

Could Home Court Advantage Act be seller's disadvantage?

By Jennifer LeClaire

There's plenty of debate this week over HB 679, a homeowner's association bill approved by the Legislature in May and expected to take effect next month.

While HB 679 has several provisions, the most controversial is the "Home Court Advantage Act" (HAA). The HAA mandates mandatory mediation or arbitration when there is a dispute between a unit owner and the association in several areas including use of or changes to the parcel or common areas, enforcement of the governing documents and access to official records of the association.

Opponents argue that the bill could equal more attorney fees for homeowners, possibly making them responsible for covering some of the costs of the association's legal counsel in arbitration or mediation. HB 679 proponents say the bill brings clarity to Home Owners Associations.

If Gov. Crist does not veto HB 679, the most of its changes will take effect July 1, 2008. The HAA, however, has an effective date of July 1, 2009.

Could the new law further dampen sales of properties where homeowner and condo association membership is mandatory?

The new disclosure requirements under HB 679 were designed to reduce confusion and disputes after the closing by giving the potential purchasers a better idea of what it means to live in a mandatory association, according to Donna D. Berger, executive director of the Community Advocacy Network, an arm of the Fort Lauderdale law firm of Katzman Garfinkel.

"I have been to membership meetings where certain new owners stood up and challenged whether the board could lien and foreclose for delinquent assessments," Berger said. "When these same owners were advised that homeowners' boards have the same rights as lenders to foreclose on a home or unit regardless of whether or not it's their homestead, they were shocked."

As Berger sees it, more disclosure is always a good thing. Potential buyers who don't think they can abide by the private restrictions or do not want to pay for community services should know that up front and have the choice to purchase elsewhere, she said.

In essence, HB 679 mandates one more piece of paper to set in front of buyers at the closing table. But could that paper spook the buyer?

It's possible, said Matthew Zifrony, an attorney at Fort Lauderdale's Tripp Scott. And it may even cause some buyers to think twice before signing on the dotted line.

"This is another opportunity for a purchaser to receive a piece of paper and become alarmed ? not so much by what's written on the paper but by the fact that they have something else to sign," Zifrony said. "From an HOA perspective, it helps avoid confusion between the association and the buyer about requirements and obligations."