

By Senator Geller

31-1823-04

1 A bill to be entitled
2 An act relating to condominium and cooperative
3 associations; amending ss. 718.112, 719.106,
4 F.S.; providing for unit owners or shareholders
5 to petition the Division of Florida Land Sales,
6 Condominiums, and Mobile Homes of the
7 Department of Business and Professional
8 Regulation to appoint an election monitor to
9 attend the annual association meeting and
10 supervise the election of directors; providing
11 for the adoption of rules; providing an
12 effective date.

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

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16 Section 1. Paragraph (d) of subsection (2) of section
17 718.112, Florida Statutes, is amended to read:

18 718.112 Bylaws.--

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

22 (d) Unit owner meetings.--

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

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

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

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

26 3. The members of the board shall be elected by
27 written ballot or voting machine. Proxies shall in no event be
28 used in electing the board, either in general elections or
29 elections to fill vacancies caused by recall, resignation, or
30 otherwise, unless otherwise provided in this chapter. Not less
31 than 60 days before a scheduled election, the association

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

1 person to vote his or her ballot, and any such ballots
2 improperly cast shall be deemed invalid, provided any unit
3 owner who violates this provision may be fined by the
4 association in accordance with s. 718.303. A unit owner who
5 needs assistance in casting the ballot for the reasons stated
6 in s. 101.051 may obtain assistance in casting the ballot. The
7 regular election shall occur on the date of the annual
8 meeting. The provisions of this subparagraph shall not apply
9 to timeshare condominium associations. Notwithstanding the
10 provisions of this subparagraph, an election is not required
11 unless more candidates file notices of intent to run or are
12 nominated than board vacancies exist.

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

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

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

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

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

24 9. Ten percent of the total voting interests in a
25 condominium association, or six unit owners, whichever is
26 greater, may petition the division to appoint an election
27 monitor to attend the annual meeting of the unit owners and
28 supervise the election of directors. The division may appoint
29 a division employee or an attorney licensed to practice in
30 this state as the election monitor or the board may retain an
31 attorney licensed to practice in this state to serve as the

1 election monitor. All costs associated with the election
2 monitoring process shall be paid by the association. The
3 division shall, by rule, establish procedures for the
4 appointment of election monitors and the scope and extent of
5 such monitor's role in the election process.

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

15 Section 2. Paragraph (d) of subsection (1) of section
16 719.106, Florida Statutes, is amended to read:

17 719.106 Bylaws; cooperative ownership.--

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

21 (d) Shareholder meetings.--There shall be an annual
22 meeting of the shareholders. All members of the board of
23 administration shall be elected at the annual meeting unless
24 the bylaws provide for staggered election terms or for their
25 election at another meeting. Any unit owner desiring to be a
26 candidate for board membership shall comply with subparagraph
27 1. The bylaws shall provide the method for calling meetings,
28 including annual meetings. Written notice, which notice shall
29 incorporate an identification of agenda items, shall be given
30 to each unit owner at least 14 days prior to the annual
31 meeting and shall be posted in a conspicuous place on the

1 cooperative property at least 14 continuous days preceding the
2 annual meeting. Upon notice to the unit owners, the board
3 shall by duly adopted rule designate a specific location on
4 the cooperative property upon which all notice of unit owner
5 meetings shall be posted. In lieu of or in addition to the
6 physical posting of notice of any meeting of the shareholders
7 on the cooperative property, the association may, by
8 reasonable rule, adopt a procedure for conspicuously posting
9 and repeatedly broadcasting the notice and the agenda on a
10 closed-circuit cable television system serving the cooperative
11 association. However, if broadcast notice is used in lieu of a
12 notice posted physically on the cooperative property, the
13 notice and agenda must be broadcast at least four times every
14 broadcast hour of each day that a posted notice is otherwise
15 required under this section. When broadcast notice is
16 provided, the notice and agenda must be broadcast in a manner
17 and for a sufficient continuous length of time so as to allow
18 an average reader to observe the notice and read and
19 comprehend the entire content of the notice and the agenda.
20 Unless a unit owner waives in writing the right to receive
21 notice of the annual meeting, the notice of the annual meeting
22 shall be sent by mail, hand delivered, or electronically
23 transmitted to each unit owner. An officer of the association
24 shall provide an affidavit or United States Postal Service
25 certificate of mailing, to be included in the official records
26 of the association, affirming that notices of the association
27 meeting were mailed, hand delivered, or electronically
28 transmitted, in accordance with this provision, to each unit
29 owner at the address last furnished to the association.
30 1. After January 1, 1992, the board of administration
31 shall be elected by written ballot or voting machine. Proxies

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

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

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

29 3. Unit owners may waive notice of specific meetings
30 if allowed by the applicable cooperative documents or any
31 Florida statute. If authorized by the bylaws, notice of

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

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

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

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

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

1 specifically delineating the different voting and election
2 procedures. The different voting and election procedures may
3 provide for elections to be conducted by limited or general
4 proxy.

5 Section 3. This act shall take effect July 1, 2004.

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SENATE SUMMARY

Provides for condominium unit owners or cooperative
shareholders to petition the Division of Florida Land
Sales, Condominiums, and Mobile Homes to appoint an
election monitor to supervise the election of directors.
Provides for the adoption of rules.