

STORAGE NAME: h1435s1.rpp

DATE: April 11, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Real Property & Probate**

BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 1435

RELATING TO: Homeowners' Associations/Complaints

SPONSOR(S): Representative Jacobs

STATUTE(S) AFFECTED: Section 617.305, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Real Property & Probate YEAS 5 NAYS 1
 - (2)
 - (3)
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I. SUMMARY:

CS/HB 1435 provides that homeowners' associations must respond to a complaint via certified mail from a member within 45 days or the member will be entitled to damages. In addition, CS/HB 1435 provides that where a homeowners' association has sought legal action or arbitration pursuant to a complaint from a member, such action must be initiated within 90 days of receipt of the member's complaint, or the member will be entitled to damages.

The bill provides an effective date of January 1, 1997.

The bill may have a small fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The 1995 Legislature enacted sections 617.301 - 617.312, Florida Statutes (Chapter 95-274, Laws of Florida), to govern the operations of mandatory homeowners' associations. Prior to this legislation, these associations were regulated under the general provisions of Chapter 617, Florida Statutes, relating to not-for-profit corporations.

Section 617.301, Florida Statutes, defines "homeowners' association" to mean:

. . . a Florida corporation responsible for the operation of a community 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

Section 617.302, Florida Statutes, states that the purposes of sections 617.301 - 617.312, Florida Statutes, are:

. . . to give statutory recognition to corporations that operate residential communities in this state, to provide procedures for operating homeowners' associations, and to protect the rights of association members without unduly impairing the ability of such associations to perform their functions.

Currently, none of the provisions in sections 617.301-617.312, Florida Statutes, obligate a homeowners' association to respond to the complaints of members.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1435 requires homeowners' associations to respond to the complaints of members within 45 days of receipt of the complaint. A failure to respond within the specified time entitles the complaining member to damages. The damages may either be actual damages, or may accrue at a rate not below \$50.00 per day, for a maximum of 10 days.

In addition, where a homeowners' association has sought legal action or arbitration pursuant to a member's complaint, CS/HB 1435 requires the association to initiate the legal action or arbitration within 90 days of receipt of the complaint. A failure to initiate the legal action or arbitration within the specified time entitles the complaining member to damages. The damages may either be actual damages, or may accrue at a rate not below \$50.00 per day, for a maximum of 10 days.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill may result in an increase in the number of suits by members of homeowners' associations against homeowners' associations.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No. The bill requires homeowners' associations to respond to a homeowners' complaint.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1

CS/HB 1435 amends section 617.305, Florida Statutes, adding subsection (4), requiring an association, board, officers, or designated agent to respond to the written complaint of a member within 45 days of receipt of the complaint. A failure to respond within the

45 day period entitles the complaining member to either actual damages, or damages of not less than \$50.00 per day, for a maximum of 10 days.

Furthermore, this section requires that when legal action or arbitration is sought by an association pursuant to a member's complaint, the legal action or arbitration must be initiated by the association within 90 days of receipt of the complaint. A failure to initiate the legal action or arbitration within the 90 day period entitles the complaining member to either actual damages or damages of not less than \$50.00 per day, for a maximum of 10 days.

Section 2

This section provides an effective date of January 1, 1998.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Unknown. The bill may have a fiscal impact on the courts.

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

Unknown. The bill may have a fiscal impact on the courts.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

CS/HB 1435 will permit damages to be assessed against homeowners' associations that fail to respond to a member's complaints.

2. Direct Private Sector Benefits:

Members of homeowners' associations will be more likely to receive a response to complaints filed with homeowners' associations.

3. Effects on Competition, Private Enterprise and Employment Markets:

Unknown.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

CS/HB 1435 is unclear regarding how an association's obligation to initiate legal action or arbitration is triggered. CS/HB 1435 provides that an association's obligation is triggered "if legal action or arbitration is sought." What is unclear is whether this language means the obligation is triggered when the complaining member has sought legal action in the initial complaint; or, whether this language means that the homeowners' association has sought legal action or arbitration pursuant to a member's complaint. If the language intends the latter, then an association could avoid any damages regarding the 90-day period for

initiating legal action or arbitration, by never mentioning those possibilities in a response to a complaining member.

