

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1551 w/CS Sale of Real Property

**SPONSOR(S):** Anderson

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1220

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary	14 Y, 0 N w/CS	Billmeier	Havlicak
2) Business Regulation	27 Y, 1 N w/CS	Livingston/Gallen	Liepshutz
3)			
4)			
5)			

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### SUMMARY ANALYSIS

Current law requires that a potential purchaser of property in communities with a mandatory homeowners' association be presented a disclosure summary prior to executing a contract for sale. The disclosure summary informs potential buyers that they will be required to become a member of the homeowners' association and will be obligated to pay assessments to the association.

If membership in the homeowners' association is not mandatory, the seller is not required to provide the prospective buyer with this disclosure summary.

The bill amends current law to require a summary disclosure even when the potential purchaser is not required to be a member of a homeowners' association. The bill requires the disclosure summary form to notify whether a purchaser will or will not be required to be a member of a homeowners' association and whether the purchaser will or will not be obligated to pay assessments to a homeowners' association. Additionally, the bill requires disclosure of whether the buyer must pay special assessments to a municipality, county, or special district. The bill provides that "parcel owners" may have the authority to amend restrictive covenants when a mandatory association does not exist.

The bill requires language in sales contracts informing the potential buyer that if the buyer has not received the required disclosure prior to signing the sales contract, the buyer may void the contract by notifying the seller within three days of receipt of the notice or prior to closing, whichever occurs first. The bill provides that a contract that does not contain such language may be voided prior to closing.

The bill takes effect October 1, 2003.

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

**STORAGE NAME:** h1551d.br.doc

**DATE:** April 18, 2003

## 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:

##### Present Situation

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.

Section 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.

However, not all homeowners associations are regulated by Chapter 720, F.S. Non-mandatory homeowners associations are voluntary associations established to provide defined benefits or services to homeowners who choose to participate. Usually these associations are incorporated for a specific purpose, such as road paving, neighborhood beautification, etc. These non-mandatory associations do not have the power to enforce assessments and all financial or other contributions are contractual or voluntary.

Section 689.26, F.S., requires that a potential purchaser of property in a mandatory homeowners' association be presented a disclosure summary prior to executing a contract for sale. The disclosure informs potential buyers that they will be required to become a member of the homeowners' association and will be obligated to pay assessments to the association.

Section 689.26, F.S., specifies the contents of the disclosure and requires the summary disclosure to be in a form substantially similar to the form set forth in s. 689.26(1), F.S. This disclosure requirement does not apply to a condominium, cooperative, vacation or timeshare, or mobile home park association.

If membership in the homeowners' association is not mandatory, the seller is not required to provide the prospective buyer with this disclosure summary.

## Effect of Proposed Changes

HB 1551 amends Section 689.26, F.S., to require additional disclosures by sellers of real property in a community<sup>1</sup> and to allow a sales contract to be voided if such disclosures are not provided in a timely manner. This bill amends the disclosure requirements to require whether:

- (1) the buyer must be a member of a homeowners' association;
- (2) the buyer must pay assessments to the association; and
- (3) whether the buyer will be obligated to pay special assessments to a municipality, county, or special district.

The disclosure summary must also state whether or not the restrictive covenants of the association may be amended with approval of the membership or, if there is not a mandatory association, the parcel owners.

The bill implicitly requires that the disclosure summary be provided to potential buyers in communities. Therefore, the bill broadens the disclosure requirements of Section 689.26, F.S., which requires disclosure for only those potential buyers that were obligated to be a member of a homeowners' association.

The bill requires new language in sales contracts for the sale of real property. It requires the contract to inform the buyer that the contract is voidable if the disclosure required by s. 689.26, F.S., has not been provided. Once the disclosure is provided, the buyer may void the contract within three days or prior to closing. The right to void a contract terminates at closing. Any contract that does not contain the language required by the bill is voidable by the purchaser prior to closing.

The bill takes effect October 1, 2003.

### C. SECTION DIRECTORY:

Section 1. Amends s. 689.26, F.S., to require additional disclosures and provide for voidability of a sales contract in certain situations.

Section 2. Provides an effective date of October 1, 2003.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

This bill does not appear to affect state government revenues.

#### 2. Expenditures:

This bill does not appear affect state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not appear to affect local government revenues.

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<sup>1</sup> "Community" means 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." Section 720.301(3), F.S.

2. Expenditures:

This bill does not appear to affect local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires additional language in sales contracts for certain real property sales and provides for voidability of certain contracts. The cost of complying with the bill is not known.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Committee on Judiciary considered the bill on April 2, 2003. The Committee adopted an amendment that removed language from the original bill which required the seller to provide copies of any restrictive covenants and gave real estate brokers immunity for providing such documents. The amendment requires more specific disclosures and provides that the sales contract may be voided if the disclosures are not provided. The bill, as amended, was reported favorably with a committee substitute.

The Committee on Business Regulation adopted one amendment at its meeting on April 14, 2003 and passed the bill favorably with a committee substitute. The bill w/CS differs from the original bill in the following area.

- Includes disclosure of any special assessments that may be imposed by counties or special districts, in addition to, municipalities.