



## 2010 Legislative Bulletin 2 Government Affairs Committee

Alan B. Fields Chairman  
February 22, 2010

As one of our legislators put it, “if you are not actively involved in the legislative process, the title industry will be on the menu.” In response to that very candid analysis and the number of bills we have already identified directly impacting our industry, Julie Myers, the Agent Section Government Affairs advisor arranged meetings with key legislators. During the Mid-Year Meeting, a number of our members went to the capital discuss issues of concern to the industry with committee chairmen and others. In every case, FLTA was received very graciously and our legislators came away with a much better understanding of some of the issues and the FLTA concerns. It was a very interesting learning experience for me, and something I would recommend to every title agent in Florida.

During the Mid-year meeting, the Government Affairs Committee again reviewed various bills which had been filed since our last meeting. There were a number which we felt had the potential to directly and negatively affect the Title Industry or real estate practices and liabilities. The committee’s recommendations were then forwarded to the FLTA Board of Directors for their consideration and adoption of formal positions.

A summary of those bills and the FLTA position is attached. During the course of the legislative session, many more bills will be filed and reviewed by FLTA.

### **HB 125 SB 854 Rental Property Foreclosure & Short Sales (H. Rogers S. Sobel) \***

Requires lender to notify each tenant upon “consideration” of a foreclosure or short sale, and to offer right of first refusal to tenant at “fair market value”. Requires use of escrowed funds to cover transaction costs upon tenant exercise of right. If tenant elects not to acquire property, escrowed funds must be used to cover relo costs. Damages for failure to give timely notice include relo costs and atty fees.

This is likely unconstitutional in taking of escrowed funds which were otherwise pledged. It will impede short sales. There is a timing problem with notifying upon “Consideration” and a problem in defining the FMV of a property in foreclosure.

The granting of a right of a non-record (but discernible if a foreclosure has been filed) right of first refusal does generate a title cloud of a type that will be difficult if not impossible to clear.

“Additional Notes: A House panel on Tuesday, Jan. 12th shelved a rental property foreclosure bill sponsored by Rep. Hazel Rogers, D- Lauderhill. Part of the problem was that the bill had a "significant negative impact" on mortgage lenders according to the staff analysis. But legislators agreed that a later meeting they will take up a stripped-down measure that would require lenders to give renters prior notice

before foreclosure or a short sale action. The House Civil Justice and Courts Policy Committee twice deferred action on HB 125, which in addition to providing notice, would also have required lenders to offer to sell the foreclosed property to a tenant for the fair market value of the property as well as require the lender to pay the mortgage escrow balance to the tenant. Committee Chairman Rep Carl Domino, R-Juno Beach, agreed to revisit the legislation after Rogers said her bottom line is that she wants to set up a process that protects tenants, some of whom may receive federal subsidies for the housing, as well as taxpayers. "I'm just asking for notice to protect taxpayers who are paying for section 8 tenants and also to protect those good consumers who are living in properties that have landlords who are not paying their mortgages," said Rogers."

**Recommended FLTA Position:** Oppose HB 125/SB 854 as written. If amended substantially, reconsider the bill

### **HB 329 Condo Foreclosure (H. Robaina)**

**Condominium Foreclosures:** Requires certain tenants to pay rent moneys owed directly to association. This is placed in chapter 84, which may be the wrong place; allows association to deny vote, use of property and common areas; requires mortgagee to request estoppel letter from association and fee of up to \$50 prior to filing foreclosure action under penalty of dismissal; Requires lender to pay association 6 months of assessments w/I 30 days after filing foreclosure suit. (Glitch, it appears to require this whether the assessments are current or not). If foreclosure is still pending after 1 year, mortgagee pays all outstanding assessments and all future assessments. Penalty for non-payment is dismissal of foreclosure and attorney fees to association.

**Recommended FLTA Position:** No Position as this does not directly affect title of the property or the practice of title insurance business.

### **HB 415/SB 606 Termination of Residential Rental Agreement in Foreclosure (S. Gelber H. Brise)**

Provides that purchaser of residential property in foreclosure may terminate tenant's residential rental agreement; provides exception for immediate purchaser intending to sell to buyer who intends to occupy as primary residence; specifies contents of termination notice to be given to tenant; provides exceptions; requires immediate purchaser named in title certificate to credit tenant's account for deposit money paid by tenant & advance rent for unexpired rental period; provides for future expiration.

