FA

CONFERENCE MANUAL

Fund Assembly

May 15-17, 2025

The Fund

Accreditation Certificates

The Florida Bar (certificate)

Florida Department of Financial Services (syllabi; course offerings)

FL BAR Reference Number: 2500908N

Title: Fund Assembly 2025

Level: Intermediate

Approval Period: 05/15/2025 - 11/30/2026

CLE Credits

General	11.5
Ethics	3.0
Technology	0.5

Certification Credits

Real Estate	11.5
Construction Law	1.0
Condominium and Planned Development Law	1.0

Quiz on Recent Real Property Cases (2025)

May 15, 2025
11:00am – 12:00pm

Provider Information
Attorneys' Title Fund Services, Inc.
6545 Corporate Centre Boulevard
Orlando, FL 32822
(407) 240-3863 EducationRegistrar@TheFund.com

Outline

1. **Recent Real Property Cases**
    a. Easements
    Diggs v. Cushman, 372 So.3d 1290
    (Fla. 1st DCA 2023)
    b. Restraints on Alienation
    Palm Beach Polo Holdings, Inc. v. Ethrensa Family Trust Company,
    375 So.3d 914
    (Fla. 4th DCA 2023)
    c. Statute of Frauds
    Mowder v. Smith,
    390 So.3d 106
    (Fla. 3d DCA 2024)
    d. Contracts
    Yatak & 52 SW 5th Court Warehouse, LLC v. La Placita Grocery,
    383 So.3d 497
    (Fla. 4th DCA 2023)
    e. Mobile Homes
    Ottone v. Williamson Investments,
    373 So.3d 686
    (Fla. 2d DCA 2023)
    f. Foreclosure
    U.S. Bancorp v. Taharra Assets 5545, Inc.,
    378 So. 3d 630
    (Fla. 4th DCA 2024)
    g. Fifth Amendment Takings
    Sheetz v. County of El Dorado, California,
    601 US 267 (2024)

h. Bankruptcy
In re Carvajal,
657 B.R. 501
(Bankr. S.D. Fla. 2024)

i. Foreclosure of Homestead Property
Desbrunes v. US Bank,
385 So.3d 158
(Fla. 4th DCA 2024)

j. Preemption of Municipal Charter
City of Titusville v. Speak Up Titusville, Inc.,
50 Fla. L. Weekly D65
(Fla. 5th DCA 2024)

k. Mediated Settlement Agreements
Dozier v. Scruggs, 380 So.3d 505
(Fla. 5th DCA 2024)

l. Municipal Code Enforcement Liens
Green Terrace E33,
LLC v. Joseph Abruzzo, 383 So.3d 106,
(Fla. 4th DCA 2024)

m. Conveyances
Fuentes v. Link, 394 So.3d 684
(Fla. 3d DCA 2024)

n. Construction Lien
Jon M. Hall Company, LLC v. Canoe Creek Investments, LLC, 385 So.3d 648
(Fla. 2d DCA 2024)

o. Tax Deed Sale
Errol Rainess v. Jose Perez 1031 4, LLC,
49 Fla. L. Weekly D1950 (Fla. 3rd DCA 2024)

p. Fraudulent Inducement
Buyer's Choice Auto Sales, LLC v. Palm Beach Motors, LLC, 391 So.3d 463
(Fla. 4th DCA 2024)

q. Undue Influence
Leitner v. Leitner, 391 So.3d 1023
(Fla. 5th DCA 2024)

r. Commercial Leasing
Patrick Fabre v. 4647 Block, LLC,
49 Fla. L. Weekly D1914
(Fla. 3rd DCA)

s. Easements
PAJ Investment Group, LLC v. El Lago N.W. 7th Condominium Association, Inc., 2024 WL 4498603 (Fla. 3rd DCA 2024)

t. Landlord-Tenant
KAC 2012-1, LLC v. American Homes 4 Rent Properties One, LLC, 49 Fla. L. Weekly D2159 (Fla. 2nd DCA 2024)

Hasta La Lien Risk, Baby (2025)

May 15, 2025
3:30pm – 4:30pm

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Outline

I. Describe sample file with different types of NOCs. Developer getting refinancing/modifying (with novation)/Construction loan mid-build. Practitioner orders a commitment to insure the loan and several NOCs are found. **5 min.**

II. How to address the NOCs:

III. NOC 1- Sitework **5 min.**
   a. Is an NOC required?
   b. NOC 2 - Completed over 90 days (Installation of mobile construction office – something early and minor) **10 min.**
   c. Statutory lien rights, who and how long?

IV. NOC 3 - NOC with bond
   a. Who does the bond cover? **5 min.**

V. NOC 4 – Total build – construction in progress **15 min.**
   a. Restoration of Priority
   b. Lien waiver audits
      i. Requesting information
      ii. Pitfalls
   c. Effective statutory termination
      i. Pitfalls
   d. Indemnification

VI. NOC 5 – Cabana/pool – completed less than 90 days **5 min.**
   a. How do we mitigate the risk of a lien after construction is completed?

VII. NOC 6 – Tenant buildout – lower floor – in progress **5 min**.
   a. When does a tenant lien attach to the fee ownership?
      i. Break **10 min.**

The Escheatment Process and Other Misunderstandings

May 15, 2025
4:30pm – 5:30pm

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Outline

1. Overview and discussion of Ch. 717, F.S. – Disposition of Unclaimed Property as it relates to unclaimed funds remaining in escrow accounts.
   20 min.

2. Who can sign policies and commitments
   10 min.

3. Permitted entities and names for title companies and law firms
   10 min.

4. Use of Zelle and other payment apps to receive and disburse escrow funds
   5 min.

5. Process for opening a new escrow account to avoid problems
   5 min.

May 16, 2025
12:00pm – 1:00pm

Provider Information
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Part 1.

Understanding Recent Freddie Mac and Fannie Mae

Multifamily Loan Guidelines (Webinar)

I. Introduction
    a. Multifamily Loan Programs
        i. Fannie Mae (FNMA)
        ii. Freddie Mac (FHLMC)
        iii. Purpose of New Guidelines
    b. Combat Fraud
II. Deep Dive into the New Rules
    a. Title Insurance Underwriter
        i. Funding Functions
        ii. Prepare Settlement Statement
        iii. Disburse according to Settlement Statement
        iv. Provide Final Ledger
    b. Title Attorney/Agent – what you can (and cannot) still do
III. Impact on Commercial Real Estate Transactions
    a. Increased Costs
    b. Delays
    c. Attorneys lose control over closings
    d. Impact on established relationships

Part 2.

So Long GTOs; Hello Residential Real Estate Rule: FinCEN's New Paradigm (Webinar)

Outline

I. Introduction
   A. FinCEN Geographic Targeting Orders in place since 2016
      a. Intended to identify/prevent money laundering
      b. Requires settlement agents to report information on business entities purchasing residential real property with title insurance; no bank loan
      c. Limited in scope and duration (specific counties; purchase amounts)
      d. Thrust is to identify individuals behind purchasing entities
   B. Each 180-day order since 2016 replaced with another
      a. Counties added; now 11 in FL

II. We knew this was coming
   A. Proposed Rule published August 2024
   B. Replaces GTOs
   C. Much broader in scope and complexity

III. New Rule in effect December 2025
   A. Covers all U.S. states and territories
   B. No dollar threshold for reportable purchases
   C. Trusts and non-profits expressly added
   D. "Cascade" of responsible parties
      a. Begins with Settlement agent
      b. Ends with person recording Deed
   E. Form seeks more than 100 pieces of information

IV. What to Do
   a. Education coming from Fund; ALTA
   b. Input form still in flux
   c. Expect training; work aids

May 16, 2025
2:00pm – 3:00pm

Provider Information
Attorneys' Title Fund Services, Inc.
6545 Corporate Centre Boulevard
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(407) 240-3863 EducationRegistrar@TheFund.com

Title Teasers 2025
Outline

1. Title Teasers
    a. Notices of Commencement/Construction Liens
        i. Sec. 713.10, F.S.
        ii. Sec. 713.23, F.S.
        iii. Sec. 713.24, F.S.

    b. Guardianships/Foreign Conservators/FL Trusts
        i. Sec. 744.307, F.S.
        ii. TN 10.04.04
        iii. Florida Trusts
        iv. Sec. 736.0403, F.S.

    c. Homestead
        i. Article X, Sec. 4 Florida Constitution
        ii. TN 2.06.01
        iii. Sec. 732.103, F.S.
        iv. Sec. 731.201, F.S.
        v. Snyder v. Davis, 699 So.2d 999 (Fla. 1997);
        vi. Public Health Tr. of Dade Cty. v. Lopez, 531 So.2d 946 (Fla. 1988)
        vii. Sec. 733.609, F.S.

    d. Disclaimers/Federal Tax Lien
        i. Sec. 739.402, F.S.
        ii. Drye v. United States, 120 S.Ct. 474 (1999)

    e. Easements/Merger
        i. Sec. 704.09, F.S.

    f. Condominium/Termination of Condos
        i. Sec. 718.117, F.S.

g. Probate
    i. Sec. 732.103, F.S. Share of other heirs
    ii. Sec. 731.201, F.S. Definition of protected homestead

i. Condominiums/Construction
    i. Sec. 713.13, F.S. Notice of Commencement

j. Mortgage Satisfactions/Corporate Authority
    i. TN 22.05.03
    ii. Corporate Authority
    iii. Sec. 607.0832, F.S.

    i. Acknowledgments/Recording Statute
    ii. Sec. 695.03, F.S. Acknowledgment and proof
    iii. TN 1.05.03
    iv. Sec. 117.05, F.S.
    v. Sec. 117.07, F.S.

May 16, 2025
3:00pm – 4:00pm

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Fraud Forgery and Impersonation: Keeping the Transaction Safe (Webinar)

Outline

1. Party verification – minimum standard
    a. Confirm
    b. WARNINGS
    c. Mitigation
2. Payoffs & Wire Transfers – minimum standard
    a. Independently
    b. WARNINGS
    c. Mitigation
3. Protect your office
    a. Be in control of the closing – minimum standard
    b. Security – strongly recommended
    c. Plan – minimum standard
    d. Train – minimum standard
    e. Common Sense – trust yourself and instincts – minimum standards
    f. Learn – keep updated on latest trends and anti-fraud protections in real estate closing fraud – minimum standard
    g. Tools – strongly recommended
    h. Insurance – strongly recommended

The Claims Game

May 16, 2025
4:20pm – 5:10pm

Provider Information
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Orlando, FL 32822
(407) 240-3863 EducationRegistrar@TheFund.com

Outline

I.	Intro/Forgery	3 Min.
II.	Adverse Possession	3 Min.
III.	Easements	3 Min.
IV.	Priority of Liens (Part 1)	3 Min.
V.	Priority of Liens (Part 2)	3 Min.
VI.	Fraud in the Inducement	3 Min.
VII.	Witness Requirement	3 Min.
VIII.	Standing	3 Min.
IX.	Title Defects	3 Min.
X.	Joint Tenancies	3 Min.
XI.	Reformation	3 Min.
XII.	Def. of Public Records	3 Min.
XIII.	After-Acquired Title	3 Min.
XIV.	Statute of Limitations	3 Min.
XV.	Fund History	3 Min.
XVI.	Conclusion	5 Min.

Florida Department of Financial Services

USER: JOHN ST. LAWRENCE, ATTORNEYS' TITLE FUND SERVICES, LLC, ATTORNEYS' TITLE FUND SERVICES, LLC

See Offering Status History

Offering Application

Offering ID	1219448
Course Name	QUIZ ON RECENT REAL PROPERTY CASES (2025)
Course ID Number	132837
Program Type	Public
Provider ID	367289
Provider Name	ATTORNEYS' TITLE FUND SERVICES, LLC
Selected Instructors	COLLEEN COFFIELD SACHS

Date(s)	05/15/2025 to 05/15/2025
Day of Week	☐ Sun ☐ Mon ☐ Tue ☐ Wed ☑ Thu ☐ Fri ☐ Sat
Time	11:00 AM to 12:00 PM
Lunch Break	to
Location	ASSEMBLY - BONNET CREEK Building HILTON ORLANDO BONNET CREEK 14100 BONNET CREEK RESORT LANE ORLANDO, FLORIDA 32821 **County:** Orange **Region:** III
Change Location	(Select One)

Offering Status

Status	Approved Date 05/05/2025

Save Cancel

JIMMY PATRONIS
FLORIDA'S CHIEF FINANCIAL OFFICER

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USER: JOHN ST. LAWRENCE, ATTORNEYS' TITLE FUND SERVICES, LLC, ATTORNEYS' TITLE FUND SERVICES, LLC

See Offering Status History

Offering Application

Offering ID	1215068
Course Name	HASTA LA LIEN RISK, BABY
Course ID Number	132838
Program Type	Public
Provider ID	367289
Provider Name	ATTORNEYS' TITLE FUND SERVICES, LLC
Selected Instructors	CHRISTOPHER BRACKEN JENNIFER BARROW

Date(s)	05/15/2025 to 05/15/2025
Day of Week	☐ Sun ☐ Mon ☐ Tue ☐ Wed ☑ Thu ☐ Fri ☐ Sat
Time	03:30 PM to 04:30 PM
Lunch Break	to
Location	ASSEMBLY - BONNET CREEK Building HILTON ORLANDO BONNET CREEK 14100 BONNET CREEK RESORT LANE ORLANDO, FLORIDA 32821 **County:** Orange **Region:** III
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Status	Approved Date 02/11/2025

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Offering Application

Offering ID	1215070
Course Name	THE ESCHEATMENT PROCESS AND OTHER MISUNDERSTANDINGS
Course ID Number	132840
Program Type	Public
Provider ID	367289
Provider Name	ATTORNEYS' TITLE FUND SERVICES, LLC
Selected Instructors	MARGARET WILLIAMS

Date(s)	05/15/2025 to 05/15/2025
Day of Week	☐ Sun ☐ Mon ☐ Tue ☐ Wed ☑ Thu ☐ Fri ☐ Sat
Time	04:30 PM to 05:30 PM
Lunch Break	to
Location	ASSEMBLY - BONNET CREEK Building HILTON ORLANDO BONNET CREEK 14100 BONNET CREEK RESORT LANE ORLANDO, FLORIDA 32821 **County:** Orange **Region:** III
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Offering Application

Offering ID	1214385
Course Name	PT1 UNDERSTANDING RECENT FREDDIE MAC MULTIFAMILY LOAN GUIDELINES PT2 SO LONG GTOS HELLO RESIDENTIAL REAL ESTATE RULE-WEBINAR
Course ID Number	132841
Program Type	Public
Provider ID	367289
Provider Name	ATTORNEYS' TITLE FUND SERVICES, LLC
Selected Instructors	JOHN B ST. LAWRENCE KARA J SCOTT

Date(s)	05/16/2025 to 05/16/2025
Day of Week	☐ Sun ☐ Mon ☐ Tue ☐ Wed ☐ Thu ☑ Fri ☐ Sat
Time	12:00 PM to 01:00 PM
Lunch Break	to
Location	ASSEMBLY - BONNET CREEK Building HILTON ORLANDO BONNET CREEK 14100 BONNET CREEK RESORT LANE ORLANDO, FLORIDA 32821 **County:** Orange **Region:** III
Change Location	(Select One)

Offering Status

Status Approved Date 01/28/2025

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USER: JOHN ST. LAWRENCE, ATTORNEYS' TITLE FUND SERVICES, LLC, ATTORNEYS' TITLE FUND SERVICES, LLC

See Offering Status History

Offering Application

Offering ID	1214486
Course Name	TITLE TEASERS 2025
Course ID Number	132842
Program Type	Public
Provider ID	367289
Provider Name	ATTORNEYS' TITLE FUND SERVICES, LLC
Selected Instructors	BRIAN DOUGLAS STRINGER CALEB GRANGER HINTON SCOTT JACKSON

Date(s)	05/16/2025 to 05/16/2025
Day of Week	☐ Sun ☐ Mon ☐ Tue ☐ Wed ☐ Thu ☑ Fri ☐ Sat
Time	02:00 PM to 03:00 PM
Lunch Break	to
Location	ASSEMBLY - BONNET CREEK Building HILTON ORLANDO BONNET CREEK 14100 BONNET CREEK RESORT LANE ORLANDO, FLORIDA 32821 **County:** Orange **Region:** III
Change Location	(Select One)

Offering Status

Status	Approved Date 01/30/2025

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See Offering Status History

Offering Application

Offering ID	1214382
Course Name	FRAUD FORGERY AND IMPERSONATION: KEEPING THE TRANSACTION SAFE (WEBINAR)
Course ID Number	132843
Program Type	Public
Provider ID	367289
Provider Name	ATTORNEYS' TITLE FUND SERVICES, LLC
Selected Instructors	LINDA NEALE MONACO THOMAS W CRONKRIGHT

Date(s)	05/16/2025 to 05/16/2025
Day of Week	☐ Sun ☐ Mon ☐ Tue ☐ Wed ☐ Thu ☑ Fri ☐ Sat
Time	03:00 PM to 04:00 PM
Lunch Break	to
Location	ASSEMBLY - BONNET CREEK Building HILTON ORLANDO BONNET CREEK 14100 BONNET CREEK RESORT LANE ORLANDO, FLORIDA 32821 **County:** Orange **Region:** III
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Offering Status

Status Approved Date 01/28/2025

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See Offering Status History

Offering Application

Offering ID	1215071
Course Name	THE CLAIMS GAME
Course ID Number	132835
Program Type	Public
Provider ID	367289
Provider Name	ATTORNEYS' TITLE FUND SERVICES, LLC
Selected Instructors	CHEZARE PALACIOS ELSA CAMACHO GEORGE PEREZ

Date(s)	05/16/2025 to 05/16/2025
Day of Week	☐ Sun ☐ Mon ☐ Tue ☐ Wed ☐ Thu ☑ Fri ☐ Sat
Time	04:20 PM to 05:10 PM
Lunch Break	to
Location	ASSEMBLY - BONNET CREEK Building HILTON ORLANDO BONNET CREEK 14100 BONNET CREEK RESORT LANE ORLANDO, FLORIDA 32821 **County:** Orange **Region:** III
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Offering Status

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Speakers

Fund Assembly Speakers

INDUSTRY SPEAKERS

DR. JESSICA LAUTZ is the Deputy Chief Economist and Vice President of Research at the National Association of REALTORS® (NAR). She has been with NAR since 2007.

The core of Dr. Lautz's research focuses on analyzing trends for both NAR members and housing consumers. She is in demand as a speaker and by major media outlets to provide commentary on the real estate market. She has testified before Congress on behalf of NAR.

Dr. Lautz volunteers at Nottingham Trent University as an industry fellow mentoring real estate graduate students, is a committee chair at the National Association of Business Economics, bakes birthday cakes for underserved youth with Cake4Kids, and sits on the board of the Food Recovery Network.

Dr. Lautz has been recognized by Housing Wire's Women of Influence and RISMedia's Newsmaker award. Dr. Lautz received her Doctorate of Real Estate from Nottingham Trent University in the United Kingdom. She also holds a Master's in Public Policy from American University and undergraduate degrees in Political Science and Law and Justice from Central Washington University.

JONATHAN WHITNEY is a partner with Lutz, Bobo & Telfair, P.A. Mr. Whitney obtained his B.S. from the University of Southern Maine and his J.D. from the University of Maine.

Mr. Whitney's real estate practice lies at the intersection of cooperative law and manufactured housing. He regularly counsels clients on the purchase and sales of mobile home parks, cooperative governance, rule enforcement and collections issues, and unit owner sales and resales.

TIMOTHY M. CERIO, with more than 28 years of experience in the public and private sectors, Tim brings a wealth of expertise to Citizens. Appointed in June 2021 as General Counsel and Chief Legal Officer, Tim provided critical leadership as Citizens responded to new legislative requirements to stabilize the Florida property insurance market and return Citizens to its role as Florida's insurer of last resort.

Prior to joining Citizens, Tim practiced with GrayRobinson, focusing on government investigations, regulatory and health care law, and administrative law. He previously served as General Counsel to Florida Governor Rick Scott where he was the chief legal advisor to the Governor and legal liaison for the Executive Office of the Governor to all state and local agencies.

Tim currently serves on the Board of Governors of the State University System of Florida. In June 2021, he was appointed to the Florida Supreme Court Judicial Nominating Commission. Tim is also a member of the Board of Directors of the James Madison Institute, Florida's premiere think tank dedicated to promoting economic opportunity for all Floridians.

Tim earned his bachelor's degree in political science from the University of Florida (UF) in 1990. He graduated from the UF College of Law with honors in 1995 and was a member of the Florida Law Review. Tim has served as president of both the University of Florida Alumni Association and the UF College of Law Alumni Council, and he currently serves as Chairman of the Florida Blue Key Alumni Advisory Board.

TOM CRONKRIGHT is the Executive Chairman of CertifID, a technology platform designed to safeguard electronic payments from fraud. He co-founded the company in response to a wire fraud he experienced and the rising instances of real estate wire fraud. He also serves as the CEO of Sun Title, a leading title agency in Michigan. Tom is a licensed attorney, real estate broker, title insurance producer and nationally recognized expert on cybersecurity and wire fraud.

TREY GOLDMAN is Legislative Counsel for the Florida Realtors. He participates in all their legislative and regulatory efforts, and represents Realtors® before the Florida Legislature, state regulatory agencies, the Governor's office and Cabinet, with a focus on insurance and community association related issues. Trey is also a member of the Florida Bar and serves on the Executive Council of the Bar's largest section, the Real Property, Probate and Trust Law Section. Trey was raised in Daytona Beach, Florida, where both of his parents were Realtors, and graduated from the University of Florida College of Business with a degree in Real Estate and Urban Analysis. He also received his J.D. from the University of Florida College of Law.

FUND SPEAKERS

BRIAN STRINGER is a Fund Underwriting Counsel in the Miami-Dade Branch. Brian holds a Master of Laws (LL.M.) in real property development from the University of Miami School of Law.

