

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1248

SPONSOR: Comprehensive Planning Committee, Senator Wise, and others

SUBJECT: Real Property Reform

DATE: April 4, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Herrin</u>	<u>Yeatman</u>	<u>CP</u>	<u>Favorable/CS</u>
2.	<u>Kruse</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GO</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for SB 1248 requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review and recommend changes to laws affecting sales, exemptions, and mandatory homeowners' associations, as well as disclosure laws related to adult and residential subdivisions. The committee substitute requires OPPAGA to receive input from certain entities and to hold public meetings around the state. OPPAGA must submit its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2004.

The committee substitute creates an unnumbered section of the Florida Statutes.

II. Present Situation:

Homeowners' Associations

Chapter 720, F.S., governs homeowners' associations. Homeowners' associations are not regulated by any state agency or bureau. Chapter 720, F.S., specifically states that the Legislature recognizes that it is not in the best interest of homeowners' associations or association members to create a bureau or other agency of state government to regulate the affairs of homeowners' associations.¹ In contrast, ch. 718, F.S., which pertains to condominium associations, provides that the Department of Business and Professional Regulation's Division of Florida Land Sales, Condominiums, and Mobile Homes has regulatory power over condominium associations. The division has the power to enforce and ensure compliance with provisions relating to the

¹ Section 720.302(2), F.S.

development, construction, sale, lease, ownership, operation, and management of residential condominium units.²

Section 720.301, F.S., provides definitions regarding homeowners' associations. A homeowners' association means a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.³ Each member of an association, as well as a member's tenants, guests, and invitees, and each association are governed by ch. 720, F.S., and the governing documents of the association. The governing documents are the recorded declaration of covenants for a community, and all adopted and recorded amendments, supplements, and recorded exhibits, and the articles of incorporation and bylaws of the homeowners' association.⁴ Member assessments in the governing documents must describe the manner in which expenses are shared and specify the member's proportional share.⁵

The governing documents must be available for inspection, must be maintained within the state, and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. An association is in compliance if it has a copy of the official records available for inspection or copying in the community. Failure to provide access to the records within 10 business days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this provision. A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply.⁶

Any action to redress the alleged failure or refusal to comply with any of these provisions may be brought by the association or any member of the association against the association itself; a member; or a director or officer of an association who willfully and knowingly fails to comply with these provisions; or a tenant, guest, or invitee occupying a parcel or using the common areas. The prevailing party in the action is entitled to reasonable attorney's fees and costs.⁷ Chapter 720, F.S., also provides an option to litigation. The Legislature recognizes the role of alternative dispute resolution in reducing court dockets and trials and offering a more efficient, cost effective alternative to litigation. Accordingly, at any time after a complaint is filed relating to a dispute under ch. 720, F.S., the court may order mediation or arbitration.⁸

Office of Program Policy Analysis and Government Accountability

The Office of Program Policy Analysis and Government Accountability (OPPAGA) was established to perform independent examinations, program reviews, and other projects as

² Section 718.501, F.S.

³ Section 720.301(7), F.S.

⁴ Section 720.301(6), F.S.

⁵ Section 720.308, F.S.

⁶ Section 720.303(5)(a) and (b), F.S.

⁷ Section 720.305(1)(a)-(d), F.S.

⁸ Section 720.311, F.S.

provided by general law, as provided by concurrent resolution, or as directed by the Legislative Auditing Committee, and to provide recommendations, training, or other services to assist the Legislature.⁹

III. Effect of Proposed Changes:

The committee substitute requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review and recommend appropriate changes in law affecting land sales, exemptions, and mandatory homeowners' associations and disclosure laws related to adult and residential subdivisions. Under this committee substitute, OPPAGA will consider input from various sources, including, but not limited to, the Department of Business and Professional Regulation, homeowners and homeowners' associations, and developers. The committee substitute requires OPPAGA to hold public meetings in South Florida, Central Florida, and Jacksonville to obtain input.

In addition, the committee substitute requires OPPAGA to evaluate the need for statutory changes in areas including, but not limited to, control of homeowners' association operations, management and maintenance, disclosure of financial reports by developers or owners, disclosure of all governing documents governing real property, penalties for noncompliance, oversight and funding for such protection of interests, alternative dispute resolution, and assistance in the formulation of rules to implement enforcement.

The committee substitute requires OPPAGA to submit its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2004.

The committee substitute provides that this act shall take effect on becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

⁹ Section 11.51(1), F.S.

B. Private Sector Impact:

This committee substitute requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review and recommend statutory changes affecting land sales, exemptions, and mandatory homeowners' associations and disclosure laws related to adult and residential subdivisions. Those recommendations, if enacted, may, among other things, minimize disputes between homeowners and homeowners' associations, and provide clarity in the disclosure requirements of homeowners' association to members and potential members.

C. Government Sector Impact:

The committee substitute requires OPPAGA to conduct public meetings in South Florida, Central Florida, and Jacksonville to obtain input and to issue a report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.