

FLTA
Legislative Update to Board of Directors
April 3, 2011

As the number of bills potentially affecting title are addressed, the schedule this week was a little less hectic. **Bold is new Language in this Report.**

On the Title Insurance Bill: SB 1468/HB 1229 Public Records Exemption SB 1606

This bill has essentially been “hi-Jacked” from us by the DFS in its desire to avoid the termination of the National Title Insurance Policies. On Monday, we received a copy of the proposed DFS language – little changed from their prior drafts. We scrambled to get feedback from the industry – which was basically for Alan to indicate qualified support with reservations as to some of the details and to continue working with them on language changes. It was heard before the House Insurance and Banking Subcommittee on Wednesday 3/30. Subsequent to that, we had several rounds of telephone chats with Wayne Johnson, who heads the insolvency and rehabilitation group at DFS. Very minor changes were agreed, which do not address all of the industry concerns.

The industry concerns with this draft were:

1. That it allowed the use of industry assessments and consumer surcharges to bring a failed insurer back from the dead (as distinguished from simply protecting the policy-holders).
2. That it applied to an out of state domiciled insurer (a) which had not been fully vetted as to its interaction with home state regulators; and (b) could result in Florida consumers cross-subsidizing claims and other expenses outside of Florida
3. The consumer assessments would phase out at different times for different underwriters (a concern which Wayne agreed to address); and
4. Creating a perpetual non-tax funding source for DFS, would reduce their willingness to negotiate in future years. (this issue was not argued at this time)

We circulated the minor changes Wayne agreed to make on Wednesday evening, and contacted the various interest groups on Thursday and Friday. There was significant spread in the views of this draft – with the prevailing sentiment being “we can hold our nose and tolerate it, but aren’t going out of our way to support it” and to escalate within the DFS hierarchy.

A couple of the industry lobby teams are pursuing moving it forward on that basis, and looking for other bills to which it could be grafted as a Floor Amendment since SB 1468/HB 1229 are essentially dead at this stage in the legislative process. Even the Floor Amendment process is a VERY LONG SHOT at this stage.

Within the title industry our handling of this bill has left a lot to be desired, and after the end of session, I will be suggesting a post-mortem evaluation of what we could have done differently and better in hopes of doing better next year.

Rep. Passidomo's Fair Foreclosure Bill HB 1191/SB 1964

Since our last report, we met with Rep. Passidomo to review our substantive rewrite of the alternative procedure section of her bill to provide an expedited procedure within a judicial foreclosure rather than a part judicial/part non-judicial model. She liked the general approach, and we have circulated the draft among the underwriter state counsel, RPPTL and others she suggested and gathered several comments for further improvements.

We also submitted language to protect bona fide purchasers for value of foreclosed properties from challenges to their title. We submitted language which would convert any such challenges to a completed foreclosure into a claim for money damages. RPPTL offered some very helpful amendments to those drafts, which have been turned back to Rep. Passidomo.

She unfortunately went home sick this afternoon, so my scheduled meeting with her wound up being with her Legislative Aide, Jacob Pewitt. Since he had already incorporated all of our proposed language for the Alternate procedure and the conversion to money damages into his working draft, we worked through a number of non-title proposals that the RPPTL Section had submitted.

As always, the decision as to what to introduce is up to Rep. Passidomo, but for what it is worth, Jacob was saying the right things. I'll follow up on Monday.

Rep. Passidomo called me this week and indicated that she was dropping the bill for this Session. She also reported that the banker's non-judicial commercial foreclosure bill was also dead. She asked our help in getting the bill polished properly for re-introduction next session – and I have reached out to the RPPTL section as that type of technical drafting is their forte.

URPERA Glitch Bill. HB 951/SB 1072

Last year, FLTA supported a RPPTL Bill on this topic which did not pass. The background is that several of the state's clerks of the court and county recorders were accepting electronic recordings prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act, §695.27 (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the Act were formally adopted. Because of the complexity of the rules governing the mechanisms for electronic filing, it is often difficult if not impossible to prove strict compliance with the rules.

In response to this, the RPPTL Section drafted a bill retroactively and prospectively ratifying the validity of all electronic documents submitted to and accepted by a county recorder for recordation, whether or not such electronic documents were in strict compliance with the

statutory or regulatory framework then in effect and that all such filings be deemed to provide constructive notice.

The House Bill has two references, and has passed the first of them 3/14 and the second committee on 3/24. It is currently on the House Calendar on Second Reading. The Senate Bill passed out of its first committee of reference on 3/22 with an amendment to make it identical to the house version. It has three remaining committees of reference, although a request will be made to drop two of the committees because of the amendments which were made. **The reference to the Community Affairs Committee was dropped. The SB 1072 will be heard by the Senate Banking and Insurance Committee, 04/05/11, 10:15 am.**

Cure for Everglades Electric Case HB 941 Moraitis/SB 1196 Bogdanoff

Florida Statutes §713.10 has long provided that a construction lien for tenant improvements (other than in a rental mobile home park) could attach to the landlord's interest in the improved property if the improvements were made in accordance with an agreement between the tenant and landlord (ie the lease or verbal agreement contemplated tenant improvements), unless: The lease expressly provides that the landlord's interest shall not be subject to liens for tenant improvements; and either:

- a. The lease or a short form of the lease is recorded in the official records and references the limitation on liability; or
- b. A notice has been recorded in the official records stating that ALL of the leases on a parcel of land prohibit such liability, and the notice includes the "specific language contained in the various leases prohibiting such liability" and meets other requirements.

Because of the title headaches it created on refinancing or sale, most landlords were advised not to record the individual unit leases and instead utilize the blanket notice as to all leases if they wanted this protection.

