



## 2010 Legislative Bulletin 4 Government Affairs Committee

Alan B. Fields Chairman  
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Thanks to the hard work of Executive Director Lee Huszagh, the lobby team of Matt Bryan and Julie Myers representing the FLTA Agents Section, the support of the lobby teams from our loyal underwriters, the Government Affairs team from the Real Property, Probate and Trust Law Committee of the Florida Bar (RPPTL) and the hard work of many FLTA members, the 2010 Florida Legislative Session was not nearly as bad for the Title Industry as we feared it could have been.

On the positive side for the Industry, all but one of the bills opposed by FLTA failed to pass during this session. Among these were:

- **SB 260 File & Use** -- Senator Bennett's proposal to radically restructure the method of determining premiums, eliminate any share of premium being paid to a title agent, and allow for treble damages for negligent errors. This bill is supported by the Office of Insurance Regulation, so expect this bill to be reintroduced for the 2011 session.
- **SB 216 Sales Tax on Services** – which would have postured the “Sunsetting” of the current sales tax exemption for services thereby subjecting closing services fees and probably premium to sales taxes – was withdrawn early in the process.
- **HB 1523/SB 2270 Non-Judicial Foreclosure.** This bill which would have replaced our current system of court supervised foreclosures with a model allowing property owners to lose their property following only notice to an out of date e-mail address. Granted there were other procedural requirements in the bill, but ultimately it would have created serious title problems by the lack of recorded documentation showing that the procedures were followed. This bill died at the end of the legislative session, but there are rumors that it will be a Senate Summer Project.
- **SB 956 Encroachments** – This bill would have allowed the prevailing party in any encroachment lawsuit to recover their attorneys' fees and costs. The FLTA was very concerned that this would provide an incentive for aggressively litigating otherwise minor encroachments of fences and trigger substantial numbers of title claims.

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- **Foreclosure Amendments** -- Quite a few bills affecting rights in foreclosure were cause for concern because no one had clearly thought through the impact on marketable title and the ability to insure a sale of the foreclosed property. The concerns fell into two main categories. One set of bills would have increased the amount of Condominium and HOA assessments for which a first mortgage lender would be responsible to amounts above what is permitted under FHA/Fannie Mae guidelines for conforming loans. While this is probably the “right” public policy answer, those proposals could have made all Florida Condo mortgages “non-conforming.”

The second approach was to give the tenants in foreclosure additional rights, in some cases even a statutory right of first refusal. All of the bills which included these concepts failed.

Likewise, three of the bills supported by FLTA also failed and are expected to be reintroduced.

- **HB 853/SB 1836 Title Insurance Rewrite** – The major rewrite of the Title Insurance Code and consolidation into a single chapter and other changes recommended by the Title Insurance Study Advisory Council – failed to pass. The Title Insurance Committee of RPPTL has agreed to work with FLTA on improvements to the draft for reintroduction in the next session.
- **HB 1069/SB 2248 Hidden Liens.** This is a RPPTL proposal which would have (i) required all governmental liens (other than taxes, special assessments and those for utility services) to be recorded in the official records; (ii) eliminated the cross-attachment of code enforcement liens (which has become a huge problem with bank foreclosures); (iii) clarifying and requiring a statement of the priority of liens asserted by local governments on the face of the filed lien; and (iv) expanding the homestead determination mechanisms of s. 222.01 to apply to other types of lien.
- **HB 1179/SB 1288 Electronic Recording Fix** – This bill passed Unanimously in House, but died in Messages to Senate after passing all but one committee of reference.

The only significant loss to the Title Industry was **CS HB 435**. This bill creates a new exception to the Marketable Record Title Act such that it would no longer eliminate any interests held by a Water Management District, the Trustees of the Internal Improvement Trust Fund or the United States of America. The amendment is NOT retroactive.

The bill contained a non-objectionable provision allowing advertising of a renewal in lieu of a certified mailing to all affected landowners. It has passed both houses and is awaiting signature by the Governor.

**Technical Assistance**

As is the case every year, the biggest value provided by FLTA and the various lobby teams with whom we work is technical expertise. Title is a highly technical industry and few people understand the technical problems and title issues which can be triggered by an otherwise well intentioned change in the law. In the course of the session, members of our Governmental Affairs Committee provided input and technical changes to quite a few bills, including the following:

- **HB 1411/SB 2358 Timeshare – Non-Judicial Foreclosure.** This bill establishes a non-judicial foreclosure mechanism for timeshares. Unlike the general non-judicial foreclosure bill, this bill was fair and balanced, provided for actual notice, and the recording of affidavits of compliance with the procedures in the Official Records. This bill passed both houses and has been submitted to the Governor.
- **HB 415/SB 606 Termination of Residential Rental Agreement in Foreclosure.** This bill roughly tracks the federal law on the subject, but died at the end of the session. We worked with various committees to insure that the scope didn't exceed the federal standard.
- **HB 109/SB 234 Doc Stamps on Short Sales.** As many of you will recall, there was some controversy about 18 months ago as to whether Doc Stamps were due on the amount of debt forgiven in a short sale. After some back and forth, the Department of Revenue issued its letter opining that no taxes were due. This bill codifies and gives authority to the DoR opinion that no Doc Stamps are due on the amount of debt forgiven in a short sale. The Bill passed and is awaiting the Governor's signature.
- **SB 292/HB 887 Adverse Possession** – This bill would have required Tax Collector to give notice of adverse filing to owner of record. FLTA and RPPTL offered technical suggestions. The bill later died in committee.
- **HB 561/SB 1196 & 1222 Condominiums** -- Among quite a few changes in condominium administration and procedures, there were three main changes which will affect the title world. Those were (1) permitting bulk buyer to acquire title without assuming all developer liabilities and (2) in making the mortgagee responsible for 1% or 12 months of condo assessments.

Most importantly for the Title Industry, language was included "reversing" Double AA Inv. Group, Inc. v. Swire Pacific Holdings, Inc., (S.D. Fla., March 30, 2010) which held that the first 10% deposits on a condominium purchase agreement must be held in a separate segregated account FOR EACH PURCHASER. Consolidating all deposits into a single account (even with proper ledgers) was held a violation of the condominium statute entitling the purchaser to terminate the contract. The bill passed and is awaiting signature by Governor.

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**HB 927/SB 1884 Transfers of Property** – allows transfer to spouses and additional categories w/o losing “Save our Homes” benefits. This Bill passed and is awaiting signature by the Governor.

- **HB 7179/SB 2322 – Energy Improvement Districts.** This bill allows local governments to help fund energy improvements and place a non-ad valorem assessment on property (with priority ahead of mortgages) to repay their advances with interest. The improvements can be up to 20% of assessed value without approval of the mortgage holder, and in unlimited amounts if the annual savings are anticipated to exceed annual assessment. **This type of lien will take priority over a pre-existing mortgage** and highlights why most underwriters discourage their agents from giving any type of “first lien” letter or assurance beyond that implied in your title policy. It passed and is awaiting the governor’s signature.
- **HB 693/SB 1048 Construction bonds – Perpetual Notice of Commencement.** – We negotiated out the concept of a perpetual NOC and agreed to work with subcontractor groups on compromise solutions over the summer. The objectionable provision was removed and it passed the senate but died in the House.

While some of these changes will complicate our lives as title agents, on the whole, it was a successful year for the Title Industry in the Florida Legislature. For more detail, copies of each of these bills are available on the Florida Legislature website [www.leg.state.fl.us](http://www.leg.state.fl.us)