

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 Banking and Insurance

BILL: SB 966

INTRODUCER: Senator Burgess

SUBJECT: Assignment of Home Warranty Contracts

DATE: January 26, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Moody	Knudson	BI	Pre-meeting
2.			CM	
3.			RC	

I. Summary:

Senate Bill 966 adds requirements under the provisions governing home warranties that are assigned by the original purchaser to a subsequent purchaser. Specifically, the bill provides:

- A home warranty that is assigned to a subsequent home purchaser continues in effect as if the new homeowner was the original purchaser of the home warranty.
- The home warranty company or the insurer continues to be obligated under the terms of the assigned home warranty contract.
- The assignment does not extend the remaining term of the contract.
- The original purchaser of the home warranty must deliver a copy of it to the subsequent home purchaser within a specified time.

The bill provides that the requirements relating to assignment of home warranties apply to any program offering a warranty on a new home that is underwritten by a Florida licensed insurer. Further, if a home warranty provides coverage of residential property during the listing period and, after the sale, the home purchaser decides to keep a home warranty then the requirements listed in s. 634.312(1), F.S., including the provisions in the bill summarized above, apply to the warranty contract assigned to the home purchaser.

Finally, the bill establishes that it is an unfair method of competition and an unfair or deceptive acts or practice to fail to continue to perform obligations under an assigned home warranty agreement.

This bill provides an effective date as of July 1, 2024.

II. Present Situation:

Background

A warranty agreement is a contract that may be given by a builder or purchased by a builder from a home warranty association. In Florida, home warranty associations are regulated by the Office of Insurance Regulation (OIR) and must maintain certain minimum financial standards to do business.

Home Warranties

A home warranty is a contract or agreement between the homeowner and the issuing company, safeguarding the homeowner from expenses related to the repair or replacement of structural components or appliances in the home.¹ This protection extends to issues caused by normal wear and tear or defects in these components or appliances.² A home warranty agreement is tied to the owner selling the home and does not transfer to the person buying the home unless the home seller transfers it to the new owner.³ A warranty means that a manufacturer or seller will replace or repair the product under certain instances.⁴

Home warranty contracts or agreements can be drafted by a home warranty association⁵ licensed under s. 634.303, F.S., or by an authorized insurance company permitted to offer coverage in this category.⁶

Builder Warranties

A builder warranty, like a home warranty, is a contractual agreement between the builder and the homeowner, shielding the homeowner from expenses related to the repair or replacement of structural components in the home.⁷

Despite these similarities, there are distinctions in their coverage.⁸ While a home warranty typically covers household appliances and systems, such as refrigerators and heating/cooling systems, and is commonly associated with residential real estate transactions, a builder warranty—also referred to as a structural warranty—is specifically provided by a builder to a homebuyer.⁹ The purpose of the builder warranty is to safeguard the homebuyer against significant structural defects in workmanship and materials used during the construction of the new home by the builder.¹⁰

¹ Section 634.301(2), F.S.

² *Id.*

³ Section 634.312(1), F.S.

⁴ 45 Fla. Jur 2d Sales and Exchanges of Goods § 156.

⁵ Section 634.301(3), F.S., defines “home warranty association” as any corporation or any other organization, other than an authorized insurer, issuing home warranties.

⁶ Section 634.303, F.S.

⁷ Section 634.301(2), F.S.

⁸ Quality Builders Warranty, *What is a Structural Warranty?*, available at: <https://qbwc.com/blog-news/what-is-a-structural-warranty/> (last visited Jan. 23, 2024).

⁹ *Id.*

¹⁰ *Id.*

Magnuson-Moss Warranty Act

The Magnuson-Moss Warranty Act (MMWA)¹¹ is a federal law that governs consumer product warranties. Passed in 1975, the Act requires manufacturers and sellers of consumer products to provide consumers with detailed information about warranty coverage before and after the sale of the warranted product.¹²

The MMWA defines three kinds of consumers:

- A buyer of any consumer product;
- Any person to whom such product is transferred during the duration of an implied or express warranty applicable to the product; and
- Any other person who is entitled by the terms of such warranty or under applicable state law to enforce the obligations of the warranty.¹³

Home and Builder Warranties

The elective market in Florida allows a builder, seller, buyer, or owner of a home to choose whether they would like to purchase a home warranty to cover against the cost of repair or replacement, or furnishes repair or replacement, of any structural component or appliance of a home, caused by wear and tear or a defect of a structural component or appliance.¹⁴

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).¹⁵ OIR regulates the insurance industry in Florida. OIR is responsible for the regulation of all activities in the state concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.¹⁶

While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.¹⁷ Home and

¹¹ 15 U.S.C. §§ 2301-2312 (1975).

¹² MMWA does not apply if a seller or manufacturer does not provide a warranty on their product. Jason Gordon, *Magnuson Moss Warranty Act – Explained*, The Business Professor, Sept. 26, 2021, available at:

https://thebusinessprofessor.com/en_US/consumer-law/magnuson-moss-warranty-act (last visited Jan. 23, 2024).

¹³ 15 U.S.C. § 2301(3) of MMWA; *O'Connor v. BMW of N. Am., LLC*, 905 So. 2d 235, 236–37 (Fla. 2d DCA 2005); see also, § 2310(d) of MMWA provides that, “a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or under a written warranty, implied warranty, or service contract, may bring suit for damages...”

¹⁴ Section 634.301(2), F.S.

¹⁵ See ch. 634, F.S.

¹⁶ Florida Office of Insurance Regulation, *Organization and Operation*, available at: <https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative> (last visited Jan. 23, 2024). See also s. 624.308, F.S., and R. 690, et seq., F.A.C.]

¹⁷ See ch. 634, F.S.

service warranty associations must be licensed by OIR¹⁸ and must maintain certain minimum financial standards in order to do warranty business in Florida.¹⁹

The following chart reflects the number of licensed warranty associations in Florida as of January 23, 2024:²⁰

Type of Association/Company	Number of Licensees
Home Warranty Association	46
Service Warranty Association	102
Motor Vehicle Warranty Company	119
Total	267

Home warranty providers must ensure that every home warranty is sent or delivered to the warranty holder within 45 days after the commencement of coverage, subject to the insurer's or home warranty association's premium payment requirements.²¹ Furthermore, all home warranty contracts are transferable.²² The contract should explicitly inform the purchaser of their right to assign it within 15 days of selling or transferring the home. The home warranty company may charge an assignment fee not exceeding \$40.²³ The home warranty may be assigned, as well from a home builder, who initially purchased the warranty, to subsequent home purchasers.²⁴

Currently, several companies offer warranties covering structural components of a home in Florida; however, Florida law does not regulate these warranties. Below are companies that provide builder warranties:²⁵

¹⁸ Sections 634.303 and 634.403, F.S. Neither the Florida Insurance Code nor this section grants permission for any home warranty association to conduct insurance business beyond what is specifically defined as home warranty or to participate in any other form of insurance. Any engagement in alternative insurance types requires explicit authorization through a certificate of authority issued by the office under the provisions of the Florida Insurance Code. Section 634.325, F.S.

¹⁹ Sections 634.3077 and 634.406, F.S.

²⁰ Data retrieved from OIR Active Company Search application, available at: <https://floir.com/CompanySearch/index.aspx> (last visited Jan. 23, 2024).

²¹ Section 634.312(2), F.S.

²² Section 634.312(1), F.S.

²³ *Id.*

²⁴ *Id.* Certain exemptions in the home warranty association statute cover cases where builders or appliance sellers offer standard guarantees without extra charges, exclude service contracts with non-profits handling repairs, and accept contracts aligning with Florida's Insurance Code for systems and appliances, excluding structural components. Individuals affiliated with a domestic insurer are exempt if they avoid offering home warranties to Florida residents, but compliance requires the insurer to directly issue warranties or provide a specific policy. Non-compliance, as determined by the Office of Insurance Regulation, subjects the person to home warranty association regulations. Additionally, the regulations do not apply to programs offering warranties on new homes if supported by an insurance policy from a licensed Florida insurer, contingent on approval by the Office. Sections 634.301(2) and 634.327, F.S.

²⁵ America's Preferred Structural Warranty, *Coverage*, available at: <https://www.apsw.com/> (last visited Jan. 23, 2024). 2-10 HBW, *Structural Warranties*, available at: <https://www.2-10.com/builders-warranty/structural-warranties/> (last visited Jan. 23, 2024). Residential Warranty Company, *Structural Warranties vs Extended Warranties – What's the Difference?*, available at: <https://www.rwcwarranty.com/homeowners-2/structural-warranties-vs-extended-warranties/> (last visited Jan. 23, 2024).

Manufacturer	Coverage Offered
America’s Preferred Structural Warranty	<ul style="list-style-type: none"> • 1-year coverage on workmanship • 1 or 2-year coverage on home systems • 10-year coverage on structural defects
2-10 HBW	<ul style="list-style-type: none"> • 1-year coverage for workmanship • 2-year coverage for distribution systems • 10-year coverage for qualifying structural defects on newly built homes
Residential Warranty Company	<ul style="list-style-type: none"> • 1-year coverage for workmanship • 7-year coverage for qualifying structural defects • 10-year coverage for qualifying structural defects

III. Effect of Proposed Changes:

Section 1 of the bill requires home warranties that are assigned by the original purchaser to a subsequent purchaser to meet the following requirements:

- The assigned home warranty continues in effect as if the new homeowner was the original purchaser of the home warranty.
- The home warranty company or the insurer continues to be obligated under the terms of the assigned home warranty contract.
- The assignment does not extend the remaining term of the contract.
- The original purchaser of the home warranty must deliver a copy of it to the subsequent home purchaser within a specified time.

Section 2 of the bill provides that the requirements relating to assignment of home warranties under s. 634.327(1), F.S., including the new provisions summarized above, apply to any program offering a warranty on a new home which is underwritten by an insurer licensed to do business in Florida when the policy underwriting the program has been filed with and approved by the OIR.

Section 3 of the bill provides if a home warranty provides coverage of residential property during the listing period and, after the sale, the home purchaser decides to keep a home warranty then the requirements listed in s. 634.312(1), F.S., including the provisions in the bill summarized above, apply to the warranty contract assigned to the home purchaser.

Section 4 of the bill establishes that it is an unfair method of competition and an unfair or deceptive acts or practice to fail to continue to perform obligations under a transferred home warranty agreement.

Section 5 of the bill provides an effective date as of July 1, 2024.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be a positive economic impact for property owners and subsequent owners as they can benefit from the remaining home warranty coverage for their residential real property without needing additional paperwork due to the currently required separate assignment agreement. The home purchaser could bear lower out of pocket costs if there is covered damage or wear and tear.

Home warranty associations and insurers may experience nominal increased costs due to the bill's prohibition on assignment fees.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill requires an original purchaser of a home warranty to deliver a paper or electronic copy of the home warranty to the subsequent home purchaser within 15 days after the home is sold or transferred. This requirement should be limited to instances where the original purchaser assigns the home warranty contract.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 634.312, 634.327, 634.331, and 634.336.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
