpose and  
17 thereafter as one or more of the owners of the unit shall so  
18 advise the association in writing, or if no address is given  
19 or the owners of the unit do not agree, to the address  
20 provided on the deed of record. An officer of the association,  
21 or the manager or other person providing notice of the  
22 association meeting, shall provide an affidavit or United  
23 States Postal Service certificate of mailing, to be included  
24 in the official records of the association affirming that the  
25 notice was mailed or hand delivered, in accordance with this  
26 provision.

27           3. The members of the board shall be elected by  
28 written ballot or voting machine. Proxies shall in no event be  
29 used in electing the board, either in general elections or  
30 elections to fill vacancies caused by recall, resignation, or  
31 otherwise, unless otherwise provided in this chapter. Not less

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 than 60 days before a scheduled election, the association  
2 shall mail, deliver, or electronically transmit, whether by  
3 separate association mailing or included in another  
4 association mailing, delivery, or transmission, including  
5 regularly published newsletters, to each unit owner entitled  
6 to a vote, a first notice of the date of the election. Any  
7 unit owner or other eligible person desiring to be a candidate  
8 for the board must give written notice to the association not  
9 less than 40 days before a scheduled election. Together with  
10 the written notice and agenda as set forth in subparagraph 2.,  
11 the association shall mail, deliver, or electronically  
12 transmit a second notice of the election to all unit owners  
13 entitled to vote therein, together with a ballot which shall  
14 list all candidates. Upon request of a candidate, the  
15 association shall include an information sheet, no larger than  
16 8 1/2 inches by 11 inches, which must be furnished by the  
17 candidate not less than 35 days before the election, to be  
18 included with the mailing, delivery, or transmission of the  
19 ballot, with the costs of mailing, delivery, or electronic  
20 transmission and copying to be borne by the association. The  
21 association is not liable for the contents of the information  
22 sheets prepared by the candidates. In order to reduce costs,  
23 the association may print or duplicate the information sheets  
24 on both sides of the paper. The division shall by rule  
25 establish voting procedures consistent with the provisions  
26 contained herein, including rules establishing procedures for  
27 giving notice by electronic transmission and rules providing  
28 for the secrecy of ballots. Elections shall be decided by a  
29 plurality of those ballots cast. There shall be no quorum  
30 requirement; however, at least 20 percent of the eligible  
31 voters must cast a ballot in order to have a valid election of

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 members of the board. No unit owner shall permit any other  
2 person to vote his or her ballot, and any such ballots  
3 improperly cast shall be deemed invalid, provided any unit  
4 owner who violates this provision may be fined by the  
5 association in accordance with s. 718.303. A unit owner who  
6 needs assistance in casting the ballot for the reasons stated  
7 in s. 101.051 may obtain assistance in casting the ballot. The  
8 regular election shall occur on the date of the annual  
9 meeting. The provisions of this subparagraph shall not apply  
10 to timeshare condominium associations. Notwithstanding the  
11 provisions of this subparagraph, an election is not required  
12 unless more candidates file notices of intent to run or are  
13 nominated than board vacancies exist.

14           4. Any approval by unit owners called for by this  
15 chapter or the applicable declaration or bylaws, including,  
16 but not limited to, the approval requirement in s. 718.111(8),  
17 shall be made at a duly noticed meeting of unit owners and  
18 shall be subject to all requirements of this chapter or the  
19 applicable condominium documents relating to unit owner  
20 decisionmaking, except that unit owners may take action by  
21 written agreement, without meetings, on matters for which  
22 action by written agreement without meetings is expressly  
23 allowed by the applicable bylaws or declaration or any statute  
24 that provides for such action.

25           5. Unit owners may waive notice of specific meetings  
26 if allowed by the applicable bylaws or declaration or any  
27 statute. If authorized by the bylaws, notice of meetings of  
28 the board of administration, unit owner meetings, except unit  
29 owner meetings called to recall board members under paragraph  
30 (j), and committee meetings may be given by electronic  
31 transmission to unit owners who consent to receive notice by

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 | electronic transmission.

2 |           6. Unit owners shall have the right to participate in  
3 | meetings of unit owners with reference to all designated  
4 | agenda items. However, the association may adopt reasonable  
5 | rules governing the frequency, duration, and manner of unit  
6 | owner participation.

7 |           7. Any unit owner may tape record or videotape a  
8 | meeting of the unit owners subject to reasonable rules adopted  
9 | by the division.

