

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 Rules

BILL: CS/SB 484

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Flood Disclosure in the Sale of Real Property

DATE: February 23, 2024 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-------------|----------------|-----------|------------------|
| 1. | <u>Bond</u> | <u>Cibula</u> | <u>JU</u> | Fav/CS |
| 2. | <u>Bond</u> | <u>Yeatman</u> | <u>FP</u> | Favorable |
| 3. | <u>Bond</u> | <u>Twogood</u> | <u>RC</u> | Favorable |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 484 requires the seller of any residential real property to furnish to the buyer, at or before signing the contract for purchase of the property, a disclosure form regarding flood risks. The form notes that homeowners insurance does not cover flood damage and that the buyer should inquire about flood insurance. The form then asks if the seller is aware of damage from flooding, whether the seller has filed a flood-related claim, whether the seller has ever received federal assistance for flood damage to the property, and whether the seller has flood insurance.

The bill is effective July 1, 2024.

II. Present Situation:

Disclosure of Known Defects

As to sales of real property, Florida historically followed the legal theory of *Caveat Emptor* (“let the buyer beware”). Under this theory, the seller has no duty to disclose defects in the property and the buyer takes the property “as-is.” One court stated that “there is no duty to disclose [a latent defect] when parties are dealing at arms length.”¹

The law changed in 1985 when the Florida Supreme Court ruled that “where the seller of a home knows of facts materially affecting the value of the property which are not readily observable

¹ *Banks v. Salina*, 413 So. 2d 851, 852 (Fla. 4th DCA 1982).

and are not known to the buyer, the seller is under a duty to disclose them to the buyer.”² This duty applies even where the buyer has agreed to purchase residential property “as-is.”³

Notably, the case law disclosure requirement only applies to facts that are not “readily observable” to the buyer. In the context of flood disclosures, the appellate courts are split as to whether a tendency to flood is readily observable. In one case, the buyers bought a home in the East Everglades area of Miami-Dade County.⁴ When they viewed the home during the dry season, the home was acceptable. The sellers did not disclose that the land on which the home sat, but not the home itself, flooded annually in the rainy season, a fact the seller knew from previous experience. The flooding, according to the court, was so severe that “snakes and even alligators (two at least), have gathered at [the] property (presumably on an elevated portion) to escape the waters.”⁵ The court found that seasonal flooding of the neighborhood was common knowledge and information that was readily available to the buyers had they exercised “diligent attention.”⁶ The lawsuit against the seller was dismissed.

In another case, the buyers sued because the seller failed to disclose that the property was in the Coastal Barrier Resource Area (CBRA), and thus ineligible for flood insurance. The trial court found the information regarding the CBRA was publicly available, and dismissed the case. The appellate court, however, ruled for the buyers.⁷

The duty to disclose latent defects will generally not apply to an as-is contract for non-residential property. An appellate court stated Florida courts will continue to apply the doctrine of caveat emptor to an “as-is” contract for non-residential property unless one of the following exceptions apply:

- Where some artifice or trick has been employed to prevent the purchaser from making independent inquiry;
- Where the purchaser does not have equal opportunity to become apprised of the fact; and
- Where a party undertakes to disclose facts and fails to disclose the whole truth.⁸

Specific Disclosure Requirements

Numerous laws have created specific legal disclosure requirements for a seller that are in addition to the disclosure required by case law, including:

- Associations -- A seller of property in a condominium, cooperative, or homeowners association must make extensive specific disclosures of information related to the association.⁹
- Coastal -- A sale of a property located partially or totally seaward of the coastal construction control line requires a written disclosure statement at time of contract. Also, the seller must

² *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).

³ *Rayner v. Wise Realty Co. of Tallahassee*, 504 So. 2d 1361 (Fla. 1st DCA 1987).

⁴ *Nelson v. Wiggs*, 699 So. 2d 258 (Fla. 3rd DCA 1997).

⁵ *Id.* at 259.

⁶ *Id.* at 260.

⁷ *Newbern v. Mansbach*, 777 So.2d 1044 (Fla. 1st DCA 2001).

⁸ *Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC*, 317 So.3d 121, 124 (Fla. 4th DCA 2021).