Prior to joining The Fund, Brian was a Fund Member in private practice in Miami, Florida. Brian started in the area of medical malpractice defense and civil litigation but then transitioned to focus his practice on real property transactional law. He represented domestic and international individuals and entities in the acquisition, financing, leasing, and disposition of residential and commercial real property. Brian also represented and served as general counsel for various companies. He has represented lenders, developers, and investors in all manner of transactions.

Brian is a member of the Florida Bar, the Real Property Probate and Trust Law Section of the Florida Bar, and the United States District Court for the Southern District of Florida.

CALEB HINTON is a Fund Senior Underwriting Counsel based at Fund Headquarters in Orlando. Caleb obtained his Bachelor of Science in Criminology and his Juris Doctor from Florida State University. In 2023, Caleb became a Board Certified Real Estate attorney through the Florida Bar. Prior to joining the Fund, Caleb's real estate practice focused primarily on commercial leasing and commercial land transactions including acquisitions, development, and sales.

CHEZARE PALACIOS is Claims Counsel for The Fund. He earned his Bachelor of Science Degree in Civil Engineering from Florida Atlantic University in 2012 and his Juris Doctor with Honors from the University of Florida Levin College of Law in 2016. Prior to joining The Fund, Mr. Palacios was in private practice as a litigation attorney in the areas of contract disputes, construction law, and real property. He also served as in-house Claims Counsel for a national title insurance underwriter. He is licensed to practice in the states of Florida and New York and is a member of the Florida Bar's Real Property, Probate & Trust Law Section.

CHRIS BRACKEN is an Underwriting Counsel at The Fund's Duval Branch in Jacksonville. He obtained his B.A. from the University of Florida and J.D. degree from Florida Coastal School of Law with a Certificate in Legal Writing. Chris represents The Fund as an active member of the Florida Land Title Association's (FLTA) Education committee. He is also a member of the Construction Law Committee of the RPPTL Section of The Florida Bar.

Before joining The Fund, Chris practiced construction litigation and real property transactional law at boutique law firms in Jacksonville. He also served as an Assistant State Attorney with the Fourth Judicial Circuit of Florida.

COLLEEN COFFIELD SACHS is an Underwriting Manager, Processes and Reporting for Attorneys' Title Fund Services, Inc., having joined The Fund in 2019. She received a B.A. in both Political Science and English and a J.D. from the University of Mississippi. Prior to becoming an underwriting counsel, Colleen was in private practice. After practicing for several years in New Orleans, Louisiana, Colleen returned to her home state of Florida, where she was a Fund Member with a practice emphasizing real estate, land use, and development law. Colleen is an active member of the Florida Bar Real Property, Probate & Trust Law Section. She is a former chair of the Florida Bar Continuing Education Committee, current Chair of the Real Property, Probate & Trust Law Section Disaster and Emergency Readiness and Preparedness Committee, and a current member of the Florida Realtor-Attorney Joint Committee where she co-chairs the contract subcommittee.

ELSA CAMACHO attended the University of Central Florida where she earned her Bachelor of Art degrees in Political Science and Psychology. Ms. Camacho then went on to earn her Juris Doctor degree from Florida A&M University College of Law. Prior to joining The Fund as Claims Counsel, she worked for several years litigating cases throughout the state of Florida primarily in the area of foreclosure. Elsa is licensed to practice in the state of Florida and is also a member of the Florida Bar's Real Property, Probate & Trust Law Section.

GEORGE PEREZ is The Fund's Senior Manager for Claims, Risk Analysis & Member Compliance. He graduated from the University of Central Florida and Brooklyn Law School. Prior to joining The Fund, Mr. Perez was in private practice where he was involved in transactional real estate for both residential and commercial properties; as well as representing institutional lenders. He was also a real estate and title insurance litigator representing a number of title insurance underwriters. During his years of private practice, Mr. Perez was also involved in estate planning, probate and trust administration, as well as business law. He has taught in Valencia College's ABA-accredited paralegal studies program in addition to being a regular speaker at The Fund's New Member Training program. He is a member of the Florida Bar.

JOHN B. "JAY" ST. LAWRENCE, Fund Regulatory Compliance Counsel, earned degrees in journalism and law at the University of Florida and was admitted to the Florida Bar in 1995. Prior to coming to the Fund, he practiced bankruptcy and real estate law. Jay is a member of the Florida Bar's Real Property, Probate & Trust Law Section and has been admitted to all Florida Federal District Courts. He joined the Fund in 2004 as a claims attorney and now works with the Fund's Legal Education Department, where he has created and taught Fund programs on topics including cyber security, private lending after Dodd-Frank and Homestead. In addition to serving as the Fund's Regulatory Compliance Counsel, Jay co-teaches the Fund's New Member Training and Commercial New Member Training courses and edits the Fund's Title Note chapter on bankruptcy.

JENNIFER BARROW is a Senior Commercial Underwriting Attorney in The Fund's Miami-Dade Branch. In addition to underwriting commercial transactions, she serves as co-forms counsel responsible for companywide implementation and education on title related forms and is a member of the Florida Land Title Association Forms Committee. Prior to employment with The Fund, Ms. Barrow was the managing attorney of a title company, a member of The Fund, and a partner at a firm focused on real estate litigation and transactions.

Ms. Barrow is a graduate of Providence College (B.S., Political Science, 2006) and the University of Miami College of Law (J.D., 2009). Ms. Barrow is admitted to practice in Florida and in the United States District Court for the Southern District of Florida and is a member of the Florida Bar's Real Property, Probate and Trust Law Section.

KARA SCOTT is a Fund Legal Education Attorney. She presents on a variety of topics in addition to co-teaching Fund New Member Training, Fund Paraprofessional Training and Fund Commercial Training. Prior to joining the Fund's Legal Education Department in 2023, she was a Senior Associate in a Fund Member's Sarasota office, with a practice focused on residential and commercial real estate transactions, business law, land use, and estate administration. Kara is a graduate of Rhode Island College and New England School of Law and practiced law in Rhode Island for 24 years before relocating to Florida in 2019. She is a member of the Florida Bar's RPPTL section and its Title Issues & Standards Committee.

LINDA MONACO is a Senior Legal Education Attorney with The Fund. Ms. Monaco received her B.S. degree in Industrial Distribution from Texas A&M University and her J.D. Maga Cum Laude from Quinnipiac University. She is a Florida Bar Board Certified Real Estate Lawyer and has been admitted to practice in United States District Court for Connecticut and retired from Connecticut Bar. Ms. Monaco is a Florida licensed real estate instructor. In addition to presenting for Fund members, Ms. Monaco has spoken on various legal topics to FLTA, RPPTL and the National Association of Realtors®.

MARGARET A. "PEGGY" WILLIAMS, Sr. Manager Risk Analysis and Member Compliance, manages The Fund's Risk Management and Member and Agent Services Departments. She received her undergraduate degree from Florida State University and her J.D. degree from the University of Florida College of Law. Ms. Williams has worked for The Fund since 1991 and joined The Fund's legal staff in 2000 as claims counsel. She has managed the Risk Management Department since 2005 and is co-editor of The Fund's monthly publication, The Fund Concept. Ms. Williams is an at-large member of The Florida Bar's Real Property, Probate and Trust Law Executive Council, and serves on several of its committees. She is a member of the Florida Land Title Association and has served on a Florida Bar Grievance Committee for the 9th Circuit.

MEGAN CRANDALL SOLOMON joined Attorneys' Title Fund Services, Inc. in 2017. In 2024 she joined the underwriting team transferring from her role as Senior Claims Counsel. She earned her law degree from Nova Southeastern University in 2009 after having received a bachelor's degree with honors in Criminal Justice with a minor in Interpersonal Communications from the University of Central Florida in 2006. She is admitted to practice law in Florida as well as in the U.S. District Courts for the Northern, Middle, and Southern Districts of Florida. She frequently presents lectures on the topic of claims avoidance at the Fund's New Member Training programs. Prior to working with the Fund, she practiced as an experienced litigation attorney focusing on real estate, bankruptcy, title disputes, code enforcement matters, and lien foreclosures in federal and state actions throughout the state of Florida. She was also involved with achieving title claims resolutions and curative measures for lending institutions.

MELISSA MURPHY is The Fund's Executive Vice President, Chief Legal Officer, and General Counsel. She obtained her B.S. degree from Florida State University and her J. D. degree from the University of Florida. Prior to joining The Fund, she was in private practice in Gainesville, Florida for over 30 years, with a focus on real property transactional law. Ms. Murphy was an agent for The Fund and her firm was a Top 25 Member of The Fund for many years. Ms. Murphy was an adjunct professor at the University of Florida prior to moving to Orlando, teaching at both the UF law school and in the Masters of Science in Real Estate program in the business school. She serves on the Executive Council of the Real Property, Probate and Trust Law Section of The Florida Bar and was Chair of the Section in 2005-2006. The Section recognized her with the William S. Belcher Lifetime Professionalism Award in 2020. She currently serves as President of the Florida Land Title Association.

PRINCY VALIATHODATHIL received her Bachelor of Arts degree from University of South Florida and received her Juris Doctor from Roger Williams University, School of Law. Princy is admitted to practice law in Florida and is a member of Florida Bar's Real Property, Probate and Trust Law Section, and the Bay Area Real Estate Council. Before joining the Underwriting Department at The Fund, Princy was a Managing Attorney at a boutique law firm in Boca Raton, FL where the primary focus of her practice was representing lenders, mortgage servicers, and creditors in the area of default services and foreclosures.

SCOTT JACKSON celebrated his 20th year with The Fund in 2024, having spent time working in both Claims and Underwriting. Scott is a graduate of the University of Miami School of Law and also holds a Master's Degree in Library Science from Florida State University. He is a member of the Real Property, Probate and Trust Law section of the Florida Bar and also represents The Fund at the Central Florida meetings for PRIA.

SHANNON WIDMAN is a Senior Vice President and Deputy General Counsel for Attorneys' Title Fund Services, Inc. She earned her B.A. in Political Science from Syracuse University and her J.D. from the University of Miami School of Law. Shannon moved from her hometown of Palm Beach Gardens to Santa Rosa Beach where she founded Porath & Associates, P.A., a law firm specializing in real estate transactions on Florida's Emerald Coast and the 30A corridor.

A Fund Member for 24 years, Shannon served on the Board of Governors for Attorneys' Title Fund Services, Inc., and as President and Treasurer of the Emerald Coast Real Estate Council, Inc.

Shannon volunteers on the Board of Directors for The Seaside School Foundation, Inc. where she acts as a legislative liaison, helping to secure over nine million dollars in legislative appropriations for the charter school's dual enrollment center expansion project.

Throughout her career, Shannon provided pro-bono title services to new homebuyers through Habitat for Humanity of Walton County and served as a volunteer Guardian ad Litem in Walton and Okaloosa Counties where she was recognized as Pro Bono Attorney of the Year for the First Judicial Circuit.

Mission of Citizens Property Insurance Corporation

Timothy M. Cerio
President, CEO, Citizens Property Insurance Corporation

NO MATERIAL PROVIDED FOR THIS SESSION

Quiz on Recent Real Property Cases

Colleen Sachs
Underwriting Manager, Processes and Reporting, The Fund

QUIZ ON RECENT REAL PROPERTY CASES

SELECTED RECENT REAL PROPERTY CASES

(From Fund Concept issues from January 2024 through February 2025)

Colleen Sachs, Underwriting Manager
Attorneys' Title Fund Services, Inc.

I. Appeals

a. ***Valdes v. City of Marathon,* 394 So.3d 135 (Fla. 3rd DCA).** The resident is not entitled to second-tier appellate review after an appeal is heard by the circuit court.

II. Bankruptcy

a. ***In re Platt*, 656 B.R. 469 (Bankr. S.D. Fla. 2023)**. The state court must make a final determination on spousal interests in entireties property prior to the bankruptcy court's potential sale.

b. ***In re Peterson*, 657 B.R. 271 (Bankr. M.D. Fla. 2024).** Purchaser's claim for specific performance was subject to discharge in seller's bankruptcy case.

c. ***In re Carvajal*, 657 B.R. 501 (Bankr. S.D. Fla. 2024).** Debtor cannot claim Florida homestead in property owned by corporation.

d. ***In re Powell,* 119 F.4th 597 (9th Cir. 2024).** Debtor has absolute right to dismiss Chapter 13 bankruptcy case.

III. Community Associations

a. ***Palanchian v. Windstone Property Owners' Association*, 384 So.3d 200 (Fla. 4th DCA 2024).** A settlement agreement between the bank and the water management district does not bind the property owners' association.

b. ***Green Terrace E33, LLC v. Joseph Abruzzo, as Clerk and Comptroller for Palm Beach County*, 383 So.3d 106, (Fla. 4th DCA 2024).** Municipal code enforcement lien against condominium common elements is not lien "against the property" or individual condominium units.

IV. Contracts

a. ***Mercado v. Sridhar*, 389 So.3d 625 (Fla. 3d DCA 2023).** Attaching an addendum to an agreement without specifically incorporating it fails to make the addendum an essential part of the agreement**.**

b. ***Palm Beach Polo Holdings, Inc. v. Ethrensa Family Trust Company*, 375 So.3d 914 (Fla. 4th DCA 2023).** Contract provisions giving the seller a right to repurchase lot below market value encouraged development and enhanced marketability and were not unreasonable restraints on alienation.

c. ***North Florida Mango v. LLS Holdings*, 375 So.3d 906 (Fla. 4th DCA 2023).** Summary judgment is not appropriate when material terms of the contract are in dispute.

d. ***Mowder v. Smith*, 390 So.3d 106 (Fla. 3d DCA 2024).** The performance of an oral agreement removes it from the statute of frauds.

e. ***Yatak & 52 SW 5th Court Warehouse, LLC v. La Placita Grocery*, 383 So.3d 497 (Fla. 4th DCA 2023).** A written agreement with a merger clause negates prior oral statements.

f. ***Dozier v. Scruggs,* 380 So.3d 505 (Fla. 5th DCA 2024).** Florida courts highly favor the enforceability of mediated settlement agreements.

g. ***Stav Software, LLC v. Lederman Investments*, LLC, 394 So.3d 1217 (Fla. 3d DCA 2024).** Entitlement to specific performance against a third-party purchaser depends on the validity of the underlying contract.

h. ***Buyer's Choice Auto Sales, LLC v. Palm Beach Motors, LLC,* 391 So.3d 463 (Fla. 4th DCA 2024).** Fraudulent inducement renders a contract voidable, not void.

V. Construction liens

a. ***Jon M. Hall Company, LLC v. Canoe Creek Investments, LLC,* 386 So.3d 648 (Fla. 2d DCA 2024).** A timely filed notice of contest shortens the time period needed to make a claim against surety to enforce a construction lien.

VI. Deeds

a. ***Fuentes v. Link,* 394 So.3d 684 (Fla. 3d DCA 2024).** Conveyance documents may be effective even when not formally titled "deed."

b. ***Leitner v. Leitner,* 391 So.3d 1023 (Fla. 5th DCA 2024).** Presumption of Undue Influence arises when the beneficiary to deed is active in procuring the deed.

VII. Easements

a. ***Diggs v. Cushman,* 372 So.3d 1290 (Fla. 1st DCA 2023).** "Access and utility easement" is not limited to easement authorizing utility access.

b. ***PAJ Investment Group, LLC v. El Lago N.W. 7th Condominium Association, Inc.,* 49 Fla.L.Weekly D2081 (Fla. 3rd DCA 2024).** The holder of an easement must own the dominant estate to establish an appurtenant easement.

VIII. Foreclosure

a. ***U.S. Bancorp v. Taharra Assets 5545, Inc.,* 378 So. 3d 630 (Fla. 4th DCA 2024).** Company remains an indispensable party in a foreclosure suit following the transfer of property to a successor company.

b. ***Desbrunes v. US Bank*, 385 So.3d 158 (Fla. 4th DCA 2024).** Appointment of personal representative for deceased borrower not required in foreclosure proceedings involving homestead property.

c. ***U.S. Bank Trust, N.A. as trustee of LSF9 Master Participation Trust v. Rodriguez,* 397 So.3d 1141 (Fla. 2nd DCA 2024).** Lost notes may be reestablished through a three-pronged analysis.

IX. Government Action

a. ***City of Titusville v. Speak Up Titusville, Inc.,* 50 Fla. L. Weekly D65 (Fla. 5th DCA 2024).** Municipal charter amendment providing for "right to clean water" was preempted by state statute.

X. Injunctions

a. ***Wayne's Aggregate and Materials, LLC v. Lopez,* 391 So.3d 633 (Fla. 5th DCA 2024).** Temporary injunction defective due to failure to adhere to the rule of civil procedure.

XI. Landlord-Tenant

a. ***Ottone v. Williamson Investments*, 373 So.3d 686 (Fla. 2d DCA 2023).** Mobile home tenant and adult daughter's actions were deemed a threat to welfare and peaceful enjoyment, and eviction was the proper remedy.

b. ***Stoppa v. Infinity the Oaks, LLC,* 389 So.3d 682 (Fla. 3rd DCA 2024).** Erroneous rule citation by the trial court does not invalidate the ruling.

c. ***Patrick Fabre v. 4647 Block, LLC*, 49 Fla. L. Weekly D1914 (Fla. 3rd DCA 2024).** Commercial landlord is entitled to default judgment of possession when tenant fails to deposit rent in court in a timely manner.

d. ***KAC 2012-1, LLC v. American Homes 4 Rent Properties One, LLC*, 398 So.3d 1033 (Fla. 2nd DCA 2024).** Tenant is not entitled to damages for landlord's posting of the statutorily required three-day notice.

XII. Land Use

a. ***Sheetz v. County of El Dorado, California*, 601 US 267 (2024).** The Fifth Amendment's takings clause applies equally to legislative and administrative land-use permits.

b. ***DeVillier v. Texas*, 601 U.S. 285 (2024).** A cause of action against the state exists under the takings clause of the Fifth Amendment in conjunction with proper causes of action under state law.

c. ***Lozman v. City of Riviera Beach, Florida,* 119 F.4th 913 (11th Cir. 2024).** Final written denial of application for permit must occur to render takings.

XIII. Lis Pendens

a. ***Weiss v. BI 27, LLC*, 48 Fla. L. Weekly D1991 (Fla. 3d DCA 2023). Withdrawn and Superseded on Denial of Rehearing by Weiss v. BI 27, LLC, Fla.App. 3 Dist., December 13, 2023.** When action is founded upon a duly recorded instrument, lis pendens is maintained as a matter of right.

b. ***Hutchins v. SCT Trading, LLC*, 392 So.3d 246 (Fla. 2nd DCA 2024).** Bond on lis pendens not set without proper requests.

XIV. Taxes

a. ***Ramle International Corp. v. Miami-Dade County*, 388 So.3d 126 (Fla. 3d DCA 2023).** Prior ownership alone is insufficient to establish the right to surplus proceeds from a tax deed sale.

b. ***Errol Rainess v. Jose Perez 1031 4, LLC,* 49 Fla. L. Weekly D1042 (Fla. 3rd DCA 2024). Withdrawn and Superseded on Rehearing by Rainess v. Jose Perez 1031 4, LLC, Fla.App. 3 Dist., September 25, 2024.** Lack of due process leads to the vacation of a tax deed sale.

XV. Rules of Construction

a. ***Grassfield v. Grassfield*, 381 So.3d 628 (Fla. 2d DCA 2023).** Rules expressed in the conjunctive require satisfaction of all requirements.

Cooperative Mobile Home Park Buyouts: Navigating the Process

Jonathan Whitney
Attorney, Lutz, Bobo & Telfair, P.A.

NO MATERIAL PROVIDED FOR THIS SESSION

General Counsel Comments

Melissa Murphy
Executive Vice President, Chief Legal Officer & General Counsel, The Fund

NO MATERIAL PROVIDED FOR THIS SESSION

“Hasta La Lien Risk, Baby”

Jennifer Barrow
Senior Commercial Underwriting Counsel, The Fund

Chris Bracken
Underwriting Counsel, The Fund

“Hasta La Lien Risk, Baby”

By, Jennifer Barrow and Chris Bracken

Fund Assembly 2025

Document Reference List

1) Fund Affidavit-22 (Over 90 days- by Owner)
2) Fund Affidavit-23 (Owner’s Affidavit)
3) Fund Affidavit-25 (Contractor’s Final Payment Affidavit)
4) Fund Affidavit-24 (Owner’s Affidavit- Restoration of Priority)
5) Fund Affidavit-25.1 (Contractor’s Payment Affidavit and Lien Waiver- Restoration of Priority)
6) Fund Affidavit-26 (Subcontractors’ Payment Affidavit and Partial Waiver of Lien)
7) Lien Waiver Audit Spreadsheet Instructions
8) Lien Waiver Audit Spreadsheet
9) Sample Notice of Lien Prohibition Under Section 713.10, Florida Statutes
10) Sample Memorandum of Lease
11) “Addressing Open Notices of Commencement in Title Insurance Commitments” (Fund Concept Issue September 2020)
12) “Restoration of Priority: Applying the Revised Notice of Termination Statute” (Fund Concept Issue June 2024)
13) “Who is Responsible for Construction Liens for Tenant Improvements?” (Fund Concept Issue October 2021)

Affidavit

[Construction — Over 90 Days — Notice of Commencement]

Florida Statutes 713.13(2) and 713.08(5)

BEFORE ME, the undersigned authority, personally appeared _____ who, after being sworn, deposes and says:

1. I am the owner of the following described property:

   [*insert legal description of real property*]

2. This affidavit is made regarding the Notice of Commencement recorded _____ in O.R. _____, Page_____, and/or Instrument No. _____, of the Public Records of _____County, Florida.

3. A. _____ [*initial as applicable*] More than 90 days has elapsed since the recording of the Notice of Commencement set forth under item 2 above and no construction has commenced under said Notice of Commencement.

