

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: April 2, 1998 Revised: _____

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>Harkins</u>	<u>Moody</u>	<u>JU</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

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

- It 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;
- It provides for delivery of specified documents by the developer to the association members at the time the members assume control of the association;
- It prohibits, in the governing documents of homeowners' associations, inclusion of certain clauses pertaining to a developer's rights or immunities after transition to the association;
- It requires that the disclosure summary be included in the sales contract along with a provision which informs the buyers not to execute contracts without reading the disclosures; and
- It requires a developer to provide a written description of all planned amenities to prospective purchasers.

The bill amends the following sections of the Florida Statutes: 617.303, 617.307, and 689.26. The bill 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 (the division) 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 an association's 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 ch. 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 chs. 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, 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.

Presently, s. 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.

Presently, s. 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.

Presently, s. 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 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. Additionally, the association's reserve and operating funds must be maintained separately prior to the time at which the developer is to turn control over to the association, except that the association may jointly invest reserve funds as long as they are accounted for separately.

The bill requires the developer, at his or her cost, to deliver a complete list of association documents to the board at the time of this transition.

The bill prohibits inclusion within an association's governing documents of clauses:

- 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 residential lot after the transition of the association to nondeveloper control.

The bill provides 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. The prohibition applies prospectively to clauses created on or after the effective date of this section.

The bill requires that the disclosure summary, which must be given to a prospective parcel owner in a community before sale, include a statement informing the purchaser that the restrictive covenants and association documents are matters of public record and can be obtained from the county records office. It requires all contracts and agreements for sale to include and incorporate a disclosure summary and a statement that buyers should not execute contract until they have received and read the disclosure summary. Finally, the bill requires the developer to provide a specific written description of all planned amenities to each prospective purchaser.

The bill takes effect October 1 of the year in which it is enacted.

IV. Constitutional Issues:

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:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.