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LEGISLATIVE ACTION

Senate

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House

The Committee on Regulated Industries (Hutson) recommended the following:

Senate Amendment

Delete lines 200 - 503

and insert:

elected ~~or appointed~~ director shall:

(I) Certify by affidavit ~~in writing~~ to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability;



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11 and that he or she will faithfully discharge his or her
12 fiduciary responsibility to the association's members; and. ~~In~~
13 ~~lieu of this written certification, within 90 days after being~~
14 ~~elected or appointed to the board, the newly elected or~~
15 ~~appointed director may~~

16 (II) Submit a certificate of having satisfactorily
17 completed the educational curriculum administered by a division-
18 approved condominium education provider within 1 year before or
19 90 days after the date of election or appointment. The affidavit
20 and written certification ~~or~~ educational certificate is valid
21 and does not have to be resubmitted as long as the director
22 serves on the board without interruption.

23
24 However, a director who is newly appointed by a developer must
25 submit only the affidavit required in sub-sub-subparagraph (I).

26 A director of an association of a residential condominium who
27 fails to timely file the affidavit and written certification ~~or~~
28 educational certificate, if applicable, is suspended from
29 service on the board until he or she complies with this sub-
30 subparagraph. The board may temporarily fill the vacancy during
31 the period of suspension. The secretary shall require ~~cause~~ the
32 association to retain a director's affidavit and written
33 ~~certification~~ ~~or~~ educational certificate for inspection by the
34 members for 5 years after a director's election or the duration
35 of the director's uninterrupted tenure, whichever is longer.
36 Failure to have such affidavit and written certification ~~or~~
37 educational certificate on file does not affect the validity of
38 any board action.

39 c. Any challenge to the election process must be commenced



40 within 60 days after the election results are announced.

41 5. Any approval by unit owners called for by this chapter
42 or the applicable declaration or bylaws, including, but not
43 limited to, the approval requirement in s. 718.111(8), must be
44 made at a duly noticed meeting of unit owners and is subject to
45 all requirements of this chapter or the applicable condominium
46 documents relating to unit owner decisionmaking, except that
47 unit owners may take action by written agreement, without
48 meetings, on matters for which action by written agreement
49 without meetings is expressly allowed by the applicable bylaws
50 or declaration or any law that provides for such action.

51 6. Unit owners may waive notice of specific meetings if
52 allowed by the applicable bylaws or declaration or any law.
53 Notice of meetings of the board of administration, unit owner
54 meetings, except unit owner meetings called to recall board
55 members under paragraph (j), and committee meetings may be given
56 by electronic transmission to unit owners who consent to receive
57 notice by electronic transmission. A unit owner who consents to
58 receiving notices by electronic transmission is solely
59 responsible for removing or bypassing filters that block receipt
60 of mass e-mails sent to members on behalf of the association in
61 the course of giving electronic notices.

62 7. Unit owners have the right to participate in meetings of
63 unit owners with reference to all designated agenda items.
64 However, the association may adopt reasonable rules governing
65 the frequency, duration, and manner of unit owner participation.

66 8. A unit owner may tape record or videotape a meeting of
67 the unit owners subject to reasonable rules adopted by the
68 division.



69 9. Unless otherwise provided in the bylaws, any vacancy
70 occurring on the board before the expiration of a term may be
71 filled by the affirmative vote of the majority of the remaining
72 directors, even if the remaining directors constitute less than
73 a quorum, or by the sole remaining director. In the alternative,
74 a board may hold an election to fill the vacancy, in which case
75 the election procedures must conform to sub-subparagraph 4.a.
76 unless the association governs 10 units or fewer and has opted
77 out of the statutory election process, in which case the bylaws
78 of the association control. Unless otherwise provided in the
79 bylaws, a board member appointed or elected under this section
80 shall fill the vacancy for the unexpired term of the seat being
81 filled. Filling vacancies created by recall is governed by
82 paragraph (j) and rules adopted by the division.

83 10. This chapter does not limit the use of general or
84 limited proxies, require the use of general or limited proxies,
85 or require the use of a written ballot or voting machine for any
86 agenda item or election at any meeting of a timeshare
87 condominium association or nonresidential condominium
88 association.

89
90 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
91 association of 10 or fewer units may, by affirmative vote of a
92 majority of the total voting interests, provide for different
93 voting and election procedures in its bylaws, which may be by a
94 proxy specifically delineating the different voting and election
95 procedures. The different voting and election procedures may
96 provide for elections to be conducted by limited or general
97 proxy.



