

Committee Substitute for House Bill No. 383

An act relating to homeowners' associations, condominium associations, mobile homeowners' associations, cooperative associations, and cooperative not-for-profit associations; amending ss. 607.0802 and 617.0802, F.S.; providing that certain persons may be deemed members of the association and eligible to serve as a director of a condominium association, cooperative association, homeowners' association, or mobile homeowners' association under certain circumstances; amending s. 617.0601, F.S.; providing that certain provisions in bylaws, rules, or other regulations are void; amending s. 617.301, F.S.; redefining the term "homeowners' association" for the purposes of the Florida Not For Profit Corporation Act to include a mobile home subdivision; providing that provisions currently governed by the act relating to the purpose and scope of homeowners' associations, powers and duties, right of owners to peaceably assemble, meetings, transition of homeowners' associations' control in a community, assessments and charges, agreements, recreational leaseholds, dispute resolutions, and covenants would apply to mobile home subdivisions; amending s. 719.103, F.S.; defining the terms "special assessment," "voting certificate," and "voting interests" for the purposes of the Cooperative Act; amending s. 719.1035, F.S.; providing that all provisions of the cooperative documents are enforceable equitable servitudes, run with the land, and are effective until the cooperative is terminated; amending s. 719.104, F.S.; revising language with respect to commingling; providing for easements; amending s. 719.1055, F.S.; revising the amount of votes necessary to amend the cooperative documents; providing additional requirements with respect to amendments; amending s. 719.106, F.S.; providing requirements with respect to insurance and fidelity bonds; creating s. 719.115, F.S.; providing limitations on liability of unit owners; creating s. 723.0751, F.S.; providing for membership in mobile homeowners' association in certain circumstances; amending ss. 849.085 and 849.0931, F.S.; including cooperatives, residential subdivisions, cooperative associations, and homeowners' associations as defined in s. 617.301, F.S., within the provisions of law relating to penny-ante games and including cooperative associations and homeowners' associations as defined in s. 617.301, F.S., within the provisions of law relating to bingo; providing an effective date.

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

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

607.0802 Qualifications of directors.—

(1) Directors must be natural persons who are 18 years of age or older but need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of

incorporation or bylaws may prescribe additional qualifications for directors.

(2) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association, or mobile homeowners' association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a beneficiary as defined in s. 737.303(4)(b) of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the association and eligible to serve as a director of the condominium association, cooperative association, homeowners' association, or mobile homeowners' association, provided that said beneficiary occupies the unit, parcel, or mobile home.

Section 2. Subsection (7) is added to section 617.0601, Florida Statutes, to read:

617.0601 Members, generally.—

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

Section 3. Section 617.0802, Florida Statutes, is amended to read:

617.0802 Qualifications of directors.—

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

(2) In the event that the eligibility to serve as a member of the board of directors of a condominium association, cooperative association, homeowners' association, or mobile homeowners' association is restricted to membership in such association and membership is appurtenant to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a beneficiary as defined in s. 737.303(4)(b) of a trust which owns a unit, parcel, or mobile home shall be deemed a member of the association and eligible to serve as a director of the condominium association, cooperative association, homeowners' association, or mobile homeowners' association, provided that said beneficiary occupies the unit, parcel, or mobile home.

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

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

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

Section 5. Subsections (22) and (23) of section 719.103, Florida Statutes, 1998 Supplement, are renumbered as subsections (23) and (24), respectively, and new subsections (22), (25), and (26) are added to said section to read:

719.103 Definitions.—As used in this chapter:

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

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

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

Section 6. Section 719.1035, Florida Statutes, 1998 Supplement, is amended to read:

719.1035 Creation of cooperatives.—

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

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

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

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

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

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

Section 8. Subsections (2) and (3) of section 719.1055, Florida Statutes, are amended and subsection (4) is added to said section to read:

719.1055 Amendment of cooperative documents; alteration and acquisition of property.—

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

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

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

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

(b) No provision of the cooperative documents shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of the cooperative documents shall contain the full text of the provision to be amended, new words shall be inserted in the text and underlined, and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following language: "Substantial rewording of document. See provision _____ for present text."

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

Section 9. Paragraph (k) of subsection (1) of section 719.106, Florida Statutes, 1998 Supplement, is amended to read:

719.106 Bylaws; cooperative ownership.—

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

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

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

719.115 Limitation of liability.—

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

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

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

Section 11. Section 723.0751, Florida Statutes, is created to read:

723.0751 Mobile home subdivision homeowners' association.—

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

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

(3) In the event that the owners of lots in a mobile home subdivision share common areas, recreational facilities, roads, and other amenities with the owners of mobile homes in a mobile home park and the mobile home owners have created a mobile homeowners' association pursuant to ss. 723.075-723.079, said mobile homeowners' association shall be the authorized representative of owners of lots in said mobile home subdivision provided:

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

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

Section 12. Paragraph (b) of subsection (2) and subsection (5) of section 849.085, Florida Statutes, are amended to read:

849.085 Certain penny-ante games not crimes; restrictions.—

(2) As used in this section:

(b) " Dwelling " means residential premises owned or rented by a participant in a penny-ante game and occupied by such participant or the common elements or ~~common recreational~~ common recreational areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-

ante game is a unit owner, or the facilities of an organization which is tax exempt under s. 501(c)(7) of the Internal Revenue Code. The term "dwelling" also includes a college dormitory room or the common recreational area of a college dormitory or a publicly owned community center owned by a municipality or county.

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

Section 13. Subsection (4) and paragraph (e) of subsection (11) of section 849.0931, Florida Statutes, are amended to read:

849.0931 Bingo authorized; conditions for conduct; permitted uses of proceeds; limitations.—

(4) The right of a condominium association, a cooperative association, a homeowners' association as defined in s. 617.301, a mobile home owners' association, a group of residents of a mobile home park as defined in chapter 723, or a group of residents of a mobile home park or recreational vehicle park as defined in chapter 513 to conduct bingo is conditioned upon the return of the net proceeds from such games to players in the form of prizes after having deducted the actual business expenses for such games for articles designed for and essential to the operation, conduct, and playing of bingo. Any net proceeds remaining after paying prizes may be donated by the association to a charitable, nonprofit, or veterans' organization which is exempt from federal income tax under the provisions of s. 501(c) of the Internal Revenue Code to be used in such recipient organization's charitable, civic, community, benevolent, religious, or scholastic works or similar activities or, in the alternative, such remaining proceeds shall be used as specified in subsection (3).

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

(e) With respect to bingo games conducted by a condominium association, a cooperative association, a homeowners' association as defined in s. 617.301, a mobile home owners' association, a group of residents of a mobile home park as defined in chapter 723, or a group of residents of a mobile home park or recreational vehicle park as defined in chapter 513, property owned by the association, property owned by the residents of the mobile home park or recreational vehicle park, or property which is a common area located within the condominium, mobile home park, or recreational vehicle park.

Section 14. This act shall take effect upon becoming a law.

Approved by the Governor June 18, 1999.

Filed in Office Secretary of State June 18, 1999.