10 |           8. Unless otherwise provided in the bylaws, any  
11 | vacancy occurring on the board before the expiration of a term  
12 | may be filled by the affirmative vote of the majority of the  
13 | remaining directors, even if the remaining directors  
14 | constitute less than a quorum, or by the sole remaining  
15 | director. In the alternative, a board may hold an election to  
16 | fill the vacancy, in which case the election procedures must  
17 | conform to the requirements of subparagraph 3. unless the  
18 | association has opted out of the statutory election process,  
19 | in which case the bylaws of the association control. Unless  
20 | otherwise provided in the bylaws, a board member appointed or  
21 | elected under this section shall fill the vacancy for the  
22 | unexpired term of the seat being filled. Filling vacancies  
23 | created by recall is governed by paragraph (j) and rules  
24 | adopted by the division.

25 |           9. Ten percent of the total voting interests in a  
26 | condominium association, or six unit owners, whichever is  
27 | greater, may petition the division to appoint an election  
28 | monitor to attend the annual meeting of the unit owners and  
29 | conduct the election of directors. The division shall appoint  
30 | a division employee, a person or persons specializing in  
31 | condominium election monitoring, or an attorney licensed to

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 practice in this state as the election monitor. All costs  
 2 associated with the election monitoring process shall be paid  
 3 by the association. The division shall adopt a rule  
 4 establishing procedures for the appointment of election  
 5 monitors and the scope and extent of the monitor's role in the  
 6 election process.

7  
 8 Notwithstanding subparagraphs (b)2. and (d)3., an association  
 9 may, by the affirmative vote of a majority of the total voting  
 10 interests, provide for different voting and election  
 11 procedures in its bylaws, which vote may be by a proxy  
 12 specifically delineating the different voting and election  
 13 procedures. The different voting and election procedures may  
 14 provide for elections to be conducted by limited or general  
 15 proxy.

16 Section 4. Paragraph (d) of subsection (1) of section  
 17 719.106, Florida Statutes, is amended to 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 (d) Shareholder meetings.--There shall be an annual  
 23 meeting of the shareholders. All members of the board of  
 24 administration shall be elected at the annual meeting unless  
 25 the bylaws provide for staggered election terms or for their  
 26 election at another meeting. Any unit owner desiring to be a  
 27 candidate for board membership shall comply with subparagraph  
 28 1. The bylaws shall provide the method for calling meetings,  
 29 including annual meetings. Written notice, which notice shall  
 30 incorporate an identification of agenda items, shall be given  
 31 to each unit owner at least 14 days prior to the annual

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 meeting and shall be posted in a conspicuous place on the  
2 cooperative property at least 14 continuous days preceding the  
3 annual meeting. Upon notice to the unit owners, the board  
4 shall by duly adopted rule designate a specific location on  
5 the cooperative property upon which all notice of unit owner  
6 meetings shall be posted. In lieu of or in addition to the  
7 physical posting of notice of any meeting of the shareholders  
8 on the cooperative property, the association may, by  
9 reasonable rule, adopt a procedure for conspicuously posting  
10 and repeatedly broadcasting the notice and the agenda on a  
11 closed-circuit cable television system serving the cooperative  
12 association. However, if broadcast notice is used in lieu of a  
13 notice posted physically on the cooperative property, the  
14 notice and agenda must be broadcast at least four times every  
15 broadcast hour of each day that a posted notice is otherwise  
16 required under this section. When broadcast notice is  
17 provided, the notice and agenda must be broadcast in a manner  
18 and for a sufficient continuous length of time so as to allow  
19 an average reader to observe the notice and read and  
20 comprehend the entire content of the notice and the agenda.  
21 Unless a unit owner waives in writing the right to receive  
22 notice of the annual meeting, the notice of the annual meeting  
23 shall be sent by mail, hand delivered, or electronically  
24 transmitted to each unit owner. An officer of the association  
25 shall provide an affidavit or United States Postal Service  
26 certificate of mailing, to be included in the official records  
27 of the association, affirming that notices of the association  
28 meeting were mailed, hand delivered, or electronically  
29 transmitted, in accordance with this provision, to each unit  
30 owner at the address last furnished to the association.

31 1. After January 1, 1992, the board of administration



Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 shall be elected by written ballot or voting machine. Proxies  
2 shall in no event be used in electing the board of  
3 administration, either in general elections or elections to  
4 fill vacancies caused by recall, resignation, or otherwise  
5 unless otherwise provided in this chapter. Not less than 60  
6 days before a scheduled election, the association shall mail,  
7 deliver, or transmit, whether by separate association mailing,  
8 delivery, or electronic transmission or included in another  
9 association mailing, delivery, or electronic transmission,  
10 including regularly published newsletters, to each unit owner  
11 entitled to vote, a first notice of the date of the election.  
12 Any unit owner or other eligible person desiring to be a  
13 candidate for the board of administration shall give written  
14 notice to the association not less than 40 days before a  
15 scheduled election. Together with the written notice and  
16 agenda as set forth in this section, the association shall  
17 mail, deliver, or electronically transmit a second notice of  
18 election to all unit owners entitled to vote therein, together  
19 with a ballot which shall list all candidates. Upon request of  
20 a candidate, the association shall include an information  
21 sheet, no larger than 8 1/2 inches by 11 inches, which must  
22 be furnished by the candidate not less than 35 days prior to  
23 the election, to be included with the mailing, delivery, or  
24 electronic transmission of the ballot, with the costs of  
25 mailing, delivery, or transmission and copying to be borne by  
26 the association. The association has no liability for the  
27 contents of the information sheets provided by the candidates.  
28 In order to reduce costs, the association may print or  
29 duplicate the information sheets on both sides of the paper.  
30 The division shall by rule establish voting procedures  
31 consistent with the provisions contained herein, including

