

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>	<u>19 Y, 0 N</u>	<u>DeJesus</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill transfers and renumbers s. 689.26, F.S., as s. 720.3085, F.S., to place the disclosure requirement in the chapter dealing with homeowners' associations and limit the application of the disclosure requirement to parcel owners in communities that are within a homeowners' association.

This 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.

This 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.

Lastly, this bill transfers and renumbers s. 689.265, F.S., as s. 720.3086, F.S., to transfer 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' associations.

This bill appears to have no significant fiscal impact on state or local governments.

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

STORAGE NAME: h0611c.ju.doc
DATE: April 13, 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:

CONVEYANCES OF LAND

Chapter 689, F.S., addresses conveyances of land and declarations of trust. It provides, in part, how real estate is conveyed.¹ A prospective purchaser of property in a community must be presented a disclosure summary² prior to executing a contract for sale.³ 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. The provisions provided under Chapter 689 F.S., apply to *all* land sale transactions, unless otherwise exempted.⁴ Therefore, these provisions generally apply to both mandatory and non-mandatory homeowners' associations.

In addition to a disclosure summary, the contract for the sale of real property governed by covenants subject to the disclosure summary must contain a voidability clause in the form provided in statute.⁵ 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.

The disclosure requirement does not apply to any condominium,⁶ cooperative,⁷ vacation or timeshare plan,⁸ mobile home park association,⁹ or to a subdivision registered under ch. 498, F.S.

¹ See s. 689.01, F.S. (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.)

² See s. 689.26, F.S., 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 and specifies the form and contents of the disclosure summary.

³ See s. 689.26, F.S.

⁴ See s. 689.26(2), F.S.

⁵ See s. 689.26(1)(b), F.S.

⁶ Chapter 718, F.S.

HOMEOWNERS' ASSOCIATIONS

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities¹⁰ in this state, provides procedures for operating homeowners' associations,¹¹ and is designed to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹² However, Chapter 720, F.S. does not regulate all homeowners' associations. "Non-mandatory homeowners' associations" are voluntary associations established to provide defined benefits or services to homeowners who choose to participate.¹³ Usually these associations are incorporated for a specific purpose, such as road paving, neighborhood beautification, and so on. Such associations do not have the power to enforce assessments unless the members are subject by a contractual obligation.

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 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

PROPOSED CHANGES

This 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.

⁷ Chapter 719, F.S.

⁸ Chapter 721, F.S.

⁹ Chapter 723, F.S.

¹⁰ See s. 720.301(3), F.S., defines a "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. It 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.

¹¹ See s. 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.

¹² See s. 720.302(1), F.S.

¹³ See s. 720.302(4), F.S.

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 April 8, 2004).

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.

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.

C. SECTION DIRECTORY:

Section 1. Transfers and renumbers s. 689.26, F.S., as s. 720.3085, F.S., to place the disclosure requirement in the chapter dealing with homeowners' associations; amends the required disclosure document in s. 720.3085(1)(a), F.S.; amends s. 720.3085(1)(b), F.S., to include the seller's representative; provides a statutory right for purchaser to void the contract by delivering written notice within a specific time period and provides that this right may not be waived.

Section 2. Transfers and renumbers s. 689.265, F.S., as s. 720.3086, F.S., to transfer the financial reporting requirement to the chapter dealing with homeowners' associations.

Section 3. Amends s. 498.025, F.S., to correct references.

Section 4. Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill appears to have no significant economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY:

This bill does not appear to provide any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2004, the Committee on Business Regulation amended HB 611 to provide that the disclosure document 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.

This analysis is drafted to the bill as amended.