While not express, this alters the priority of a mortgage in a manner that may trigger a taking claim. The requirement for the CT purchaser to create a deposit for the tenant (3) line 68 is a problem. Line 36 allows termination of tenancy if the purchaser from the CT purchaser will occupy as a primary residence – but not if the CT purchaser will occupy.

**Recommended FLTA Position:** No Position as this does not directly affect title of the property or the practice of title insurance business.

### **HB 419/ SB 864 Community Associations – Liens (H. Robaina S. Garcia)**

Major bill, which would reset priority of liens of coops by causing them to relate back to original filing; amends 720.3085 (lines 4725) to eliminate first mortgage priority over liens. Because the priority of .3085 has been changed twice previously, the intended priorities for the various prior statutes should be spelled out in the statute to avoid mis-constructions, bad faith enforcement and taking claims.

Allows collection of assessments from tenants with enforcement mechanism. Does not address conceptual conflict of personal liability of an owner vs. lien & priority concepts.

Parts similar to SB 880 from 2009.

**Recommended FLTA Position:** FLTA Opposes those provisions of HB 419/SB 864 which would alter the existing priority of liens relative to mortgage interests; and the elimination of current limitations on liability of a first mortgage holder acquiring property to 1% or 6 months assessments, because such a change which would cause Condo/Coop/HOA mortgages to fall outside of Fannie/Freddie guidelines and thus be ineligible for federal guaranties.

### **HB 693/SB 1048 Construction Bonds (S. Baker)**

Requires that a surety record in the public records a payment bond for a public works construction project. Prohibits the issuing authority for a building permit or a private provider performing inspection services from inspecting the property being improved until certain documents are filed. Requires that a contractor provide an owner's rights and responsibilities under Florida's Construction Lien Law, changes term of Notice of Commencement to 90 days after all work done; amends "bonding off" provisions etc.

Line 85 eliminates requirement for recording of a public construction bond. Line 680 provides Notice of Commencement remains effective until terminated or 90 days after all work done. Thus not generally determinable from public record. All unexpired NOCs will continue to cloud property even after facial expiration. Line 903 seems to eliminate the first inspection as a control point for assuring that the NOC has been recorded but the requirement has been moved to line 1106. Title, please review language beginning at Line 1362 concerning the period for enforcement of liens. Has bill drafting changed the meaning? Is there a difference between "not enforceable" and "not good"? Do we need to specify that an LP must have been filed before the creditor/purchaser interest was granted?

Line 1488 – does the reference to "other security" suggest authority to accept security other than cash or payment bond?

**Recommended FLTA Position:** FLTA will work with Senator Baker on amendments to make certain that the effective period of a notice of commencement is readily discernible from an examination of the official records. Doing otherwise, or requiring a formal termination in every case will slow all real estate transactions involving new construction or any repairs and significantly increase costs to the consumer.

### **HB 853 Title insurance (H. Ambler S. Baker) Study Council Bill**

Related: HB 855 (trust fund creation); HB 867 (Public Records)

This is the Chapter 637 Bill that Rep. Kevin Ambler has been working on to turn the study council recommendations into law.

Note, there are a handful of points where the FLTA board of directors disagrees with the approach taken in this draft as well as a number of technical details. The areas of substantive disagreement are outlined in the attached letter. Rep. Ambler has been very gracious in his support of FLTA and his willingness to discuss issues and work with us to achieving a superior end result and is to be commended for that. But because of the timing of the Winter Meeting, it was necessary to circulate the most current (but likely not final) version for discussion.

Subsequent to the Mid-Year meeting, FLTA representatives have continued working with Rep. Ambler to address technical issues as well as areas of broader concern to the FLTA – including prohibitions on rebating, clarifying agent in charge responsibilities and the handling of assessments to cover failed underwriters. We anticipate having a revised product in the next week which can be circulated to our members.

**Recommended FLTA Position:** While the FLTA has concerns about specific provisions of this bill and will continue to work with Rep. Ambler to address those concerns, it supports the recommendations of the Title Insurance Study Advisory Council and applauds Rep. Ambler and Sen. Baker for their hard work and dedication in drafting legislation to codify those recommendations in Florida law.