

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 Banking and Insurance

BILL: CS/SB 966

INTRODUCER: Banking and Insurance Committee and Senator Burgess

SUBJECT: Assignment of Home Warranty Contracts

DATE: January 29, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	Fav/CS
2.			CM	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 966 requires certain warranties provided by builders to home purchasers to be automatically transferred in certain circumstances. If a builder provides an express written warranty or purchases a home warranty from a home warranty association on or after January 1, 2025, such warranties, if active, automatically transfer to a subsequent purchaser.

The bill provides that a home warranty that is conditioned on the continuation of a maintenance contract automatically transfers to a subsequent purchaser unless the subsequent purchaser declines the assignment of the maintenance contract. A subsequent purchaser is bound by the terms of a maintenance contract if it is assigned to him or her. A builder must notify the subsequent purchaser of any amounts due under the maintenance contract at the home addressed unless the purchaser informs the builder of a preferred method of notification. A maintenance contract that is not a condition of a home warranty does not automatically transfer to a subsequent purchaser unless the builder or home warranty association and the subsequent purchaser agree to its assignment.

A subsequent purchaser who receives the benefit of a warranty being automatically transferred must notify the builder or home warranty association that he or she is the warrantee under the home warranty. Such notice may be given at any time while the warranty remains in effect, and a builder or home warranty association may not require a shorter notice period. A builder is prohibited from charging a fee for the automatic transfer of a warranty. The bill provides for

construction of the bill's provisions and specifies that the provisions do not have specified consequences.

The bill provides that the provisions relating to the assignment of home warranties apply except for any provisions related to the automatic transfer of warranties established under the bill.

The bill provides that the requirements relating to the automatic transfer of home warranties under s. 634.601, F.S., apply to a home warranty that is transferred to the home purchaser. The bill clarifies that a premium charged for a home warranty when the home is listed is due at the end of the listing period and removes the option for it to be due the earlier of the end of the listing period or the date the sale of the residential property is closed.

Finally, the bill renames ch. 634, F.S., to "Warranties and Warranty Associations".

This bill provides an effective date as of July 1, 2024.

II. Present Situation:

Background

A warranty agreement is a contract that may be given by a builder or purchased by a builder from a home warranty association. In Florida, home warranty associations are regulated by the Office of Insurance Regulation (OIR) and must maintain certain minimum financial standards to do business.

Home Warranties

A home warranty is a contract or agreement between the homeowner and the issuing company, safeguarding the homeowner from expenses related to the repair or replacement of structural components or appliances in the home.¹ This protection extends to issues caused by normal wear and tear or defects in these components or appliances.² A home warranty agreement is tied to the owner selling the home and does not transfer to the person buying the home unless the home seller transfers it to the new owner.³ A warranty means that a manufacturer or seller will replace or repair the product under certain instances.⁴

Home warranty contracts or agreements can be drafted by a home warranty association⁵ licensed under s. 634.303, F.S., or by an authorized insurance company permitted to offer coverage in this category.⁶

¹ Section 634.301(2), F.S.

² *Id.*

³ Section 634.312(1), F.S.

⁴ 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

⁵ Section 634.301(3), F.S., defines "home warranty association" as any corporation or any other organization, other than an authorized insurer, issuing home warranties.

⁶ Section 634.303, F.S.

Builder Warranties

A builder warranty, like a home warranty, is a contractual agreement between the builder and the homeowner, shielding the homeowner from expenses related to the repair or replacement of structural components in the home.⁷

Despite these similarities, there are distinctions in their coverage.⁸ While a home warranty typically covers household appliances and systems, such as refrigerators and heating/cooling systems, and is commonly associated with residential real estate transactions, a builder warranty—also referred to as a structural warranty—is specifically provided by a builder to a homebuyer.⁹ The purpose of the builder warranty is to safeguard the homebuyer against significant structural defects in workmanship and materials used during the construction of the new home by the builder.¹⁰

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act (MMWA)¹¹ is a federal law that governs consumer product warranties. Passed in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.¹²

The MMWA defines three kinds of consumers:

- A buyer of any consumer product;
- Any person to whom such product is transferred during the duration of an implied or express warranty applicable to the product; and
- Any other person who is entitled by the terms of such warranty or under applicable state law to enforce the obligations of the warranty.¹³

Home and Builder Warranties

The elective market in Florida allows a builder, seller, buyer, or owner of a home to choose whether they would like to purchase a home warranty to cover against the cost of repair or replacement, or furnishes repair or replacement, of any structural component or appliance of a home, caused by wear and tear or a defect of a structural component or appliance.¹⁴

⁷ Section 634.301(2), F.S.