   B._____ [*initial as applicable*] More than 90 days has elapsed since the final furnishing of labor, services or materials to the property pursuant to the Notice of Commencement set forth under item 2 above and all lienors are paid in full.

4. This affidavit is given to induce **Old Republic National Title Insurance Company**, to insure title to the subject property. Affiant agrees to indemnify them for any loss or damages resulting from its reliance on this affidavit.

_____

(Affiant)

Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

Notary Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____

Owner's Affidavit

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ ("Affiants"), who depose(s) and say(s) under penalties of perjury that:

1. That he/she is the owner of the property described in Exhibit A attached hereto being the same property described in that certain Notice of Commencement recorded _____ in O.R. _____, Page_____, and/or Instrument No. _____, of the Public Records of _____ County, Florida; or is the agent of the owner of that property and has knowledge of the matters sworn to herein and is authorized by the owner to provide this affidavit.

2. That the following list includes the names of all of the persons who have established privity with the owner (as set forth in Florida Statute 713.05) for providing labor, services or material for the improvements being constructed on the property described in Exhibit A.

   (**Instructions**: *list the names next to the numbered lines in this paragraph, if additional space is needed continue list on the rear of this page, if the answer is "none" write "none" in any space provided in this paragraph*.)

   1) _____ 6) _____

   2) _____ 7) _____

   3) _____ 8) _____

   4) _____ 9) _____

   5) _____ 10) _____

3. That the following list includes the names of all of the persons who have served notice to owner (as set forth in Florida Statute 713.06) on the owner.

   (**Instructions**: *list the names next to the numbered lines in this paragraph, if additional space is needed continue list on the rear of this page, if the answer is "none" write "none" in any space provided in this paragraph*.)

   1) _____ 6) _____

   2) _____ 7) _____

   3) _____ 8) _____

   4) _____ 9) _____

   5) _____ 10) _____

4. A certified copy of the recorded Notice of Commencement is properly posted on the construction site pursuant to the requirements of Florida Statute 713.13. I have inspected the property described in Exhibit A during construction in order to determine whether any notice to owner has been posted on the property and have listed all persons who posted a notice to owner on the property in paragraph 3 above.

5. All construction on the property described in Exhibit A has been completed and the owner has obtained the final payment affidavit required by Sec. 713.06 (3) (d) 1., Florida Statutes from all parties, including but not limited to, the contractor, who have established privity with the owner (as set forth in Sec. 713.05 Florida Statutes).
6. The owner has **paid in full all parties** named in this affidavit.
7. This affidavit is given to induce **Old Republic National Title Insurance Company**, to insure title to the subject property. Affiant agrees to indemnify them for any loss or damage resulting from its reliance on this affidavit.

_____
(Affiant)

Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____
Notary Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____

Owner's Affidavit

Restoration of Priority

BEFORE ME, the undersigned authority, personally appeared _____ who, after being sworn, depose(s) and says:

1. I am the owner of the property described in Exhibit A attached to this affidavit. This affidavit is made regarding the Notice of Commencement recorded _____ in O.R. _____, Page_____, and/or Instrument No. _____, of the Official Records of _____ County, Florida.

2. **All** parties who have established privity with me (as set forth in Florida Statute 713.05) relating to the construction described in the Notice of Commencement are **paid in full** through _____**.** (***Instructions****: state date through which payment for work was made, which should be as close to the closing date as possible*),

3. Regarding construction under the Notice of Commencement, I have obtained a list of **all** subcontractors and suppliers (pursuant to Florida Statute 713.165) from each person who has established privity (as set forth in Florida Statute 713.05) with me. All of those subcontractors and suppliers are listed in this paragraph.

   (**Instructions**: *list the names next to the numbered lines in this paragraph, if additional space is needed continue list on the rear of this page, if the answer is "none" write "none" in any space provided in this paragraph*.)

   1) _____ 6) _____

   2) _____ 7) _____

   3) _____ 8) _____

   4) _____ 9) _____

   5) _____ 10) _____

4. I made a personal inspection of the property to locate any notice to owner posted on the subject property.

5. Regarding construction described in the Notice of Commencement, all parties who have served notice to owner on me (as set forth in Florida Statute 713.06) or posted notice to owner on the subject property are listed in this paragraph.

   (**Instructions**: *list the names next to the numbered lines in this paragraph, if additional space is needed continue list on the rear of this page, if the answer is "none" write "none" in any space provided in this paragraph*.)

   1) _____ 6) _____

   2) _____ 7) _____

   3) _____ 8) _____

   4) _____ 9) _____

   5) _____ 10) _____

6. All parties listed in paragraphs 4 and 6 have provided a Contractor's Payment Affidavit as required by Sec. 713.06(3)(d)(1), F.S., and lien waivers as evidence that they have all been paid in full up to and including the date stated in paragraph 2 and any further work, materials or labor shall relate to a new Notice of Commencement to be recorded subsequent to the recording of the mortgage to which the liens of any and all construction lienors are intended to be inferior.

7. This affidavit is given to induce **Old Republic National Title Insurance Company**, to insure title to the subject property. Affiant agrees to indemnify them for any loss or damages resulting from its reliance on this affidavit.

_____
(Affiant)

Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____
Notary Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____

Contractor's Final Payment Affidavit and Lien Waiver

[TN 21.03.01]

BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgements, personally appeared _____, who after being duly sworn, deposes and says:

1. I am the _____ of _____, a _____, ("Contractor") and as such am authorized to make this affidavit on behalf of the company and have personal knowledge of the matters described herein/

2. At all times material hereto, Contractor has been doing business in _____ County, Florida.

3. This affidavit is made pursuant to Florida Statutes, for the purpose of acknowledging full payment to the Contractor from the Owner at the property described as:

   See Exhibit "A" attached hereto

4. That all lienors engaged by the Contractor to perform or provide labor, services and/or materials under the contract, including all extras and change orders, between Contractor and _____, a _____ ("Owner"), and pursuant to that certain Notice of Commencement recorded in Official Records Book _____, Page _____, or Instrument No. _____ of the Public Records of _____ County, Florida, have been PAID IN FULL and signed lien waivers have been provided to Contractor and Owner by each of said lienors, except as follows::

   See Exhibit "B" attached hereto (OR NONE)

5. For and in consideration of the contract amount paid by Owner the undersigned hereby acknowledges and does hereby waive, release, remise and relinquish any and all right to claim any lien or liens for work done or material furnished, or any kind of class of lien whatsoever on the property described above.

6. The undersigned certifies that all labor, services and/or materials described herein have been provided prior to execution and delivery of this document and that all construction on the property described above was completed on or before _____, ___, 202_.

7. Contractor agree to hold harmless Owner, (TITLE AGENT) and Old Republic National Title Insurance Company (the "Title Company") free from any and all loss, costs, damage and expense of every kind, including attorney's fees, which it shall or may suffer, including, as to the Title Company, under its said policy or policies now to be issued, or any reissue, renewal or extension thereof, or new policy at any time issued upon said real estate, part hereof or interest herein; arising, directly or indirectly, out of or on account of any such mechanics' or materialmen's liens.

FURTHER AFFIANT SAYETH NOT.

Title of Affiant: _____

Name of Contractor's Business: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

Notary Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____

Affidavit
Contractor's Payment Affidavit and Lien Waiver
[Restoration of Priority- TN 21.03.03]

BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgements, personally appeared _____, who after being duly sworn, deposes and says:

1. I am the _____ of _____, a _____, ("Contractor") and as such am authorized to make this affidavit on behalf of the company and have personal knowledge of the matters described herein.

2. At all times material hereto, Contractor has been doing business in _____ County, Florida.

3. This Affidavit is made pursuant to Florida Statutes, for the purpose of acknowledging full payment to the Contractor from the Owner at the property described as:

   See Exhibit "A" attached hereto

4. That all lienors engaged by the Contractor to perform or provide labor, services and/or materials under the contract, including all extras and change orders, between Contractor and _____, a _____ ("Owner"), and pursuant to that certain Notice of Commencement recorded in Official Records Book _____, Page _____, or Instrument No. _____ of the Public Records of _____ County, Florida, have been **PAID IN FULL** through_____, 20___, the "Payment Date" and signed lien waivers have been provided to Contractor and Owner by each of said lienors, except as follows:
   (***Instructions****: the Payment Date should be as close to the closing date as possible*).

   See Exhibit "B" attached hereto (OR NONE)

5. For and in consideration of the contract amount paid by Owner the undersigned hereby acknowledges and does hereby waive, release, remise and relinquish any and all right to claim any lien or liens for work done or material furnished, or any kind of class of lien whatsoever on the property described above through the Payment Date.

6. The undersigned certifies that all labor, services and/or materials described herein have been provided prior to execution and delivery of this document.

7. Contractor agree to hold harmless Owner, (TITLE AGENT) and Old Republic National Title Insurance Company (the "Title Company") free from any and all loss, costs, damage and expense of every kind, including attorney's fees, which it shall or may suffer, including, as to the Title Company, under its said policy or policies now to be issued, or any reissue, renewal or extension thereof, or new policy at any time issued upon said real estate, part hereof or interest herein; arising, directly or indirectly, out of or on account of any such mechanics' or materialmen's liens.

FURTHER AFFIANT SAYETH NOT.

_____

Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Aff-26, Subcontractor's Payment Affidavit and Partial Waiver of Lien

[Restoration of Priority- TN 21.03.03]

BEFORE ME, the undersigned authority, personally appeared _____, who deposes and says under oath that He/She is _____of_____, having furnished labor, material or services under a direct contract with _____, for consideration, the receipt of which is hereby acknowledged, does hereby release and waive any lien or right to lien the undersigned now has under the Notice of Commencement recorded _____ in O.R. _____, Page_____ or Instrument Number _____, Public Records of _____ County, Florida, and against the property owned by _____, and legally described as follows:

SEE ATTACHED EXHIBIT "A"

The undersigned further acknowledges and certifies that:
(***Instructions****: the Payment Date, as used throughout this document, should be as close to the closing date as possible*).

1. This is a final waiver of lien rights which the undersigned has against the property described herein for all labor, material, and service furnished, including all extras and change orders through _____, 20___ (the "Payment Date"). All laborers employed by the undersigned have been **PAID IN FULL** through the Payment Date, and the undersigned has the right and authority to execute this waiver of lien.
2. All suppliers and sub-contractors to the undersigned who have furnished labor, material, and services for the undersigned in connection with the construction of improvements upon the aforesaid property have been **PAID IN FULL** through the Payment Date, or, if not, attached are the name(s) of the party or parties and the amount(s) to be paid: NONE
3. All parties who have filed a Notice to Owner as a Vendor to the undersigned are **PAID IN FULL** through the Payment Date **and** their waivers of lien are attached.
4. The lienor recognizes that the Notice of Commencement recorded _____, 20__ in O.R. _____, Page_____ or Instrument Number _____, became null and void as of the Payment Date and that any further labor, services or material provided to the property shall be done under a newly recorded notice of commencement.

The undersigned acknowledges that under Florida Statutes, Contractor, Owner, and **Old Republic National Title Insurance Company** have a right to rely on this Subcontractor's Payment Affidavit and Lien Waiver.

COMPANY: _____

BY: _____

TITLE: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [ ] physical presence or [ ] online notarization this ___ day of _____, 20___, by_____ who [ ] is personally known or [ ] has produced _____ as identification.

_____

Notary Public

[Notary Seal]

Printed Name: _____

My Commission Expires: _____

Lien Waiver Audit Worksheet Instructions*

The attached Lien Waiver Audit Worksheet is a tool designed to assist practitioners organize and evaluate construction lien risk tied to one or more recorded Notice of Commencement (NOC) by conducting a lien waiver audit where there is a need to determine construction lien risk amount.

A lien waiver audit is intended to identify unpaid parties and amounts they may be due where construction is or was recently present. The Worksheet assists in identifying steps necessary to meet commitment requirements.

In order to use the Worksheet, the user will need to request information from a variety of sources including but not limited to the owner, lender, general contractor, and project manager. This tool is not intended to be used to assess the validity of a NOC, Notice to Owner or Claim of Lien, but instead a way to organize relevant information for analysis of any construction lien risk. Therefore, each of the foregoing items should be treated as valid for purpose of using the Worksheet.

Please note: There may be situations where there are not multiple lienors or a need for an in-depth lien waiver audit.

How to use the tool:

FIRST: Review the title commitment for B-I requirements reflecting there is a recorded NOC.

- Multiple sheets have been provided in the master spreadsheet for files with more than one NOC – See tabs along the bottom labeled "NOC 1", etc.

SECOND: Save a copy of the Worksheet for fact gathering and completion as further described.

THIRD: SECTION ONE (Rows 2-7): Identify the project and party information contained in the NOC and insert in rows 2-7. Certain fields, such as "Type of Interest" have a dropdown list that can be accessed on the right-hand side of the field box.

- TYPE OF INTEREST: Select: Fee, Tenant, Leasehold.
  - Pursuant to Sec. 713.10, F.S., a construction lien extends only to the right title and interest of the person who contracts for the improvement, with certain exceptions.
  - You may encounter NOCs related to tenant improvements. Tenant NOCs are not automatically ignored, and further analysis will be necessary:
    - Review the tenant lease to determine if the lien prohibition language under Sec. 713.10(2), F.S. is included.
    - Review title for a recorded Sec. 713.10(2), F.S. safe harbor notice.
    - Determine if the improvement under the NOC is pursuant to an agreement between the tenant and owner (pith of the lease).
    - Review the construction contract to determine if the owner is in privity with the lienor.
    - Consult Underwriting with your findings and for further analysis.
- NOC RECORDING DATE: Insert recording date.
- STATED EXPIRATION: Insert expiration date if specifically listed in the NOC (Typically on line 9 of the NOC).
  - A NOC is effective for one year, but can state that it is effective for an additional period of time, Sec. 713.13, F.S.
- FILING PARTY: Insert the contractor information.
- BONDED: If a payment bond is attached to the NOC under Sec. 713.23, F.S., type "Yes".
- B-I REQUIREMENT #: Insert the requirement number from the title commitment.

FOURTH: SECTION 2 (Columns A-O) In order to complete this section, request that owner provide a list of all parties in privity with the owner pursuant to a contract and all lienors serving notice to owner. The owner may also request a certified list from the contractor on the NOC pursuant to Sec. 713.165, F.S. Additionally, request contracts for each NOC, and most recent lien waivers from all lienors identified in the owner's and/or contractor's list.

- PARTY TYPE: Select the party type from the dropdown list.
- NAME(S): Insert the name of the lienor.
- NOTICE TO OWNER?: Select yes or no from dropdown list.

        - A lienor who is not in privity with the owner (with the exception of lienors providing subdivision improvements/sitework and professionals) must serve a notice to owner in order to have lien rights on a particular project.
    - CONTRACT WITH OWNER?: Select yes or no from dropdown list.
        - Parties in privity have lien rights and are not required to serve notice to owner.
    - CONTRACT $ AMOUNT: Insert total contract amount.
    - WAIVER?: Select yes or no from dropdown list.
    - WAIVER TYPE: Select conditional or unconditional from dropdown list.
        - A conditional lien release is contingent upon the actual receipt and clearance of the payment.
        - An unconditional lien release is typically provided with the lienor receives the final payment, and they waive their lien rights immediately without any conditions.
    - FINAL OR PARTIAL WAIVER?: Select final or partial from dropdown list.
        - A partial lien release specifically identifies the extent to which payment claims have been waived and can also be known as a progress payment lien waiver per Sec. 713.20(4), F.S.
        - A final lien release under Sec. 713.20(5), F.S. is provided upon completion of a project, in which all payment obligations are satisfied at the time the release is executed. A final lien waiver should contain the full and final amount of lien rights being waived.
    - LIEN WAIVER DATE: Insert the date the lienor signed the lien waiver.
    - WAIVER GOOD THRU DATE: Type the date the lien waiver is good through.
        - This information may be contained within a partial lien waiver and indicates that the signing party is agreeing to waive their claims for all work completed on or before the date entered.
    - CLAIM OF LIEN?: Select yes or no from dropdown list.
        - Review the title commitment and title updates for a recorded claim of lien.
    - RELEASE OF LIEN?: Select yes or no from dropdown list.
        - Any recorded claim of lien must be released prior to closing.
    - LAST PAYMENT AMOUNT: Insert the last payment amount.
        - This information may be contained in a payment application (draw request from contractor), payment affidavit or waiver and release of lien upon interim or final payment.
    - AMOUNT REMAINING: Insert the amount remaining.

FINAL: COMMENTS: Any additional information pertinent to your review may be inserted in this field.

Any questions may be directed to Underwriting at (800) 432-9594.

Notice of Commencement Information

Type of Interest:	
NOC Recording Date:	
Stated Expiration:	
Filing Party:	
Bonded:	
BI Requirement #:	

Party Type	Name(s)	Notice to Owner?	Contract with Owner?	Contract $ Amount	Waiver?	Waiver Type (Conditional / Unconditional)	Final or Partial Waiver?	Lien Waiver Date	Waiver Good Thru Date	Claim of Lien?	Release of Lien?	Last Payment Amount	Amount Remaining	Comments

[redacted]

[redacted]

NOTICE OF LIEN PROHIBITION
UNDER SECTION 713.10, FLORIDA STATUTES

Notice is given that the interest of the lessor who is executing this Notice in the parcel of land described below (the "**Property**") shall not be subject to any lien under Chapter 713, Florida Statutes, for improvements made on the Property by any lessee whose lease expressly provides that the interest of the lessor shall not be subject to liens for improvements made by the lessee.

1. In compliance with Section 713.10, Florida Statutes, the following information is provided:

(a) The name of the lessor is [redacted], a Florida limited liability company, having a mailing address of [redacted].

(b) The legal description of the Property to which this Notice applies is set forth on **EXHIBIT "A"** to this Notice. The parcel of land is commonly known as of [redacted].

(c) All or a majority of the leases entered into for premises on the Property expressly provide that the lessor's interest shall not be subject to liens for improvements made by the lessee. The specific language contained in these leases prohibiting such liability is provided on **EXHIBIT "B"** attached to this Notice.

2. Some building departments may require that the Notice of Commencement for work being performed by or on behalf of a lessee list the lessor as the "owner" and be signed by the lessor as owner. However, this Notice of Lien Prohibition under Section 713.10, Florida Statutes shall still be effective even if a Notice of Commencement is recorded for work to be performed by or on behalf of a lessee and lists the "owner" as the lessor and is signed by the lessor as owner. Lessor does not waive the protections of Section 713.10, Florida Statutes by executing a Notice of Commencement and being listed in it as the owner if the work in question is in fact being performed by or on behalf of a lessee and no lienor should rely on the execution of a Notice of Commencement by the lessor who is listed as the owner in such Notice of Commencement as evidence that the work was being performed by or on behalf of lessor rather than a lessee, if, in fact, the work is being performed by or on behalf of a lessee.

[redacted]

[redacted]

IN WITNESS WHEREOF, lessor has caused this Notice to be duly executed and acknowledged as of this 24 day of August, 2021.

LESSOR:

WITNESSES:

[redacted]

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me by means of ☑ physical presence or ☐

[redacted]

Exhibit "B"

[redacted]

[redacted]

EXHIBIT A

LEGAL DESCRIPTION

[redacted]

[redacted]

EXHIBIT "B"

LIEN PROHIBITION PROVISIONS FROM LEASES

Nothing in this lease is intended to constitute a consent by Owner to subject Owner's or Tenant's interest in the building or the land upon which the building is located, to any lien or claim by any person who supplies any work, labor, material, service or equipment to Tenant in performing any Tenant changes or any work ordered by Tenant to be done in the Premises. Owner hereby notifies all such persons of such intent and each such person agrees that by performing any Tenant changes for Tenant, or work in the Premises for Tenant, it accepts that Owner has not granted such consent and that such person shall not have a right to file any lien or claim against such interest of the Owner or Tenant in the building or land upon which it is located. Tenant further agrees to provide a copy of this Article to all such persons prior to entering into any contract for, or otherwise having any work done for the Tenant in the Premises.

[redacted]

[redacted]

[redacted]

MEMORANDUM OF LEASE
AND AMENDMENT TO PRIOR MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is dated this 31st day of December, 2018 by and between [redacted] ("**Lessor**"), whose address is [redacted], and [redacted] ("**Lessee**"), whose mailing address is [redacted].

Lessor has granted, demised and leased the premises ("**Premises**") described below to Lessee upon the following terms:

1. Effective Date of Lease: December 31, 2018 (referred to as the "**Lease**").

2. Description of Premises:

See Exhibit A attached hereto.

The Premises includes the Hospital Facilities, as that term is more particularly defined in the Lease.

3. Lease Commencement Date: January 1, 2019.

4. Initial Term: Thirty (30) years.

5. Renewal Options: Three, fifteen (15) year renewal options.

6. Notice under Section 713.10, Florida Statutes. The Lease provides that no construction or mechanics' liens shall be placed against the Lessor's title in the Premises for or on account of the construction of any improvement upon the Premises or any repair, alterations, demolition, or removal of such improvement, or for any other purpose, by any laborer, contractor, materialman, or other person contracting with Lessee. All laborers, mechanics, materialmen, contractors, subcontractors, and others are called upon to take due notice of this clause, it being the intent of the parties hereby to expressly prohibit any such lien against the Lessor's title or interest by the use of this language as and in the manner contemplated by Section 713.10 of the Florida Statutes.

7. Purpose of Memorandum. The purpose of this Memorandum is to give notice to third persons of the existence and effect of the Lease without recording the entire Lease. It is

acknowledged that the complete, detailed terms, covenants and conditions of the Lease appear in the Lease itself, copies of which are in the possession of the parties hereto; it is agreed that all of the terms, covenants and conditions of the Lease are deemed by this reference to be included in this Memorandum of Lease as if fully set forth herein. Nothing herein contained shall in any way, manner or means modify, amend, change, or supersede the terms, covenants and conditions of the Lease and if there exists a conflict between the terms, covenants and conditions of this Memorandum and the terms, covenants and conditions of the Lease, then and in such event the terms, covenants and conditions of the Lease shall take precedence and priority, and shall govern.

