



FLTA Tallahassee Report

Serving Title Professionals Throughout Florida

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Winter 2012

March 7, 2012

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A Message from the President

Beverly McReynolds, CLC
North American Title



The first two months of 2012 have been quite busy for our Association. We had a very successful Lobby Day in January where we opened a dialog with many legislators. We have to be mindful that while a good percentage of legislators have a legal background, not all are familiar with our industry and the service that we provide to the Florida consumer. Meeting with them face to face gives us the opportunity to change that and to

demonstrate the value of our services. As title professionals we, should be repeating our message to all who will listen.

I can truly say that the meetings I had on Lobby Day were very cordial and well received. Our appointments were flawlessly scheduled by Julie Myers and her team at Smith, Bryan and Myers. We were able to visit members of the Committees that would later be hearing our title insurance legislation (HB 0643, HB 0645 and SB 1404). The legislators were interested to learn more about something that they would be voting on in the upcoming days or weeks. I encourage you to take the time to come to Tallahassee next year. Your presence is valuable and you will find it educational and rewarding.

In the weeks following our Lobby Day, Executive Director Alan Fields, Julie Myers, a number of our members and their

lobbyists have worked tirelessly to promote our title insurance bills and other pieces of legislation that have the potential to protect our industry and the way we do business. As this is published, HB 0643 and HB 0645 have passed in the house. Alan has addressed these Bills and others in a separate section of this newsletter (page 9) for your review. You can follow all bills of interest on our Website on the [Governmental Affairs page](#). I want to take this opportunity to thank everyone, especially Alan, who has done so much to make this a successful legislative session!

In addition to being thankful for the organized efforts of our Association, I am sure you can all join me in saying that we are thankful for some relief in the market. I have heard it from so many title agents and underwriters that things are finally picking up and in a big way! We have plans

to increase our membership this year and it is nice that our potential members are experiencing a better cash flow and hopefully will decide to use some of that cash to become members of this fine Association!

We are also monitoring the events in Washington. If you have not looked at the new HUD, please do so. We are nearing the end of this process and if you wish to make comments, you need to do so soon. Use this link: <http://www.consumerfinance.gov/knowbeforeyouowe> to see the forms and express your concerns, if any.

Later this spring, we will be taking to the road with our CE classes to help you keep your associates up to date on the ever changing nuances of our industry. The dates and locations will be posted on the website as they are finalized.

Finally, I want to say that it is my honor to serve as your President this year and I want you to know that the same philosophy that pertains to my associates and clients pertains to the members of the FLTA: I value your input. My door is always open, my phone is always on and I would love to hear from you!

Did You Know?

The Florida Constitution limits homestead protection to 160 acres of contiguous land if outside a municipality and one-half acre inside a municipality. Property in excess of these limits may have homestead status as to part of the property and non-homestead status as to the remainder.

The Title Industry Has Lost a Great Mentor



We are saddened to announce the passing of a beloved member of the Land Title Industry, mentor and friend to many of us, **Charles J. "Chuck" Birmingham.**

In 2008, Chuck retired from Stewart Title after a long and distinguished career culminating as Vice President and Florida State Counsel. Chuck graduated from City College of NY with a BA in 1961 and earned his JD at NYU School of Law in 1966. He practiced in New Jersey as a private attorney, worked for Hovnanian Enterprises and served on several State Government appointed Historical Committees. After moving to Florida in 1981, Chuck first worked in Real Estate Sales before joining Title USA in 1985. Chuck was a past chairman of the Florida Title Underwriters Bureau and served on the Construction Law Committee and the Title Standards Committee of the Real Property Section of the Florida Bar. Chuck had been a loyal and dedicated member of the Florida Land Title Association and is credited with creating the Claims Roundtable at which internal claims counsel for the various insurers and private firms specializing in title claims litigation meet annually.

Chuck was the recipient of the Raymond O. Denham award in 2002 which signifies outstanding service to the FLTA and the title industry of Florida. He was also the recipient of an Honorary Life Membership in 2009. Chuck will be deeply missed by his family, friends and colleagues at Stewart. At Chuck's request, there will be no memorial service, although condolences may be sent to Trinity Memorial Gardens, 12609 Memorial Drive, Trinity, FL 34655.

In Florida, our title community is very small and each of us have been blessed with mentors and guides along the way. Chuck was a master at providing guidance and leadership. Chuck, who mentored so many, would be proud to serve as our reminder that we must guide and help the next generation grow into great title professionals. Our industry would have been less without mentors like Chuck.

Chuck was a friend and someone who shaped our industry in a positive way. Louis Guttman – The Fund (ret)

"Chuck was a mentor to many of us and always a valued source of knowledge and sound judgment. He set the highest standards for work quality, ethics, service to customers and the title industry while being a true gentleman and a kind and caring person." Barry Scholnik – Stewart Title

"Chuck had a sense of humor driven by a refined intelligence. Any latent problem, like a badly cracked sidewalk, was always referred to as an 'inchoate tort.'" Jim Russick – Old Republic

Agent Section Report

Interview with Aaron Davis

Vincent Cassidy, Chair
Majesty Title Services, LLC

Happy New Year to my fellow FLTA agents; from all leading indicators it seems that 2012 should be a "Happy" year for title agents. On behalf of all agents, I would like to thank our FLTA leadership team for fighting the fight on our behalf in Tallahassee, AGAIN this session. There are several bills being debated and many FLTA folks have been lobbying hard to protect and improve our industry.

