

# 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: SB 1634  
 SPONSOR: Senator Fasano  
 SUBJECT: Sale of Real Property  
 DATE: March 10, 2003      REVISED: 03/12/03 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CP</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill revises the disclosure requirements that must be provided to prospective purchasers of real property.

This bill amends s. 689.26 of the Florida Statutes.

**II. Present Situation:**

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects the rights of association members without unduly impairing the ability of such associations to perform their functions.

Section 720.301(7), F.S., defines a "homeowners' association" as 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.

However, not all homeowners associations are regulated by ch. 720, F.S. "Non-mandatory homeowners associations" are voluntary associations established to provide defined benefits or services to homeowners who choose to participate. Usually these associations are incorporated for a specific purpose, such as road paving, neighborhood beautification, etc. Such associations do not have the power to enforce assessments – all financial or other contributions are contractual or voluntary.

Section 689.26, F.S., requires that a prospective purchaser of property in a mandatory homeowners=association be presented a disclosure summary prior to executing a contract for sale. The intent of the disclosure is to inform prospective buyers that they will be required to become a member of the homeowners association and will be obligated to pay assessments to the association.

The statute specifies the form and contents of the disclosure summary, and provides that the disclosure be supplied by the developer, or by the parcel owner if the sale is by an owner other than the developer. The disclosure summary is as follows:

DISCLOSURE SUMMARY  
FOR  
(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.
2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.
3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.
4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT IN A LIEN ON YOUR PROPERTY.
5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. (If such obligation exists, then the amount of the current obligation shall be set forth.)
6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP.
7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS.
8. THESE DOCUMENTS ARE MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

DATE:

PURCHASER:

PURCHASER:

This disclosure requirement does not apply to any condominium, cooperative, vacation or timeshare, or mobile home park association. If membership in the homeowners association is not mandatory, the seller is not required to provide the prospective buyer with this disclosure summary.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 689.26, F.S., to revise the disclosure requirements that must be provided to prospective purchasers of real property, and will implicitly require that the disclosure be provided to buyers in neighborhoods other than those with mandatory homeowners associations.

Sellers will be required to specify whether or not property purchasers will be obligated to be a member of a homeowners' association, to pay assessments to this association, and to pay assessments to the municipality.

In addition, the notice is expanded to state that parcel owners or association members must approve changes to restrictive covenants.

The disclosure statement is changed in the following way:

DISCLOSURE SUMMARY  
FOR  
(NAME OF COMMUNITY)

1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU (WILL) ~~(WILL NOT)~~ ~~WILL~~ BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS COMMUNITY.

3. YOU (WILL) ~~(WILL NOT)~~ ~~WILL~~ BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. YOU (WILL) (WILL NOT) BE OBLIGATED TO PAY ASSESSMENTS TO THE MUNICIPALITY. ALL, WHICH ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

4. YOUR FAILURE TO PAY THESE ASSESSMENTS COULD RESULT IN A LIEN ON YOUR PROPERTY.

5. THERE (IS) (IS NOT) AN OBLIGATION TO PAY RENT OR LAND USE FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. (If such obligation exists, then the amount of the current obligation shall be set forth.)

6. THE RESTRICTIVE COVENANTS (CAN) (CANNOT) BE AMENDED WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR PARCEL OWNERS.

7. THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING DOCUMENTS BEFORE PURCHASING PROPERTY.

8. THESE DOCUMENTS ARE MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED.

DATE:

PURCHASER:

PURCHASER:

**Section 2** provides that this act will take effect July 1, 2003.

**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:

Prospective home-buyers will be noticed that, if they purchase the property, they may be obligated to pay special assessments to the municipality in which the property is located.

B. Private Sector Impact:

This bill would require all sellers of residential property provide a disclosure summary to prospective purchasers.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The 'catch line' for s. 689.26, F.S., should be amended to clarify that the notice is to be provided to all prospective property purchasers.

The notice of assessments to municipalities should be expanded to include notice of assessments to counties and special districts.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Comprehensive Planning:

Revises the disclosure requirements that must be provided to prospective purchasers of real property.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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