8. Replacement of Prior Memorandum of Lease. This Memorandum of Lease shall supercede, amend and replace that certain Memorandum of Lease of [redacted]

[SIGNATURE PAGES FOLLOWS NEXT.]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the date set forth above.

Signed, sealed and delivered in our presence:

LESSEE:

[redacted]

STATE OF FLORIDA
COUNTY OF Indian River

[redacted]

Signed, sealed and delivered
in our presence:

LESSOR:

[redacted]

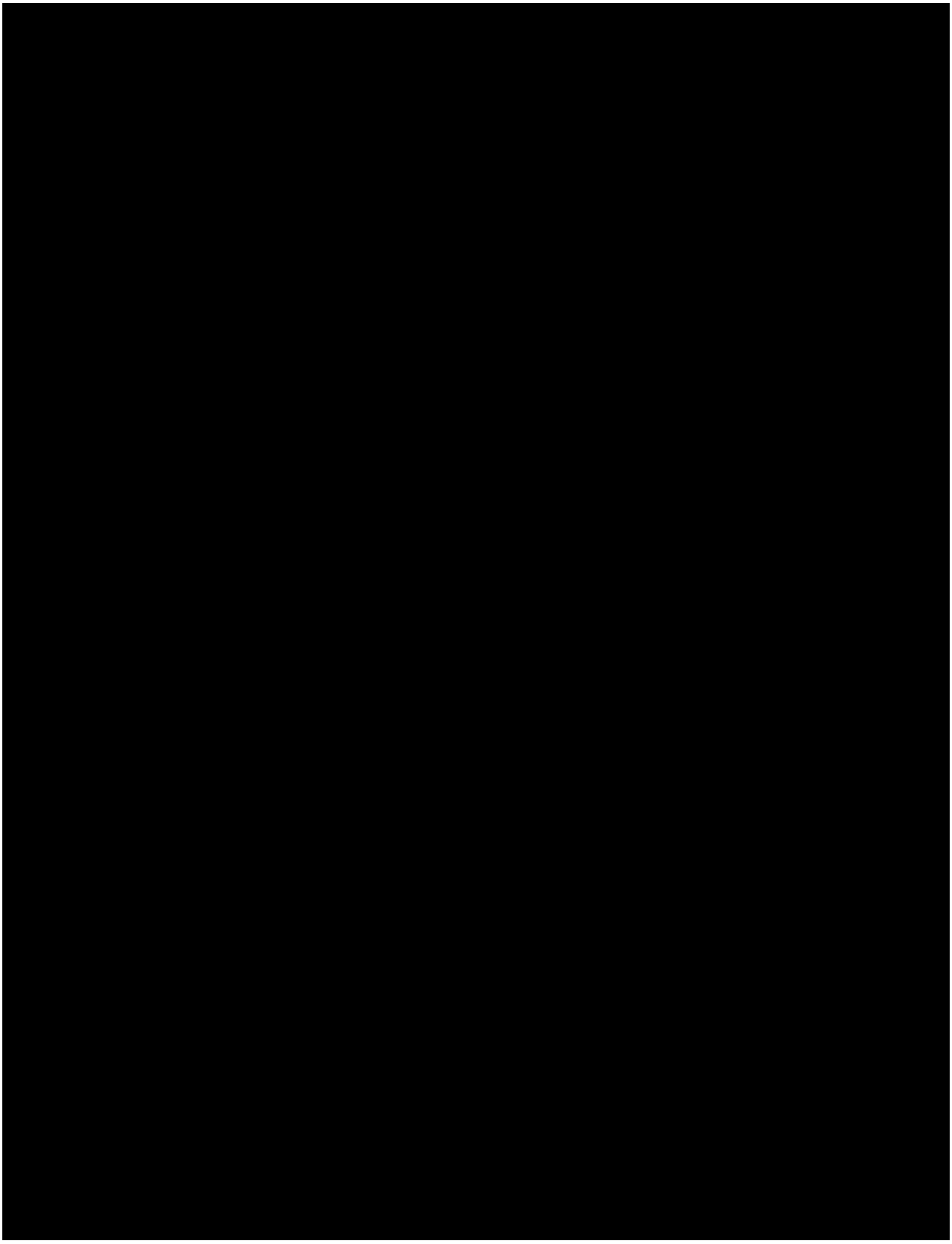
STATE OF FLORIDA
COUNTY OF INDIAN RIVER

[redacted]

[redacted]

EXHIBIT "A" TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION



The Fund® CONCEPT
SEPTEMBER 2020 | VOL 52

ADDRESSING OPEN NOTICES OF COMMENCEMENT IN TITLE INSURANCE COMMITMENTS

BY JOHN E. BROWN, FUND SR. UNDERWRITING COUNSEL, COMMERCIAL SERVICES

Bob Dylan once said, "*There is nothing more stable than change*." We live in an age inspired by change. New construction is everywhere. Advertisements fill the airwaves convincing us to remodel our offices, homes, and yards. We add pools, remodel rooms, and add on to our homes and businesses. When this construction involves the use of licensed contractors who must pull building permits, a process is set in motion that can impact the title to the owner's property. The purpose of this article is to spotlight how routine construction in Florida is impacted by provisions of Florida's construction lien law and to provide guidance to Fund members regarding how to evaluate and address these issues when insuring a transaction.

Generally

According to Sec. 713.135, F.S., when a government agency issues a building permit, a Notice of Commencement (NOC) must be duly filed in the public records and posted at the job site before the first inspection. With a few exceptions, the owner or its authorized agent must file a NOC in accordance with Sec. 713.13, F.S., prior to commencing work to improve any real property. The exceptions include subdivision improvements (Sec. 173.04, F.S.), projects costing less than $2,500 (Sec. 713.02, F.S.), and recommencing completion of any improvement after default or abandonment. The provisions of Florida's Construction Lien Law exist to protect the owner from being exposed to surprise liens filed by unknown parties providing labor, services and materials to the property. These provisions ensure that a NOC will be recorded in the official records of the county where the property is located, whenever work is performed, or a permit is pulled to construct, repair or replace improvements to real property.

Contents of a NOC

Sec. 713.13, F.S., mandates the form and contents of the NOC. The NOC contains a wealth of information about the nature of the construction and the identity of interested parties. A NOC is effective for a period of one year from the date of recording, or longer if so stated. If the work described in the NOC is not commenced within 90 days of its recording, the NOC is void. The NOC can be amended to extend the effective date, change erroneous information in the original NOC, or to add information that was previously missing. According to Sec. 713.07, F.S., the recording of the NOC establishes a point of reference to which

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valid claims of lien filed against the property relate back. Thus, the filing of the NOC alters the first in time, first in right rule of priority of Sec. 695.11, F.S., and its recording date becomes the established priority point in time for these unfiled construction liens, which tends to ensure that contractors providing labor, services or materials get paid.

Finding NOCs of Record

What if the owner needs to borrow money or refinance the property to pay for their improvements after the NOC has been recorded? The title search will reveal the NOC and the process of determining its impact on the current transaction begins. The existence of a NOC in the public records will be shown as an exception on Schedule BII of a title commitment or as a recorded matter in a title search report. A requirement for eliminating the risk of liens under the NOC will appear in Schedule BI of a title commitment, noting that upon satisfaction of the requirement, the related exception can be deleted. It will take some evaluation of the facts surrounding a filed NOC to determine what that requirement will be. If there is a recorded claim of lien or a lis pendens of record, the need to release the lien or dismiss the litigation is obvious, but may be in addition to a requirement addressing the NOC per se. If there is nothing recorded subsequent to the NOC, the effect on title and the risk of future liens is less apparent. To avoid any disruption to a scheduled closing, the Fund Member should investigate the situation as early in the process as possible. This evaluation process may require input from third parties that are not directly related to the current closing so planning a course of action to address this type of title issue is critical to a successful closing. Whether the requirement for clearing the risk is simple or complex varies based on the facts, but a valid NOC in the chain of title can never be ignored.

Common Factors to Consider in Reviewing a NOC

A title transaction with a recorded NOC involves a risk that a construction lien may be filed for unpaid labor, materials, or services. There are some common factors to evaluate when it comes to evaluating that risk.

The first is the status of the work. There is no lien risk if the work is complete and everyone is paid. If the work is complete, the date of completion becomes key, because a lienor's claim must be filed within 90 days of completing their portion of the work. Generally, Fund Members may expect to see one of three requirements associated with the NOC based on the status of the work. If the work was completed more than 90 days prior to the title transaction, Fund Members may be able to rely on an owner's affidavit given in accordance with Sec. 627.7842(1)(c), F.S. If the work was completed fewer than 90 days prior to the title transaction, affidavits and proof of payment to all parties will be required. If the work is ongoing and cannot be completed before the scheduled closing, the restoration of priority process may have to be undertaken. Without off-record information, title examiners may not have enough information to determine the appropriate requirement, so Fund Members should undertake an inquiry into the facts to ensure that the appropriate requirement is reflected in the commitment.

The next factor in examining the NOC is to confirm that the legal description used in the NOC accurately describes only the job site. Owners and contractors sometimes use street addresses and property tax account numbers instead of an accurate legal description. If the work is being conducted on only a part of the overall parcel or the street address does not accurately describe the location of the work, an amended NOC clarifying the job site to the exclusion of the property being insured may be sufficient to eliminate the risk of liens associated with the NOC.

Next, the duration of the NOC as stated on the face of the document should be determined. If no expiration date is stated, the term is one year. For insuring purposes, a stated expiration date shorter than one year from the date of commencement may not be relied upon to shorten the one-year term. On the other hand, a NOC may expressly provide for an expiration date creating a duration of more than one year. If the NOC has recently expired, or will expire shortly before closing, confirmation that the work is complete and all lienors have been paid is a prudent insuring requirement. On the other hand, in the absence of any indication of a continuing risk, the operation of law may be sufficient to eliminate the risk associated with a NOC that has been expired for some period of time. Operation of law may also serve to eliminate the risk of a NOC that has been of record for at least 90 days if work has not yet begun; if the NOC is void for that reason, the Fund Member can verify this fact with the use of a reliable affidavit signed by the owner and

issue the policy without exception for the open NOC.

Another important piece of information to review in the NOC is the nature and scope of the work described. The NOC contains required information which may prove valuable when assessing its risk and when developing a plan to eliminate it. A minor scope of work may indicate that the work is likely completed, and all involved have been paid. For instance, a NOC for the installation of a fence, a sign or a new roof that has been of record for several months suggests the possibility that the work is likely complete, in which case Fund Members may be able to insure in reliance on affidavits. However, if the work described in the NOC is significant or extensive, it may be less reasonable to believe it is complete even if the NOC has been recorded for many months. In that case the Fund Member may need to undertake more due diligence to appropriately eliminate the risk.

Florida lien law does not provide an easy path or risk-free option to address a situation when the construction was completed fewer than 90 days prior to the insured transaction. The Fund Member must request and review proof of payment and lien waivers from all contractors and subcontractors constructing the improvements to assess the risk of liens being filed in the gap or after a closing. The general contractor must supply an affidavit attesting that the work described in the NOC is complete and all subcontractors have been paid in full. The contractor and subcontractors must provide a written waiver of lien evidencing payment in full. Florida law currently provides that all lienors must provide a payment affidavit and a lien waiver to the owner in order to confirm payment. Thus, requesting this information from the lienors in a current transaction poses no additional obligations on them regarding these same items. Lastly, the owner must also verify by affidavit that all work is complete, and all parties have been paid in full (see Aff-23 in The Fund's Affidavit Practice Manual (APM)). The greater the monetary risk associated with a NOC, the higher degree of inquiry that must be applied. For larger monetary risks, consultation with Fund Underwriting Counsel is required. A Fund Member may request assistance from Fund Underwriting Counsel to determine the sufficiency of this compiled information for insuring purposes. Guidance is also available in TN 21.03.01.

Termination of a NOC

Following the process detailed in Sec. 713.132, F.S., and recording a notice of termination (NOT) is the best method available to address an open NOC. The owner may terminate the period of effectiveness of a NOC provided they record a NOT referencing the recording information of the NOC, and including statements regarding when the termination is effective (which cannot be less than 30 days from recording the NOT), that all lienors are paid in full and that the owner has served a copy of the NOT on those lienors in direct contract with the owner and on those who previously served a notice to the owner. The owner may not record a NOT except after construction ceases. The general contractor must provide an affidavit attesting to the fact the work is complete or ceased, and all lienors, including themselves, are paid in full (see APM Aff-25 and 25.1). This affidavit is then attached to the NOT when it is recorded. When scheduling a closing, Fund Members should consider that the statute provides that the NOT is only effective to terminate the NOC after the NOT has been of record for 30 days.

Restoration of Priority

If the work described in the NOC will not or cannot be completed before closing, another option is to restore the priority of the loan against these potential unfiled liens. Restoration of priority is typically not necessary when insuring only a buyer during the sale of the property since the buyer will be accepting responsibility for the ongoing work and payment to the contractor in due course. In those instances, the owner's policy will contain an exception for the open NOC. When a loan will be insured without exception for the risk of liens associated with the NOC, the restoration of priority will be required. This process is outlined in TN 21.03.03 and involves scheduling a date for the work to cease at the job site, reviewing proof of payment and lien waivers from each contractor and subcontractor involved on the job and collecting affidavits from the general contractor and owner. Here again, the more complex the project, the closer the scrutiny should be, and consultation with Fund Underwriting Counsel is encouraged (see APM Aff-24 and 25.1). For complex commercial transactions, the restoration of priority process may include the recording of a NOT. Following restoration, a new NOC must be recorded after the insured mortgage. Fund Members are welcome to seek assistance from Fund Underwriting Counsel when their commitment requires restoration of loan priority.

Summary

In closing, the presence of a NOC in the title search or commitment cannot be ignored and must be addressed at or before closing. Dealing with an open

NOC will require input and documentation from third parties whose cooperation and participation may affect the scheduled closing date. The Fund title commitment requirements will list instructions for dealing with open NOCs based on information available and may change upon a more detailed review of the facts surrounding the construction activity. It is important to immediately assess the nature and timing of the construction activities so an appropriate course of action can be undertaken to eliminate potential liens from affecting the rights of the lender and owner at closing. The more extensive the project, the more complex the insuring solutions may be, and Fund Underwriting Counsel are always available to support Fund Members. □

The Fund® CONCEPT
June 2024 | Vol 56

Restoration of Priority: Applying the Revised Notice of Termination Statute

By John E. Brown, Fund Sr. Commercial Underwriting Counsel

Title insurers are routinely called upon to insure loans on property before, during, and after construction. The priority of the loan is of paramount importance to the lender in every instance. Florida's Construction Lien Law, Sec. 713.13, F.S., contains the concept of the notice of commencement. The notice of commencement marks the beginning of construction and establishes a single point in time to which any liens filed against the property relate back. A notice of commencement is valid for one year (or longer if so provided). Its primary purposes are to create an equal playing field for all who work on a project and eliminate disputes over the priority of lienors' claims filed at various times during construction. A notice of commencement can create a challenge to the loan priority if it is recorded and unexpired prior to a mortgage in a current loan transaction.

When the work is complete, the owner can verify that the contractor and all its subcontractors and suppliers are paid in full by securing sworn payment affidavits and lien waivers. The significance of an open or unexpired notice of commencement is minimal if it is known there will be no more work on the project and proof that all who worked on it are paid in full is obtained. However, the situation is different when the work is ongoing and the owner needs to close on new or amended financing. The same notice of commencement that established an earlier point in time for lien priority now presents a challenge to the priority of the new loan.

Assessing the Risk

The Fund has long recognized an inherent risk when balancing the rights of construction workers and suppliers with those who finance the improvements. The Construction Lien Law does not protect third-party lenders or their title insurers. Therefore, the Fund Member must use the tools within the Construction Lien Law when insuring new or modified loans during construction to minimize the risk of claims on the title policy. One tool that is especially useful in this situation is the notice of termination procedure set forth in Sec. 713.132, F.S.

Historically, the notice of termination process has been used to eliminate an open notice of commencement. The statute specifies the content requirements

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Restoration of Priority... continued from page 61

of a proper notice of termination and the prerequisites for its filing. It imposes an obligation to serve notice of the owner's intent to file a notice of termination of the notice of commencement on certain parties. Previously, the notice was only proper if the work was (a) complete, (b) or ceased before completion, and (c) all lienors were paid in full. Further, a notice of termination that was completed and properly served terminated the period of effectiveness 30 days after it was recorded or later if so stated.

New Legislative Changes

Effective Oct. 1, 2023, the provisions of Sec. 713.132, F.S., were changed in three significant ways. First, the notice of termination can now be filed at any time and is no longer limited to when construction is completed or work is ceased before completion. However, this does not dispense with the requirement that all lienors must be paid in full or pro rata. Second, the owner must serve notice on both the lienor who has a direct contract with the owner and those lienors who have timely filed a notice to owner. The newly inserted term "timely" now enlarges the class of parties to include those within their time to serve their notice to owner, even if its delivery to the owner is after the notice of termination is filed. This is of some significance since previously the owner needed only to serve notice of its intent to terminate on those from whom a notice to owner had been received prior to filing the notice of termination. According to the revised statute, the owner must also include a statement in the notice of termination that it will serve a copy of the notice of termination on each lienor who timely serves its notice to owner after the notice of termination is recorded. Third, the timeframe of the effectiveness of the termination is extended beyond the original 30-day period as to filers who timely serve their notice to owner after the notice of termination is recorded. The effective date of the notice of termination on these notice to owner filers is now 30 days after service of the notice of termination on such a timely filer. The practical effect of this change is that the notice of termination may terminate an open notice of commencement as to some lienors, but not all, during the initial 30 days after it is filed.

Going Forward

The demand to fund loans during construction remains high despite the change in the law. The risk associated with termination of an open notice of commencement during construction for loan restoration is much greater than when terminating the notice of commencement after all work is complete and the lienors are paid in full. Fund Members must consider new procedures to safely insure these loans when terminating an open notice of commencement during ongoing construction before replacing it with another notice of commencement recorded subsequent to the newly insured mortgage.

The traditional approach to termination of the open notice of commencement and restoration of lien priority was to (a) pause or cease construction, (b) pay all lienors in full through the date the work ceased, (c) terminate the notice of commencement, (d) record the new or amended mortgage (or mortgage modification), and then (e) refile a new notice of commencement. The date the work ceased served the dual purpose of establishing the end date of construction under the existing notice of commencement and defining the last date that payment was due for the work of each lienor. The change in the statute eliminates the need for work to cease or stop prior to completion when filing a notice of termination. Still, it does not change the requirement that all lienors must be paid in full or pro rata per Sec. 713.06(4), F.S. One practical challenge then is determining how to pay the lienors any amounts currently due if they do not stop working and continue to earn additional compensation. The Fund recommends establishing a specific payment date to create a target for paying all lienors any current amounts owed. This date should coincide with the loan closing to minimize the exposure of continuing charges for additional work the lienors perform. Upon payment, lienors' payment affidavits and lien waivers upon payment could then be collected and verified to satisfy this important step in the revised statutory scheme.

The second significant change to the statute, introducing the term "timely" to the ser-

vice by lienors not in privity with the owner, now must be considered when restoring priority.

The Fund Member restoring priority should implement a process that will include the owner/borrower's requirement to serve the notice of termination on all timely notice to owner filers, including those existing potential lienors who provide the notice to owner after the loan closing. Without this process, the termination may fail as to the potential lien claimants who subsequently provide the notice to owner. The statute already imposes this duty on the owner, but its noncompliance does not provide the title insurer any protection. One solution may be securing the owner's assurance at closing to provide the closing agent with notice of any new notices to owner and proof of service of the notice of termination on the new filers or a post-closing confirmation that no new notices to owner were received before the termination was effective. The change to the notice requirement and its possible effect warrants post-closing follow-up or confirmation, much like verifying the recording of a mortgage satisfaction, to confirm the necessary steps were taken and the termination was effective.

Another technique that may limit the risk of post-closing notices to owner is to have the owner secure the contractor's list of subcontractors and suppliers under Sec. 713.165, F.S., prior to closing. This list consists of all subcontractors and suppliers who have a contract with the contractor to furnish material or perform service with respect to the contracted improvements. This list must be accurate, or the contractor risks forfeiting its right to assert a lien on the property. Once obtained, all parties named on this list can be served with notice of the owner's intent to terminate the notice of commencement instead of limiting the owner's service list to only those lienors that previously provided a notice to owner. In this way, the service of notice by the owner will likely include all parties entitled to a potential lien, reducing the likelihood of any post-closing notices to owner under the prior notice of commencement.

Final Take

Restoring the priority of a loan over potential construction liens established by a recorded notice of commencement remains a constant necessity. Recently enacted changes to the notice of termination process under the Florida Construction Lien Law require an innovative approach to confirming the status of work and payments made to lienors on the project. Also, due care must be exercised when using the notice of termination process to confirm the insured loan has established priority and that the rights of lienors remain protected for future payment for labor, service, and materials rendered to the project. Members are encouraged to contact the Fund underwriting department for guidance with construction related issues. □

The Fund® CONCEPT
OCTOBER 2021 | VOL 53

WHO IS RESPONSIBLE FOR CONSTRUCTION LIENS FOR TENANT IMPROVEMENTS?

BY JOHN E, BROWN, FUND SR. UNDERWRITING COUNSEL

Under Florida law, licensed contractors and other professionals who supply labor, services, or materials to improve real property are entitled to a lien against the property they improve. Generally, an owner understands that if they engage a contractor to improve their property, it could be subject to a lien if they fail to pay. This concept is not as straightforward when the owner leases the land to another who intends to construct improvements upon it. Is there potential for the tenant's construction liens to attach to the real property? The answer is maybe.