It always amazes me how such a small group of committed delegates for our industry can accomplish so much for all of us. I look forward to the day when more and more agents realize the value FLTA provides them, and in turn join the association and become active.

Speaking of getting active, this year our newsletter will periodically highlight title agents that not only have realized the importance of FLTA and become active, but have also accomplished an incredible feat the past several years. They have expanded and gained market share in their areas. In this issue we are highlighting Aaron Davis from Hillsborough Title

<http://www.hillsboroughtitle.com/>.

Aaron has been leading Hillsborough Title since 2001, and he is a native of Plant City, a proud FLTA member and recent addition to the FLTA Board of Directors. Congratulations to Aaron for the success he has achieved. I hope you enjoy his

story and find some profitable ideas.

Vince: When did you start in title, and why?

Aaron: I would jokingly say I have been doing this since I was 9 years old...my mother Gail Calhoun had recently divorced my dad. She started Hillsborough Title in 1984 upstairs at a bank in Plant City. As many of us know, when you start a business, you take whatever scraps are thrown your way. Some of those are night and weekend closings. My mom didn't always have a babysitter for my younger brother and I, so she would bring us along- and tell us "now you two be quiet in here while I am doing this closing, pick the staples out of the carpet, empty the trash cans, and refill all of the paper clips holders".

I was 16 when I started working as the company courier. This was before the days of fax, and FedEx was NOT guaranteed overnight. I ran packages, deposits, checks and recordings. After that, I worked my way up the ranks, Post Closer, Processor, Closer, Manager, now owner.

Vince: When did you realize this was a business you wanted to develop and grow?

Aaron: In 1997, I managed to get away from the business, to attend the University of Florida where I received a degree in Finance. After that, I worked for a small Registered Investment Advisory firm in South Tampa. Oddly enough, it was our Title agency



Vincent Cassidy and Aaron Davis

rep who connected me with a friend, who got me my first job. I was licensed in selling, stocks, bonds, mutual funds, and starting my finance career. I was happily doing that when I had what I now call the "come to Jesus" meeting with my mother. It was 2001 and we were on a family vacation, when we first talked about me coming back to run the company. Her goal was to move on, and eventually retire; my goal was to own my own business. By that time, I had learned in the Investment world to USE YOUR ASSETS. As it turned out my biggest asset was the background, knowledge, trust, and loyalty I received from my mother, her business, and her clients.

I came back in 2001, took over operations in '03-'04 and I opened our second location in 2007. Ultimately I purchased the company from my Mom in September of 2008....it immediately depleted everything I had just in keeping the company afloat.

Vince: You have grown to one of the largest in Tampa – what was your strategy, how did you do it?

Aaron: At first I thought it was our technology. Then our work ethic. But I tell you -- its three things: First, the recession FORCED us to grow out of Plant City. We had to expand in order to stay alive. Through expansion, came growth, new markets, new territories, new business.

Second, staying positive. While everyone was doom and gloom, we fought. We spent wisely. We constantly reinvested back into our company - new servers, new offices and new technology. We never got greedy; we never carried a lot of debt. We never worried about those around us, ranking doesn't matter and publicity doesn't matter. I tell the troops "head down, push forward, and every once in a while, we'll pop up for air to see where we are!"

Third - PEOPLE. We have the best people in the industry. I believe in them. They believe in me. We are a family, we have each other's backs, and we ENJOY what we do.

Vince: What mistakes did you make along the way?

Aaron: None-next question (LOL). Plenty. Changes in direction. Investing in one system, going with another. And opening multiple offices at the same time. I have several new gray hairs with that one.

Vince: In Nov., 2011 you were elected to the FLTA board representing Zone 4. What made you get involved at that level?

Aaron: In the beginning I just ran my business, I reacted to the changes in our industry, and moved on. I didn't really know much

about FLTA except they had an endorsement I needed. As I was educated about FLTA, I saw what they were doing for our industry; fighting bills in Tallahassee that would put half of us out of business. I decided it was time to start being PROACTIVE rather than REACTIVE. I wanted to be a part of something I believe in, and give back to the industry.

Vince: Do you have any Mentors in your life that framed your life and management approach?

Aaron: I have several. Some are the obvious, my mother, who founded the company, clients and agents, my family, my dad, fellow business leaders. Some are my mentors and don't even know it -- "Pioneers" of the industry. If you recall, I've been doing this since I was 16 years old -- I am 36 now, in 20 years of experience I've seen a lot. I've watched companies come and go, seen several downturns, economic cycles, and upswings. I listen to the advice of others, I learn from mistakes. But the one mentor who I believe has taught me everything in life was my grandpa; He was a simple man, with a 6th grade education. He worked on the family farm and scraped by. He lived by his word -- A day's work for a day's pay. Do unto others. Do the right things in life and the right things will find you. Honor God.

I once asked my grandpa, who had been married for 54 years at the time of my Granny's passing, "Papa, how did you stay with Granny so long?" He said, "I told our preacher when we stated our vows, 'til death do us part,' so that's what I did." Simple. Genius. A 6th grade education and the smartest man I know.