Furthermore, it is unclear what sufficiently indicates that legal action or arbitration have been sought, thus triggering the obligation to initiate legal action or arbitration. For example, in a response to a member's complaint, does mentioning the possibility of arbitration, along with other possibilities, trigger an obligation on the part of the association to seek arbitration?

Also, it is unclear how an association "initiates" a legal action or arbitration in order to avoid damages. For example, does placing a call to an attorney satisfy "initiate?" In addition, it appears incongruous for the bill to provide that where "legal action or arbitration have been sought," an obligation to "initiate" legal action or arbitration arises.

CS/HB 1435 creates strict liability for an association that fails to respond to a complaining member within the time frame set forth in the bill. With the passage of CS/HB 1435, an association that does not respond to a complaint within the prescribed time frames will incur either actual damages, or damages of at least 50.00 per day, for a maximum of 10 days, regardless of whether the association is aware of the new obligations provided for in the bill. CS/HB 1435 does not require a complaining member to apprise an association of their statutory obligation to respond to a complaint.

CS/HB 1435 provides that a complaining member is entitled to either actual damages or damages not less than \$50.00 per day, for a maximum of 10 days, when an association fails to initiate legal action or arbitration within 90 days of indicating to a member that "legal action or arbitration have been sought." What is unclear is whether actual damages relates to the actual damages flowing from the underlying complaint, or the actual damages caused by the association's failure to initiate legal action or arbitration. Furthermore, CS/HB 1435 does not provide guidance as to when actual damages should be imposed, or when damages not less than 50.00 per day should be imposed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB 1435 was unclear regarding when the time period commenced in which an association must take action in order to avoid damages. HB 1435 provided that a member may "file a written complaint with the association." HB 1435 also provided that the time period set forth in the bill commenced with the association's "receipt" of the complaint. Because the phrase "file a written complaint" and the term "receipt" are subject to different meanings, it was unclear how the time period set forth in HB 1435 would have been determined to have commenced. CS/HB 1435 requires that written complaints must be sent to an association by certified mail. Therefore, CS/HB 1435 provides a time certain for when the time period has commenced.

HB 1435 provided damages for a complaining member of not less than 50.00 day, for a maximum of 10 days, when an association failed to respond within 45 days. CS/HB 1435 provides for either **actual damages or** damages not less than 50.00 day, for a maximum of 10 days, when an association misses the 45 day deadline. What is unclear is whether actual damages relates to the actual damages flowing from the underlying complaint, or the actual damages caused by the association's failure to respond. Furthermore, CS/HB 1435 does not provide guidance as to when actual damages should be imposed, or when damages not less than 50.00 per day should be imposed. This is the same problem discussed in section V., regarding another provision of CS/HB 1435.

HB 1435 seemed to allow a member to file an unlimited number of written complaints. Furthermore HB 1435 seemed to require an association to respond separately to each complaint in order to avoid damages. CS/HB 1435 provides that where an "association has previously responded to the same association member on the same issues raised, the association may respond by providing a copy of the previous response." Therefore, CS/HB 1435 seems to limit an association's obligation to respond separately in circumstances where the same member is complaining repetitively about the same issues. However, CS/HB 1435 does not provide guidance regarding the scope of the phrase "same issues raised," which is determinative of whether the lesser obligation is available.

CS/HB 1435 provides that an offer of mediation is included in the list of an association's possible responses to a complaining member. An offer of mediation was not included in the non-exclusive list provided in HB 1435.

Lastly, the title of CS/HB 1435 indicates that the bill provides for damages. The title of HB 1435 did not.

VII. SIGNATURES:

COMMITTEE ON Real Property & Probate:
Prepared by:

Legislative Research Director:

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