This article explores Florida's Construction Lien Law and the circumstances under which construction liens for tenant improvements attach to the interests of the owner. The determination requires evaluating the actions of the owner, tenant, and contractor in a given situation.

Background

Florida's Construction Lien Law has a lengthy history. In 1967, the current Ch. 713, F.S., replaced its predecessor in Ch. 84. However, the general rule describing how liens for tenant improvements attach embodied in today's Sec. 713.10, F.S., has not changed much from its earlier version. The current statute provides:

> *(1) Except as provided in s. 713.12, a lien under this part shall extend to, and only to, the right, title, and interest of the person who contracts for the improvements as such right, title, and interest exists at the commencement of the improvement or is thereafter acquired in the real property. When an improvement is made by a lessee in accordance with an agreement between such lessee and her or his lessor, the lien shall extend also to the interest of such lessor.*

A strict reading of the first sentence of Sec. 713.12, F.S., indicates that a contractor engaged by the tenant to construct leasehold improvements is limited to a lien upon the tenant's leasehold interest only for nonpayment. But the second sentence of the statute casts a cloud over this straightforward interpretation since an off record "agreement" may change the applicability of the contractor's lien.

The concept of this off-record agreement or contract creating a doorway to owner liability is not new. The Florida Supreme Court has ruled numerous times on the nature of a side contract or agreement that may result in lien exposure to the owner. In *Masterbilt*

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Corp. v S.A. Ryan Motors of Miami, 6 So.2d 81 (Fla. 1942), the court found that consent of the owner for the improvements made by a subtenant does not confer or grant the contractor authority to work or right to impose a lien on the owner's property. In *Robert L. Weed Architect, Inc. v. Horning*, 33 So.2d 648 (Fla. 1947), the court stated that if the lease expressly requires the lessee to make the improvements, then the lessee is deemed to be the owner's agent and the contractor can be construed to be in privity with the owner. In the case of *Brenner v. Sullivan*, 84 So. 2d 44 (Fla. 1955), the court also held the liens of the contractor will attach to the owner's interest in the land where a lease required the tenant to make the improvements. In *Anderson v. Sokolik*, 88 So.2d 511 (Fla. 1956), the court further imposed lien liability on the owner when the tenant improvements were the pith of the lease. The court held that when the lessee contracts for improvements he does so in accordance with a contract with lessor when these improvements are the essence or pith of the lease. A strong dissenting opinion on the facts of the *Anderson* case did not change this standard for holding the owner's interest in the land subject to liens.

Subsequent appellate court decisions uniformly followed these prior decisions and further highlighted the case-by-case analysis required to determine if the terms of lease required the improvements to be made by the tenant or if the lease terms made it obvious the improvements were the pith of the lease. See *A.N. Drew, Inc v. Frenchy's World Famous Cajun Café, Inc.*, 517 So.2d 766 (Fla. 1st DCA 1988); *Van D. Costas, Inc. v. Rosenberg*, 432 So.2d 656 (Fla. 2d DCA 1983); *Davidson Lumber Co. v. Sullivan*, 403 So.2d 560 (Fla. 3d DCA 1981); *Miracle Center Development Corp. v. M.A.D. Construction, Inc.*, 662 So.2d 1288 (Fla. 3d DCA 1995) (consent to the improvements is not enough); *Robb v. Lott Paving Company. Inc.*, 289 So.2d 776 (Fla. 4th DCA 1974); and *Budget Electric Co. v. Strauss*, 417 So.2d 1143 (Fla. 5th DCA 1982) (introducing the test for consideration to determine if the lease required the improvements).

Statutory Solution

In 1963, the Florida legislature made comprehensive changes to the mechanics' lien law in order to avoid confusion and misunderstandings by contractors regarding their lien rights when contracting with tenants for their improvements. The legislature enacted Sec. 84.101, F.S., which provided that the interest of the lessor shall not be subject to liens as long as the lease expressly prohibits such liability and the lease was recorded. However, filing the entire lease to provide adequate notice of the lease prohibition from liens of the contractor remained problematic.

In 1985, the Florida legislature changed the obligation to record the entire lease as a means to impart knowledge of lease terms on the tenant's contractor. Sec. 713.10 (2) (b), F.S., was refined but continued to provide the owner with two ways to place the contractor on notice of the terms of a lease limiting the extent of a contractor's lien. The first method was modified to allow the owner to record the lease or a short form thereof that contained the terms of the lease that expressly prohibit liability. The second method authorized recording a blanket notice of the lease prohibition and setting forth the express language covering all tenant leases occupying any space on the land. This statutory safe harbor regarding tenant improvements seemed to provide clarity and protection to both the contractor and owner.

The First District Court in *14th & Heinberg, L.L.C. v. Hendricksen & Co. Inc.*, 877 So. 2d 34 (Fla. 1st DCA 2004) held the improvements were not required by the lease and denied a lien on the owner's interest. More importantly, this court pointed out that where the improvements were required, or were the pith of the lease, the owner's interest in the land will be subject to mechanics' liens unless the owner records the necessary disclaimer. See also *MHB Construction Services, L.L.C. v. RM-NA HB Waterway Shoppes, L.L.C.*,74 So.3d 587 (Fla. 4th DCA 2011). Thus, the strength of the statutory safe harbor was recognized as a means to avert owner liability.

An apparent glitch with the provisions of Sec. 713.10(2)(b), F.S., (1997), was pointed out by the Fourth District Court in *Everglades Electric Supply, Inc. v. Paraiso Granite, LLC,* 28 So.3d 235 (Fla. 4th DCA 2010) when it ruled that all leases must contain the specific language or the blanket notice option would not be sufficient to protect the owner from liens. The court in *Everglades* allowed the lien of the contractor to attach to the owner's property despite the filing of a blanket notice of the lien prohibition, because not all of the applicable leases contained the same or similar language included in the recorded notice.

This case prompted the Florida legislature in 2011 to change the blanket notice provision from requiring that all leases contain specific language prohibiting liens to requiring that a majority of the leases do so. Additionally, in 2011 the legislature added a new paragraph 3 to this section allowing the contractor an opportunity to confirm the lien prohibiting language is in the lease. The contractor may serve a written notice on the lessor demanding a copy of the provision in the lease. The interest of the lessor in the property is subject to liens if lessor fails to serve a verified copy of the lease provision on the contractor within 30 days of the demand unless the requesting party has actual notice of the provision. Much attention has been given to this provision and its effect on the reliability of the other provisions of this section.

In 2012, a further change was made to these safe harbor provisions eliminating the requirements that all leases include the prohibiting language and that the language be identical.

Currently Section 713.10 (2), F.S., provides:

(a) When the lease expressly provides that the interest of the lessor shall not be subject to liens for improvements made by the lessee, the lessee shall notify the contractor making such improvements of such provision or provisions in the lease, and the knowing or willful failure of the lessee to provide such notice to the contractor shall render the contract between the lessee and the contractor voidable at the option of the contractor:

(b) The interest of the lessor is not subject to liens for improvements made by the lessee when:

1. The lease, or a short form or a memorandum of the lease that contains the specific language in the lease prohibiting such liability, is recorded in the official records of the county where the premises are located before the recording of a notice of commencement for improvements to the premises and the terms of the lease expressly prohibit such liability; or

2. The terms of the lease expressly prohibit such liability, and a notice advising that leases for the rental of premises on a parcel of land prohibit such liability has been recorded in the official records of the county in which the parcel of land is located before the recording of a notice of commencement for improvements to the premises, and the notice includes the following:

a. The name of the lessor.

b. The legal description of the parcel of land to which the notice applies.

c. The specific language contained in the various leases prohibiting such liability.

d. A statement that all or a majority of the leases entered into for premises on the parcel of land expressly prohibit such liability.

3. The lessee is a mobile home owner who is leasing a mobile home lot in a mobile home park from the lessor.

A notice that is consistent with subparagraph 2, effectively prohibits liens for improvements made by the lessee even if other leases for premises on the parcel do not expressly prohibit liens or if provisions of each lease restricting the applications of liens are not identical.

Drafting Considerations

The language in the statute and the court rulings point out some drafting measures that might avert lien exposure. Prudent landlords seeking to shield their fee interests in leased land from tenant improvement construction liens should consider the following tips. First, always insert specific language in the lease prohibiting lien exposure. Be careful not to require the improvements as a condition of the lease nor make the improvements the primary purpose of the lease. Record either a memorandum of lease containing the specific lien prohibition language or a blanket notice accurately reflecting the lien prohibition in a majority of leases. Finally, require the tenant to provide the contractor with a copy of the lien prohibition clause in the lease and secure a written acknowledgment of actual notice of the clause from the contractor prior to the recording of the notice of commencement.

Insuring Factors and Considerations

In a current transaction can the owner's interest be safely insured when there is a recorded notice of commencement for tenant improvements? The Fund Member should review the lease and determine if the improvements were mandatory or the essence of the lease. Document if there is a direct agreement between the owner and contractor. Confirm the lease contains lien prohibition language and whether one of the authorized methods of providing notice of it to

the contractor was properly effectuated prior to the recording of the notice of commencement. Compile evidence of when and if the contractor has actual knowledge of the lease terms. Share these findings with a member of the Fund's Underwriting Department to collaborate and determine requirements for insuring without exception for potential liens related to tenant improvements. □

The Escheatment Process and Other Misunderstandings

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The Escheatment Process and Other Misunderstandings

Fund Assembly 2025

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Misunderstanding Number One – Unclaimed Funds

- Incorrect - Escheating unclaimed funds is optional
- Correct – Escheatment process must be followed by any holder of unclaimed funds.
    - Requirements are contained in:
        - Ch. 717, F. S.
        - Rule 69G – 20, F.A.C.
    - Instructions for the process to deal with unclaimed funds:
        - Reporting Instructions Manual
        - Frequently Asked Questions

Misunderstanding Number Two – Who Can Sign Policies

- Incorrect - Anyone in a Fund Member firm's office who is licensed to practice law in Florida is authorized to sign Old Republic Commitments and Policies issued through The Fund
- Correct – Attorneys and Licensed Title Agents who wish to be authorized to sign Old Republic Commitments and Policies issued through The Fund must apply, be vetted, and approved as a signatory by The Fund

Misunderstanding Number Three – Use of D/B/A

- Incorrect – Law Firms can use a d/b/a in order to appear that they are a licensed title agency and not a law firm.
- Correct – Law Firms may use a d/b/a, but the name used must not be misleading and must not imply that the law firm is any other type of business.
    - Florida Bar Rule 4-7.21

Misunderstanding Number Four – Use of LLC

- Incorrect – Law Firms are permitted to use LLC, Corp, Inc., etc. as entity designations.
- Correct – Law Firms must use P.A., PLLC, and other entity designations permitted for Professional Business Entities.
    - Florida Bar Rule 4-8.6
    - Ch. 612, F.S.

Misunderstanding Number Five – Online Payment Platforms

- Incorrect – Fund Member Attorneys may use online payment platforms to receive and disburse trust account funds.
- Correct – The Florida Bar issued an ethics opinion permitting use of online payment platforms to receive funds. They did not mention using online payment platforms to disburse funds, especially from a trust account.
    - Florida Bar Ethics Opinion 21.2

Misunderstanding Number Six – Opening a New Trust Account

- Incorrect – When opening a new trust account, all funds from the old trust account should be moved to the new trust account in one lump sum.
- Correct – When opening a new trust account, it is best to start from 0 and only put money for new transactions in the new account. Old account should be allowed to wind down to 0 over time (with resolution of all issues as they are found).

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The 2024 Florida Statutes

Title XL
REAL AND PERSONAL PROPERTY

Chapter 717
DISPOSITION OF UNCLAIMED PROPERTY

View Entire Chapter

CHAPTER 717
DISPOSITION OF UNCLAIMED PROPERTY

717.001 Short title.—This chapter may be cited as the "Florida Disposition of Unclaimed Property Act."
History.—s. 1, ch. 87-105.

717.101 Definitions.—As used in this chapter, unless the context otherwise requires:

(1) "Aggregate" means the amounts reported for owners of unclaimed property of less than $10 or where there is no name for the individual or entity listed on the holder's records, regardless of the amount to be reported.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Audit" means an action or proceeding to examine and verify a person's records, books, accounts, and other documents to ascertain and determine compliance with this chapter.

(4) "Audit agent" means a person with whom the department enters into a contract to conduct an audit or examination. The term includes an independent contractor of the person and each individual participating in the

audit on behalf of the person or contractor.

(5) "Banking organization" means any and all banks, trust companies, private bankers, savings banks, industrial banks, safe-deposit companies, savings and loan associations, credit unions, and investment companies in this state, organized under or subject to the laws of this state or of the United States, including entities organized under 12 U.S.C. s. 611, but does not include federal reserve banks. The term also includes any corporation, business association, or other organization that:

(a) Is a wholly or partially owned subsidiary of any banking, banking corporation, or bank holding company that performs any or all of the functions of a banking organization; or

(b) Performs functions pursuant to the terms of a contract with any banking organization.

(6) "Business association" means any for-profit or nonprofit corporation other than a public corporation; joint stock company; investment company; unincorporated association or association of two or more individuals for business purposes, whether or not for profit; partnership; joint venture; limited liability company; sole proprietorship; business trust; trust company; land bank; safe-deposit company; safekeeping depository; financial organization; insurance company; federally chartered entity; utility company; or other business entity, whether or not for profit.

(7) "Claimant" means the person on whose behalf a claim is filed.

(8) "Claimant's representative" means an attorney who is a member in good standing of The Florida Bar, a certified public accountant licensed in this state, or a private investigator who is duly licensed to do business in the state, registered with the department, and authorized by the claimant to claim unclaimed property on the claimant's behalf. The term does not include a person acting in a representative capacity, such as a personal representative, guardian, trustee, or attorney, whose representation is not contingent upon the discovery or location of unclaimed property; provided, however, that any agreement entered into for the purpose of evading s. 717.135 is invalid and unenforceable.

(9) "Credit balance" means an account balance in the customer's favor.

(10) "Department" means the Department of Financial Services.

(11) "Domicile" means the state of incorporation for a corporation; the state of filing for a business association, other than a corporation, whose formation or organization requires a filing with a state; the state of organization for a business association, other than a corporation, whose formation or organization does not require a filing with a state; or the state of home office for a federally charted entity.

(12) "Due diligence" means the use of reasonable and prudent methods under particular circumstances to locate apparent owners of inactive accounts using the taxpayer identification number or social security number, if known, which may include, but are not limited to, using a nationwide database, cross-indexing with other records of the holder, mailing to the last known address unless the last known address is known to be inaccurate, providing written notice as described in this chapter by electronic mail if an apparent owner has elected such delivery, or engaging a licensed agency or company capable of conducting such search and providing updated addresses.

(13) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(14) "Financial organization" means a savings association, savings and loan association, savings bank, industrial bank, bank, banking organization, trust company, international bank agency, cooperative bank, building and loan association, or credit union.

(15) "Health care provider" means any state-licensed entity that provides and receives payment for health care services. These entities include, but are not limited to, hospitals, outpatient centers, physician practices, and skilled nursing facilities.

(16) "Holder" means:

(a) A person who is in possession or control or has custody of property or the rights to property belonging to another; is indebted to another on an obligation; or is obligated to hold for the account of, or to deliver or pay to, the owner, property subject to this chapter; or

(b) A trustee in case of a trust.

(17) “Insurance company” means an association, corporation, or fraternal or mutual benefit organization, whether for profit or not for profit, which is engaged in providing insurance coverage.

(18) “Intangible property” includes, by way of illustration and not limitation:

(a) Moneys, checks, virtual currency, drafts, deposits, interest, dividends, and income.

(b) Credit balances, customer overpayments, security deposits and other instruments as defined by chapter 679, refunds, unpaid wages, unused airline tickets, and unidentified remittances.

(c) Stocks, and other intangible ownership interests in business associations.

(d) Moneys deposited to redeem stocks, bonds, bearer bonds, original issue discount bonds, coupons, and other securities, or to make distributions.

(e) Amounts due and payable under the terms of insurance policies.

(f) Amounts distributable from a trust or custodial fund established under a plan to provide any health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefit.

(19) “Last known address” means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail. For the purposes of identifying, reporting, and remitting property to the department which is presumed to be unclaimed, “last known address” includes any partial description of the location of the apparent owner sufficient to establish the apparent owner was a resident of this state at the time of last contact with the apparent owner or at the time the property became due and payable.

(20) “Lawful charges” means charges against dormant accounts that are authorized by statute for the purpose of offsetting the costs of maintaining the dormant account.

(21) “Managed care payor” means a health care plan that has a defined system of selecting and limiting health care providers as evidenced by a managed care contract with the health care providers. These plans include, but are not limited to, managed care health insurance companies and health maintenance organizations.

(22) “Owner” means a person, or the person’s legal representative, entitled to receive or having a legal or equitable interest in or claim against property subject to this chapter; a depositor in the case of a deposit; a beneficiary in the case of a trust or a deposit in trust; or a payee in the case of a negotiable instrument or other intangible property.

(23) “Person” means an individual; estate; business association; corporation; firm; association; joint adventure; partnership; government or governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.

(24) “Public corporation” means a corporation created by the state, founded and owned in the public interest, supported by public funds, and governed by those deriving their power from the state.

(25) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) “Reportable period” means the calendar year ending December 31 of each year.

(27) “State,” when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States.

(28) “Trust instrument” means a trust instrument as defined in s. 736.0103.

(29) “Unclaimed Property Purchase Agreement” means the form adopted by the department pursuant to s. 717.135 which must be used, without modification or amendment, by a claimant’s representative to purchase unclaimed property from an owner.

(30) “Unclaimed Property Recovery Agreement” means the form adopted by the department pursuant to s. 717.135 which must be used, without modification or amendment, by a claimant’s representative to obtain an owner’s consent and authority to recover unclaimed property on the owner’s behalf.

(31) “United States” means any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

(32) “Utility” means a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

(33)(a) "Virtual currency" means digital units of exchange that:

1. Have a centralized repository or administrator;

2. Are decentralized and have no centralized repository or administrator; or

3. May be created or obtained by computing or manufacturing effort.

(b) The term does not include any of the following:

1. Digital units that:

a. Are used solely within online gaming platforms;

b. Have no market or application outside of the online gaming platforms in sub-subparagraph a.;

c. Cannot be converted into, or redeemed for, fiat currency or virtual currency; and

d. Can or cannot be redeemed for real-world goods, services, discounts, or purchases.

2. Digital units that can be redeemed for:

a. Real-world goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer or other designated merchants; or

b. Digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, fiat currency or virtual currency.

3. Digital units used as part of prepaid cards.

History.—s. 2, ch. 87-105; s. 23, ch. 91-110; s. 1, ch. 96-301; s. 1770, ch. 97-102; s. 1, ch. 2001-36; s. 1, ch. 2003-21; s. 1887, ch. 2003-261; s. 110, ch. 2004-390; s. 1, ch. 2005-163; s. 2, ch. 2013-172; s. 1, ch. 2016-90; s. 39, ch. 2024-140.

[1]**Note.**—The word "with" following the word "contract" was deleted by the editors to improve sentence structure.

[2]**Note.**—The word "or" was inserted by the editors to improve clarity.

717.102 Property presumed unclaimed; general rule.—

(1) All intangible property, including any income or increment thereon less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and the owner fails to claim such property for more than 5 years after the property becomes payable or distributable is presumed unclaimed, except as otherwise provided by this chapter.

(2) Property is payable or distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) A presumption that property is unclaimed is rebutted by an apparent owner's expression of interest in the property. An owner's expression of interest in property includes:

(a) A record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) An oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) Presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, with respect to an account, underlying security, or interest in a business association;

(d) Activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(e) A deposit into or withdrawal from an account at a financial organization, excluding an automatic deposit or withdrawal previously authorized by the apparent owner or an automatic reinvestment of dividends or interest, which does not constitute an expression of interest; or

(f) Any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists.

(4) If a holder learns or receives confirmation of an apparent owner's death, the property shall be presumed unclaimed 2 years after the date of death, unless a fiduciary appointed to represent the estate of the apparent owner has made an expression of interest in the property before the expiration of the 2-year period. This subsection may not be construed to extend the otherwise applicable dormancy period prescribed by this chapter.

History.—s. 3, ch. 87-105; s. 2, ch. 2001-36; s. 40, ch. 2024-140.

717.103 General rules for taking custody of intangible unclaimed property.—Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of the department as unclaimed property if the conditions leading to a presumption that the property is unclaimed as described in ss. 717.102 and 717.105-717.116 are satisfied and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(a) The last known address of the person entitled to the property is in this state; or

(b) The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property, and the holder is a domiciliary or a government or governmental subdivision or agency of this state;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) The transaction out of which the property arose occurred in this state, and;

(a)1. The last known address of the apparent owner or other person entitled to the property is unknown; or

2. The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property; and

(b) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

History.—s. 4, ch. 87-105; s. 3, ch. 2001-36.

717.1035 Property originated or issued by this state, any political subdivision of this state, or any entity incorporated, organized, created, or otherwise located in the state.—

(1) All intangible property, including, but not limited to, any interest, dividend, or other earnings thereon, less any lawful charges, held by a business association, federal, state, or local government or governmental subdivision, agency, or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed or corresponded in writing concerning the property within 3 years after the date prescribed for payment or delivery, is presumed to be unclaimed property and subject to the custody of this state as such if:

(a) The last known address of the owner is unknown; and

(b) The person or entity originating or issuing the intangible property is this state or any political subdivision of this state, or the person or entity is incorporated, organized, created, or otherwise located in this state.

(2) The provisions of subsection (1) shall not apply to property which is or may be presumed unclaimed and subject to the custody of this state pursuant to any other provision of law containing a dormancy period different than that prescribed in subsection (1).

(3) The provisions of subsection (1) shall apply to all property held at the time of enactment, or at any time thereafter, regardless of when such property became or becomes presumptively unclaimed.

History.—s. 1, ch. 90-113; s. 2, ch. 92-169; s. 4, ch. 2001-36.

717.104 Traveler's checks and money orders.—

(1) Subject to subsection (4), any sum payable on a traveler's check that has been outstanding for more than 15 years after its issuance is presumed unclaimed unless the owner, within 15 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file with the issuer.

(2) Subject to subsection (4), any sum payable on a money order or similar written instrument, other than a third party bank check, that has been outstanding for more than 7 years after its issuance is presumed unclaimed unless the owner, within 7 years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file with the issuer.

(3) No holder may deduct from the amount of any traveler's check or money order any charges imposed by reason of the failure to present those instruments for payment unless there is a valid and enforceable written contract between the issuer and the owner of the property pursuant to which the issuer may impose those charges and the issuer regularly imposes those charges and does not regularly reverse or otherwise cancel those charges with respect to the property.

(4) No sum payable on a traveler's check, money order, or similar written instrument, other than a third party bank check, described in subsections (1) and (2) may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the traveler's check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the traveler's check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state; the records of the issuer show the state in which the traveler's check, money order, or similar written instrument was purchased; and the laws of the state of purchase do not provide for the escheat or custodial taking of the property, or its escheat or unclaimed property law is not applicable to the property.

(5) Notwithstanding any other provision of this chapter, subsection (4) applies to sums payable on traveler's checks, money orders, and similar written instruments presumed unclaimed on or after February 1, 1965, except to the extent that those sums have been paid over to a state prior to January 1, 1974.

History.—s. 5, ch. 87-105; s. 5, ch. 2001-36.

717.1045 Gift certificates and similar credit items.—Notwithstanding s. 717.117, an unredeemed gift certificate or credit memo as defined in s. 501.95 is not required to be reported as unclaimed property.

(1) The consideration paid for an unredeemed gift certificate or credit memo is the property of the issuer of the unredeemed gift certificate or credit memo.

(2) An unredeemed gift certificate or credit memo is subject only to any rights of a purchaser or owner thereof and is not subject to a claim made by any state acting on behalf of a purchaser or owner.

(3) It is the intent of the Legislature that this section apply to the custodial holding of unredeemed gift certificates and credit memos.

(4) However, a gift certificate or credit memo described in s. 501.95(2)(b) shall be reported as unclaimed property. The consideration paid for such a gift certificate or credit memo is the property of the owner of the gift certificate or credit memo.

History.—s. 2, ch. 2007-256.

717.105 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.—

(1) Any sum payable on a check, draft, or similar instrument, except those subject to ss. 717.104 and 717.115, on which a banking or financial organization is directly liable, including, but not limited to, a cashier's check or a certified check, which has been outstanding for more than 5 years after it was payable or after its issuance if payable on demand, is presumed unclaimed unless the owner, within 5 years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization.

(2) No holder may deduct from the amount of any instrument subject to this section any charges imposed by reason of the failure to present the instrument for encashment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose those charges and does not regularly reverse or otherwise cancel those charges with respect to the instrument.

History.—s. 6, ch. 87-105; s. 2, ch. 96-301; s. 6, ch. 2001-36.

717.106 Bank deposits and funds in financial organizations.—

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including deposits that are automatically renewable, and any funds paid toward the purchase of shares, a mutual investment certificate, or any other interest in a banking or financial organization is presumed unclaimed unless the owner has, within 5 years:

(a) Increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing or by documented telephone contact with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the banking or financial organization;

(d) Owned other property to which paragraph (a), paragraph (b), or paragraph (c) is applicable and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed unclaimed under this subsection at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

1. Communicated in writing with the banking or financial organization; or

2. Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be unclaimed under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purpose of paragraph (1)(a), property includes any interest or dividends thereon.

(3) No holder may impose with respect to property described in subsection (1) any charges due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose those charges or cease payment of interest.

(b) For property in excess of $2, the holder, no more than 3 months prior to the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges shall be imposed or that interest shall cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before July 1, 1987.

(c) The holder regularly imposes those charges or ceases payment of interest and does not regularly reverse or otherwise cancel those charges or retroactively credit interest with respect to such property.

(4) Any property described in subsection (1) that is automatically renewable is matured for purposes of subsection (1) upon the expiration of its initial time period except that, in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in s. 717.119, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result.

(5) If the documents establishing a deposit described in subsection (1) state the address of a beneficiary of the deposit, and the account has a value of at least $50, notice shall be given to the beneficiary as provided for notice to the apparent owner under s. 717.117(6). This subsection shall apply to accounts opened on or after October 1, 1990.

History.—s. 7, ch. 87-105; s. 2, ch. 90-113; s. 63, ch. 91-110; s. 3, ch. 96-301; s. 7, ch. 2001-36; s. 111, ch. 2004-390; s. 2, ch. 2005-163; s. 41, ch. 2024-140.

717.1065 Virtual currency.—

(1) Any virtual currency held or owing by a banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity is presumed unclaimed unless the owner, within 5 years, has communicated in writing with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity concerning the virtual currency or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking organization, corporation, custodian, exchange, or other entity engaged in virtual currency business activity.

(2) A holder may not deduct from the amount of any virtual currency subject to this section any charges imposed by reason of the virtual currency unless there is a valid and enforceable written contract between the holder and the owner of the virtual currency pursuant to which the holder may impose those charges and the holder does not regularly reverse or otherwise cancel those charges with respect to the virtual currency.

History.—s. 42, ch. 2024-140.

717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, the annuitant, or the retained asset account holder, but property described in paragraph (3)(d) is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, the annuitant, or the retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the annuitant, or the retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured, the annuitant, or the retained asset account holder according to the records of the company is deemed matured and the proceeds due and payable if any of the following applies:

(a) The company knows that the insured, the annuitant, or the retained asset account holder has died.

(b) A presumption of death made in accordance with paragraph (8)(c) has not been rebutted.

(c) The policy or contract has reached its maturity date.

(d)1. The insured has attained, or would have attained if he or she were living, the limiting age under the mortality table on which the reserve is based;

2. The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph 1.; and

3. Neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy; subjected the policy to a loan; corresponded in writing with the company concerning the policy; or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from being matured or terminated under subsection (1) if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in

this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured, the annuitant, or the retained asset account holder and the beneficiary has not communicated with the insurer within 4 months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing 2 years after July 1, 1987, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class.

(b) The address of each beneficiary.

(c) The relationship of each beneficiary to the insured.

(8)(a) Notwithstanding any other provision of law, an insurer shall compare the records of its insureds' life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992, against the United States Social Security Administration Death Master File once to determine whether the death of an insured, an annuitant, or a retained asset account holder is indicated and shall thereafter use the Death Master File update files for future comparisons. The comparisons must use the name and social security number or date of birth of the insured, the annuitant, or the retained asset account holder. The comparisons must be made on at least an annual basis before August 31 of each year. If an insurer performs such comparisons regarding its annuities or other books of business more frequently than once a year, the insurer must also make comparisons regarding its life insurance policies, annuity contracts that provide a death benefit, and retained asset accounts at the same frequency as is made regarding its annuities or other books or lines of business. An insurer may perform the comparisons required by this paragraph using any database or service that the department determines is at least as comprehensive as the United States Social Security Administration Death Master File for the purpose of indicating that a person has died.

(b) However, an insurer that meets one of the following criteria as of June 30, 2016, shall conduct the comparison in paragraph (a) to all in-force policies:

1. The insurer has entered into a regulatory settlement agreement with the Office of Insurance Regulation; or

2. The insurer has received a targeted market conduct examination report issued by the Office of Insurance Regulation regarding claims-handling practices and the use of the Death Master File with no findings of violations of law.

(c) An insured, an annuitant, or a retained asset account holder is presumed deceased if the date of his or her death is indicated by the comparison required under paragraph (a) unless the insurer has in its records competent and substantial evidence that the person is living, including, but not limited to, a contact made by the insurer with such person or his or her legal representative. The insurer shall account for common variations in data and for any partial names, social security numbers, dates of birth, and addresses of the insured, the annuitant, or the retained asset account holder which would otherwise preclude an exact match.

(d) For purposes of this section, a policy, an annuity contract, or a retained asset account is deemed to be in force if it has not lapsed, has not been canceled, or has not been terminated at the time of death of the insured, the annuitant, or the retained asset account holder.

(e) This subsection does not apply to an insurer with respect to benefits payable under:

1. An annuity that is issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 or that is issued to fund an employment-based retirement plan, including any deferred compensation plan.

2. A policy of credit life or accidental death insurance.

3. A joint and survivor annuity contract if an annuitant is still living.

4. A policy issued to a group master policy owner for which the insurer does not perform recordkeeping functions. For purposes of this subparagraph, the term "recordkeeping" means those circumstances under which the insurer has agreed through a group policyholder to be responsible for obtaining, maintaining, and

administering, in its own or its agents' systems, information about each individual insured under a group insurance policy or a line of coverage thereunder, including at least the following:

a. The social security number, or name and date of birth;

b. Beneficiary designation information;

c. Coverage eligibility;

d. The benefit amount; and

e. Premium payment status.

5. Any policy or certificate of life insurance that is assigned to a person licensed under s. 497.452 to fund a preneed funeral merchandise or service contract.

(9) No later than 120 days after learning of the death of an insured, an annuitant, or a retained asset account holder through a comparison under subsection (8), an insurer shall:

(a) Complete and document an effort to confirm the death of the insured, the annuitant, or the retained asset account holder against other available records and information.

(b) Review its records to determine whether the insured, the annuitant, or the retained asset account holder purchased other products from the insurer.

(c) Determine whether benefits may be due under a policy, an annuity, or a retained asset account.

(d) Complete and document an effort to locate and contact the beneficiary or authorized representative under a policy, an annuity, or a retained asset account if such person has not communicated with the insurer before the expiration of the 120-day period. The effort must include:

1. Sending to the beneficiary or authorized representative information concerning the claim process of the insurer.

2. Notice of any requirement to provide a certified original or copy of the death certificate if applicable under the policy, annuity, or retained asset account.

(10) An insurer may, to the extent permitted by law, disclose the minimum necessary personal information about an insured, an annuitant, a retained asset account owner, or a beneficiary to an individual or entity reasonably believed by the insurer to possess the ability to assist the insurer in locating the beneficiary or any other individual or entity that is entitled to payment of the claim proceeds.

(11) An insurer, or any agent or third party that it engages or that works on its behalf, may not charge insureds, annuitants, retained asset account holders, beneficiaries, or the estates of insureds, annuitants, retained asset account holders, or the beneficiaries of an estate any fees or costs associated with any search, verification, claim, or delivery of funds conducted pursuant to this section.

History.—s. 8, ch. 87-105; s. 849, ch. 97-102; s. 8, ch. 2001-36; s. 112, ch. 2004-390; s. 1, ch. 2016-219.

[1]717.1071 Lost owners of unclaimed demutualization, rehabilitation, or related reorganization proceeds.—

(1) Property distributable in the course of a demutualization, rehabilitation, or related reorganization of an insurance company is deemed abandoned 2 years after the date the property is first distributable if, at the time of the first distribution, the last known address of the owner on the books and records of the holder is known to be incorrect or the distribution or statements are returned by the post office as undeliverable; and the owner has not communicated in writing with the holder or its agent regarding the interest or otherwise communicated with the holder regarding the interest as evidenced by a memorandum or other record on file with the holder or its agent.

(2) Property distributable in the course of demutualization, rehabilitation, or related reorganization of a mutual insurance company that is not subject to subsection (1) shall be reportable as otherwise provided by this chapter.

(3) Property subject to this section shall be reported and delivered no later than May 1 as of the preceding December 31; however, the initial report under this section shall be filed no later than November 1, 2003, as of December 31, 2002.

History.—s. 2, ch. 2003-21; s. 75, ch. 2003-281.

[1]**Note.**—As enacted by s. 75, ch. 2003-281. For a description of multiple acts in the same session affecting a statutory provision, *see* preface to the *Florida Statutes*, "Statutory Construction." Section 717.1071 was also enacted by s. 2, ch. 2003-21, and that version reads:

717.1071 Unclaimed demutualization proceeds.—Unclaimed property payable or distributable in the course of a demutualization of an insurance company is presumed unclaimed 5 years after the earlier of the date of last contact with the policyholder or the date the property became payable or distributable.

717.108 Deposits held by utilities.—Any deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or advance payment was made is presumed unclaimed.

History.—s. 9, ch. 87-105; s. 4, ch. 96-301; s. 9, ch. 2001-36.

717.109 Refunds held by business associations.—Except as otherwise provided by law, any sum that a business association has been ordered to refund by a court or administrative agency which has been unclaimed by the owner for more than 1 year after it became payable in accordance with the final determination or order providing for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim for it, is presumed unclaimed.

History.—s. 10, ch. 87-105; s. 10, ch. 2001-36; s. 113, ch. 2004-390.

717.1101 Unclaimed equity and debt of business associations.—

(1)(a) Stock or other equity interest in a business association is presumed unclaimed on the date of the earliest of the following:

1. Three years after the most recent of any owner-generated activity or communication related to the account, as recorded and maintained in the holder's database and records systems sufficient enough to demonstrate the owner's continued awareness or interest in the property;

2. Three years after the date of the death of the owner, as evidenced by:

a. Notice to the holder of the owner's death by an administrator, beneficiary, relative, or trustee, or by a personal representative or other legal representative of the owner's estate;

b. Receipt by the holder of a copy of the death certificate of the owner;

c. Confirmation by the holder of the owner's death though other means; or

d. Other evidence from which the holder may reasonably conclude that the owner is deceased; or

3. One year after the date on which the holder receives notice under subparagraph 2. if the notice is received 2 years or less after the owner's death and the holder lacked knowledge of the owner's death during that period of 2 years or less.

(b) Unmatured or unredeemed debt, other than a bearer bond or an original issue discount bond, is presumed unclaimed 3 years after the date of the most recent interest payment unclaimed by the owner.

(c) Matured or redeemed debt is presumed unclaimed 3 years after the date of maturity or redemption.

(d) At the time property is presumed unclaimed under paragraph (a) or paragraph (b), any other property right accrued or accruing to the owner as a result of the property interest and not previously presumed unclaimed is also presumed unclaimed.

(2) The running of such 3-year period ceases if the person:

(a)1. Communicates in writing with the association or its agent regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

2. Otherwise communicates with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association or its agent.

(b) Presents an instrument issued to pay interest or a dividend or other cash distribution. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period in which the property is presumed unclaimed commences and relates back only to the time a subsequent dividend, distribution, or other sum became due and payable.

(3) At the same time any interest is presumed unclaimed under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, is presumed unclaimed.

(4) Any dividend, profit, distribution, interest redemption, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificateholder, member, bondholder, or other security holder, who has not claimed such amount or corresponded in writing with the business association concerning such amount, within 3 years after the date prescribed for payment or delivery, is presumed unclaimed.

History.—s. 11, ch. 87-105; s. 5, ch. 96-301; s. 11, ch. 2001-36; s. 3, ch. 2003-21; s. 3, ch. 2005-163; s. 43, ch. 2024-140.

717.111 Property of business associations held in course of dissolution.—All intangible property distributable in the course of a voluntary or involuntary dissolution of a business association which is not claimed by the owner for more than 6 months after the date specified for final distribution is presumed unclaimed.

History.—s. 12, ch. 87-105; s. 12, ch. 2001-36.

717.112 Property held by agents and fiduciaries.—

(1) All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person, including property held by an attorney in fact or an agent, except as provided in ss. 717.1125 and 733.816, is presumed unclaimed unless the owner has within 5 years after it has become payable or distributable increased or decreased the principal, accepted payment of principal or income, communicated in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the Internal Revenue laws of the United States are not payable or distributable within the meaning of subsection (1) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between said person and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned.

(5) All intangible property, and any income or increment thereon, issued by a government or governmental subdivision or agency, public corporation, or public authority and held in an agency capacity for the governmental subdivision, agency, public corporation, or public authority for the benefit of the owner of record, is presumed unclaimed unless the owner has, within 1 year after such property has become payable or distributable, increased or decreased the principal, accepted payment of the principal or income, communicated concerning the property, or otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the fiduciary.

(6) This section does not relieve a fiduciary of his or her duties under applicable general law.

History.—s. 13, ch. 87-105; s. 6, ch. 96-301; s. 13, ch. 2001-36; s. 3, ch. 2013-172; s. 44, ch. 2024-140.

717.1125 Property held by fiduciaries under trust instruments.—All intangible property and any income or increment thereon held in a fiduciary capacity for the benefit of another person under a trust instrument is presumed unclaimed unless the owner has, within 2 years after it has become payable or distributable, increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary. This section does not relieve a fiduciary of his or her duties under the Florida Trust Code.

History.—s. 4, ch. 2013-172; s. 45, ch. 2024-140.

717.113 Property held by courts and public agencies.—All intangible property held for the owner by any court, government or governmental subdivision or agency, public corporation, or public authority that has not been claimed by the owner for more than 1 year after it became payable or distributable is presumed unclaimed. Except as provided in s. 45.032(3)(c), money held in the court registry and for which no court order has been issued to

determine an owner does not become payable or distributable and is not subject to reporting under this chapter. Notwithstanding the provisions of this section, funds deposited in the Minerals Trust Fund pursuant to s. 377.247 are presumed unclaimed only if the funds have not been claimed by the owner for more than 5 years after the date of first production from the well.

History.—s. 14, ch. 87-105; s. 4, ch. 94-193; s. 71, ch. 96-321; s. 14, ch. 2001-36; s. 8, ch. 2018-71.

717.115 Wages.—Unpaid wages, including wages represented by unpresented payroll checks, owing in the ordinary course of the holder's business that have not been claimed by the owner for more than 1 year after becoming payable are presumed unclaimed.

History.—s. 16, ch. 87-105; s. 15, ch. 2001-36.

717.116 Contents of safe-deposit box or other safekeeping repository.—All tangible and intangible property held by a banking or financial organization in a safe-deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business, and proceeds resulting from the sale of the property permitted by law, that has not been claimed by the owner for more than 3 years after the lease or rental period on the box or other repository has expired are presumed unclaimed.

History.—s. 17, ch. 87-105; s. 8, ch. 96-301; s. 16, ch. 2001-36; s. 114, ch. 2004-390.

717.117 Report of unclaimed property.—

(1) Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property under this chapter shall report to the department via electronic medium as the department may prescribe by rule. The report must include:

(a) Except for traveler's checks and money orders, the name, social security number or taxpayer identification number, date of birth, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property which is presumed unclaimed and which has a value of $10 or more.

(b) For unclaimed funds that have a value of $10 or more held or owing under any life or endowment insurance policy or annuity contract, the identifying information provided in paragraph (a) for both the insured or annuitant and the beneficiary according to records of the insurance company holding or owing the funds.

(c) For all tangible property held in a safe-deposit box or other safekeeping repository, a description of the property and the place where the property is held and may be inspected by the department, and any amounts owing to the holder. Contents of a safe-deposit box or other safekeeping repository which consist of documents or writings of a private nature and which have little or no apparent value shall not be presumed unclaimed.

(d) The nature or type of property, any accounting or identifying number associated with the property, a description of the property, and the amount appearing from the records to be due. Items of value of less than $10 each may be reported in the aggregate.

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property.

(f) Any other information the department may prescribe by rule as necessary for the administration of this chapter.

(2) If the total value of all presumed unclaimed property, whether tangible or intangible, held by a person is less than $10, a zero balance report may be filed for that reporting period.

(3) Credit balances, customer overpayments, security deposits, and refunds having a value of less than $10 shall not be presumed unclaimed.

(4) If the holder of property presumed unclaimed and subject to custody as unclaimed property is a successor holder or if the holder has changed the holder's name while in possession of the property, the holder shall file with the holder's report all known names and addresses of each prior holder of the property. Compliance with this subsection means the holder exercises reasonable and prudent efforts to determine the names of all prior holders.

(5) The report must be filed before May 1 of each year. The report applies to the preceding calendar year. Upon written request by any person required to file a report, and upon a showing of good cause, the department may extend the reporting date. The department may impose and collect a penalty of $10 per day up to a maximum of

$500 for the failure to timely report, if an extension was not provided or if the holder of the property failed to include in a report information required by this chapter which was in the holder's possession at the time of reporting. The penalty shall be remitted to the department within 30 days after the date of the notification to the holder that the penalty is due and owing. As necessary for proper administration of this chapter, the department may waive any penalty due with appropriate justification. The department must provide information contained in a report filed with the department to any person requesting a copy of the report or information contained in a report, to the extent the information requested is not confidential, within 45 days after the department determines that the report is accurate and acceptable and that the reported property is the same as the remitted property.

(6) Holders of inactive accounts having a value of $50 or more shall use due diligence to locate and notify apparent owners that the entity is holding unclaimed property available for them to recover. Not more than 120 days and not less than 60 days prior to filing the report required by this section, the holder in possession of property presumed unclaimed and subject to custody as unclaimed property under this chapter shall send written notice by first-class United States mail to the apparent owner at the apparent owner's last known address from the holder's records or from other available sources, or via electronic mail if the apparent owner has elected this method of delivery, informing the apparent owner that the holder is in possession of property subject to this chapter, if the holder has in its records a mailing or electronic address for the apparent owner which the holder's records do not disclose to be inaccurate. These two means of contact are not mutually exclusive; if the mailing address is determined to be inaccurate, electronic mail may be used if so elected by the apparent owner.

(7) The written notice to the apparent owner required under this section must:

(a) Contain a heading that reads substantially as follows: "Notice. The State of Florida requires us to notify you that your property may be transferred to the custody of the Florida Department of Financial Services if you do not contact us before _(insert date that is at least 30 days after the date of notice)_."

(b) Identify the type, nature, and, except for property that does not have a fixed value, value of the property that is the subject of the notice.

(c) State that the property will be turned over to the custody of the department as unclaimed property if no response to this letter is received.