Vince: What would you say is remarkable about your Agency that sets you apart from the competition?

Aaron: What sets us apart is that my employees all drive better cars than I do. Maybe I need to fix that one day.

Vince: If you weren't in title, what would you be doing?

Aaron: My mom and I have an ongoing joke. I want to work for the county digging ditches. She wants to work for the DOT and be the person that twists the sign from STOP to GO. I suppose I would still be doing what I set off to be, a Registered Investment Advisor, financial planner, investing assets, managing money, crunching numbers; essentially managing other people's businesses instead of my own.

Vince: How do you see 2012 vs. 2011?

Aaron: I can already feel the change occurring. I hear it in the client's voices; I see it in the news. People are more upbeat. You can smell the activity occurring. We saw something in the 4th quarter of 2011 -- that something is continuing into 2012. I think the markets hardest hit geographically are those with the highest density as well as the large metro areas. We are experiencing a shift in those areas and I believe that recovery starts there and will work its way to the less populated areas. I see light at the end of the tunnel....and it's not a train.

[If you know an agent that should be highlighted in upcoming issues, please send a note to vcassidy@majestytitle.com]

Insurer Section Report

Florida Underwriters Sign New Indemnity Treaty

James C. Russick, Esq., Chair
Old Republic National Title
Insurance Co.



One of the true economic benefits that title insurance represents is the industry's ability to promptly meet consumer expectations at an economical price. This is done in part by addressing technical title objections, most that are cured by statute with the mere passage of time, through indemnity agreements supported by fiscally sound title insurers. Many of these technical issues are so mundane, that the Florida Indemnity Treaty was originally devised to expedite transactions by eliminating the need for the traditional, separately crafted letter of indemnity. Over time, the industry has reexamined the matters addressed by the Treaty and made technical adjustments as appropriate.

It has been six years since Florida's Indemnity Treaty was last revised. The Forms Committee of the Florida Land Title Association had been periodically meeting to discuss appropriate improvements to the Treaty. This process culminated with the signing of the Third Revised Florida Indemnity Treaty at the formal execution ceremony that took place recently at the annual convention of the Florida Land Title Association. The changes took effect immediately for all signatories.

The latest changes to the Florida Indemnity Treaty are not dramatic. They are primarily clarifications directed at issues presented to the industry by the mortgage foreclosure counsel. There has been no change to the Conditions that require the prior policy to be at least one year old, the retention of that policy by the new issuer, and the maximum \$500,000.00 liability on the face of that prior policy. There were also formatting changes, primarily the placement of the Indemnity provisions at the beginning of the Treaty.

Many may recall that the previous amendment to the Treaty expanded its applicability to mortgagee policies "at least one (1) year old insuring a lender who has taken title to some or all of the covered land insured under the policy." This raised a number of inquiries from lender's counsel who examined title while in the process of foreclosure. It became obvious that some clarifications were necessary should the lender acquire title at the end of the foreclosure process.

An area that presented many inquiries was homestead. Companies were repeatedly presented with issues about the actual mortgage that was the subject of the foreclosure. Was the mortgage signed by the spouse of the mortgagor? Or, alternatively, what was the marital status and homestead character of property where the mortgage was signed by only one person with no indication of their marital status? Section A of the Third Revised Treaty addresses all of these issues to specifically cover that which, at best, was previously merely implied.

Not dissimilar to the homestead issues about the

legitimacy of the lien in foreclosure, was the issue of mortgagor authority. Often foreclosing counsel were faced with situations where the mortgage in foreclosure had a business entity mortgagor and the mortgage was signed by someone with no apparent authority. These situations are now clearly addressed by the Treaty.

Foreclosing counsel also presented the industry with a number of situations involving a mortgage in foreclosure that had a defective notary acknowledgment for one or more of the parties to the mortgage. In some instances, a *jurat* was utilized rather than the statutorily-prescribed acknowledgment form. These acknowledgment issues are now all encompassed in the Treaty.

A lesser issue, but one that has been recurring, nonetheless, is the lack of a corporate seal on the insured mortgage when the mortgagor was a corporation. The Treaty now expressly covers this situation.

The mere passage of time and various curative statutes address each of these issues. In some instances, the issue is more immediately addressed through the foreclosure litigation as merely an affirmative defense that is waived if not raised. In short, these are technical defects that rarely result in any loss, if ever. Accordingly, they were appropriate subjects to address within the Indemnity Treaty.

We are certain that the clarifications and expansions of the Treaty will enhance its utility to you as agents. We hope that they reduce the need for questions and requests for interpretation, but please, as always, feel free to contact underwriting counsel with any questions you may have.

FLTA Lobby Days A Success

On January 17 title professionals traveled to Tallahassee to participate in the 2012 FLTA Lobby Days. Meetings began Tuesday afternoon at the prestigious Governor's Club with a briefing by Agent Section Lobbyist Julie Myers. Julie spoke about the status of various bills and the schedule for the following day. Government Affairs Chair, Ted Conner, distributed talking points on key bills affecting the title industry and led a discussion on how best to approach our legislators and effectively share our concerns.