Everglades Electric Supply, inc. v. Paraiso Granite, 28 So. 3d 235 (Fla 4th DCA, 2010) held that a blanket notice did NOT prevent the attachment of liens to the landlord's interest where (a) not every lease on the property included the limitation language; or (b) all of the leases included the limitation language, but the language of some leases was phrased slightly differently than the "specific" language of the blanket notice.

The proposed statutory amendments will permit the use of the blanket notice option even if all of the leases for the property do not contain lien prohibition language or if the prohibition language in the individual leases vary so long as the lease under which work is being performed by a tenant contains the prohibition language and a blanket notice for the entire property is recorded (prior to the commencement of work) and advises that all leases for the property contain the prohibition language or lists the leases which do not contain it. The bill also clarifies other technical issues and updates anachronistic language.

A committee substitute to the House Bill added a requirement for the landlord to respond within 30 days to a request by a contractor for a copy of the lease provisions under penalty of losing the protection. Several of the original proponents object to this change and may be in the awkward

position of opposing their own bill. **On Thursday 3/31, we participated in a meeting between Rep. Moraitis, the House Sponsor, RPPTL, and the lobby team for the International Council of Shopping Centers at which the last details were hashed out. All parties are now in agreement on one minor amendment to the bill.**

HB 941 has passed its first committee of reference and has one remaining committee stop. SB 1196 **was approved by the Senate Regulated Industries Committee with the agreed change. It has two remaining committee references.**

Effects of Crimes HB 721 Steinberg/SB 1050 Fasano

Among other things, this bill provides that a parent who commits specified offenses against minor child shall lose all right to intestate succession in child's estate & all right to administer estate; provides for distribution of that share of estate.

We have technical concerns in that no conviction is required to make someone ineligible, that there is no record notice of the ineligibility and (although I suspect most underwriters will insure over it is not raised in probate), as phrased it disqualifies someone from taking regardless of the outcome of the probate proceeding.

Technical suggestions have been offered through RPPTL.

HB 721 has two committee references and SB 1050 has three. Neither bill has been heard in either house as yet.

Nonjudicial Foreclosure of Commercial Real Property HB 799 Young/SB 1288 Hays

The bill was scored by the EDR's Revenue Estimating Impact Conference as having an \$11MM plus impact on court funding.

The bill has three committee references in both the house and the Senate. Neither have had a first hearing.

Transferee Tax Liability. HB 907 Wood/SB 1384 Altman/SB 2044 Alexander

Last year, the DOR slipped in a provision which makes the transferee of a business liable for unpaid taxes. The language was broad enough to encompass various transfers in connection with a real estate sale. It does not create a lien on real property, so arguably is not covered by title insurance policy language.

This year's bill is a joint product of DOR, the Business Law Section and the Florida Bankers and fixes quite a few of these problems. One portion of this year's bill creates a potential problem for the title industry. That is language which makes the transfer of 50% or more of the "assets of the business" a trigger for the transferee liability. We will want to coordinate a minor change to try to carve out a stand-alone real estate transfer in which the real estate is not "central" to the business – as would be a sale of a developer's condo units or an apartment building.

Russ Hale (Bankers Assoc Lawyer at Akerman) and Gary Teblum (Bus Law at Trenam) didn't feel that we could get as far as a total carve out for all real estate conveyances – because of the situation where the property was the business (hotel, office building, etc). They have been gracious enough to carry our concerns as part of the overall negotiations in order to minimize the confusion from too many fingers in the pie and have submitted my recommended language to DoR for comment. **We continue to work on carve-outs of various real estate interests as potential triggers for transferee liability.**

At some point it may be necessary for the industry to become more active, but are currently working on a negotiated solution. The title industry lobbyists and state counsel have been apprised of the concerns regarding this bill

On Tuesday 3/29, HB 907 was reported favorably by the House Civil Justice Committee with amendments addressing a number of the Business Law Section's concerns. It has one remaining committee stop, and we have had substantive discussions with the bill's sponsors. The bill has one remaining committee stop scheduled.

SB 1384 has not yet had its first committee hearing

SB 2044 is a Budget Subcommittee on Finance and Tax committee bill, which includes the various fixes to the transferee liability provisions. It has passed Community Affairs and is scheduled for a hearing before the Budget Subcommittee on Finance and Tax, 04/06/11, 8:00 am, 301 S. There is no house companion, so presumably there will be an effort to coordinate the versions at the next committee stop.

Deregulation of Surveyors and Others HB 5005

As filed, this bill would have eliminated the regulation and licensure requirements for surveyors, and the statutory duty to create and maintain minimum technical standards. FLTA opposed this, sent letters to all members of the pertinent committees and urged our members to contact their elected officials in opposition to this.

We were successful and on 3/24 a committee substitute bill was adopted which left in place the current regulatory structure for surveyors, professional geologists, condo association managers and the registration for residential condominiums.

There is still no Senate Companion for this Bill.

We will continue to monitor, but believe our troubles with this bill have been resolved.

Municipal Abatement Liens, SB 1248 (Norman)/HB 1173 (Harrison)

This bill places the foreclosure of abatement liens (not clear whether this includes the \$500/day fines) under chapter 173, which was designed in 1931 for the enforcement of municipal tax certificates on an expedited basis. Section 173.10 (which is not reproduced in the bill) gives

almost a super-priority status to the magistrate's deed thus potentially priming a pre-existing mortgage. Other elements of using this section to enforce a code lien are fundamentally unfair.

SB 1248 was amended on 3/28 to remove any reference that an abatement lien could be foreclosed under chapter 173. The Senate Bill has two remaining committees of reference.

HB 1173 has three committees of reference and has not yet been heard in any of them.