

STORAGE NAME: h3193s2.ca

DATE: April 5, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/CS/HB 3193

RELATING TO: Homeowners' Associations

SPONSOR(S): Committees on Community Affairs & Real Property & Probate & Representative Starks

COMPANION BILL(S): SB 544 (s), HB 4129 (c), and SB 2068 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE 5 YEAS 0 NAYS
 - (2) COMMUNITY AFFAIRS YEAS 7 NAYS 0
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

CS/HB 3913 makes the following changes to the statutes governing mandatory homeowners' associations:

- ▶ provides that reserve and operating funds of the association are to be held separately by the developer and prohibits commingling of association funds with the developer's funds or with those of another association;
- ▶ provides for delivery of specified documents by the developer to the association members at the time the members are entitled to assume control of the association;
- ▶ prohibits certain clauses in homeowners' association governing documents;
- ▶ requires notice that certain documents are available in the record office in the county where the property is located; and
- ▶ requires that a contract for sale must refer and include the disclosure summary and must also include a statement that the potential buyer should not execute the contract until they have received and read the disclosure summary.

This bill should not have a fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 94-350, Laws of Florida, required the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation to conduct a study concerning "laws governing mandatory associations and residential subdivisions" and to report to the Legislature. The division was directed to evaluate any changes which would be "appropriate to protect the interests of consumers." The Legislature was particularly interested in the issues of control of association operations; agreements for recreational amenities, management, and maintenance; and disclosure of covenants concerning real property.

In December 1994, the division produced its *Report on Mandatory Homeowners' Associations* that became the basis for substantive legislation during the 1995 session. Chapter 95-274, Laws of Florida, substantially amended chapter 617, Florida Statutes. Sections 617.301 through 617.312, Florida Statutes, were enacted to govern disclosures to prospective purchasers, association powers and duties, obligations and remedies of members, voting and election procedures, transition of association control, and association contracts. The purposes of these sections are to give statutory recognition to corporations that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions. These statutes do not apply to associations subject to chapters 718, 719, 721, or 723, Florida Statutes.

Subsection 617.301(7), Florida Statutes, defines a "homeowners' association" as a Florida corporation responsible for the operation of a community 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 does not include a community development district or other similar special taxing district created pursuant to statute.

Section 617.303, Florida Statutes, governs an association's powers and duties, including its budget and financial reporting obligations; however, this section does not specifically address the issue of commingling of the associations' funds.

Section 617.307, F.S., provides for the transition of control from the developer to the homeowners' association. The statute authorizes members other than the developer to elect the majority of the board of directors of the association when the earlier of two events occurs:

- (1) Three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the homeowners' association have been conveyed to members; or
- (2) Such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity with regard to the mortgage financing of parcels.

Current law does not provide any requirement that the developer, at his or her expense, deliver a complete list of documents to the board during the transition of control. Nor does it provide a public policy statement or implementing provisions regarding documents or clauses included in homeowners' associations' documents

Section 689.26, Florida Statutes, requires that a prospective purchaser of property in a mandatory homeowners' association be presented a disclosure summary prior to executing a contract for sale. The statute specifies the form and contents of the disclosure summary, and provides that the disclosure be supplied by the developer, or by the parcel owner if the sale is by an owner other than the developer.

B. EFFECT OF PROPOSED CHANGES:

The bill prohibits the commingling of funds held by the developer; requires the developer to provide specified documents to the association at the time the home owners are entitled to take control of the association; provides a list of prohibited clauses in homeowners' association documents and a statement of appropriate public policy; and revises language regarding disclosures to prospective purchasers.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends sections 617.303, 617.307, and 689.26, and creates section 617.3075, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1.

Section 617.303, Florida Statutes, adds a new subsection (8) to address commingling of association funds. The section requires that the developer hold all association funds separately in the name of the association and prohibits the developer from commingling any association funds with his or her funds or with those of another association. In addition, this section requires that the association's reserve and operating funds be maintained separately prior to turnover of the association, except that the association may jointly invest reserve funds as long as they are accounted for separately.

Section 2.

