

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u>      </u>	(Y/N)
ADOPTED AS AMENDED	<u>      </u>	(Y/N)
ADOPTED W/O OBJECTION	<u>      </u>	(Y/N)
FAILED TO ADOPT	<u>      </u>	(Y/N)
WITHDRAWN	<u>      </u>	(Y/N)
OTHER	<u>      </u>	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Spano offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 689.263, Florida Statutes, is created  
 7 to read:

8 689.263 Sale of residential property; disclosure of  
 9 seller's intent to retain subsurface rights.-

10 (1) As used in this section, the term:

11 (a) "Residential property" includes any real estate which,  
 12 at the time of the sale, is zoned for residential use.

13 (b) "Subsurface rights" includes rights to the phosphate,  
 14 minerals, metals, natural gas, petroleum, or oil that is or may  
 15 be in, on, or under any land being transferred to the  
 16 prospective purchaser.

17 (2) A seller who intends to retain any subsurface rights as

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18 part of a contract or deed for the sale of residential property,  
19 or a seller who has previously transferred or has knowledge  
20 concerning the prior transfer of such rights, shall provide to  
21 the prospective purchaser, and the prospective purchaser's real  
22 estate agent if the prospective purchaser is using a real estate  
23 agent, written notification of the property interest that the  
24 seller is seeking to retain or that was previously severed. The  
25 seller, or the seller's agent if applicable, shall notify the  
26 buyer by providing notice under subsection (3) herein at least 3  
27 business days prior to entering into any sales contract for the  
28 purchase of the residential property and must acknowledge  
29 receipt of the written notification by his or her signature.

30 (3) The written notice required under subsection (2) shall  
31 be provided on a sheet of paper that is 8 1/2 inches by 11  
32 inches, shall address no other subject, shall be double-spaced,  
33 and shall include substantially the following information in a  
34 font size of at least 14 points:

35  
36 RETENTION OF SUBSURFACE RIGHTS

37  
38 AS REQUIRED BY FLORIDA LAW, UNDER SECTION 689.263, FLORIDA  
39 STATUTES, ... (SELLER'S NAME) ... HEREBY PROVIDES 3 BUSINESS DAYS'  
40 NOTICE TO ... (PROSPECTIVE PURCHASER'S NAME) ... THAT THE SELLER,  
41 AS PART OF THE TRANSFER OF THE PROPERTY LOCATED AT ... (PROPERTY  
42 ADDRESS) ..., INTENDS TO SEVER, RETAIN, RESERVE, OR OTHERWISE  
43 KEEP CERTAIN SUBSURFACE RIGHTS AS PART OF THE SALE OF THAT

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44 PROPERTY HAS PREVIOUSLY TRANSFERRED SUCH RIGHTS, OR HAS  
45 KNOWLEDGE CONCERNING THE PRIOR TRANSFER OF SUCH RIGHTS. THESE  
46 RIGHTS MAY INCLUDE THE RIGHT TO PHOSPHATE, MINERALS, METALS,  
47 NATURAL GAS, PETROLEUM, OR OIL THAT MIGHT BE IN, ON, OR UNDER  
48 THE PROPERTY.

49  
50 I/WE ACKNOWLEDGE RECEIPT OF THIS NOTICE.

51  
52 (signature of prospective purchaser)

53  
54 (4) A purchaser has 3 business days after the contract is  
55 fully executed to rescind the contract if a seller fails to  
56 provide the notice as required herein. The rescission  
57 notification must be provided in writing to the seller or the  
58 seller's agent, if applicable. If the purchaser rescinds the  
59 contract, the rescission is the purchaser's sole remedy.

60 (5) If a proper notice is not provided to the purchaser  
61 and agent, if applicable, and if the seller retains the  
62 subsurface rights, the severance of the subsurface estate is  
63 voidable by the purchaser. However, if the subsurface rights  
64 were subsequently conveyed by the seller, then the purchaser is  
65 entitled to damages as if the seller failed to provide a notice  
66 as required herein. If a proper notice was not provided to the  
67 purchaser, and if the seller has sold or otherwise transferred  
68 the subsurface rights to a wholly- or partially-owned  
69 subsidiary, the purchaser has a cause of action against the

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70 seller and is entitled to either \$5000 in liquidated damages or  
71 actual damages, whichever is greater, plus all costs of the  
72 action and a reasonable attorney's fee. Relief under this  
73 subsection is the only remedy authorized by law.

74 (6) Jurisdiction and venue for enforcement of this section  
75 is in the circuit court of the county where the subject real  
76 property is located.

77 (7) The failure to give a notice required by this section  
78 shall not affect the title to real property nor affect the  
79 insurability thereof. This subsection does not apply to the  
80 holder of subsurface rights, whose title may be impacted by this  
81 section.

82 Section 2. This act shall take effect July 1, 2014.

83  
84  
85  
86 -----  
87 **T I T L E A M E N D M E N T**

88 Remove everything before the enacting clause and insert:

89 An act relating to residential property sales; creating s.  
90 689.263, F.S.; providing definitions; requiring a seller of  
91 residential property to provide written notification to a  
92 prospective buyer of the seller's intent to retain subsurface  
93 rights; providing the form for such notification; providing for  
94 rescission of a contract under certain circumstances; providing  
95 a cause of action and a remedy for failure to provide a required

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96 notification; specifying jurisdiction and venue for enforcement;  
97 providing that failure to give a notice does not affect the  
98 title the surface estate; providing an effective date.