

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 Real Estate Conveyances
SPONSOR(S): Duggan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Rochester	Luczynski
2) Business & Professions Subcommittee	13 Y, 0 N	Wright	Anstead
3) Judiciary Committee	16 Y, 0 N	Rochester	Luczynski

SUMMARY ANALYSIS

A leasehold is an estate interest in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time.

A transfer or conveyance of real property, including a leasehold, for a term of more than one year must be:

- In writing; and
- Signed by the conveying party in the presence of two subscribing witnesses.

Subscribing witness requirements are designed to protect the grantor of the estate in land, therefore only the landlord's signature must be witnessed. If a dispute arises concerning the real estate transaction, the landlord or tenant may benefit from having a third party who was present at the signing. Currently, lease agreements must be witnessed if they are executed in Connecticut, Florida, Georgia, Louisiana, or South Carolina.

HB 469 removes the subscribing witness requirement for instruments conveying a leasehold interest in real property. Instruments conveying a freehold interest still require two subscribing signatures.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A leasehold is an estate interest in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time.¹

A transfer or conveyance of real property, including a leasehold, for a term of more than one year² must be:

- In writing; and
- Signed by the conveying party in the presence of two subscribing witnesses.³

Subscribing witness requirements are designed to protect the grantor of the estate in land, therefore only the landlord's signature must be witnessed.⁴ If a dispute arises concerning the real estate transaction, the landlord or tenant may benefit from having a third party who was present at the signing. Currently, lease agreements must be witnessed if they are executed in Connecticut, Florida, Georgia, Louisiana or South Carolina.⁵

A lease may be valid even if the landlord's signature was not witnessed by two subscribing witnesses. Where the parties' conduct demonstrates acceptance of the lease and adherence to its terms⁶, that conduct may prevent a party from contending that the lease is invalid.⁷ Conversely, a court may void a lease agreement lacking two subscribing witnesses if the tenant has not moved in or relied upon the lease and there is a genuine dispute as to whether a lease exists.⁸

Effect of Proposed Changes

HB 469 removes the subscribing witness requirement for instruments conveying a leasehold interest in real property. Instruments conveying a freehold⁹ interest will still require two subscribing signatures.¹⁰

B. SECTION DIRECTORY:

Section 1: Amends s. 689.01, F.S., relating to how real estate conveyed.

Section 2: Provides an effective date of July 1, 2020.

¹ A leasehold is an estate interest in real property held under a rental agreement by which the owner gives another the right to occupy or use land for a period of time. West's Encyclopedia of American Law, *Leasehold* (2008), <https://legal-dictionary.thefreedictionary.com/leasehold> (last visited Jan. 20, 2020). See s. 689.01, F.S.

² Landlords that are corporations may create a lease longer than one without the need for witnessed signatures if the conveying instrument is sealed with the corporate seal and signed in its name by its president, any vice president, or chief executive officer. Ss. 689.01 and 692.01, F.S.

³ Any requirement that an instrument 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. S. 689.01(2), F.S.

⁴ S. 689.01, F.S.

⁵ Teo Spengler, *Who Can Witness a Real Estate Signing*, San Francisco Chronicle (Feb. 11, 2019) <https://homeguides.sfgate.com/can-witness-real-estate-deed-signing-52835.html> (last visited Jan. 20, 2020).

⁶ Demonstration of adherence to lease terms may include a landlord's delivery of keys or a tenant's rent payment. *Bodden v. Carbonell*, 354 So. 2d 927 (Fla. 2d DCA 1978).

⁷ *Harbour Place Professional Park Co. v. Max's Pet Emporium, Inc.*, 2008 WL 8089978 (Fla. Cir. Ct.).

⁸ *Id.*

⁹ A freehold is a permanent and absolute tenure of land or property with freedom to dispose of it at will. West's Encyclopedia of American Law, *Freehold* (2008), <https://www.thefreedictionary.com/freehold> (last visited Jan. 20, 2020).

¹⁰ Unless the conveying party is a corporation, then subscribing witnesses are not required. Ss. 689.01 and 692.01, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES