

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 Judiciary

BILL: CS/SB 948

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Flood Disclosures

DATE: March 24, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 948 requires a landlord of residential rental property or a mobile home park owner to disclose certain information regarding the property and flood risks to prospective tenants. A tenant who does not receive the disclosures and who incurs substantial losses or damages due to flooding may terminate the lease and is entitled to refund of advance rents paid.

Similarly, the bill requires the developer of a condominium or cooperative to disclose information relating to flood risks in a contract for the sale or long-term rental of a condominium or cooperative unit.

Lastly, the bill slightly expands the flood-related disclosures required under current law that must be provided to a prospective purchaser of residential real property. The bill adds a requirement that the seller disclose whether he or she is aware of any flood damage that occurred during his or her ownership. A seller must also disclose whether he or she has received assistance from *any* source for flood damage to the property, as opposed to just federal sources.

The bill is effective October 1, 2025.

II. Present Situation:

Real Property Sales Disclosure

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

Notably, the disclosure required by case law 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 during 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 was 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 the sale of 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 an independent inquiry;
- Where the purchaser does not have equal opportunity to become apprised of the fact; or
- Where a party undertakes to disclose facts and fails to disclose the whole truth.⁸

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

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).

Statutory Real Property Sales Disclosure Requirements

Numerous statutes have created specific legal disclosure requirements for a seller of residential real property that clarify the scope of a required disclosure or require additional disclosures.

These statutory disclosure requirements relate to the following:

- 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. The seller also must furnish the buyer with a survey or affidavit showing the control 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
- Flood -- A seller of real property must disclose whether the seller has filed a flood insurance claim and whether the seller has received federal flood aid.¹²
- 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.¹³
- Mobile Home Park Lot Rentals -- In a park having 26 or more lots, the park owner must furnish a copy of the prospectus. That document discloses information on numerous topics of interest that a mobile home owner might have regarding the park.¹⁴
- Property tax -- A seller must disclose that a transfer of ownership may lead to an increased property tax assessment related to the Save Our Homes Amendment.¹⁵
- 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.¹⁶

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

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 Section 689.302, F.S.

¹³ 24 CFR Part 35 and 40 CFR Part 745. See also United States Environmental Protection Agency, Lead-Based Paint Disclosure Rule (updated Jan. 13, 2025), <https://www.epa.gov/lead/lead-based-paint-disclosure-rule-section-1018-title-x>.

¹⁴ See ss. 723.011-012, F.S.

¹⁵ 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."

¹⁶ 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."

- Sewer lines -- A seller must disclose known defects in the property's sanitary sewer lateral line.¹⁷
- 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 the full amount of the proceeds was used to repair the sinkhole damage.¹⁸
- Subsurface rights -- A 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.¹⁹

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

- That an occupant is or has been infected with HIV or AIDS.²⁰
- That the property was or may have been the site of a homicide, suicide, or other death.²¹

Disclosures Related to Residential Leases

The Florida Residential Landlord and Tenant Act requires that a landlord disclose information regarding the deposit and the landlord's address.²² The federal lead-based paint disclosure applicable to residential sales also applies to residential leases. The duty to disclose latent defects applicable to sales of real property does not apply to a lease transaction.²³

III. Effect of Proposed Changes:

Residential Landlord-Tenant Flood Disclosure

The bill creates s. 83.512, F.S., to require a landlord leasing a residential property to provide a prospective tenant with a separate "Flood Disclosure" form. The form is provided in the bill and it:

- Informs the tenant that renter's insurance policies do not include coverage for flood damage;
- Requires the landlord to state whether the landlord knows of any flood damage that has occurred on any portion of the property or in any related structure during the landlord's ownership;
- Requires the landlord to state whether the landlord has filed an insurance claim for flood damage related to the property; and

¹⁷ Section 689.301, F.S.

¹⁸ Section 627.7073(2)(c), F.S.

¹⁹ 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."

²⁰ Section 689.25(1)(a), F.S.

²¹ Section 689.25(1)(b), F.S.

²² Sections 83.49 and 83.50, F.S.

²³ *Rost Invs., LLC v. Cameron*, 302 So. 3d 445, 451 (Fla. 2nd DCA 2020); *rev. denied*, 2021 WL 1402224.

- Requires the landlord to state whether the landlord has received assistance for flood damage to the property from the Federal Emergency Management Agency or other entities.

Note that the disclosure form, like the current disclosure form applicable to residential sales in s. 689.302, F.S., does not require detailed answers. The questions are all in the form of a “yes/no” reply without further detail.