⁸ Quality Builders Warranty, *What is a Structural Warranty?*, available at: <https://qbwc.com/blog-news/what-is-a-structural-warranty/> (last visited Jan. 23, 2024).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 15 U.S.C. §§ 2301-2312 (1975).

¹² MMWA does not apply if a seller or manufacturer does not provide a warranty on their product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, available at: https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited Jan. 23, 2024).

¹³ 15 U.S.C. § 2301(3) of MMWA; *O'Connor v. BMW of N. Am., LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); *see also*, § 2310(d) of MMWA provides that, “a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages...”

¹⁴ Section 634.301(2), F.S.

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).¹⁵ OIR regulates the insurance industry in Florida. OIR is responsible for the regulation of all activities in the state concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.¹⁶

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.¹⁷ Home and service warranty associations must be licensed by OIR¹⁸ and must maintain certain minimum financial standards in order to do warranty business in Florida.¹⁹

The following chart reflects the number of licensed warranty associations in Florida as of January 23, 2024:²⁰

Type of Association/Company	Number of Licensees
Home Warranty Association	46
Service Warranty Association	102
Motor Vehicle Warranty Company	119
Total	267

Home warranty providers must ensure that every home warranty is sent or delivered to the warranty holder within 45 days after the commencement of coverage, subject to the insurer's or home warranty association's premium payment requirements.²¹ Furthermore, all home warranty contracts are transferable.²² The contract should explicitly inform the purchaser of their right to assign it within 15 days of selling or transferring the home. The home warranty company may

¹⁵ See ch. 634, F.S.

¹⁶ Florida Office of Insurance Regulation, *Organization and Operation*, available at: <https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative> (last visited Jan. 23, 2024). See also s. 624.308, F.S., and R. 690, et seq., F.A.C.]

¹⁷ See ch. 634, F.S.

¹⁸ Sections 634.303 and 634.403, F.S. Neither the Florida Insurance Code nor this section grants permission for any home warranty association to conduct insurance business beyond what is specifically defined as home warranty or to participate in any other form of insurance. Any engagement in alternative insurance types requires explicit authorization through a certificate of authority issued by the office under the provisions of the Florida Insurance Code. Section 634.325, F.S.

¹⁹ Sections 634.3077 and 634.406, F.S.

²⁰ Data retrieved from OIR Active Company Search application, available at: <https://floir.com/CompanySearch/index.aspx> (last visited Jan. 23, 2024).

²¹ Section 634.312(2), F.S.

²² Section 634.312(1), F.S.

charge an assignment fee not exceeding \$40.²³ The home warranty may be assigned, as well from a home builder, who initially purchased the warranty, to subsequent home purchasers.²⁴

Currently, several companies offer warranties covering structural components of a home in Florida; however, Florida law does not regulate these warranties. Below are companies that provide builder warranties:²⁵

Manufacturer	Coverage Offered
America’s Preferred Structural Warranty	<ul style="list-style-type: none"> • 1-year coverage on workmanship • 1 or 2-year coverage on home systems • 10-year coverage on structural defects
2-10 HBW	<ul style="list-style-type: none"> • 1-year coverage for workmanship • 2-year coverage for distribution systems • 10-year coverage for qualifying structural defects on newly built homes
Residential Warranty Company	<ul style="list-style-type: none"> • 1-year coverage for workmanship • 7-year coverage for qualifying structural defects • 10-year coverage for qualifying structural defects

III. Effect of Proposed Changes:

Section 1 amends s. 634.312(1), F.S., to provide that the current law provisions relating to the assignment of home warranties apply except for any provisions related to the automatic transfer of warranties established under the bill.

