

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: CS/SB 1402

SPONSOR: Regulated Industries Committee and Senator Fasano

SUBJECT: Conveyances of Land

DATE: March 20, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>CP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill transfers and renumbers s. 689.26, F.S., as s. 720.3085, F.S, and amends the required disclosure. The bill amends the required disclosure clause in s. 720.3085(1)(b), F.S., to include the seller’s representative as one of the persons that can be provided the buyer’s written notice of intent to void the contract.

The bill also provides purchasers the right to void a contract to purchase property in a homeowners’ association within three days of receiving the disclosure summary required under s. 720.3085, F.S, or prior to closing, whichever occurs. The bill provides that this right may not be waived by the purchaser, but that it terminates at closing.

The bill transfers and renumbers s. 689.265, F.S., as s. 720.3086, F.S. The bill amends s. 498.025, F.S., to conform the provision to s. 720.3085, F.S. It also amends s. 498.025(2)(g)4 and (h)4, F.S., to provide that all funds or property paid by the purchaser must be put into escrow until the agreement for deed has been recorded.

This bill would take effect on July 1, 2004.

This bill transfers and renumbers sections 689.26 and 689.265, Florida Statutes, to sections 720.3085 and 720.3086, Florida Statutes, respectively, and substantially amends those sections.

The bill substantially amends section 489.025, Florida Statutes.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.¹

Section 720.301(7), F.S., defines a "homeowners' association" 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. Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 617, F.S., relating to not for profit corporations.

Section 720.301(3), F.S., defines the term "community" to mean:

the real property that is or will be subject to a *declaration of covenants* which is recorded in the county where the property is located. The term "community" includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto.

Section 720.301(4), F.S., defines the terms "declaration of covenants," or "declaration," to mean

a recorded written instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members.

However, not all homeowners' associations are regulated by ch. 720, F.S. "non-mandatory homeowners' associations" are voluntary associations established to provide defined benefits or services to homeowners' who choose to participate. Usually these associations are incorporated for a specific purpose, such as road paving, neighborhood beautification, etc. Such associations do not have the power to enforce assessments unless its members are subject by a contractual obligation.

Community Disclosures

Section 689.26, F.S., requires that a prospective purchaser of property in a community be presented a disclosure summary prior to executing a contract for sale. The intent of the disclosure is to inform prospective buyers that they will be required to become a member of the

¹ See s. 720.302, F.S.

homeowners' association and will be obligated to pay assessments to the association. Chapter 689, F.S., does not define the term "community." Because the provisions of ch. 689, F.S., apply to all land sale transactions, unless otherwise exempted,² this provision generally applicable to both mandatory and non-mandatory homeowners' associations.

Section 689.26, F.S., 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.

The disclosure notice in s. 689.26, F.S., requires sellers to specify whether or not property purchasers will be obligated to be a member of a homeowners' association, to pay assessments to this association, and to pay assessments to the municipality. The notice must also state whether or not the restrictive covenants of the association can be amended with the approval of the membership or, if there is not a mandatory association, the parcel owners. The provision encourages prospective purchasers to refer to the actual governing documents and covenants prior to purchasing the property.

In addition, s. 689.26(1)(b), F.S., requires that the contract for the sale of real property governed by covenants subject to the disclosure summary under s. 689.26, F.S., must contain a voidability clause in the form provided in statute. This clause gives notice that the contract is voidable at the option of the purchaser prior to closing if it does not have the disclosure summary or the disclosure summary is not provided to the purchaser. The clause also allows a buyer to void the contract by delivering written notice of his or her intent to cancel within three days of receiving the disclosure summary or prior to closing, whichever occurs first, to the seller or seller's agent.

Section 689.26(1)(c), F.S., provides that the buyer's right to void the agreement terminates at closing. However, the buyer's right to cancel the contract within three days of receiving the disclosure summary or prior to closing, whichever occurs first, and the buyer's obligation to deliver the written notice of intent to cancel the contract to the seller or seller's agent, are only contractual.

This disclosure requirement does not apply to any condominium,³ cooperative,⁴ vacation or timeshare plan,⁵ mobile home park association,⁶ or to a subdivision registered under ch. 498, F.S.

Reporting Requirements for Mandatory Homeowners' Association Fees

Section 689.265, F.S., establishes a financial reporting requirement for residential subdivisions in which the owners of lots or parcels must pay mandatory maintenance or amenity fees. This reporting requirement is not applicable to amounts paid to homeowners' associations pursuant to ch. 617, F.S.,⁷ condominiums, cooperatives, vacation or timeshare plans, mobile home park associations, or to a amounts paid to local government entities, including special districts.

² See exemptions in s. 689.025, F.S., and discussion *supra*.

³ Chapter 718, F.S.

⁴ Chapter 719, F.S.

⁵ Chapter 721, F.S.

⁶ Chapter 723, F.S.

⁷ The provisions of ch. 617, F.S., relate to corporations not for profit.