Conveniently, the Title Insurance Data Call bill (HB 643, sponsored by Rep. George Moraitis) was to be heard before the House Insurance and Banking Committee at 3:30 that day. We broke from the briefing and walked over to the Capitol complex to show strong support for this important bill. The committee unanimously approved the bill.

For those unfamiliar, it has been many years since Florida has adjusted its promulgated title insurance rates. Due to problems in current law, our regulators haven't been able to gather the information necessary to properly review and update our rate structure. For some time, the title industry has been encouraging a proper data call and has devoted some of our best minds to working with the Office of Insurance Regulation and the Department of Financial Services on this project. More on the data call project can be found in "Rewriting the Rule,"

in [FLTA's June 2011 newsletter](#). Good data is critical to maintaining the viability of Florida's promulgated rate structure and to OIR's ability to set appropriate title insurance rates.

After Rep. Moraitis' success in the committee meeting, we reconvened at the Governor's Club in an ebullient mood. Ted completed his review of the talking points and recommended approaches to communicating with the legislators. Julie Myers' team had scheduled appointments with 22 different legislators who serve on important committees; we broke the group into teams and assigned each team to meet with a group of legislators. We ended the afternoon, breaking into smaller groups for drinks, dinner and an evening of socializing.

The following morning, teams met back at the Capitol and got to work. Our teams visited 22 different legislators during the course of the day. We gathered just before lunch for a group briefing by Rep. Dorothy Hukill, chair of the powerful House Economic Affairs Committee, and FLTA's 2011 Legislator of the Year. Her briefing on the inter-related nature of issues working through the legislature and this year's budget constraints was fascinating. Since Rep. Hukill was working for us in Tallahassee during last year's convention, FLTA President, Beverly McReynolds used this occasion to present the Legislator of the Year plaque to Rep. Hukill. We are very grateful to Rep. Hukill for

her knowledge of the real estate industry and continued support of the title industry.

The teams disbursed to continue their meetings with legislators and reconvened late in the afternoon for a debriefing session in the Cabinet Meeting Room. The feedback from legislators on the bills we discussed was very positive and the effectiveness of this approach was borne out by the progress (or in one case, lack of progress) on every single issue we briefed.

The FLTA Board has advised that they would like a Tallahassee Lobby Days event to become an annual part of the FLTA calendar, separate and distinct from a mid-winter convention. Please plan to become an active part of the team protecting the title industry's interests and our livelihoods in Tallahassee.

Did You Know?

The Florida Constitution uses the term "Homestead" to refer to three very different legal concepts. The first is the \$25,000 exemption from *ad valorem* taxation for homestead. The second is that many types of involuntary liens and judgments will not attach to homestead property. The third concerns the limitations placed on devising or conveying homestead property.

Florida Supreme Court Report

FLTA has always monitored Florida's court rulings to bring our members the latest information on changes that can affect our business. Occasionally, an issue of sufficient importance causes FLTA to file a Friend of the Court ("Amicus") brief to point out broader issues and consequences – the "big picture" issues that the litigants might overlook as not helpful to their specific case.

Recently, we have seen more real estate cases going to the Florida Supreme Court on issues that could cause major problems for our industry. In the last few months, FLTA has taken amicus positions in the following cases:

The first case was *Wells Fargo v. City of Palm Bay*. This case concerned the too common practice by local governments of creating liens that they claimed had a priority on a par with taxes and thus can wipe out a previously filed mortgage. Under Florida Law, a local government can impose a fine of up to \$500 per day until a violation has been cured. It doesn't take long for the accumulated fines to exceed the value of most properties. Having those liens take priority over filed mortgages would trigger title claims and potentially cause Florida mortgages to be uninsurable by Fannie Mae and Freddie Mac. [More on that case here.](#)

More recently, through the generosity of First American, Fidelity National Title, Alliant National, WFG and other underwriters, FLTA received funding to engage former Supreme Court Justice and Board Certified Real Estate Attorney, Ken Bell, to represent the industry in filing an Amicus Brief in *Pino*



v. Bank of New York – Mellon. The case arose out of an allegedly fraudulent assignment of mortgage filed in a foreclosure case. FLTA felt that there was a risk that the Supreme Court might attempt to deal with the problem of alleged frauds on the court broadly and inadvertently call into question the title to all REO properties. More about that case, and the FLTA Amicus Brief, can be found [here](#).

Several weeks ago, the FLTA Board authorized the filing of a third Amicus Brief in the case of *CRC 603, LLC v. North Carillon, LLC*, should the court accept the appeal. The case puts at risk many title agents and insurers who held pre-construction condominium deposits during the boom times. For many years, the industry, backed by the Bureau of Condominiums, felt that it was proper to place all funds into a master escrow account and then maintain careful ledger balances for each customer. Courts have since called this into question. FLTA led the charge to fix the problem by amending a statute retroactively and the District Court of Appeal overturned that statute. Here's the [Bulletin](#) describing the issues in more

detail. Since then, the parties have asked the Florida Supreme Court to accept the case. Assuming the court does, FLTA will be filing yet another Amicus Brief through the generous financial support of Fidelity National Title.