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 rules establishing procedures for giving notice by electronic  
2 transmission and rules providing for the secrecy of ballots.  
3 Elections shall be decided by a plurality of those ballots  
4 cast. There shall be no quorum requirement. However, at least  
5 20 percent of the eligible voters must cast a ballot in order  
6 to have a valid election of members of the board of  
7 administration. No unit owner shall permit any other person  
8 to vote his or her ballot, and any such ballots improperly  
9 cast shall be deemed invalid. A unit owner who needs  
10 assistance in casting the ballot for the reasons stated in s.  
11 101.051 may obtain assistance in casting the ballot. Any unit  
12 owner violating this provision may be fined by the association  
13 in accordance with s. 719.303. The regular election shall  
14 occur on the date of the annual meeting. The provisions of  
15 this subparagraph shall not apply to timeshare cooperatives.  
16 Notwithstanding the provisions of this subparagraph, an  
17 election and balloting are not required unless more candidates  
18 file a notice of intent to run or are nominated than vacancies  
19 exist on the board.

20           2. Any approval by unit owners called for by this  
21 chapter, or the applicable cooperative documents, shall be  
22 made at a duly noticed meeting of unit owners and shall be  
23 subject to all requirements of this chapter or the applicable  
24 cooperative documents relating to unit owner decisionmaking,  
25 except that unit owners may take action by written agreement,  
26 without meetings, on matters for which action by written  
27 agreement without meetings is expressly allowed by the  
28 applicable cooperative documents or any Florida statute which  
29 provides for the unit owner action.

30           3. Unit owners may waive notice of specific meetings  
31 if allowed by the applicable cooperative documents or any

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 Florida statute. If authorized by the bylaws, notice of  
2 meetings of the board of administration, shareholder meetings,  
3 except shareholder meetings called to recall board members  
4 under paragraph (f), and committee meetings may be given by  
5 electronic transmission to unit owners who consent to receive  
6 notice by electronic transmission.

7         4. Unit owners shall have the right to participate in  
8 meetings of unit owners with reference to all designated  
9 agenda items. However, the association may adopt reasonable  
10 rules governing the frequency, duration, and manner of unit  
11 owner participation.

12         5. Any unit owner may tape record or videotape  
13 meetings of the unit owners subject to reasonable rules  
14 adopted by the division.

15         6. Ten percent of the total voting interests in a  
16 cooperative association, or six unit owners, whichever is  
17 greater, may petition the division to appoint an election  
18 monitor to attend the annual meeting of the shareholders and  
19 conduct the election of directors. The division shall appoint  
20 a division employee, a person or persons specializing in  
21 cooperative election monitoring, or an attorney licensed to  
22 practice in this state as the election monitor. All costs  
23 associated with the election monitoring process shall be paid  
24 by the association. The division shall adopt a rule  
25 establishing procedures for the appointment of election  
26 monitors and the scope and extent of the monitor's role in the  
27 election process.

28  
29 Notwithstanding subparagraphs (b)2. and (d)1., an association  
30 may, by the affirmative vote of a majority of the total voting  
31 interests, provide for a different voting and election

Bill No. SB 1938

Amendment No. \_\_\_\_ Barcode 205488

1 procedure in its bylaws, which vote may be by a proxy  
 2 specifically delineating the different voting and election  
 3 procedures. The different voting and election procedures may  
 4 provide for elections to be conducted by limited or general  
 5 proxy.

6  
 7 (Redesignate subsequent sections.)

8  
 9

10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 1, line 9, after the semicolon,

13

14 insert:

15 amending ss. 718.112, 719.106, F.S.; providing  
 16 for unit owners or shareholders to petition the  
 17 Division of Florida Land Sales, Condominiums,  
 18 and Mobile Homes of the Department of Business  
 19 and Professional Regulation to appoint an  
 20 election monitor to attend the annual  
 21 association meeting and conduct the election of  
 22 directors; providing for the adoption of rules;

23  
 24  
 25  
 26  
 27  
 28  
 29  
 30  
 31