

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1551                      Sale of Real Property  
**SPONSOR(S):** Anderson  
**TIED BILLS:** None.                      **IDEN./SIM. BILLS:** SB 1220

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary</u>	_____	<u>Billmeier</u>	<u>Havlicak</u>
2) <u>Business Regulation</u>	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

HB 1551 requires the seller of real property, if the seller is not the developer of the property, to provide a current copy of the deed restrictions that apply to the property to each prospective purchaser who has entered into a contract for the purchase of the property. Current law does not require such disclosure. This bill requires that seller pay the costs of providing a copy of the deed restrictions.

This bill requires that each contract for resale of real property in a deed-restricted community must contain one of two provisions:

- (1) an acknowledgment by the buyer that the buyer received a copy of the deed restrictions more than 3 days prior to the execution of the contract; or
- (2) a provision allowing the buyer to void the contract within 3 days after executing the contract or within 3 days after receiving the deed restrictions, whichever is later.

A contract that does not contain one of those provisions is voidable at the option of the purchaser at any time prior to closing.

HB 1551 gives immunity for any errors or inaccuracies to real estate salespersons or brokers who provide to or otherwise obtain for a prospective purchaser the documents required by the bill.

HB 1551 takes effect July 1, 2003.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

This bill requires sellers of real property to provide a current copy of a deed restriction to a prospective purchaser. Current law does not require such disclosure.

#### B. EFFECT OF PROPOSED CHANGES:

HB 1551 requires the seller, if the seller is not the developer of the property, to provide a current copy of the deed restrictions that apply to the property to each prospective purchaser who has entered into a contract for the purchase of the property. Current law does not require such disclosure. Deed restrictions are recorded<sup>1</sup> and "it is well established that all persons are charged with knowledge of matters properly of record."<sup>2</sup> This bill requires that seller pay the costs of providing a copy of the deed restrictions.

This bill requires that each contract for resale of real property in a deed-restricted community must contain one of two provisions:

(1) an acknowledgment by the buyer that the buyer received a copy of the deed restrictions more than 3 days prior to the execution of the contract; or

(2) a provision allowing the buyer to void the contract within 3 days after executing the contract or within 3 days after receiving the deed restrictions, whichever is later.

A contract that does not contain one of those provisions is voidable at the option of the purchaser at any time prior to closing.

HB 1551 gives immunity for any errors or inaccuracies to persons licensed under part I of chapter 475, F.S.<sup>3</sup>, who provide to or otherwise obtain for a prospective purchaser the documents required by the bill. The immunity language in this bill is the same language contained in s. 718.503(2)(b), F.S., relating to disclosures required by nondeveloper sellers of condominiums and s. 719.503(2)(b), F.S., relating to disclosures required by nondeveloper sellers of cooperatives.

This bill will be effective July 1, 2003.

#### C. SECTION DIRECTORY:

Section 1. Creates a new section of law requiring nondeveloper owners to supply copies of deed restrictions to prospective purchasers of real property.

<sup>1</sup> Recording of deeds is required by s. 695.01, F.S.

<sup>2</sup> *Engle v. Acopian*, 432 So. 2d 113, 115 (Fla. 5<sup>th</sup> DCA 1983).

<sup>3</sup> Part I of Chapter 475, F.S., provides for licensing and regulation of real estate salespersons and brokers.

Section 2. Provides an effective date.

## 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 to appear affect state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

This bill does not appear to affect local government revenues.

#### 2. Expenditures:

This bill does not appear to affect local government expenditures.

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

This bill requires sellers of real property in deed-restricted communities to provide copies of those restrictions to potential buyers. The cost of complying with that requirement is not known.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill gives immunity to real estate brokers and salespersons who provide copies of deed restrictions to prospective purchasers or obtain copies of those deed restrictions for purchasers for any error or inaccuracy contained in those documents. This raises the question of whether this immunity extends to cases of fraud. The same immunity language is contained in both the condominium and cooperative statutes but there are no reported decisions interpreting those provisions. In M/I

Schottenstein Homes, Inc. v. Azam,<sup>4</sup> the Florida Supreme Court held that an action for fraudulent misrepresentation could proceed even though the information that was fraudulently misrepresented was available in the public record. It is not clear if this bill would prevent a cause of action for fraudulent misrepresentation against a person licensed under chapter 475, F.S. However, the court clearly rejected the position that “statements concerning the public record cannot form the basis for a claim of actionable fraud” in M/I Schottenstein.<sup>5</sup>

The Department of Business and Professional Regulation provided comments about the liability provision of the bill:

HB 1551 exculpates real estate salespersons and brokers from liability for errors or inaccuracies contained in deed restriction documents the salesperson or broker provides to a prospective purchaser of real property. The bill does not limit the activity of real estate licensees to situations in which they are acting in their capacity as the agent for a third party. This exclusion from liability could include situations in which a salesperson or broker is also the owner in a sales and purchase transaction. Under the act, if the licensee, acting as an owner of real property, commits an act within the purview of section 475.25(1)(b), F.S., the Florida Real Estate Commission, may be foreclosed from imposing disciplinary action against the licensee.<sup>6</sup>

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A

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<sup>4</sup> 813 So. 2d 91 (Fla. 2002).

<sup>5</sup> See M/I Schottenstein Homes, 813 So. 2d at 94, 96.

<sup>6</sup> Department of Business and Professional Regulation Legislative Analysis Form dated March 24, 2003.