Subdivided Land Sale Transactions

Chapter 498, F.S.,⁸ governs the disposition of any interest in subdivided lands, including financial operations entered into by companies and persons regulated by the Florida Uniform Land Sales Practices Law to prevent fraudulent and misleading methods and unsound financing techniques which could detrimentally affect not only remote land purchasers, but also the land sales industry, the public, and the state's economic well-being.⁹

Section 498.005(21), F.S., defines "subdivision" or "subdivided lands" to mean:

- (a) Any contiguous land which is divided or is proposed to be divided for the purpose of disposition into 50 or more lots, parcels, units, or interests; or
- (b) Any land, whether contiguous or not, which is divided or proposed to be divided into 50 or more lots, parcels, units, or interests which are offered as a part of a common promotional plan.

Section 498.022, F.S., provides that it is a third degree felony for any person to offer or dispose of five or more lots, parcels, units, or interests in a subdivision, and to engage in specified fraudulent or misleading practices.

Section 498.025, F.S., exempts certain land sale transactions from the provisions of ch. 498, F.S., except for the provisions of s. 498.022, F.S., certain transactions. Section 498.025(2), F.S., exempts offers or dispositions of interests in lots, parcels, or units contained in a recorded subdivision plat, or resulting from the subdivision of land in accordance with applicable local land development laws and regulations pursuant to part II of ch. 163, F.S., including lots, parcels, units, or interest vested under such part, if certain conditions exist. These conditions include matters related to the contract or purchase or lease¹⁰ and the agreement for deed.¹¹ These conditions include the two following conditions:

- all funds *for* property paid by the purchaser must be put into escrow until the agreement for deed has been recorded;¹² and
- the subdivider must present to the purchaser the disclosure required by s. 689.26, F.S., before the execution of the contract, lease, or agreement for deed.¹³

Homeowners' Association Task Force

The Homeowners' Association Task Force within the Department of Business and Professional Regulation is composed of a cross-section of representatives involved with homeowners' associations. It was created at the Governor's request to harmonize and improve relations between homeowners, homeowners' associations, and other related entities. The task force held

⁸ Section 498.001, F.S., provides that this chapter may be cited as the "Florida Uniform Land Sales Practices Law."

⁹ Id.

¹⁰ Section 498.025(2)(g), F.S.

¹¹ Section 498.025(2)(h), F.S.

¹² See s. 498.025(2)(g)4 and (h)4, F.S.,

¹³ See s. 498.025(2)(g)7 and (h)8, F.S.

monthly meetings throughout the state from September 2003 through its final meeting on January 28, 2004. At its November 14, 2003, meeting, the task force voted to recommend the transfer of the provisions of s. 689.26, F.S., to ch. 720, F.S.¹⁴

III. Effect of Proposed Changes:

Section 1. The bill transfers and renumbers s. 689.26, F.S., as s. 720.3085, F.S. The effect of the transfer is to place the disclosure requirement in the chapter dealing with homeowners' associations. It appears that the effect of this transfer would be to limit the application of the disclosure requirement to parcel owners in communities that are within a homeowners' association. The term "community" in ch. 720, F.S., as informed by the meaning of the terms "declaration of covenants," or "declaration," relates to mandatory homeowners' associations.

The bill amends the required disclosure to specify that property purchasers will be obligated to be a member of a homeowners' association, to pay assessments to this association, and to pay assessments to the municipality. The disclosure is amended to specify the current amount for each assessment. The disclosure is amended to provide that the developer may have the right to amend the restrictive covenants without the approval of the association membership or the approval of the parcel owners. The disclosure is further amended to provide that if the documents are not be recorded, they can be obtained from the developer.

The bill amends the required disclosure clause in s. 720.3085(1)(b), F.S., to include the seller's representative as one of the persons, including the seller or seller's agent, that can be provided the buyer's written notice of intent to void the contract.

The bill also provides a statutory right, in addition to the contractual right contained in the disclosure clause in s. 720.3085(1)(b), F.S., to void the contract within three days of receiving the disclosure summary or prior to closing, whichever occurs first, by delivering written notice to the seller, seller's agent, or seller's representative. The bill provides that this right may not be waived by the purchaser, but that it terminates at closing.

Section 2. The bill transfers and renumbers s. 689.265, F.S., as s. 720.3086, F.S. This transfers the financial reporting requirement of the owners or developers of common areas, recreational facilities, and other parcels serving the lots and parcels in subdivisions to the chapter dealing with homeowners' association. It is unclear whether this transfer will limit the financial reporting requirement only to developers or common area owners in subdivisions governed by a homeowners' association. The statute refers to a reporting requirement of developers or common area owners in subdivisions and does not limit its application to developers or common area owners in subdivisions that are in communities within a homeowners' association.

Section 3. The bill amends s. 498.025, F.S., to conform the reference to s. 689.26, F.S., to s. 720.3085, F.S., in s. 498.025(2)(g)7 and (h)8, F.S. The bill also amends s. 498.025(2)(g)4 and (h)4, F.S., to provide that "all funds *or* property," instead of all funds *for* property" paid by the purchaser must be put into escrow until the agreement for deed has been recorded.

¹⁴ Homeowners' Association Task Force, *Final Report of the Homeowners' Association Task Force*, February 2004. A copy of the report is available on the internet at http://www.myflorida.com/dbpr/os/hot_topics/hoa_taskforce (Website last visited on March 20, 2004.)

Section 4. This bill would take effect on July 1, 2004.

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.