Section 2 amends s. 634.331, F.S., to provide that the requirements relating to the automatic transfer of home warranties under s. 634.601, F.S., including the new provisions summarized below, apply to a home warranty that is transferred to the home purchaser. The bill clarifies that a premium charged for a home warranty when the home is listed is due at the end of the listing

²³ *Id.*

²⁴ *Id.* Certain exemptions in the home warranty association statute cover cases where builders or appliance sellers offer standard guarantees without extra charges, exclude service contracts with non-profits handling repairs, and accept contracts aligning with Florida’s Insurance Code for systems and appliances, excluding structural components. Individuals affiliated with a domestic insurer are exempt if they avoid offering home warranties to Florida residents, but compliance requires the insurer to directly issue warranties or provide a specific policy. Non-compliance, as determined by the Office of Insurance Regulation, subjects the person to home warranty association regulations. Additionally, the regulations do not apply to programs offering warranties on new homes if supported by an insurance policy from a licensed Florida insurer, contingent on approval by the Office. Sections 634.301(2) and 634.327, F.S.

²⁵ America’s Preferred Structural Warranty, *Coverage*, available at: <https://www.apsw.com/> (last visited Jan. 23, 2024). 2-10 HBW, *Structural Warranties*, available at: <https://www.2-10.com/builders-warranty/structural-warranties/> (last visited Jan. 23, 2024). Residential Warranty Company, *Structural Warranties vs Extended Warranties – What’s the Difference?*, available at: <https://www.rwcwarranty.com/homeowners-2/structural-warranties-vs-extended-warranties/> (last visited Jan. 23, 2024).

period and removes the option for it to be due the earlier of the end of the listing period or the date the sale of the residential property is closed.

Section 3 creates sections 634.601 and 634.602, F.S., which together form a new Part IV of ch. 634, F.S., entitled “Miscellaneous Provisions.”

Section 634.601, F.S., defines the following terms:

- “Builder” means “the primary contactor of a home who possesses the requisite skill, knowledge, and experience, and has the responsibility, to supervise, direct, manage, and control the contracting activities of the business organization with which he or she is connected and who has the responsibility to supervise, direct, manage, and control the construction work on a job for which he or she has obtained a building permit. Construction work includes, but is not limited to, construction of structural components.”
- “Home warranty” or “warranty” has the same meaning as in s. 634.301, F.S., which defines the terms to mean, “any contract or agreement whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss.”²⁶
- “Home warranty association” has the same meaning as in s. 634.301, F.S., which defines the term to mean, “any corporation or any other organization, other than an authorized insurer, issuing home warranties.”²⁷
- “Indemnify” means “to undertake repair or replacement of a home’s structural component, or pay compensation for such repair or replacement by cash, check, or other similar means, including by not limited to, electronic means.”
- “Structural component” means “one or more essential elements of a home, including the roof, foundation, basement, exterior or interior walls, ceilings, floors, or spray foam...The term ‘exterior walls’ includes, but is not limited to, any siding, stucco, or paint on the exterior walls.”

Section 634.602, F.S., provides that if a builder provides an express written warranty or purchases a home warranty from a home warranty association on or after January 1, 2025, such warranties and all indemnification rights, terms, and conditions of such warranties automatically transfer to a subsequent purchaser unless the warranty has become null and void or lawfully terminated.

A home warranty that is conditioned on the continuation of a maintenance contract automatically transfers to a subsequent purchaser unless the subsequent purchaser declines the assignment of the maintenance contract. If a subsequent purchaser accepts the assignment of a maintenance contract, the subsequent purchaser is bound by its terms, including the requirement to make payments under the terms of the agreement. A builder must notify the subsequent purchaser of any amounts due under the maintenance contract at the home addressed covered by such contract unless the purchaser notifies the builder of home warranty association of a preferred method of notification. A maintenance contract that is not a condition of a home warranty does not

²⁶ Section 634.301(2), F.S.

