

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: SB 1224

INTRODUCER: Senators Simmons and Gruters

SUBJECT: Real Estate Conveyances

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Elsesser</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1224 removes a statutory requirement that a lessor's signature on a lease of longer than one year be subscribed by two witnesses.

II. Present Situation:

Section 689.01, F.S., requires that the sale of real property, or the leasing of real property for a term of more than 1 year, be conveyed by a written instrument that is signed by the party conveying the real property, or the party's authorized agent, in the presence of two subscribing witnesses.

In 2019 the Legislature amended s. 689.01, F.S., to provide that the requirement that the instrument conveying property be signed in the presence of two subscribing witnesses may be satisfied by witnesses being present and electronically signing by means of audio-video communication technology.¹

Chapter 692, F.S., provides to corporations an alternative method of conveying real property through a sale or lease. A corporation may instead execute a document sealed with the common or corporate seal that is signed in its name by the president, vice-president, or chief executive officer. This alternative method may not be used by other forms of business organizations such as a limited liability company (LLC).²

Notably, under s. 689.01, F.S., only the lessor's (generally the landlord's) signature must be witnessed. Section 689.01, F.S. operates to ensure that the lessor actually intended to convey the rights as described in the instrument.

¹ Ch. 2019-71, s. 21, Laws of Fla.

² *Skylake Ins. Agency v. NMB Plaza, LLC*, 23 So. 3d 175, 178 (Fla. 3rd DCA 2009).

Both landlords and tenants can be estopped from relying on the two-witness rule as the principles of equity require in an otherwise valid agreement. A landlord, for example, can be estopped from breaking a lease due to a lack of two witnesses where the landlord accepts benefits under the unwitnessed lease and transfers possession to a tenant, and the parties otherwise recognize the instrument as being an effective conveyance.³ Similarly, a tenant can be estopped from breaking the lease for lack of witnesses to a signature where the tenant occupies the conveyed property under the lease (or similar agreement) and makes rental payments under that agreement for two years.⁴

III. Effect of Proposed Changes:

The bill amends s. 689.01(1), F.S., to provide that a written leasehold estate in real property does not require subscribing witnesses. Currently, two subscribing witnesses are required. This change removes a protection afforded to landlords. However, it also streamlines the process by which leaseholds may be conveyed.

This bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³ *Gill v. Livingston*, 29 So. 2d 631, 632 (Fla. 1947); *see also Skylake*, 23 So. 3d at 178.

⁴ *Taylor v. Rosman*, 312 So. 2d 239, 241 (Fla. 3d DCA 1975).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 689.01 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.