Section 617.307, Florida Statutes, adds a new subsection (3) to require the developer, at his or her expense, to deliver a complete list of association documents to the board at the time of transition.

Section 3.

Section 617.3075, Florida Statutes, creates a prohibition to include the following types of clauses within an association's governing documents:

- authorizing the developer to unilaterally make changes to the homeowners' association documents after the transition of control from the developer to the non-developer members;
- prohibiting the homeowners' association from filing a lawsuit against the developer;
or
- authorizing the developer to cast votes in excess of one per lot after the transition of the association to non-developer control.

This section provides that it is the state's public policy that certain documents or declarations are prohibited from inclusion in homeowners' association documents and, if included, are, thereby, declared null and void.

Subsection (2) clarifies that the prohibition applies prospectively to clauses created on or after the effective date of this section.

Section 4.

Section 689.26, Florida Statutes, relates to the disclosure summary required to be given to prospective purchasers of property in an association community. It requires that a statement be included in the disclosure summary informing the purchaser that the

restrictive covenants and association documents are matters of public record and can be obtained from the county records office. The bill also requires that a contract for sale must refer and include the disclosure summary and must also include a statement that the potential buyer should not execute the contract until they have received and read the disclosure summary.

Section 5.

Provides that the bill will take effect October 1 of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The bill requires developers, at the developer's expense, to deliver a list of documents to the board at the time the members are entitled to elect a majority of the board of directors. The developer should have these documents, however, if he or she does not, there will be a cost associated with obtaining the records. For example, a certified copy of the articles of incorporation of the association would cost \$52.50 from the Secretary of State.

2. Direct Private Sector Benefits:

Homeowners' Associations have clearer directions as to handle certain types of funds. Once entitled, such associations can expect to take possession of important documents from the developer within a certain period of time.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

- On March 30, 1998, the House Committee on Community Affairs agreed, without objection, to withdraw one technical amendment and adopt a “strike everything” amendment to CS/HB 3193. Subsequently, the committee passed a committee substitute to CS/HB 3193. The “strike everything” amendment differs from CS/HB 3193 in the following manner:
 - (1) Removes a provision that allows homeowners’ associations to jointly invest operating funds;
 - (2) Removes a provision that specifically determines “when 90 percent of the phase development parcels are conveyed.” This change effectively keeps related existing law intact. Such law provides that the transition of control to the homeowner association happens, in conjunction with other events, three months after 90 percent of the parcels in all phases of the community development that will ultimately be operated by the association have been conveyed to members of the association;
 - (3) Clarifies that developers must turnover all insurance policies “in effect” and a roster of “current” homeowners and their addresses at the time control passes to the homeowner’s association;
 - (4) Adds to the list of documents that developers are required to deliver upon transfer of control a) employment and service contracts in effect, and b) all other contracts in effect to which the association is a party;
 - (5) Removes a provision that gives developers the right to veto any action taken by homeowners’ associations’ from the list of clauses prohibited from inclusion in homeowners’ associations’ documents;
 - (6) Clarifies that it is state public policy that certain documents not be included in homeowners’ association documents, and, if included, are thereby, declared null and void.
 - (7) Provides that the potential buyer to a sales contract should not execute such contract until he or she has received and read certain disclosure information required in the contract; and
 - (8) Removes a provision requiring developers to provide a specific written description of all planned amenities to each potential purchasers.
- The House Committee on Community Affairs proposes a technical amendment to correct a scrivener’s error which was later withdrawn as indicated above.
- The Committee on Real Property & Probate adopted 6 amendments which are incorporated into the committee substitute. Those amendments provide:

The first amendment clarified that the association may jointly invest reserve “and operating” funds.

The second amendment re-wrote the provision relating to phase developments to make it clearer.

The third amendment removed paragraphs (r) and (s) of the bill since the provisions of those paragraphs were covered in paragraphs (l) and (m).

The fourth amendment removed possibly conflicting language which appeared to provide for retroactive effect.

The fifth and sixth amendments added language after the provision which gives buyers the right to cancel the contract within 7 days if certain disclosures are not provided to clarify that the buyer's right to cancel the agreement terminates at closing.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

Legislative Research Director:

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