In our highly regulated industry, we can be adversely affected by any change in the laws affecting real estate, foreclosure, probate, and any number of other areas. FLTA continues to be highly vigilant of court cases that may affect your business and through the generous support of our underwriters maintains an active and influential presence before Florida's courts.

Did You know?

That language like "subject to restrictions and reservations of record" in a deed is not enough to prevent the Marketable Record Title Act (Ch. 712, Fla. Stat) from eventually eliminating those interests. To be preserved under MRTA, the reference must be specific – which generally means to the Official Record Book and Page or to the plat by name and recording information.

Post-Closing *meets* **Spring Cleaning**



the [*r*] *require* *way*

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As this is written, we are a little more than half way through the 2012 Florida legislative session. We started this session with the expectation that little would be accomplished other than re-districting and the budget – we have been pleasantly surprised. After a

slow start, a number of the bills that FLTA supported are moving forward nicely in the process. Here the bills of primary importance:

1. Transferee Tax Liability. We worked closely with the Business Law Section, the Tax Law Section and Rep. John Wood (R – Winter Haven) on last year's carve out of most real estate transactions from the law which made the purchaser of certain assets liable for unpaid taxes. Last year, this bill passed the house, and died on the Senate Floor on the last day.

This year we refilled the same bill (HB 103/SB 170) and it passed the house unanimously and is before its final committee stop in the Senate.

2. The Foreclosure Bill. After a slow start, the foreclosure bill sponsored by Rep. Kathleen Passidomo (R-Naples) has picked up momentum and formed the basis for a committee bill of the House Civil Justice Committee. The bill is controversial, opposed by both the banks and the foreclosure defense bar and some homeowner advocacy groups. This bill . (HB 213/SB 1890) is awaiting floor action in both the House and Senate.

3. Website Foreclosure Notice. This bill gave the title industry some concern as it would have allowed an unlimited charge to determine whether proper notice had been given if requested more than 90 days after the completion of a foreclosure. Title is almost the only industry that looks at these after the fact. It also purported to change the standard for service by publication and would have tied all of the

clerks to a single provider. The bills (HB 149/SB 230) are basically dead at this time.

4. Mortgage Estoppels for Subsequent Owners. Our friends at the RPPTL Section of the Bar led the charge to correct a problem that many of us have faced. The lender will often refuse to provide payoff information when requested by an heir or subsequent owner of the property, citing privacy concerns of the original mortgagor. HB 505/SB 1050 requires those lenders to provide payoff information, but not the detail, to those subsequent owners upon showing an interest in the property. These bills have passed all committees of reference and are awaiting final action in both houses. Because of some of the politics mentioned, this bill also includes revisions to the Florida Uniform Principal and Income Act.

5. Title Insurance Data Call Bill. This bill, sponsored by Rep. George Moraitis and Sen. Thad Altman (HB 643/SB 1404) is discussed in more detail in the report on FLTA's 2012 The bill has unanimously passed the full House of Representatives -- the companion public records exemption has passed all committees and is awaiting final floor action. The Senate companion has two remaining committee stops but the final is Budget which is expected to be pro-forma.

6. Hidden Liens Bill. Three years after our initial attempt, a bill which will require local government entities to record almost all of their liens in the official records, appears to have a reasonable prospect of passing. While it does not include all of the detail we had originally suggested, it will help streamline some of our search processes. HB 671, by Rep. John Wood, has passed all committees of reference, and is awaiting action on the House Floor. The Senate companion SB 670 is in its last committee stop with Budget.

7. Insurance Agents Bill. This year, DFS has proposed any number of changes to the law

governing all categories of insurance agents. Most of these are good changes, but a few would adversely impact the title industry. Examples would be eliminating the requirement for title agencies to carry any bond, but requiring only licensed agents (not even attorney-agents) to market to our Realtors and mortgage brokers and changing the way we handle continuing education. We continue to work with DFS to reach compromise on these areas of concern. At this point it is hard to say where we will come out, but they have been very considerate of our opinions and concerns. Both HB 725 & SB 938 have one remaining committee stop at which we hope to introduce amendments. It is anyone's guess how this one will play out.

8. Title Insurance Claims Bill. A bill filed by Sen. Michael Bennett would require payment of additional damages if a policy claim was not resolved within 90 days, would require the issuance of additional coverage every time a loan policy was issued and would require a MRTA search for every policy. The title industry has expressed our serious concerns regarding this bill to Senator Bennett who, in meetings, has shown a willingness to discuss mutually acceptable alternatives. FLTA has agreed to encourage the ALTA forms committee and the title industry broadly to evaluate the creation of an optional "supplemental damages" endorsement. The endorsement would provide coverage to reimburse architects fees, engineers fees, infrastructure costs and other similar costs in the event of a title failure or defect preventing use of the plans. The discussions are ongoing. Senator Bennett's bill (SB 826) has passed its first committee of reference. The House companion (HB 961) has not had its first committee hearing.

9. Construction Liens. HB 897 by Rep. George Moraitis includes fixes for two concerns of the title industry: 1) A glitch in last year's bill addressing the landlord's liability for tenant improvements and 2) a last minute amendment made late in the 2011 session which implied that a Notice of Commencement continued in effect until the work was completed and final payment made, regardless of the date specified in the NOC. This bill has passed its last committee of reference and is

awaiting action before the full House of Representatives. The Senate companion, SB 1202, has one more committee stop.

