

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: March 26, 2003 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CP	Fav/CS
2.	_____	_____	CM	_____
3.	_____	_____	JU	_____
4.	_____	_____	GO	_____
5.	_____	_____	AP	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute (CS) requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to review and recommend appropriate statutory changes affecting land sales, exemptions, and mandatory homeowner’s associations and disclosure laws related to adult and residential subdivisions. This CS provides that OPPAGA will consider input from various sources and hold public meetings to obtain input. Finally, the CS requires OPPAGA to report its findings and recommendations to the Governor, President of the Senate, and the Speaker of the House of Representatives by February 1, 2004.

This bill creates a new section of the Florida Statutes.

II. Present Situation:

Chapter 720, F.S., pertains to homeowners’ associations that are responsible for the operation and maintenance of a community where membership is mandatory and the property is subject to assessments which may become lien against the property.¹ Specifically, ss. 720.301-.312, F.S., provide operating procedures and offers protection for the individual rights of association members without impairing the ability of the association to perform its functions.² The powers and duties of the associations include those set out in ch. 720, F.S., as well as those set forth in the governing documents³ of specific homeowners’ associations.

¹ S. 720.301(7), (9), Fla. Stat. (2002).

² S. 720.302(1), Fla. Stat. (2002).

³ S. The term “governing documents” means the “recorded declaration of covenants for a community, and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto and [t]he articles of incorporation and bylaws of the homeowners’ association, and any duly adopted amendments thereto.”

Each member of an association, as well as a member's tenants, guests, and invitees, and each association are governed by both ch. 720, F.S., and the governing documents of the association. 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 invitees occupying a parcel or using the common areas.⁴ The prevailing party in the action is entitled to reasonable attorney's fees and costs. 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.⁵

Homeowners' associations are not governed by any state agency or bureau, as 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.⁶ In contrast, Chapter 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 development, construction, sale, lease, ownership, operation, and management of residential condominium units.⁷

III. Effect of Proposed Changes:

Section 1 provides the Office of Program Policy Analysis and Government Accountability (OPPAGA) shall review and recommend appropriate changes affecting land sales, exemptions, and mandatory homeowners' associations and disclosure laws related to adult and residential subdivisions. Under this CS, OPPAGA will consider input from various sources, including the Department of Business and Professional Regulation, homeowners and homeowners' associations, and developers. The CS requires OPPAGA to hold public meetings to obtain input.

In addition, this CS requires OPPAGA to evaluate the need for statutory changes concerning control of the homeowners' associations operations, management and maintenance, disclosure of financial reports by developers or owners, disclosure of all governing documents governing the real property, penalties for noncompliance and enforcement, alternative dispute resolution," and other matters related to the interests of consumers and property owners.

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

Section 2 provides that this act shall take effect on becoming a law.

⁴ S. 720.305(1), Fla. Stat. (2002).

⁵ S. 720.311, Fla. Stat. (2002).

⁶ S. 720.302, Fla. Stat. (2002).

⁷ S. 718.501, Fla. Stat. (2002).

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.

B. Private Sector Impact:

This CS requires 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 minimize disputes between homeowners and homeowners' associations.

C. Government Sector Impact:

The CS requires OPPAGA to hold public meetings in South Florida, Central Florida, and Jacksonville to obtain input.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.