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98 Section 2. Paragraph (d) of subsection (1) of section
99 719.106, Florida Statutes, is amended to read:

100 719.106 Bylaws; cooperative ownership.—

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

104 (d) *Shareholder meetings*.—There shall be an annual meeting
105 of the shareholders. All members of the board of administration
106 shall be elected at the annual meeting unless the bylaws provide
107 for staggered election terms or for their election at another
108 meeting. Any unit owner desiring to be a candidate for board
109 membership must comply with subparagraph 1. The bylaws must
110 provide the method for calling meetings, including annual
111 meetings. Written notice, which must incorporate an
112 identification of agenda items, shall be given to each unit
113 owner at least 14 days before the annual meeting and posted in a
114 conspicuous place on the cooperative property at least 14
115 continuous days preceding the annual meeting. Upon notice to the
116 unit owners, the board must by duly adopted rule designate a
117 specific location on the cooperative property upon which all
118 notice of unit owner meetings are posted. In lieu of or in
119 addition to the physical posting of the meeting notice, the
120 association may, by reasonable rule, adopt a procedure for
121 conspicuously posting and repeatedly broadcasting the notice and
122 the agenda on a closed-circuit cable television system serving
123 the cooperative association. However, if broadcast notice is
124 used in lieu of a posted notice, the notice and agenda must be
125 broadcast at least four times every broadcast hour of each day
126 that a posted notice is otherwise required under this section.



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127 If broadcast notice is provided, the notice and agenda must be
128 broadcast in a manner and for a sufficient continuous length of
129 time to allow an average reader to observe the notice and read
130 and comprehend the entire content of the notice and the agenda.
131 In addition to any of the authorized means of providing notice
132 of a meeting of the shareholders, the association may, by rule,
133 adopt a procedure for conspicuously posting the meeting notice
134 and the agenda on a website serving the cooperative association
135 for at least the minimum period of time for which a notice of a
136 meeting is also required to be physically posted on the
137 cooperative property. Any rule adopted shall, in addition to
138 other matters, include a requirement that the association send
139 an electronic notice in the same manner as a notice for a
140 meeting of the members, which must include a hyperlink to the
141 website where the notice is posted, to unit owners whose e-mail
142 addresses are included in the association's official records.
143 Unless a unit owner waives in writing the right to receive
144 notice of the annual meeting, the notice of the annual meeting
145 must be sent by mail, hand delivered, or electronically
146 transmitted to each unit owner. An officer of the association
147 must provide an affidavit or United States Postal Service
148 certificate of mailing, to be included in the official records
149 of the association, affirming that notices of the association
150 meeting were mailed, hand delivered, or electronically
151 transmitted, in accordance with this provision, to each unit
152 owner at the address last furnished to the association.

153 1. The board of administration shall be elected by written
154 ballot or voting machine. A proxy may not be used in electing
155 the board of administration in general elections or elections to



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156 fill vacancies caused by recall, resignation, or otherwise
157 unless otherwise provided in this chapter.

158 a. At least 60 days before a scheduled election, the
159 association shall mail, deliver, or transmit, whether by
160 separate association mailing, delivery, or electronic
161 transmission or included in another association mailing,
162 delivery, or electronic transmission, including regularly
163 published newsletters, to each unit owner entitled to vote, a
164 first notice of the date of the election. Any unit owner or
165 other eligible person desiring to be a candidate for the board
166 of administration must give written notice to the association at
167 least 40 days before a scheduled election. Together with the
168 written notice and agenda as set forth in this section, the
169 association shall mail, deliver, or electronically transmit a
170 second notice of election to all unit owners entitled to vote,
171 together with a ballot that lists all candidates. Upon request
172 of a candidate, the association shall include an information
173 sheet, no larger than 8 1/2 inches by 11 inches, which must be
174 furnished by the candidate at least 35 days before the election,
175 to be included with the mailing, delivery, or electronic
176 transmission of the ballot, with the costs of mailing, delivery,
177 or transmission and copying to be borne by the association. The
178 association is not liable for the contents of the information
179 sheets provided by the candidates. In order to reduce costs, the
180 association may print or duplicate the information sheets on
181 both sides of the paper. The division shall by rule establish
182 voting procedures consistent with this subparagraph, including
183 rules establishing procedures for giving notice by electronic
184 transmission and rules providing for the secrecy of ballots.



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185 Elections shall be decided by a plurality of those ballots cast.
186 There is no quorum requirement. However, at least 20 percent of
187 the eligible voters must cast a ballot in order to have a valid
188 election. A unit owner may not permit any other person to vote
189 his or her ballot, and any such ballots improperly cast are
190 invalid. A unit owner who needs assistance in casting the ballot
191 for the reasons stated in s. 101.051 may obtain assistance in
192 casting the ballot. Any unit owner violating this provision may
193 be fined by the association in accordance with s. 719.303. The
194 regular election must occur on the date of the annual meeting.
195 This subparagraph does not apply to timeshare cooperatives.
196 Notwithstanding this subparagraph, an election and balloting are
197 not required unless more candidates file a notice of intent to
198 run or are nominated than vacancies exist on the board. Any
199 challenge to the election process must be commenced within 60
200 days after the election results are announced.

201 b. Within 90 days after being elected ~~or appointed~~ to the
202 board, each new director shall:

203 (I) Certify by affidavit ~~in writing~~ to the secretary of the
204 association that he or she has read the association's bylaws,
205 articles of incorporation, proprietary lease, and current
206 written policies; that he or she will work to uphold such
207 documents and policies to the best of his or her ability; and
208 that he or she will faithfully discharge his or her fiduciary
209 responsibility to the association's members; and. ~~Within 90 days~~
210 ~~after being elected or appointed to the board, in lieu of this~~
211 ~~written certification, the newly elected or appointed director~~
212 may

213 (II) Submit a certificate of having satisfactorily



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214 completed the educational curriculum administered by an
215 education provider as approved by the division pursuant to the
216 requirements established in chapter 718 within 1 year before or
217 90 days after the date of election or appointment. The
218 educational certificate is valid and does not have to be
219 resubmitted as long as the director serves on the board without
220 interruption.