10. Property Fraud. Throughout Florida we have had problems with fraudulent conveyances of property into trust and other vehicles used to steal property and/or delay foreclosures. This bill makes it an express crime to cause to be filed in the Official Records any document relating to real or personal property that the person knows to contain a material misstatement, misrepresentation, or omission of fact, with the intent to defraud.

While we doubt that this will stop all of the nefarious practices, we hope that it will encourage law enforcement to prosecute these violations more aggressively.

HB 1331, by Rep. John Wood, has passed the full House of Representatives. The Senate companion (SB 996) has one remaining committee stop.

As with every year, politics abounds. Bills can die, even at a late stage, because their sponsors become unpopular, or for no apparent reason at all. We still have three full weeks of session remaining, so ANYTHING CAN HAPPEN, even to the bills about which we may sound optimistic.

Did You Know?

At common law, it was questionable whether a joint tenancy with right of survivorship could be created by a conveyance from the owner to herself and another, because of the technical requirement of the four unities of interest, time, title and possession. For this reason, "straw man" conveyances (from the current owner to another party, then back to the owner and the intended joint tenant) were commonly used to create this interest. This issue was finally resolved in 1971, when the Supreme Court held that the four unities were in fact present even without a straw man. See *LaPierre v. Kalergis*, 251 So.2d 885 (Fla. 1st DCA 1971), *aff'd* 257 So.2d 33; *Ratinska v. Estate of Denesuk*, 447 So.2d 241 (Fla. 2d DCA 1983). Fund TN 17.01.01

Statutory Title Fixes

Florida has a number of statutory “fixes” for title defects. As title professionals we need to be aware of them even though different insurers have their own standards and requirements for their use. Check with your underwriter before relying on any of these. If you don’t know they are available, you can’t ask the question.

1. **Marketable Record Title Act (MRTA) Ch. 713, F.S.** MRTA is the “Mac Daddy” of statutory fixes. It’s too complex to cover all of the details here (that will be another newsletter article), but grossly oversimplified, MRTA provides the following: if the defect, or even a whole interest in the land, is old enough, and subsequent conveyances, are themselves at least 30 years old and didn’t repeat the problem or claim, and there is no mention in the official records about that interest or defect at any time since a 30+ year old deed, you can ignore the defect because MRTA declares them to be “null and void.”

That’s only after:

- a. making certain that you fit the technical requirements for the application of the MRTA; AND
- b. making certain that none of its technical exceptions preserve the defect; AND
- c. making sure that a small number of judicially imposed exceptions do not block you.

MRTA applies to all types of interests and often solves the problem without the need to resort to any of the other curative statutes listed below.

2. **Will or Deed on Record over Five Years.** Five years after a deed executed by the owner of record has been recorded, it can be accepted as valid and as providing constructive notice even though there were no witnesses and there was a defect in (but not a total absence of) the acknowledgment. The statute operates only in the absence of fraud, adverse possession, or pending litigation. Sec. 95.231 (1), F.S.

Two cautions apply to this statute:

- a. The statute requires that the deed be executed by the owner, so there is some doubt whether a deed by a guardian or personal representative would be cured.

b. The statute cures defects in but not a lack of acknowledgments. A failure of the notary to sign would not be cured, neither would a notary acknowledgement that didn’t name one or more of the grantors. That because the acknowledgement was completely lacking as to the unnamed grantors.

3. **Acknowledgement is Valid even if Notary has Interest in Corporate Grantee.** Section 695.05, Fla. Stat. provides that otherwise *bona fide* deeds and mortgages are not invalid and provide constructive notice when recorded, even though the notary was an officer, stockholder or other person interested in the corporation receiving the interest.

4. **Seven Year Cure for Lack of Seals, Lack of Witnesses & Defects in Acknowledgement.** Seven years after the recordation of a power of attorney or a deed executed by the owner or by a person in a representative capacity, it can be accepted as valid, in the absence of fraud, adverse possession, or pending litigation, if one or more subsequent conveyances of the land described in the deed have been recorded by persons claiming under the deed, even though there has been a defect in the acknowledgment or certificate of acknowledgment, the word "as" does not precede the title of the person conveying in a representative capacity, there was no seal affixed when required, or there were no witnesses. §694.08, F.S.

The difference between the five year and seven year limitations, other than the time period, is the seven year limitation applies to a power of attorney and to conveyances made in a representative capacity while the five year limitation does not. Note: This section does require that the property has been conveyed subsequent to the defective instrument.

5. **Irregularities in Place of Acknowledgment Validated.** Occasionally we come across a document with internal inconsistencies as to where it was signed or notarized. This statute provides that a deed or other instrument recorded in the official

records is properly acknowledged and of record even though recitals in the acknowledgment or following the signature of the notary or from the seal of the notary indicate that the acknowledgment was not taken or may not have been taken in the stated place Sec. 695.06, F.S.

If the recitals indicate that the acknowledgment was taken outside the jurisdiction of the notary, some insurers will not rely on it.

6. Adverse Possession. We occasionally see parties argue that we can ignore certain record interests based on Adverse Possession under §§95.12, .13, .14, .16 and .18, F.S. **Rarely will an insurer permit reliance on adverse possession unless it has been established in court.** We still need to understand the basic rules.

