

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 1013 (CS/CS/SB 1196)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Civil Justice Subcommittee; Artiles (Judiciary; Community Affairs; Bennett)	106 Y's	10 N's
COMPANION BILLS:	CS/CS/SB 1196	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 1013 passed the House on February 23, 2012, and subsequently passed the Senate on March 8, 2012.

The common law implied warranty of fitness and merchantability or habitability related to the purchase of improved real estate purchased from the builder applies to buildings and other improvements which are affixed to the real property, as opposed to fixtures that can be removed from the real property without damage to the premises.

A recent District Court of Appeal (DCA) decision expanded the common law implied warranty of fitness and merchantability or habitability to off-site improvements, such as roads and drainage areas within a subdivision. This opinion is contrary to a previous Florida Supreme Court opinion. This bill provides that the implied warranty of fitness and merchantability or habitability does not include off-site improvements.

This bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on April 27, 2012, ch. 2012-161, Laws of Florida. The effective date of the bill is July 1, 2012, and applies to all cases accruing before, pending on, or filed after that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

In general, in an exchange between a buyer and a seller, the seller conveys to the buyer with either an express or an implied warranty of fitness and merchantability.¹ Florida has adopted the Uniform Commercial Code (UCC), which provides an implied warranty of merchantability for the sale of goods.² However, the UCC does not apply to the sale of real property, and furthermore, it does not apply to affixed buildings upon real property.³

Florida courts have created a common law implied warranty of fitness and merchantability for the purchase of real estate.⁴ For the warranty to apply, there must be privity between the builder and the first purchaser.⁵ This common law implied warranty applies to realty which is affixed to the real property, as opposed to fixtures that can be removed from the real property without damage to the premises.⁶ For example, a window unit air conditioner is a fixture, while a central air system is realty.⁷ In another case, a court decided that a seawall abutting a lot is not covered by the implied warranty.⁸

Florida courts have previously ruled that an implied warranty only applies to first purchasers of real estate in Florida and is extended only to the construction of a home or other improvements immediately supporting the residence.⁹ That was understood to be the law until recently, when a conflicting decision in the 5th DCA held that roads and drainage ditches of a subdivision were within the scope of the common law implied warranty of fitness and merchantability.¹⁰ This decision extended the doctrine beyond what the Supreme Court had previously allowed and directly conflicted with a prior DCA decision, which followed the Supreme Court's reasoning. The 5th DCA case noted, "[w]e also reject the Developer's argument that extending the implied warranties is a matter for the legislature. In the absence of a legislative pronouncement, we are free to apply common law, and this is a case of application of common law warranties."¹¹

Effects of Proposed Changes

This bill creates s. 553.835, F.S., within the Florida Building Codes Act. This bill contains a Legislative finding that courts have reached different conclusions concerning the scope and extent of the common law doctrine of implied warranty of fitness and merchantability or habitability for improvements immediately supporting the structure of a new home. The bill proclaims the Legislature's intent to affirm the limits to the doctrine of implied warranty of fitness and merchantability or habitability associated with the construction of a new home.

The bill defines "off-site improvement" as the street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is not located on or under the lot on which a new home is

¹ See, e.g., s. 672.301, F.S., *et. seq.*, the Florida Uniform Commercial Code regarding general obligation and construction of contract.

² Section 672.314, F.S.

³ Section 672.105, F.S., defines "goods" as all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale. . ."

⁴ *Gable v. Silver*, 258 So.2d 11 (Fla. 4th DCA 1972).

⁵ *Strathmore Riverside Villas Condominium Ass'n, Inc. v. Paver Development Corp.*, 369 So.2d 971 (Fla. 2d DCA 1979).

⁶ *Id.* at 14.

⁷ *Id.*

⁸ *Conklin v. Hurley*, 428 So.2d 654 (Fla. 1983).

⁹ *Port Sewall Harbor & Tennis Club Owners Ass'n v. First Fed. S. & L. Ass'n.*, 463 So.2d 530, 531 (Fla. 4th DCA 1985).

¹⁰ *Lakeview Reserve Homeowners et. al. v. Maronda Homes, Inc., et. al.*, 48 So.3d 902, 908 (Fla. 5th DCA 2010).

¹¹ *Id.* at 909. The Supreme Court has jurisdiction due to a certified conflict and heard oral arguments on December 6, 2011, to resolve the issue, however, a decision has not yet been released.

constructed, except such improvements that are shared by and part of the overall structure of two or more separately owned homes that are attached, if such improvements affect the fitness and merchantability or habitability of one or more of the other adjoining structures. "Off-site improvement" also includes the street, road, driveway, sidewalk, drainage, utilities, or any other improvement or structure that is located on or under the lot but that does not immediately and directly support the habitability of the home itself.

The bill provides that there is no cause of action in law or equity for the purchaser of a home or to a homeowners' association based upon the doctrine of implied warranty of fitness and merchantability or habitability for off-site improvements, except as otherwise provided by statute, with specific reference to ss. 718.203 and 719.203, F.S., relating to condominiums and cooperatives.

The bill contains a severability clause.

The bill provides an effective date of July 1, 2012, and applies retroactively to all cases accruing before, pending on, or filed after the effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.