⁹ See, ss. 718.503 (condominiums), 719.503 (cooperatives), and 720.401 (homeowners association), F.S.

furnish the buyer with a survey or affidavit showing the line, although the buyer may waive this requirement.¹⁰

- Code enforcement -- If a code enforcement proceeding is pending at the time of sale, the seller must disclose it to the buyer.¹¹
- Lead paint -- Federal law requires all sellers or landlords of residential real property built before 1978 to give the buyer or tenant a federally produced form disclosure. The contract or lease must allow for a 10-day inspection period.¹²
- Property tax -- The seller must disclose that a transfer of ownership may lead to an increased property tax assessment related to the Save Our Homes Amendment.¹³
- Radon gas -- A specific disclosure relating to the risks of radon gas must be made in writing in connection with the sale of any building.¹⁴
- Sewer lines -- The seller must disclose known defects in the property's sanitary sewer lateral line.¹⁵
- Sinkhole damage -- The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the closing, that a claim has been paid and whether or not the full amount of the proceeds was used to repair the sinkhole damage.¹⁶
- Subsurface rights -- The seller must provide a prospective purchaser of residential property with a disclosure summary if the seller or an affiliated or related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry.¹⁷

¹⁰ Section 161.57, F.S. The written disclosure is this statement: "The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased."

¹¹ Section 162.06(5), F.S.

¹² 24 CFR Part 35 and 40 CFR Part 745. See also United States Environmental Protection Agency, Lead-Based Paint Disclosure Rule (updated Aug. 7, 2023), <https://www.epa.gov/lead/lead-based-paint-disclosure-rule-section-1018-title-x>.

¹³ Section 689.261, F.S. The written disclosure is this statement: "BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION."

¹⁴ Section 404.056(5), F.S. The disclosure is this statement: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

¹⁵ Section 689.301, F.S.

¹⁶ Section 627.7073(2)(c), F.S.

¹⁷ Section 689.29, F.S. The written disclosure is: "SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE, EXPLORE, OR REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE."

Correspondingly, statutes provide that certain disclosures are not required, including:

- That an occupant is or has been infected with HIV or AIDS.¹⁸
- That the property was or may have been the site of a homicide, suicide, or other death.¹⁹

Inability of Buyers to Access Federal Data on Flood-Prone Homes.

The Federal Emergency Management Agency (FEMA) responds to emergencies caused by natural disasters including flooding. Like all federal agencies, they keep records related to their regulatory function. One form of data held by FEMA is properties categorized as a “severe repetitive loss property.” That designation covers homes that have flooded twice, with damage totaling the value of the property, or flooded four times with at least \$5,000 of damage each time. There are about 45,000 of these properties in the U.S., as of the end of 2022, with about 3,100 in Florida alone, according to FEMA data. Florida added about 120 of those homes from 2021 to 2022. FEMA’s policy is to share past flood history only with a property owner that holds an active flood insurance policy on a property, so prospective buyers may know the details of their property’s flood history only after they’ve closed the deal.²⁰

III. Effect of Proposed Changes:

The bill creates a form that a seller of residential property must furnish to a buyer before or at the time of contract regarding flooding. The form defines “flooding” to mean a general or temporary condition of partial or complete inundation of the property caused by any of the following:

- The overflow of inland or tidal waters;
- The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch; or
- Sustained periods of standing water resulting from rainfall.

The form informs a buyer that homeowner's insurance does not cover flood damage, and encourages the buyer to discuss flood insurance with the buyer's insurance agent. The form requires the seller to answer 4 questions:

- Is the seller aware of damage to the property caused by flooding during the time the seller has owned the property?
- Has the seller filed a flood-related insurance claim related to the property?
- Has the seller ever received federal assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency?
- Does the seller maintain flood insurance on the property?

The bill is effective July 1, 2024.

¹⁸ Section 689.25(1)(a), F.S.

¹⁹ Section 689.25(1)(b), F.S.

²⁰ Alex Harris, *Thousands of Florida homes flood repeatedly. You're not allowed to know which ones.* MIAMI HERALD (Jan. 14, 2024), <https://www.wusf.org/politics-issues/2024-01-14/thousands-of-florida-homes-flood-repeatedly-youre-not-allowed-to-know-which-ones>.

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 apparent.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill imposes a minimal paperwork requirement on sellers of residential real property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 689.302 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Judiciary on February 5, 2024:

The amendment significantly narrowed and simplified the bill. Specifically, by the amendment:

- The bill is limited to residential sales, instead of all sales.
- The open-ended questions requiring written answers are replaced with 4 check-box-type questions.
- In the definition of “flooding” the reference to “excessive rainfall” is changed to the more accurate “sustained periods of standing water resulting from rainfall.”
- The requirements to disclose the flood zone of the property and whether the seller has a flood elevation certificate are removed.

B. Amendments:

None.