Title to real property can be acquired by adverse possession with or without color of title. Before January 1, 1975, color of title (you had a deed or judgment confirming ownership) was limited to the property described in the public records and color of title did not extend to any contiguous lands. Effective January 1, 1975, Sec. 95.16, F.S., was amended making it unnecessary to have a paper title correctly describing the disputed property as long as the area was contiguous to the described land and protected by a substantial enclosure. This amendment was not retroactive. *Seddon v. Harpster*, 403 So.2d 409 (Fla. 1981).

In 1987 the legislature again amended Sec. 95.16, F.S., to require that "color of title" only extended to the lands within the property description. Thus a lot depends on when the claimed possession "ripened."

Adverse possession without color of title only applies when the claimant caused it to be taxed to him within one year of taking possession and subsequently paid all taxes. In 2011, when a party reports a property for taxes as adversely possessed, the property appraiser will make a note in the legal description and provide affirmative notice to the record owner.

In each case, 7 years of adverse possession must be demonstrated.

7. Guardian, Executor or Personal Representative Sales. Title to real property purchased at a sale made

by a personal representative or guardian shall not be questioned, after the purchaser has held possession adversely for 3 years, because of any irregularity in the conveyance or any insufficiency or irregularity in the court proceedings authorizing the sale, whether jurisdictional or not, nor shall it be questioned because the sale is made without court approval or confirmation. This section does not bar an action for fraud against a personal representative or guardian for personal liability to a beneficiary or a ward. §95.21 F.S.

The purchaser must prove adverse possession. Failure to pay full value and fraud prevent the statute from operating. *Griffin v. Bolen*, 5 So.2d 690 (Fla. 1942). The statute should apply to irregularities in the court proceedings, but it is doubtful it applies where the court lacked jurisdiction.

Since it has constitutional implications, consult your underwriter before relying on this statute if the underlying property was homestead.

8. Validity of Condominium. Three years after the date of the filing of a declaration of condominium, the declaration and other documents are deemed effective to create a condominium, whether or not the documents substantially comply with the mandatory requirements of Ch. 718, F.S. §718.110(10). A similar provision applies to cooperatives. See Sec. 719.304, F.S.

While not stated in the statute, expressly raise with your underwriter if (a) the declaration wasn't executed and acknowledged with the requirements for a deed; (b) the declaration didn't contain a description sufficient to locate a unit or lacked an "as built survey;" or (c) the declaration didn't set out the rights and obligations of the unit owners. Many underwriters are hesitant to rely on this statute to insure over these defects.

9. Contracts for Deed. A contract for deed is considered to be a mortgage under Sec. 697.01, F.S., and is foreclosed in the same manner as a mortgage. Under Sec. 95.281, F.S., the lien of the contract terminates 5 years after the date of maturity if the maturity date is ascertainable from the record. If the maturity dates are not ascertainable from the record, the lien terminates 20 years after the date of the contract.

This section is generally not very helpful, because the “wrong party” is often still in title, but the section can be applied to eliminate out of date contracts.

10. Pre-1972 Purchase Contracts. Section 95.35, F.S. bars enforcement of a contract made before July 1, 1972, in which the final maturity date of the obligation is not ascertainable from the record of the contract and there is no deed to or judgment in favor of the purchaser of record and the purchaser is not in possession. Some underwriters place limitations on the use of this provision.

11. Pre-1930 Contracts. Section 695.20, F.S. is applicable to all recorded contracts prior to January 1, 1930, and required all payments to be made within 10 years, provided the vendee or assignee did not obtain and record a deed or procure a decree recognizing his rights before October 21, 1941. Rights of persons in actual possession are not affected.

Note that in many cases, the Marketable Record Title Act will provide greater certainty if there is an intervening “Root of Title.”

12. Conveyances by Foreign Corporations Recorded for 7 years. Absent a showing of fraud, adverse possession or pending litigation, a conveyance by directors and trustees of a dissolved foreign corporation which have been recorded for at least 7 years can be accepted as having conveyed the fee simple title of the corporation on whose behalf the conveyance has been executed. §692.03 F.S.

This section does not eliminate the necessity of determining that the persons signing as directors and trustees were in fact directors at the time the corporation was dissolved. If the section is not applicable, the proper persons to convey the land of the dissolved corporation must be determined by the laws of the domicile of the corporation.

13. Conveyance by “All Heirs” or “Sole Heir.” A conveyance by one or more heirs or devisees purporting to convey ALL of the decedent’s interest in a property cannot be challenged by other heirs or beneficiaries more than seven years after the conveyance was recorded. This provision doesn’t

apply to any heirs or beneficiaries whose names appeared of record under the will of the decedent or in proceedings in an administration of the estate. §95.22 F.S.

Some insurers will not rely on this provision if the conveyance is a quit claim deed. See *Egger v. Egger*, 506 So.2d 1168 (Fla. 3d DCA 1987).

14. Deed or Will of Record 20 Years. Twenty years after the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed. §95.231 (2), F.S.

This section is not applicable to a void deed. *Reed v. Fain*, 145 So.2d 858 (Fla. 1962). Following that case, some insurers have been reluctant to rely on the curative power of Sec. 95.231 (2), F.S.

