

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: January 26, 1998 Revised: 2/3/98 _____

Subject: Homeowners' Associations

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|----------------|-----------------------|------------------|-------------------------|
| 1. | <u>Schmith</u> | <u>Yeatman</u> | <u>CA</u> | <u>Fav/2 amendments</u> |
| 2. | _____ | _____ | <u>JU</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The bill 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 those of another association;
- ▶ Accelerates the time for transition of the association board from developer to members;
- ▶ Provides for delivery of specified documents by the developer to the association members at the time the members assume control of the association;
- ▶ Prohibits certain clauses in homeowners' association governing documents;
- ▶ Requires that notice of the record of associations' documents be included in the Disclosure Summary and provides a penalty for the seller's failure to comply with disclosure requirements; and
- ▶ Requires the developer to provide a written description of all planned amenities to prospective purchasers and provides a penalty for the developer's failure to do so.

This bill substantially amends sections 617.303, 617.307, and 689.26, and creates section 617.3075 of the Florida Statutes.

II. 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. While the division was directed to evaluate any changes which would be “appropriate to protect the interests of consumers,” the Legislature was specifically 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, F.S. Sections 617.302-617.312, F.S., were enacted to govern disclosures to prospective purchasers, association powers and duties, obligations and remedies of members, voting and election procedures, transaction 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, F.S.

Subsection 617.301(7), F.S., 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, F.S., 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, F.S., 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.

III. Effect of Proposed Changes:

The bill makes the following changes to the statutes governing mandatory homeowners' associations:

Section 1 amends s. 617.303, F.S., by creating a new subsection (3) 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. Further, 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 amends s. 617.307, F.S., to accelerate the transition of the association from the developer to its members. The language is changed to allow transition of control on the board of directors three months after 90 percent of the parcels that are platted, have a site plan approved, are approved for land use, or are otherwise approved by the appropriate governmental authority, *prior to the first unit sold*, have been conveyed to members. 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 this transition.

Section 3 creates s. 617.3075, F.S., 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; and
- Authorizing the developer to cast votes in excess of one per lot after the transition of the association to nondeveloper control.

This section declares that it is the public policy of the state to prohibit the inclusion or enforcement of these types of clauses in any association documents which bind the association members. Subsection (2) clarifies that the prohibition applies prospectively to clauses created on or after the effective date of this section.

Section 4 amends s. 689.26, F.S., relating 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 penalty for the seller's failure to provide the disclosure statement required by this section. In that event, the seller 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 penalty for failure to do so.

Section 5 provides an effective date of October 1 of the year in which enacted.

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The language on page 5, lines 9 and 10, could be interpreted to apply the prohibition on certain clauses within homeowners' association documents retroactively. However, the immediately following subsection clarifies that the intent is to apply only prospectively. As these statements appear to contradict one another, perhaps lines 9 and 10 should be deleted from the bill.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Community Affairs:

Addresses the technical deficiency by deleting language which may have been interpreted to apply retroactively that section of the bill prohibiting certain clauses within homeowners' association governing documents.

#2 by Community Affairs:

Authorizes homeowners' associations to amend their bylaws to provide a quorum requirement that is less than a majority of the members.