

STORAGE NAME: h3193s1.rpp

DATE: March 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3193

RELATING TO: Homeowners' Associations

SPONSOR(S): Representative Starks

COMPANION BILL(S): SB 544

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

(1) REAL PROPERTY & PROBATE 5 YEAS 0 NAYS

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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;
- ▶ accelerates the time for transition of the association board from the developer to members in phase communities;
- ▶ 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 provides a voidability period for the buyer if the seller fails to comply with disclosure requirements; and
- ▶ requires the developer to provide a written description of all planned amenities to prospective purchasers and provides a voidability period for the buyer if the developer fails to comply.

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.

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; revises provisions relating to the transition of the homeowners' association from the developer to the home owners; 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 as void for being against 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.

A new subsection (3) is added to section 617.303, Florida Statutes, to address commingling of association funds. The bill 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 and operating funds as long as they are accounted for separately.

Section 2.

Section 617.307, Florida Statutes, is amended to accelerate the transition of the association from the developer to its members in phase communities. The language is changed to allow transition of control of the board of directors three months after 90 percent of the parcels have been conveyed to members. For purposes of determining when 90 percent of the parcels have been conveyed, only such parcels as have been platted, had a site plan approved, were approved for land use, or were otherwise approved by the appropriate governmental authority, prior to the sale of the first parcel is to be considered. This amendment addresses the issue of large developments which are platted and sold in phases over time, allowing for the transition of control upon the conveyance of 90 percent of a phase, rather than the entire development. A new subsection (3) is added to require the developer, at his or her cost, to deliver a complete list of association documents to the board at the time of transition.

This provision could result in some difficulty for developers to market and show lots and homes. For example, if a homeowner's association in an early phase votes to preclude signs or model homes, this could impede the developer's ability to advertise other lots or homes.

Section 3.

Section 617.3075, Florida Statutes, is created to prohibit the inclusion of the following types of clauses within an association's governing documents:

- authorizing the developer to veto any action taken by the association after the transition of control of the association from the developer to the nondeveloper members;
- authorizing the developer to unilaterally make changes to the homeowners' association documents after the transition of control from the developer to the nondeveloper 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 nondeveloper control.

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 provides a voidability period if the seller fails to provide the disclosure statement required by this section. If the seller fails to comply with the disclosure requirements, the purchaser has the right to cancel the proposed contract for up to seven days following its execution. Finally, new language is added to this section requiring the developer to provide a specific written description of all planned amenities to each prospective purchaser prior to the execution of a written contract, and provides for the same voidability period for failure to comply. The voidability periods end, however, at the time of closing.

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:

Homeowner's will be able to control their associations at an earlier date in phase communities.

In addition, if the seller does not comply with disclosure requirements or if the developer does not comply with the disclosure requirements or does not comply with the requirement to provide a specific written description of all planned amenities to each prospective purchaser, the purchaser has a voidability period of 7 days during which time the purchaser can void the sales contract without penalty or forfeiture of

any deposit or good faith monies advanced. However, the buyer's right to cancel the agreement terminates at closing.

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

N/A

D. FISCAL COMMENTS:

N/A

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:

The Committee on Real Property & Probate adopted 6 amendments which were incorporated into the committee substitute.

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).

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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:

P.K. Jameson

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