²⁷ Section 634.301(3), F.S.

automatically transfer to a subsequent purchaser unless the builder or home warranty association and the subsequent purchaser agree to its assignment.

A subsequent purchaser who receives the benefit of a warranty being automatically transferred must notify the builder or home warranty association that he or she has purchased the home and therefore is the warrantee under the home warranty. Such notice may be given at any time while the warranty remains in effect. A builder or home warranty association may not require in the terms of the warranty a shorter notice period. A builder is prohibited from charging a fee for the automatic transfer of a warranty.

The section does not:

- Modify or extend the commencement date, duration, or scope of coverage of the express written warranty or home warranty beyond their terms.
- Require a builder or home warranty association to be obligated under a warranty that has become null and void.
- Require a builder that is obligated under and provides a home purchaser an express written warranty to obtain a license under the Florida Insurance Code, and such practice does not constitute the transaction of insurance subject to the requirements of the code unless otherwise required by law.
- Permit the provision of indemnification against consequential damages arising from the failure of any structural component, which practice constitutes the transaction of insurance subject to the requirements of the Florida Insurance Code.
- Require any subsequent purchaser to be bound by the terms of a home maintenance contract being assigned to him or her.

Section 4 of the bill renames ch.634, F.S., entitled “Warranty Associations” as “Warranties and Warranty Associations”.

Section 5 of the bill provides an effective date as of July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive economic impact for property owners and subsequent owners as they can benefit from the remaining home warranty coverage for their residential real property without needing additional paperwork due to the currently required separate assignment agreement. The home purchaser could bear lower out of pocket costs if there is covered damage or wear and tear.

Home warranty associations and insurers may experience nominal increased costs due to the bill's prohibition on assignment fees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill provides that unless a maintenance contract is a condition of a home warranty, the home warranty does not automatically transfer to a subsequent purchaser. However, a home warranty must automatically transfer to a subsequent purchaser if the conditions stated in the bill are met. As a result, reference to "home warranty" at line 129 should state "maintenance contract" to suggest that a maintenance contract that is not a condition of a home warranty does not automatically transfer to a subsequent purchaser.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 634.312, 634.327, 634.331, and 634.336.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Banking and Insurance Committee on January 29, 2024:

- Removes the amendments to s. 634.312(1), F.S., relating to home warranties;
- Removes the provision that adds failing to continue to perform obligations under the terms of an assigned home warranty contract as a ground for unfair and deceptive acts or practices;
- Provides that the provisions on the assignment of home warranties apply except as provided in s. 634.602, F.S., created in the bill relating to the automatic transfer of certain warranties;
- Amends the provisions on coverage of property for sale to modify the time within payment must be made for the purchase of warranty when a property is listed for sale, and provides that the requirements in s. 634.602, F.S., created in the bill relating to the automatic transfer of certain warranties, apply to a home warranty that is transferred to the home purchaser;
- Provides that a builder's express written warranty or a warranty that a builder purchases from a home warranty association automatically transfers to a subsequent purchaser in certain circumstances;
- Provides when maintenance contracts automatically transfer to a subsequent purchaser;
- Requires a subsequent homeowner who accepts assignment of a maintenance contract to be bound by the terms of the contract;
- Requires a builder or home warranty association to provide notice of any amounts due under the maintenance contract by specified method;
- Requires a subsequent purchaser who receives the benefit of an automatic transfer of a warranty to notify the builder or home warranty association of the new warrantee;
- Prohibits a builder from charging a fee for a transfer of a warranty which occurs automatically;
- Provides for construction of the provisions, including that the section does not:
 - Modify or extend the commencement date or the duration or scope of the warranty's terms;
 - Require a builder or home warranty association to be obligated under a warranty that has become null and void;
 - Require a builder to obtain a license under the Florida Insurance Code;
 - Permit the provision of indemnification against consequential damages arising from the failure of any structural component; and
 - Require any subsequent purchaser to be bound by the terms of a home maintenance contract unless he or she agrees to the maintenance contract being assigned to him or her;
- Renames ch. 634 to "Warranties and Warranty Associations"; and
- Defines terms.

B. Amendments:

None.