(d) State that any property that is not legal tender of the United States may be sold or liquidated by the department.

(e) State that after the property is turned over to the department, an apparent owner seeking return of the property may file a claim with the department.

(f) State that the property is currently with a holder and provide instructions that the apparent owner must follow to prevent the holder from reporting and paying for the property or from delivering the property to the department.

(8) Any holder of intangible property may file with the department a petition for determination that the property is unclaimed requesting the department to accept custody of the property. The petition shall state any special circumstances that exist, contain the information required by subsection (4), and show that a diligent search has been made to locate the owner. If the department finds that the proof of diligent search is satisfactory, it shall give notice as provided in s. 717.118 and accept custody of the property.

(9) Upon written request by any entity or person required to file a report, stating such entity's or person's justification for such action, the department may place that entity or person in an inactive status as an unclaimed property "holder."

(10)(a) This section does not apply to the unclaimed patronage refunds as provided for by contract or through bylaw provisions of entities organized under chapter 425 or that are exempt from ad valorem taxation pursuant to s. 196.2002.

(b) This section does not apply to intangible property held, issued, or owing by a business association subject to the jurisdiction of the United States Surface Transportation Board or its successor federal agency if the apparent owner of such intangible property is a business association. The holder of such property does not have any obligation to report, to pay, or to deliver such property to the department.

(c) This section does not apply to credit balances, overpayments, refunds, or outstanding checks owed by a health care provider to a managed care payor with whom the health care provider has a managed care contract, provided that the credit balances, overpayments, refunds, or outstanding checks become due and owing pursuant to the managed care contract.

(11)(a) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.

(b) Social security numbers and property identifiers contained in reports required under this section, held by the department, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.

History.—s. 18, ch. 87-105; s. 1, ch. 92-169; s. 30, ch. 92-319; s. 1, ch. 93-280; s. 9, ch. 96-301; s. 1771, ch. 97-102; s. 17, ch. 2001-36; s. 1, ch. 2002-64; s. 1888, ch. 2003-261; s. 115, ch. 2004-390; s. 4, ch. 2005-163; s. 1, ch. 2007-69; s. 1, ch. 2012-227; s. 2, ch. 2016-90; s. 1, ch. 2017-33; s. 46, ch. 2024-140.

717.118 Notification of apparent owners of unclaimed property.—

(1) It is specifically recognized that the state has an obligation to make an effort to notify owners of unclaimed property in a cost-effective manner. In order to provide all the citizens of this state an effective and efficient program for the recovery of unclaimed property, the department shall use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than $250 with a reported address or taxpayer identification number. Such active attempt to notify apparent owners shall include any attempt by the department to directly contact the owner. Other means of notification, such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts and items in which the department does not directly attempt to contact the owner are expressly declared to be passive attempts. Nothing in this subsection precludes other agencies or entities of state government from notifying owners of the existence of unclaimed property or attempting to notify apparent owners of unclaimed property.

(2) Notification provided directly to individual apparent owners shall consist of a description of the property and information regarding recovery of unclaimed property from the department.

(3) This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments presumed unclaimed under s. 717.104.

History.—s. 19, ch. 87-105; s. 2, ch. 88-256; s. 31, ch. 92-319; s. 2, ch. 93-280; s. 10, ch. 96-301; s. 18, ch. 2001-36; s. 116, ch. 2004-390; s. 5, ch. 2005-163.

717.119 Payment or delivery of unclaimed property.—

(1) Every person who is required to file a report under s. 717.117 shall simultaneously pay or deliver to the department all unclaimed property required to be reported. Such payment or delivery shall accompany the report as required in this chapter for the preceding calendar year.

(2) Payment of unclaimed funds may be made to the department by electronic funds transfer.

(3) If the owner establishes the right to receive the unclaimed property to the satisfaction of the holder before the property has been delivered to the department or it appears that for some other reason the presumption that the property is unclaimed is erroneous, the holder need not pay or deliver the property to the department. In lieu of delivery, the holder shall file a verified written explanation of the proof of claim or of the error in the presumption that the property was unclaimed.

(4) All virtual currency reported under this chapter on the annual report filing required in s. 717.117 shall be remitted to the department with the report. The holder shall liquidate the virtual currency and remit the proceeds to the department. The liquidation must occur within 30 days before the filing of the report. Upon delivery of the virtual currency proceeds to the department, the holder is relieved of all liability of every kind in accordance with the provisions of s. 717.1201 to every person for any losses or damages resulting to the person by the delivery to the department of the virtual currency proceeds.

(5) All stock or other intangible ownership interest reported under this chapter on the annual report filing required in s. 717.117 shall be remitted to the department with the report. Upon delivery of the stock or other

intangible ownership interest to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder is relieved of all liability of every kind in accordance with the provisions of s. 717.1201 to every person for any losses or damages resulting to the person by the delivery to the department of the stock or other intangible ownership interest.

(6) All intangible and tangible property held in a safe-deposit box or any other safekeeping repository reported under s. 717.117 shall not be delivered to the department until 120 days after the report due date. The delivery of the property, through the United States mail or any other carrier, shall be insured by the holder at an amount equal to the estimated value of the property. Each package shall be clearly marked on the outside "Deliver Unopened." A holder's safe-deposit box contents shall be delivered to the department in a single shipment. In lieu of a single shipment, holders may provide the department with a single detailed shipping schedule that includes package tracking information for all packages being sent pursuant to this section.

(a) Holders may remit the value of cash and coins found in unclaimed safe-deposit boxes to the department by cashier's check or by electronic funds transfer, unless the cash or coins have a value above face value. The department shall identify by rule those cash and coin items having a numismatic value. Cash and coin items identified as having a numismatic value shall be remitted to the department in their original form.

(b) Any firearm or ammunition found in an unclaimed safe-deposit box or any other safekeeping repository shall be delivered by the holder to a law enforcement agency for disposal pursuant to s. 705.103(2)(b) with the balance of the proceeds deposited into the State School Fund if the firearm is sold. However, the department is authorized to make a reasonable attempt to ascertain the historical value to collectors of any firearm that has been delivered to the department. Any firearm appearing to have historical value to collectors may be sold by the department pursuant to s. 717.122 to a person having a federal firearms license. Any firearm which is not sold pursuant to s. 717.122 shall be delivered by the department to a law enforcement agency in this state for disposal pursuant to s. 705.103(2)(b) with the balance of the proceeds deposited into the State School Fund if the firearm is sold. The department shall not be administratively, civilly, or criminally liable for any firearm delivered by the department to a law enforcement agency in this state for disposal.

(c) If such property is not paid or delivered to the department on or before the applicable payment or delivery date, the holder shall pay to the department a penalty for each safe-deposit box shipment received late. The penalty shall be $100 for a safe-deposit box shipment container that is late 30 days or less. Thereafter, the penalty shall be $500 for a safe-deposit box shipment container that is late for each additional successive 30-day period. The penalty assessed against a holder for a late safe-deposit box shipment container shall not exceed $4,000 annually. The penalty shall be remitted to the department within 30 days after the date of the notification to the holder that the penalty is due and owing.

(d) The department may waive any penalty due with appropriate justification, as provided by rule.

(e) If a will or trust instrument is included among the contents of a safe-deposit box or other safekeeping repository delivered to the department, the department must provide a copy of the will, trust, and any codicils or amendments to such will or trust instrument, upon request, to anyone who provides the department with evidence of the death of the testator or settlor.

(7) Any holder may request an extension in writing of up to 60 days for the delivery of property if extenuating circumstances exist for the late delivery of the property. Any such extension the department may grant shall be in writing.

(8) A holder may not assign or otherwise transfer its obligation to report, pay, or deliver property or to comply with the provisions of this chapter, other than to a parent, subsidiary, or affiliate of the holder.

(a) Unless otherwise agreed to by the parties to a transaction, the holder's successor by merger or consolidation, or any person or entity that acquires all or substantially all of the holder's capital stock or assets, is responsible for fulfilling the holder's obligation to report, pay, or deliver property or to comply with the duties of this chapter regarding the transfer of property owed to the holder's successor and being held for an owner resulting from the merger, consolidation, or acquisition.

(b) This subsection does not prohibit a holder from contracting with a third party for the reporting of unclaimed property, but the holder remains responsible to the department for the complete, accurate, and timely reporting of

the property.

History.—s. 20, ch. 87-105; s. 11, ch. 96-301; s. 19, ch. 2001-36; s. 4, ch. 2003-21; s. 117, ch. 2004-390; s. 6, ch. 2005-163; s. 1, ch. 2021-144; s. 47, ch. 2024-140.

717.1201 Custody by state; holder liability; reimbursement of holder paying claim; reclaiming for owner; payment of safe-deposit box or repository charges.—

(1) Upon the good faith payment or delivery of unclaimed property to the department, the state assumes custody and responsibility for the safekeeping of the property. Any person who pays or delivers unclaimed property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(a) A holder's substantial compliance with s. 717.117(6) and good faith payment or delivery of unclaimed property to the department releases the holder from liability that may arise from such payment or delivery, and such delivery and payment may be pleaded as a defense in any suit or action brought by reason of such delivery or payment. This section does not relieve a fiduciary of his or her duties under the Florida Trust Code or Florida Probate Code.

(b) If the holder pays or delivers property to the department in good faith and thereafter any other person claims the property from the holder paying or delivering, or another state claims the money or property under that state's laws relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim, except that a holder may not be indemnified against penalties imposed by another state.

(2) For the purposes of this section, a payment or delivery of unclaimed property is made in good faith if:

(a) The payment or delivery was made in conjunction with an accurate and acceptable report.

(b) The payment or delivery was made in a reasonable attempt to comply with this chapter and other applicable general law.

(c) The holder had a reasonable basis for believing, based on the facts then known, that the property was unclaimed and subject to this chapter.

(d) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(3) Any holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to be entitled to payment and, upon filing proof that the payee is entitled thereto, the department shall forthwith repay the holder without deduction of any fee or other charges. If repayment is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be repaid under this subsection upon filing proof that the instrument was duly presented and that the payee is entitled to payment. The holder shall be repaid for payment made under this subsection even if the payment was made to a person whose claim was barred under s. 717.129(1).

(4) Any holder who has delivered property, including a certificate of any interest in a business association, other than money to the department pursuant to this chapter may reclaim the property if still in the possession of the department, without payment of any fee or other charges, upon filing proof that the owner has claimed the property from the holder.

(5) The department may accept an affidavit of the holder stating the facts that entitle the holder to recover money and property under this section as sufficient proof.

(6) Property removed from a safe-deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall make the reimbursement to the holder out of the proceeds remaining after the deduction of the department's selling cost.

(7) If it appears to the satisfaction of the department that, because of some mistake of fact, error in calculation, or erroneous interpretation of a statute, a person has paid or delivered to the department pursuant to any provision of this chapter any money or other property not required by this chapter to be so paid or delivered,

the department may, within 5 years after such erroneous payment or delivery, refund or redeliver such money or other property to the person, provided that such money or property has not been paid or delivered to a claimant or otherwise disposed of in accordance with this chapter.

History.—s. 21, ch. 87-105; s. 20, ch. 2001-36; s. 118, ch. 2004-390; s. 48, ch. 2024-140.

[1]**Note.**—The word "pleaded" was substituted for the word "plead" by the editors to conform to context.

717.121 Crediting of dividends, interest, or increments to owner's account.—Whenever property other than money is paid or delivered to the department under this chapter, the owner is entitled to receive from the department any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money.

History.—s. 22, ch. 87-105.

717.122 Public sale of unclaimed property.—

(1) Except as provided in paragraph (2)(a), the department after the receipt of unclaimed property shall sell it to the highest bidder at public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department shall have the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as the department determines appropriate. Any sale at a specified physical location held under this section must be preceded by a single publication of notice, at least 3 weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold. The department shall proportionately deduct auction fees, preparation costs, and expenses from the amount posted to the owner's account when safe-deposit box contents are sold. No action or proceeding may be maintained against the department for or on account of any decision to decline the highest bid or withhold any unclaimed property from sale.

(2)(a) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department deems advisable. The department may authorize the agent or broker acting on behalf of the department to deduct fees from the proceeds of these sales at a rate agreed upon in advance by the agent or broker and the department. The department shall reimburse owners' accounts for these brokerage fees from the State School Fund unless the securities are sold at the owner's request.

(b) Unless the department deems it to be in the public interest to do otherwise, all securities presumed unclaimed and delivered to the department may be sold upon receipt. Any person making a claim pursuant to this chapter is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, but no person has any claim under this chapter against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the state.

(c) Certificates for unclaimed stock or other equity interest of business associations that cannot be canceled and registered in the department's name or that cannot be readily liquidated and converted into the currency of the United States may be sold for the value of the certificate, if any, in accordance with subsection (1) or may be destroyed in accordance with s. 717.128.

(3) The purchaser of property at any sale conducted by the department pursuant to this chapter is entitled to ownership of the property purchased free from all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.

(4) The sale of unclaimed tangible personal property is not subject to tax under chapter 212 when such property is sold by or on behalf of the department pursuant to this section.

History.—s. 23, ch. 87-105; s. 3, ch. 90-113; s. 12, ch. 96-301; s. 21, ch. 2001-36; s. 119, ch. 2004-390; s. 7, ch. 2005-163.

717.123 Deposit of funds.—

(1) All funds received under this chapter, including the proceeds from the sale of unclaimed property under s. 717.122, shall forthwith be deposited by the department in the Unclaimed Property Trust Fund. The department shall retain, from funds received under this chapter, an amount not exceeding $15 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. All remaining funds received by the department under this chapter shall be deposited by the department into the State School Fund.

(2) The department shall record the name and last known address of each person appearing from the holder's reports to be entitled to the unclaimed property in the total amounts of $5 or greater; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due.

(3) Notwithstanding subsection (1), and for the 2022-2023 fiscal year, the department shall retain, from funds received under this chapter, an amount not exceeding $65 million from which the department shall make prompt payment of claims allowed by the department and shall pay the costs incurred by the department in administering and enforcing this chapter. This subsection expires July 1, 2024.

History.—s. 24, ch. 87-105; s. 13, ch. 96-301; s. 22, ch. 2001-36; s. 120, ch. 2004-390; s. 48, ch. 2023-240.

717.1235 Dormant campaign accounts; report of unclaimed property.—Unclaimed funds reported in the name of a campaign for public office, for any campaign that must dispose of surplus funds in its campaign account pursuant to s. 106.141, after being reported to the department, shall be deposited with the Chief Financial Officer to the credit of the State School Fund.

History.—s. 3, ch. 2016-90.

717.124 Unclaimed property claims.—

(1) Any person, excluding another state, claiming an interest in any property paid or delivered to the department under this chapter may file with the department a claim on a form prescribed by the department and verified by the claimant or the claimant's representative. The claimant's representative must be an attorney licensed to practice law in this state, a licensed Florida-certified public accountant, or a private investigator licensed under chapter 493. The claimant's representative must be registered with the department under this chapter. The claimant, or the claimant's representative, shall provide the department with a legible copy of a valid driver license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver license at the time the original claim form is filed, the department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. In lieu of photographic identification, a notarized sworn statement by the claimant may be provided which affirms the claimant's identity and states the claimant's full name and address. The claimant must produce to the notary photographic identification of the claimant issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary's full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement, if applicable, is void.

(a) Within 90 days after receipt of a claim, the department may return any claim that provides for the receipt of fees and costs greater than that permitted under this chapter or that contains any apparent errors or omissions. The department may also request that the claimant or the claimant's representative provide additional information. The department shall retain a copy or electronic image of the claim.

(b) A claim is considered to have been withdrawn by a claimant or the claimant's representative if the department does not receive a response to its request for additional information within 60 days after the notification of any apparent errors or omissions.

(c) Within 90 days after receipt of the claim, or the response of the claimant or the claimant's representative to the department's request for additional information, whichever is later, the department shall determine each

claim. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57. The 90-day period shall be extended by 60 days if the department has good cause to need additional time or if the unclaimed property:

1. Is owned by a person who has been a debtor in bankruptcy;
2. Was reported with an address outside of the United States;
3. Is being claimed by a person outside of the United States; or
4. Contains documents filed in support of the claim that are not in the English language and have not been accompanied by an English language translation.

(2) A claim for a cashier's check or a stock certificate without the original instrument may require an indemnity bond equal to the value of the claim to be provided prior to issue of the stock or payment of the claim by the department.

(3) The department may require an affidavit swearing to the authenticity of the claim, lack of documentation, and an agreement to allow the department to provide the name and address of the claimant to subsequent claimants coming forward with substantiated proof to claim the account. This shall apply to claims equal to or less than $250. The exclusive remedy of a subsequent claimant to the property shall be against the person who received the property from the department.

(4)(a) Except as otherwise provided in this chapter, if a claim is determined in favor of the claimant, the department shall deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department, together with any additional amount required by s. 717.121.

(b) If an owner authorizes an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, and registered with the department under this chapter, to claim the unclaimed property on the owner's behalf, the department is authorized to make distribution of the property or money in accordance with the Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement under s. 717.135. The original Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement must be executed by the claimant or seller and must be filed with the department.

(c)1. Payments of approved claims for unclaimed cash accounts must be made to the owner after deducting any fees and costs authorized by the claimant under an Unclaimed Property Recovery Agreement. The contents of a safe-deposit box must be delivered directly to the claimant.

2. Payments of fees and costs authorized under an Unclaimed Property Recovery Agreement for approved claims must be made or issued to the law firm of the designated attorney licensed to practice law in this state, the public accountancy firm of the licensed Florida-certified public accountant, or the designated employing private investigative agency licensed by this state. Such payments shall be made by electronic funds transfer and may be made on such periodic schedule as the department may define by rule, provided the payment intervals do not exceed 31 days. Payment made to an attorney licensed in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, operating individually or as a sole practitioner, must be to the attorney, certified public accountant, or private investigator.

(5) The department shall not be administratively, civilly, or criminally liable for any property or funds distributed pursuant to this section, provided such distribution is made in good faith.

(6) This section does not supersede the licensing requirements of chapter 493.

(7) The department may allow an apparent owner to electronically submit a claim for unclaimed property to the department. If a claim is submitted electronically for $2,000 or less, the department may use a method of identity verification other than a copy of a valid driver license, other government-issued photographic identification, or a sworn notarized statement. The department may adopt rules to implement this subsection.

(8) Notwithstanding any other provision of this chapter, the department may develop and implement an identification verification and disbursement process by which an account valued at $2,000 or less, after being received by the department and added to the unclaimed property database, may be disbursed to an apparent owner after the department has verified that the apparent owner is living and that the apparent owner's current address is correct. The department shall include with the payment a notification and explanation of the dollar

amount, the source, and the property type of each account included in the disbursement. The department shall adopt rules to implement this subsection.

(9)(a) Notwithstanding any other provision of this chapter, the department may develop and implement a verification and disbursement process by which an account, after being received by the department and added to the unclaimed property database, for which the apparent owner entity is:

1. A state agency in this state or a subdivision or successor agency thereof;
2. A county government in this state or a subdivision thereof;
3. A public school district in this state or a subdivision thereof;
4. A municipality in this state or a subdivision thereof; or
5. A special taxing district or authority in this state,

may be disbursed to the apparent owner entity or successor entity. The department shall include with the payment a notification and explanation of the dollar amount, the source, and the property type of each account included in the disbursement.

(b) The department may adopt rules to implement this subsection.

(10) Notwithstanding any other provision of this chapter, the department may develop a process by which a claimant's representative or a buyer of unclaimed property may electronically submit to the department an electronic image of a completed claim and claims-related documents under this chapter, including an Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement that has been signed and dated by a claimant or seller under s. 717.135, after the claimant's representative or the buyer of unclaimed property receives the original documents provided by the claimant or the seller for any claim. Each claim filed by a claimant's representative or a buyer of unclaimed property must include a statement by the claimant's representative or the buyer of unclaimed property attesting that all documents are true copies of the original documents and that all original documents are physically in the possession of the claimant's representative or the buyer of unclaimed property. All original documents must be kept in the original form, by claim number, under the secure control of the claimant's representative or the buyer of unclaimed property and must be available for inspection by the department in accordance with s. 717.1315. The department may adopt rules to implement this subsection.

(11) This section applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported pursuant to ss. 45.032, 732.107, 733.816, and 744.534.

History.—s. 25, ch. 87-105; s. 3, ch. 89-291; s. 8, ch. 89-299; s. 4, ch. 90-113; s. 14, ch. 96-301; s. 295, ch. 96-410; s. 31, ch. 97-93; s. 1772, ch. 97-102; s. 23, ch. 2001-36; s. 121, ch. 2004-390; s. 8, ch. 2005-163; s. 1, ch. 2013-34; s. 9, ch. 2018-71; s. 34, ch. 2019-140; s. 2, ch. 2021-144.

717.12403 Unclaimed demand, savings, or checking account in a financial institution held in the name of more than one person.—

(1)(a) If an unclaimed demand, savings, or checking account in a financial institution is reported as an "and" account in the name of two or more persons who are not beneficiaries, it is presumed that each person must claim the account in order for the claim to be approved by the department. This presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account should have been reported by the financial institution as an "or" account.

(b) If an unclaimed demand, savings, or checking account in a financial institution is reported as an "and" account and one of the persons on the account is deceased, it is presumed that the account is a survivorship account. This presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account is not a survivorship account.

(2) If an unclaimed demand, savings, or checking account in a financial institution is reported as an "or" account in the name of two or more persons who are not beneficiaries, it is presumed that either person listed on the account may claim the entire amount held in the account. This presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account should have been reported by the financial institution as an "and" account.

(3) If an unclaimed demand, savings, or checking account in a financial institution is reported in the name of two or more persons who are not beneficiaries without identifying whether the account is an “and” account or an “or” account, it is presumed that the account is an “or” account. This presumption may be rebutted by showing that entitlement to the account has been transferred to another person or by clear and convincing evidence demonstrating that the account should have been reported by the financial institution as an “and” account.