15. Oil, Gas & Mineral Rights. Since a reservation of oil, gas or mineral rights severs the mineral estate from the surface estate, the prevailing view is that the marketable record title act, ch. 712, F.S. will not eliminate a mineral reservation prior to the root of title.

The right of entry onto the surface estate to explore, drill, mine, etc. is a different issue, and may be eliminated in certain circumstances.

Section 270.11, F.S. releases the right of entry, held by the Trustees of the Internal Improvement Fund or the State Board of Education as to any parcel that is, or ever has been, a contiguous tract of less than 20 acres in the aggregate under the same ownership.

Section 704.05, F.S. provides that rights and interest in land which are subject to being extinguished by the Marketable Record Title Act include rights of entry or an easement given or reserved for the purpose of mining, drilling, exploring or developing oil, gas, minerals or fissionable material. Note: a right of entry is an interest in the “nature of an easement” and is not extinguished by MRTA if used in whole or in part. §712.03(5). It is often difficult to determine if any part of an easement has been used. Discuss this with your underwriter before insuring over a right of entry based on MRTA. Note also, that this section does not apply to interests reserved or held by the

state or by any of its agencies, boards or departments.

16. Mortgages. Under §95.281, the lien of a mortgage terminates 5 years after the date of maturity if the final maturity date is ascertainable from the record. If the final maturity date is not ascertainable from the record, the lien terminates 20 years after the date of the mortgage. The 5 year and 20 year provisions apply to recorded extensions of the maturity date. The section does not apply to mortgages by any railroad or other public utility corporation or to mechanics' liens under Ch. 713, F.S.

A cause of action on a demand note accrues at the time a written demand for payment is made. Therefore the maturity date of a demand cannot be determined from the record and the 20 year

limitation period is applicable. *Smith v. Branch*, 391 So.2d 797 (Fla. 2d DCA 1980). Taking title subject to a mortgage more than 5 years after its original due date can be an acknowledgment of a continued lien. *Ronald L. Irwin, Trustee v. Ann Groggan-Cole, et al.*, 590 So.2d 1102 (5th DCA 1991).

A mortgagor can bring an action to remove the cloud on the title caused by a mortgage barred by Sec. 95.281, F.S. *Hubbard v. Tebbetts*, 76 So.2d 280 (Fla. 1954).

While it is important for title professionals to know the applicable laws, this article only hits the high points. Always refer to the actual statute and case law for the troublesome details. Each insurer has its own, often differing, standards for when reliance is appropriate or permitted. Always check your insurers underwriting manual or call for guidance.

Welcome to FLTA!

Please welcome the newest members of our association. We look forward to more growth in the New Year!

Fast Title Services, Inc

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Tampa, FL

Leslie Robert Evans & Associates, PA

David Brodt
Palm Beach, FL

Prestige Title of Brevard, LLC

Tiffany Fortenberry
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Thank You George Moraitis



One of FLTA's main initiatives during the 2012 legislative session was creating a statutory framework to allow OIR to collect the data necessary to set appropriate title insurance rates. Thanks to the hard work and sponsorship of Rep. George R. Moraitis, Jr., a highly regarded real estate attorney in Ft. Lauderdale, the Florida House of Representatives has unanimously passed the data call bill (HB 643) and a separate public records exemption (HB 645) to protect the information that we submit from public disclosure. The Senate companion bills each have one final committee stop as of this writing.

Please join us in thanking Representative Moraitis for his continuing support of the Title Industry!

Are You Getting the Most Value From Your FLTA Membership?

At FLTA, we've been busy building resources for our members. We have worked hard to add resources, reference materials and to send out regular updates that (we hope) your company and your employees will find useful. Our goal is to make your company's membership valuable.

As a FLTA member, there is no extra charge for any of your employees to use these resources – we encourage our members to have all your employees take advantage of them.

From time to time, we'll be highlighting FLTA resources that may not be widely known:

For your Examiners

Do the searchers and examiners in your office know how to quickly find the original Government Law Office map when a legal references a government lot? Do they know where to find the Spanish Land Grants, or the lazy way to see if a parcel is affected by a Coastal Control Setback line? Do they spend hours searching when they need

We have built pages of Search and Examination Resources with county-by-county links to the clerk's records, tax records, court files and pages of "oddball" stuff that we don't use every day, but when we need it – WE REALLY NEED IT! Those resources can be hard to find. We have assembled

them for you, but **these pages are only accessible to registered employees of FLTA members.**

Here are the links directly to some of the FLTA search and exam resources:

[County Stuff](#)
[Oddball Stuff](#)

If you want to get the most out of your FLTA membership, encourage your employees to sign up as an employee of an FLTA member. Go to <http://www.flta.org/JoinFLTA> and click on "Employee Registration."

Your employees can always "unsubscribe" from the bulletins if they don't want them, although we think our bulletins provide the kind of timely and relevant information that makes everyone a better title professional.

Did You Know?

FLTA is working closely with both of our regulators to create an appropriate Data Call so that they have the information necessary to set appropriate title insurance premiums.

See [ReWriting The Rules, The FLTA Tallahassee Report, June 2011](#)