The disclosure form required by the bill also defines “flooding” to mean “a general or temporary condition of partial or complete inundation of the property caused by . . . 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.” This definition is the same as in the disclosure form required by current law for residential real estate sales.²⁴

The bill allows a tenant, where the landlord has failed to provide such disclosure and such tenant suffers a substantial loss or damage due to flooding, to terminate the lease no more than 30 days after the date of the flood loss or damage.²⁵ In such event, the landlord must refund the tenant all rent or other amounts paid in advance under the rental agreement for any period after the effective date of the termination of the rental agreement. However, such termination does not alleviate the tenant’s obligation to pay delinquent or unpaid rents due at the time of termination.

Residential Mobile Home Park Lot Leases

The bill amends s. 723.011, F.S., to require a mobile home park owner leasing a residential mobile home park lot to provide a prospective lessee with a separate “Flood Disclosure” form. The form is provided in the bill, and it:

- Informs the mobile home owner that renter’s insurance policies do not include coverage for flood damage;
- Requires the mobile home park owner to state whether the park owner knows of any flood damage that has occurred on any portion of the property or in any related structure during the park owner’s ownership;
- Requires the mobile home park owner to state whether the park owner has filed an insurance claim for flood damage related to the property; and
- Requires the mobile home park owner to state whether the park owner has received assistance for flood damage to the property.

The disclosure form, like the current disclosure form applicable to residential sales, does not require detailed answers. The questions are all in the form of a “yes/no” reply with no further detail.

The disclosure form required by the bill also defines “flooding” to mean “a general or temporary condition of partial or complete inundation of the property caused by . . . the overflow of inland or tidal waters; the unusual and rapid accumulation of runoff or surface waters from any

²⁴ Section 689.302, F.S.

²⁵ The bill defines “substantial loss or damage” as the total cost of repairs to or replacement of the personal property is 50 percent or more of the personal property’s market value on the date the flooding occurred.

established water source, such as a river, stream, or drainage ditch; or sustained periods of standing water resulting from rainfall.” This definition is the same as in the disclosure form required by current law for residential real estate sales.²⁶

The bill allows a tenant, where the owner has failed to provide such disclosure and such tenant suffers a substantial loss or damage due to flooding, to terminate the lease no more than 30 days after the date of the flood loss or damage.²⁷ In such event, the owner must refund the tenant all rent or other amounts paid in advance under the rental agreement for any period after the effective date of the termination of the rental agreement. However, such termination does not alleviate the tenant’s obligation to pay delinquent or unpaid rents (or other sums due to the owner) due at the time of termination.

Condominium and Cooperative Flood Disclosure

The bill amends ss. 718.503 and 719.503, F.S., to require a developer of a condominium or cooperative, respectively, to include flood disclosures in sales contracts and in long-term rental agreements (defined as an unexpired term of more than 5 years). Specifically, the contract or agreement must:

- Contain a statement that informs the buyer or renter that homeowners’ insurance policies do not include coverage for flood damage;
- Disclose whether the developer has any knowledge of flooding that has damaged the property or structures on the property during their ownership;
- Disclose whether the developer has filed an insurance claim for flood damage related to the property or the common elements; and
- Disclose whether the developer has received assistance for flood damage to the property or the common elements from the Federal Emergency Management Agency or other entities.

Consistent with the similar flood disclosure form in current law for residential real estate sales and with the other forms created by this bill for residential rental properties, the required contract language also defines “flooding” to mean “a general or temporary condition of partial or complete inundation of the property caused by . . . 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.”

In a resale of a condominium or cooperative unit, the general flood disclosure form at s. 689.302, F.S., applies.

Flood Disclosure Form in Current Law

The bill amends the flood disclosure form in current law at s. 689.302, F.S., applicable to all sales of residential real property, to expand its scope. Currently, the form asks whether the seller has received any federal flood-related assistance. The bill deletes the limiting word “federal,”

²⁶ Section 689.302, F.S.

²⁷ The bill defines “substantial loss or damage” as the total cost of repairs to or replacement of the personal property is 50 percent or more of the personal property’s market value on the date the flooding occurred

which has the effect of expanding the scope of the disclosure to include whether the seller has received state, local, or private flood-related assistance. It remains as a “yes/no” question without further detail.

The bill also adds to the standard form to include disclosure of whether the seller has knowledge of any flooding that has damaged any portion of the property or any structure on the property during the seller’s ownership of the property.

Effective Date

The bill is effective October 1, 2025.

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:

The new and revised disclosure requirements provided in the bill may add administrative costs to a covered transaction. In addition, these new and revised requirements may increase the potential for lawsuits (and damages) where a person required to make such disclosures does not do so.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 689.302, 718.503, 719.503 and 723.011.

This bill creates section 83.512 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on March 12, 2025:

The CS adds a disclosure of past flood damage to the disclosure form applicable to real estate sales; and adds matching flood disclosures to cooperative law and mobile home park tenancy law, respectively.

B. Amendments:

None.