221
222 However, a director who is newly appointed by a developer must
223 only submit the affidavit required in sub-sub-subparagraph (I).

224 A director who fails to timely file the affidavit and ~~written~~
225 ~~certification or~~ educational certificate, if applicable, is
226 suspended from service on the board until he or she complies
227 with this sub-subparagraph. The board may temporarily fill the
228 vacancy during the period of suspension. The secretary of the
229 association shall require ~~cause~~ the association to retain a
230 director's affidavit and ~~written certification or~~ educational
231 certificate for inspection by the members for 5 years after a
232 director's election or the duration of the director's
233 uninterrupted tenure, whichever is longer. Failure to have such
234 affidavit and ~~written certification or~~ educational certificate
235 on file does not affect the validity of any board action.

236 2. Any approval by unit owners called for by this chapter,
237 or the applicable cooperative documents, must be made at a duly
238 noticed meeting of unit owners and is subject to this chapter or
239 the applicable cooperative documents relating to unit owner
240 decisionmaking, except that unit owners may take action by
241 written agreement, without meetings, on matters for which action
242 by written agreement without meetings is expressly allowed by



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243 the applicable cooperative documents or law which provides for
244 the unit owner action.

245 3. Unit owners may waive notice of specific meetings if
246 allowed by the applicable cooperative documents or law. Notice
247 of meetings of the board of administration, shareholder
248 meetings, except shareholder meetings called to recall board
249 members under paragraph (f), and committee meetings may be given
250 by electronic transmission to unit owners who consent to receive
251 notice by electronic transmission. A unit owner who consents to
252 receiving notices by electronic transmission is solely
253 responsible for removing or bypassing filters that may block
254 receipt of mass emails sent to members on behalf of the
255 association in the course of giving electronic notices.

256 4. Unit owners have the right to participate in meetings of
257 unit owners with reference to all designated agenda items.
258 However, the association may adopt reasonable rules governing
259 the frequency, duration, and manner of unit owner participation.

260 5. Any unit owner may tape record or videotape meetings of
261 the unit owners subject to reasonable rules adopted by the
262 division.

263 6. Unless otherwise provided in the bylaws, a vacancy
264 occurring on the board before the expiration of a term may be
265 filled by the affirmative vote of the majority of the remaining
266 directors, even if the remaining directors constitute less than
267 a quorum, or by the sole remaining director. In the alternative,
268 a board may hold an election to fill the vacancy, in which case
269 the election procedures must conform to the requirements of
270 subparagraph 1. unless the association has opted out of the
271 statutory election process, in which case the bylaws of the



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272 association control. Unless otherwise provided in the bylaws, a
273 board member appointed or elected under this subparagraph shall
274 fill the vacancy for the unexpired term of the seat being
275 filled. Filling vacancies created by recall is governed by
276 paragraph (f) and rules adopted by the division.

277
278 Notwithstanding subparagraphs (b)2. and (d)1., an association
279 may, by the affirmative vote of a majority of the total voting
280 interests, provide for a different voting and election procedure
281 in its bylaws, which vote may be by a proxy specifically
282 delineating the different voting and election procedures. The
283 different voting and election procedures may provide for
284 elections to be conducted by limited or general proxy.

285 Section 3. Subsection (1) of section 720.3033, Florida
286 Statutes, is amended to read:

287 720.3033 Officers and directors.—

288 (1) (a) Within 90 days after being elected ~~or appointed~~ to
289 the board of a homeowners' association with at least 10 parcels,
290 each director shall:

291 1. Certify by affidavit in writing to the secretary of the
292 association that he or she has read the association's
293 declaration of covenants, articles of incorporation, bylaws, and
294 current written rules and policies; that he or she will work to
295 uphold such documents and policies to the best of his or her
296 ability; and that he or she will faithfully discharge his or her
297 fiduciary responsibility to the association's members; and
298 ~~Within 90 days after being elected or appointed to the board, in~~
299 ~~lieu of such written certification, the newly elected or~~
300 ~~appointed director may~~



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301 2. Submit a certificate of having satisfactorily completed
302 the educational curriculum administered by a division-approved
303 education provider within 1 year before or 90 days after the
304 date of election or appointment.

305 (b) A director who is newly appointed by a developer must
306 only submit the affidavit required in subparagraph (a)1.

307 (c) The affidavit and ~~written certification~~ or educational
308 certificate are ~~is~~ valid for the uninterrupted tenure of the
309 director on the board. A director who does not timely file the
310 affidavit and ~~written certification~~ or educational certificate,
311 if applicable, is ~~shall be~~ suspended from the board until he or
312 she complies with the requirement. The board may temporarily
313 fill the vacancy during the period of suspension.

314 (d) ~~(e)~~ The association shall retain each director's
315 affidavit