

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 611 w/CS Conveyances of Land  
**SPONSOR(S):** Stargel  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	<u>33 Y, 0 N w/CS</u>	<u>Livingston</u>	<u>Liepshutz</u>
2) <u>Judiciary</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

Chapter 689, F.S., addresses conveyances of land and declarations of trust. It provides, in part, how real estate is conveyed. 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 homeowners' association and will be obligated to pay assessments to the association. Chapter 689, F.S., does not define the term "community." Chapter 689, F.S., applies to all land sale transactions, unless otherwise exempted, and thus these provisions generally apply to both mandatory and non-mandatory 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 is designed to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.

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 bill amends the required disclosure document to specify that purchasers will be required to be a member of a homeowners' association . The amended disclosure must also contain a statement that the purchaser may be obligated to pay special assessments and other special fees. The disclosure is amended to specify the current amount for each assessment.

The bill also provides a statutory right, in addition to the contractual right contained in the disclosure clause, 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.

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.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0611a.br.doc  
**DATE:** April 5, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

Chapter 689, F.S., addresses conveyances of land and declarations of trust by, in part, specifying:

No estate or interest of freehold, or for a term of more than 1 year, or any uncertain interest of, in or out of any messuages, lands, tenements or hereditaments shall be created, made, granted, transferred or released in any other manner than by instrument in writing, signed in the presence of two subscribing witnesses by the party creating, making, granting, conveying, transferring or releasing such estate, interest, or term of more than 1 year, or by the party's agent thereunto lawfully authorized, unless by will and testament, or other testamentary appointment, duly made according to law; and no estate or interest, either of freehold, or of term of more than 1 year, or any uncertain interest of, in, to or out of any messuages, lands, tenements or hereditaments, shall be assigned or surrendered unless it be by instrument signed in the presence of two subscribing witnesses by the party so assigning or surrendering, or by the party's agent thereunto lawfully authorized, or by the act and operation of law.

**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 bill amends the required disclosure document in s. 720.3085(1)(a), F.S., to specify that purchasers will be required to be a member of a homeowners' association. The amended disclosure must also contain a statement that the purchaser may be obligated to pay special assessments and other special fees. 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 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, who 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, 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 and 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.

**Section 3.** The bill amends s. 498.025, F.S., to correct references.

**Section 4.** Effective date - July 1, 2004.

C. SECTION DIRECTORY:

See B. above.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None anticipated.
2. Expenditures:  
None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
NA
2. Expenditures:  
NA

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:  
NA
2. Other:  
None noted.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

The CS amends the required disclosure document to require a statement specifying:

purchasers will be required to be a member of a homeowners' association;

purchasers may be obligated to pay special assessments and other special fees;

the current amount for each assessment;

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; and

if the documents are not recorded, they can be obtained from the developer.