

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1634  
 SPONSOR: Senator Fasano  
 SUBJECT: Sale of Real Property/Disclosures  
 DATE: March 24, 2003      REVISED: 03/26/03 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	<u>Cibula</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Under this bill, a disclosure form providing notice of whether there is a requirement to be a member of a homeowners’ association and whether there is an obligation to pay assessments to a homeowners’ association or a municipality must be provided to all prospective purchasers of property in a residential area. The notice requirement provided by the bill, like the existing notice requirement in s. 689.26, F.S., however, does not apply to certain timeshare properties, property located in certain mobile home parks, or property located within an area subject to a condominium association or cooperative association.

This bill substantially amends section 689.26, Florida Statutes.

**II. Present Situation:**

Homeowners’ associations are regulated under ch. 720, F.S. A homeowners’ association is defined as:

a Florida corporation responsible for the operation of a community or a mobile home subdivision 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.*<sup>1</sup>

(Emphasis added.)

<sup>1</sup> Section 720.301(7), F.S.

Currently, a prospective purchaser of property located within an area that is subject to a homeowners' association is required to be provided with the disclosure form prescribed in s. 689.26, F.S. The form provides notice to the prospective purchaser of mandatory membership of the homeowners' association; the existence of restrictive covenants on the property; and the obligation to pay assessments to the association. The disclosure form must be provided to a prospective purchaser by a seller. The disclosure form states in pertinent part:

DISCLOSURE SUMMARY  
FOR  
(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

\*\*\*

6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.

Because membership in a homeowners' association is mandatory by definition under s. 720.301(7), F.S., the disclosure form above does not apply to property located in a residential area where there is an association comprised of homeowners or parcel owners who voluntarily assume the responsibilities of maintaining portions of the residential area. Usually, these associations are incorporated for a specific purpose, such as road paving or neighborhood beautification. Such associations do not have the authority to enforce assessments. All financial contributions to the association are contractual or voluntary. The disclosure form provided in s. 689.26, F.S., also does not apply to property in which membership in a homeowners' association is mandatory but the obligation to pay assessments to the association is voluntary. The disclosure form in s. 689.26, F.S., also does not apply to certain timeshare properties, property located in certain mobile home parks, or property located within an area subject to a condominium association or cooperative association.

### **III. Effect of Proposed Changes:**

Under this bill, a disclosure form providing notice of whether there is a requirement to be a member of a homeowners' association and whether there is an obligation to pay assessments to a homeowners' association or a municipality must be provided to all prospective purchasers of property in a residential area. The notice requirement provided by the bill, like the existing requirement in s. 689.26, F.S., however, does not apply to certain timeshare properties, property

located in certain mobile home parks, or property located within an area subject to a condominium association or cooperative association.

The bill takes effect July 1, 2003.

**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:

Sellers must provide notice to prospective purchasers of property in certain residential areas of the obligation to pay assessments to a municipality.

B. Private Sector Impact:

Sellers of property in certain residential areas will be required to provide prospective purchasers of property with notice of the non-existence of a homeowners' association or the existence of a homeowners' association with voluntary dues.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The catch line for s. 689.26, F.S., should be amended to clarify that the notice is to be provided to all prospective property purchasers.

The notice of assessments to municipalities should be expanded to include a notice of assessments to counties and special districts.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Comprehensive Planning:  
Makes technical and clarifying changes to the bill.

#1 by Commerce, Economic Opportunities, and Consumer Services:  
Requires disclosure to prospective purchasers by realtors or sellers of residential property that property taxes in the year after the sale may be in excess of the property taxes assessed at the time of the sale. (WITH TITLE AMENDMENT)

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---