(4) The department shall be deemed to have made a distribution in good faith if the department remits funds consistent with this section.

History.—s. 122, ch. 2004-390.

717.12404 Claims on behalf of a business entity or trust.—

(1)(a) Claims on behalf of an active or dissolved corporation, for which the last annual report is not available from the Department of State through the Internet, must be accompanied by a microfiche copy of the records on file with the Department of State or, if the corporation has not made a corporate filing with the Department of State, the claim must be accompanied by a uniform resource locator for the address of a free Internet site operated by the state of incorporation of the corporation that provides access to the last corporate filing identifying the officers and directors of the corporation. If available, the claim must be accompanied by a printout of the officers and directors from the Department of State Internet site or the free Internet site operated by the state of incorporation of the corporation. If the free Internet site is not available, the claim must be accompanied by an authenticated copy of the last corporate filing identifying the officers and directors from the appropriate authorized official of the state of incorporation.

(b) A claim on behalf of a corporation must be made by an officer or director identified on the last corporate filing.

(2) Claims on behalf of a dissolved corporation, a business entity other than an active corporation, or a trust must include a legible copy of a valid driver license of the person acting on behalf of the dissolved corporation, business entity other than an active corporation, or trust. If the person has not been issued a valid driver license, the department shall be provided with a legible copy of a photographic identification of the person issued by the United States, a foreign nation, or a political subdivision or agency thereof. In lieu of photographic identification, a notarized sworn statement by the person may be provided which affirms the person’s identity and states the person’s full name and address. The person must produce his or her photographic identification issued by the United States, a state or territory of the United States, a foreign nation, or a political subdivision or agency thereof or other evidence deemed acceptable by the department by rule. The notary shall indicate the notary’s full address on the notarized sworn statement. Any claim filed without the required identification or the sworn statement with the original claim form and the original Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement, if applicable, is void.

History.—s. 123, ch. 2004-390; s. 9, ch. 2005-163; s. 3, ch. 2021-144.

717.12405 Claims by estates.—An estate or any person representing an estate or acting on behalf of an estate may claim unclaimed property only after the heir or legatee of the decedent entitled to the property has been located. Any estate, or any person representing an estate or acting on behalf of an estate, that receives unclaimed property before the heir or legatee of the decedent entitled to the property has been located, is personally liable for the unclaimed property and must immediately return the full amount of the unclaimed property or the value thereof to the department in accordance with s. 717.1341.

History.—s. 124, ch. 2004-390.

717.12406 Joint ownership of unclaimed securities or dividends.—For the purpose of determining joint ownership of unclaimed securities or dividends, the term:

(1) “TEN COM” means tenants in common.

(2) “TEN ENT” means tenants by the entireties.

(3) “JT TEN” or “JT” means joint tenants with the right of survivorship and not as tenants in common.

(4) “And” means tenants in common with each person entitled to an equal pro rata share.

(5) "Or" means that each person listed on the account is entitled to all of the funds.

History.—s. 10, ch. 2005-163.

717.1241 Conflicting claims.—

(1) When conflicting claims have been received by the department for the same unclaimed property account or accounts, the property shall be remitted in accordance with the claim filed by the person as follows, notwithstanding the withdrawal of a claim:

(a) To the person submitting the first claim received by the Division of Unclaimed Property of the department that is complete or made complete.

(b) If a claimant's claim and a claimant's representative's claim are received by the Division of Unclaimed Property of the department on the same day and both claims are complete, to the claimant.

(c) If a buyer's claim and a claimant's claim or a claimant's representative's claim are received by the Division of Unclaimed Property of the department on the same day and the claims are complete, to the buyer.

(d) As between two or more claimant's representative's claims received by the Division of Unclaimed Property of the department that are complete or made complete on the same day, to the claimant's representative who has agreed to receive the lowest fee. If the two or more claimant's representatives whose claims received by the Division of Unclaimed Property of the department were complete or made complete on the same day are charging the same lowest fee, the fee shall be divided equally between the claimant's representatives.

(e) If more than one buyer's claim received by the Division of Unclaimed Property of the department is complete or made complete on the same day, the department shall remit the unclaimed property to the buyer who paid the highest amount to the seller. If the buyers paid the same amount to the seller, the department shall remit the unclaimed property to the buyers divided in equal amounts.

(2) The purpose of this section is solely to provide guidance to the department regarding to whom it should remit the unclaimed property and is not intended to extinguish or affect any private cause of action that any person may have against another person for breach of contract or other statutory or common-law remedy. A buyer's sole remedy, if any, shall be against the claimant's representative or the seller, or both. A claimant's representative's sole remedy, if any, shall be against the buyer or the seller, or both. A claimant's or seller's sole remedy, if any, shall be against the buyer or the claimant's representative, or both. Nothing in this section forecloses the right of a person to challenge the department's determination of completeness in a proceeding under ss. 120.569 and 120.57.

(3) A claim is complete when entitlement to the unclaimed property has been established.

History.—s. 15, ch. 96-301; s. 24, ch. 2001-36; s. 125, ch. 2004-390; s. 11, ch. 2005-163; s. 40, ch. 2016-165.

717.1242 Restatement of jurisdiction of the circuit court sitting in probate and the department.—

(1) It is and has been the intent of the Legislature that, pursuant to s. 26.012(2)(b), circuit courts have jurisdiction of proceedings relating to the settlement of the estates of decedents and other jurisdiction usually pertaining to courts of probate. It is and has been the intent of the Legislature that, pursuant to this chapter, the department determines the merits of claims and entitlement to unclaimed property paid or delivered to the department under this chapter. Consistent with this legislative intent, any beneficiary, devisee, heir, personal representative, or other interested person, as those terms are defined in the Florida Probate Code and the Florida Trust Code, of an estate seeking to obtain property paid or delivered to the department under this chapter must file a claim with the department as provided in s. 717.124.

(2) If any estate or heir of an estate seeks or obtains an order from a circuit court sitting in probate directing the department to pay or deliver to any person property paid or delivered to the department under this chapter, the estate or heir shall be ordered to pay the department reasonable costs and attorney's fees in any proceeding brought by the department to oppose, appeal, or collaterally attack the order if the department is the prevailing party in any such proceeding.

History.—s. 16, ch. 96-301; s. 126, ch. 2004-390; s. 12, ch. 2005-163; s. 49, ch. 2024-140.

717.1243 Small estate accounts.—

(1) A claim for unclaimed property made by a beneficiary, as defined in s. 731.201, of a deceased owner need not be accompanied by an order of a probate court if the claimant files with the department an affidavit, signed by all beneficiaries, stating that all the beneficiaries have amicably agreed among themselves upon a division of the estate and that all funeral expenses, expenses of the last illness, and any other lawful claims have been paid, and any additional information reasonably necessary to make a determination of entitlement. If the owner died testate, the claim shall be accompanied by a copy of the will.

(2) Each person receiving property under this section shall be personally liable for all lawful claims against the estate of the owner, but only to the extent of the value of the property received by such person under this section, exclusive of the property exempt from claims of creditors under the constitution and laws of this state.

(3) Any heir or devisee of the owner, who was lawfully entitled to share in the property but did not receive his or her share of the property, may enforce his or her rights in appropriate proceedings against those who received the property and shall be awarded taxable costs as in chancery actions, including attorney's fees.

(4) This section applies only if all of the unclaimed property held by the department on behalf of the owner has an aggregate value of $20,000 or less and no probate proceeding is pending.

(5) Nothing in this section shall be interpreted as precluding the use of live testimony in order to establish entitlement.

History.—s. 17, ch. 96-301; s. 25, ch. 2001-36; s. 23, ch. 2003-154; s. 13, ch. 2005-163; s. 4, ch. 2016-90; s. 50, ch. 2024-140.

717.1244 Determinations of unclaimed property claims.—In rendering a determination regarding the merits of an unclaimed property claim, the department shall rely on the applicable statutory, regulatory, common, and case law. Agency statements applying the statutory, regulatory, common, and case law to unclaimed property claims are not agency statements subject to s. 120.56(4).

History.—s. 127, ch. 2004-390.

717.1245 Garnishment of unclaimed property.—If any person files a petition for writ of garnishment seeking to obtain property paid or delivered to the department under this chapter, the petitioner shall be ordered to pay the department reasonable costs and attorney's fees in any proceeding brought by the department to oppose, appeal, or collaterally attack the petition or writ if the department is the prevailing party in any such proceeding.

History.—s. 14, ch. 2005-163.

717.125 Claim of another state to recover property; procedure.—

(1) At any time after property has been paid or delivered to the department under this chapter, another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed unclaimed under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment or being unclaimed by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subject to custody by this state under s. 717.103(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a traveler's check, money order, or other similar instrument that was subjected to custody by this state under s. 717.104, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or unclaimed property under this section must be presented in a form prescribed by the department, and the department shall determine the claim within 90 days after it is presented. Such determination shall contain a notice of rights provided by ss. 120.569 and 120.57.

(3) The department shall require a state, prior to recovery of property under this section, to indemnify this state and its officers and employees against any liability on a claim for the property.

History.—s. 26, ch. 87-105; s. 296, ch. 96-410; s. 26, ch. 2001-36.

717.126 Administrative hearing; burden of proof; proof of entitlement; venue.—

(1) Any person aggrieved by a decision of the department may petition for a hearing as provided in ss. 120.569 and 120.57. In any proceeding for determination of a claim to property paid or delivered to the department under this chapter, the burden shall be upon the claimant to establish entitlement to the property by a preponderance of evidence. Having the same name as that reported to the department is not sufficient, in the absence of other evidence, to prove entitlement to unclaimed property.

(2) Unless otherwise agreed by the parties, venue shall be in Tallahassee, Leon County, Florida. However, upon the request of a party, the presiding officer may, in the presiding officer's discretion, conduct the hearing at an alternative remote video location.

History.—s. 27, ch. 87-105; s. 297, ch. 96-410; s. 128, ch. 2004-390.

717.1261 Death certificates.—Any person who claims entitlement to unclaimed property by means of the death of one or more persons shall file a copy of the death certificate of the decedent or decedents that has been certified as being authentic by the issuing governmental agency.

History.—s. 129, ch. 2004-390.

717.1262 Court documents.—Any person who claims entitlement to unclaimed property by reason of a court document shall file a certified copy of the court document with the department. A certified copy of each pleading filed with the court to obtain a court document establishing entitlement, filed within 180 days before the date the claim form was signed by the claimant or claimant's representative, must also be filed with the department.

History.—s. 130, ch. 2004-390; s. 5, ch. 2016-90.

717.127 Election to take payment or delivery.—The department may decline to receive any property reported under this chapter that the department considers to have a value less than the expense of giving notice and of sale. If the department elects not to receive custody of the property, the holder shall be notified within 120 days after filing the report required under s. 717.117 or remitting the property required under s. 717.119.

History.—s. 28, ch. 87-105; s. 18, ch. 96-301.

717.128 Destruction or disposition of property having insubstantial commercial value; immunity from liability.—If the department after investigation finds that any property delivered under this chapter has insubstantial commercial value, the department may destroy or otherwise dispose of the property. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the department pursuant to this section with respect to the property.

History.—s. 29, ch. 87-105.

717.129 Periods of limitation.—

(1) The expiration before or after July 1, 1987, of any period of time specified by contract, statute, or court order, during which a claim for money or property may be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed unclaimed or affect any duty to file a report or to pay or deliver unclaimed property to the department as required by this chapter.

(2) The department may not commence an action or proceeding to enforce this chapter with respect to the reporting, payment, or delivery of property or any other duty of a holder under this chapter more than 10 years after the duty arose. The period of limitation established under this subsection is tolled by the earlier of the department's or audit agent's delivery of a notice that a holder is subject to an audit or examination under s. 717.1301 or the holder's written election to enter into an unclaimed property voluntary disclosure agreement.

History.—s. 30, ch. 87-105; s. 27, ch. 2001-36; s. 51, ch. 2024-140.

717.1301 Investigations; examinations; subpoenas.—

(1) To carry out the chapter's purpose of protecting the interest of missing owners through the safeguarding of their property and to administer and enforce this chapter, the department may:

(a) Investigate, examine, inspect, request, or otherwise gather information or evidence on, claim documents from a claimant or a claimant's representative during its review of a claim.

(b) Audit the records of a person or the records in the possession of an agent, representative, subsidiary, or affiliate of the person subject to this chapter to determine whether the person complied with this chapter. Such records may include information to verify the completeness or accuracy of the records provided, even if such records may not identify property reportable to the department.

(c) Take testimony of a person, including the person's employee, agent, representative, subsidiary, or affiliate, to determine whether the person complied with this chapter.

(d) Issue an administrative subpoena to require that the records specified in paragraph (b) be made available for examination or audit and that the testimony specified in paragraph (c) be provided.

(e) Bring an action in a court of competent jurisdiction seeking enforcement of an administrative subpoena issued under this section, which the court shall consider under procedures that will lead to an expeditious resolution of the action.

(f) Bring an administrative action or an action in a court of competent jurisdiction to enforce this chapter.

(2) If a person is subject to reporting property under this chapter, the department may require the person to file a verified report in a form prescribed by the department. The verified report must:

(a) State whether the person is holding property reportable under this chapter;

(b) Describe the property not previously reported, the property about which the department has inquired, or the property that is in dispute as to whether it is reportable under this chapter; and

(c) State the amount or value of the property.

(3) The department may authorize a compliance review of a report for a specified reporting year. The review must be limited to the contents of the report filed, as required by s. 717.117 and subsection (2), and all supporting documents related to the reports. If the review results in a finding of a deficiency in unclaimed property due and payable to the department, the department shall notify the holder in writing of the amount of deficiency within 1 year after the authorization of the compliance review. If the holder fails to pay the deficiency within 90 days, the department may seek to enforce the assessment under subsection (1). The department is not required to conduct a review under this section before initiating an audit.

(4) Notwithstanding any other provision of law, in a contract providing for the location or collection of unclaimed property, the department may authorize the contractor to deduct its fees and expenses for services provided under the contract from the unclaimed property that the contractor has recovered or collected under the contract. The department shall annually report to the Chief Financial Officer the total amount collected or recovered by each contractor during the previous fiscal year and the total fees and expenses deducted by each contractor.

(5) The material compiled by the department in an investigation or examination under this chapter is confidential until the investigation or examination is complete. If any such material contains a holder's financial or proprietary information, it may not be disclosed or made public by the department after the investigation or audit is completed, except as required by a court of competent jurisdiction in the course of a judicial proceeding in which the state is a party, or pursuant to an agreement with another state allowing joint audits. Such material may be considered a trade secret and exempt from s. 119.07(1) as provided for in s. 119.0715. The records, data, and

information gathered by the department in an investigation or audit under this chapter remain confidential if the department has submitted the material or any part of it to any law enforcement agency or other administrative agency for further investigation or for the filing of a criminal or civil prosecution and such investigation has not been completed or become inactive.

(6) If an investigation or an audit of the records of any person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the cost of the investigation or audit against the holder. The fee for the costs of the investigation or audit shall be remitted to the department within 30 days after the date of the notification that the fee is due and owing. Any person who fails to pay the fee within 30 days after the date of the notification that the fee is due and owing shall pay to the department interest at the rate of 12 percent per annum on such fee from the date of the notification.

History.—s. 31, ch. 87-105; s. 1, ch. 94-262; s. 131, ch. 2004-390; s. 52, ch. 2024-140.

717.1311 Retention of records.—

(1) Every holder required to file a report under s. 717.117 shall maintain a record of the specific type of property, amount, name, and last known address of the owner for 10 years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) or by rule of the department.

(2) Any business association that sells in this state its traveler's checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly responsible, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for 3 years after the date the property is reportable.

History.—s. 32, ch. 87-105; s. 24, ch. 91-110; s. 19, ch. 96-301; s. 15, ch. 2005-163; s. 53, ch. 2024-140.

717.1315 Retention of records by claimant's representatives and buyers of unclaimed property.—

(1) Every claimant's representative and buyer of unclaimed property shall keep and use in his or her business such books, accounts, and records of the business conducted under this chapter to enable the department to determine whether such person is complying with this chapter and the rules adopted by the department under this chapter. Every claimant's representative and buyer of unclaimed property shall preserve such books, accounts, and records, including every Unclaimed Property Recovery Agreement or Unclaimed Property Purchase Agreement between the owner and such claimant's representative or buyer, for at least 3 years after the date of the initial agreement.

(2) A claimant's representative or buyer of unclaimed property, operating at two or more places of business in this state, may maintain the books, accounts, and records of all such offices at any one of such offices, or at any other office maintained by such claimant's representative or buyer of unclaimed property, upon the filing of a written notice with the department designating in the written notice the office at which such records are maintained.

(3) A claimant's representative or buyer of unclaimed property shall make all books, accounts, and records available at a convenient location in this state upon request of the department.

History.—s. 28, ch. 2001-36; s. 132, ch. 2004-390; s. 16, ch. 2005-163; s. 4, ch. 2021-144.

717.132 Enforcement; cease and desist orders; fines.—

(1) The department may bring an action in any court of competent jurisdiction to enforce or administer any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department.

(2) In addition to any other powers conferred upon it to enforce and administer the provisions of this chapter, the department may issue and serve upon a person an order to cease and desist and to take corrective action whenever the department finds that such person is violating, has violated, or is about to violate any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department. For purposes of this subsection, the term "corrective action" includes refunding excessive charges, requiring a person to return unclaimed property, requiring a holder to remit unclaimed property, and requiring a

holder to correct a report that contains errors or omissions. Any such order shall contain a notice of rights provided by ss. 120.569 and 120.57.

(3) In addition to any other powers conferred upon it to enforce and administer the provisions of this chapter, the department or a court of competent jurisdiction may impose fines against any person found to have violated any provision of this chapter, any rule or order promulgated under this chapter, or any written agreement entered into with the department in an amount not to exceed $2,000 for each violation. All fines collected under this subsection shall be deposited as received in the Unclaimed Property Trust Fund.

History.—s. 33, ch. 87-105; s. 4, ch. 93-280; s. 20, ch. 96-301; s. 298, ch. 96-410; s. 29, ch. 2001-36; s. 133, ch. 2004-390; s. 17, ch. 2005-163.

717.1322 Administrative and civil enforcement.—

(1) The following acts are violations of this chapter and constitute grounds for an administrative enforcement action by the department in accordance with the requirements of chapter 120 and for civil enforcement by the department in a court of competent jurisdiction:

(a) Failure to comply with any provision of this chapter, any rule or order adopted under this chapter, or any written agreement entered into with the department.

(b) Fraud, misrepresentation, deceit, or gross negligence in any matter within the scope of this chapter.

(c) Fraudulent misrepresentation, circumvention, or concealment of any matter required to be stated or furnished to an owner or apparent owner under this chapter, regardless of reliance by or damage to the owner or apparent owner.

(d) Willful imposition of illegal or excessive charges in any unclaimed property transaction.

(e) False, deceptive, or misleading solicitation or advertising within the scope of this chapter.

(f) Failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by this chapter, by any rule or order adopted under this chapter, or by any agreement entered into with the department under this chapter.

(g) Refusal to permit inspection of books and records in an investigation or examination by the department or refusal to comply with a subpoena issued by the department under this chapter.

(h) Criminal conduct in the course of a person's business.

(i) Failure to timely pay any fine imposed or assessed under this chapter or any rule adopted under this chapter.

(j) Requesting or receiving compensation for notifying a person of his or her unclaimed property or assisting another person in filing a claim for unclaimed property, unless the person is an attorney licensed to practice law in this state, a Florida-certified public accountant, or a private investigator licensed under chapter 493, or entering into, or making a solicitation to enter into, an agreement to file a claim for unclaimed property owned by another, unless such person is registered with the department under this chapter and an attorney licensed to practice law in this state in the regular practice of her or his profession, a Florida-certified public accountant who is acting within the scope of the practice of public accounting as defined in chapter 473, or a private investigator licensed under chapter 493. This paragraph does not apply to a person who has been granted a durable power of attorney to convey and receive all of the real and personal property of the owner, is the court-appointed guardian of the owner, has been employed as an attorney or qualified representative to contest the department's denial of a claim, or has been employed as an attorney to probate the estate of the owner or an heir or legatee of the owner.

(k) Failure to authorize the release of records in the possession of a third party after being requested to do so by the department regarding a pending examination or investigation.

(l) Receipt or solicitation of consideration to be paid in advance of the approval of a claim under this chapter.

(2) Upon a finding by the department that any person has committed any of the acts set forth in subsection (1), the department may enter an order:

(a) Revoking for a minimum of 5 years or suspending for a maximum of 5 years a registration previously granted under this chapter during which time the registrant may not reapply for a registration under this chapter;

(b) Placing a registrant or an applicant for a registration on probation for a period of time and subject to such conditions as the department may specify;

(c) Placing permanent restrictions or conditions upon issuance or maintenance of a registration under this chapter;

(d) Issuing a reprimand;

(e) Imposing an administrative fine not to exceed $2,000 for each such act; or

(f) Prohibiting any person from being a director, officer, agent, employee, or ultimate equitable owner of a 10-percent or greater interest in an employer of a registrant.

(3) A claimant's representative is subject to civil enforcement and the disciplinary actions specified in subsection (2) for violations of subsection (1) by an agent or employee of the registrant's employer if the claimant's representative knew or should have known that such agent or employee was violating any provision of this chapter.

(4)(a) The department shall adopt, by rule, and periodically review the disciplinary guidelines applicable to each ground for disciplinary action which may be imposed by the department under this chapter.

(b) The disciplinary guidelines shall specify a meaningful range of designated penalties based upon the severity or repetition of specific offenses, or both. It is the legislative intent that minor violations be distinguished from more serious violations; that such guidelines consider the amount of the claim involved, the complexity of locating the owner, the steps taken to ensure the accuracy of the claim by the person filing the claim, the acts of commission and omission of the ultimate owners in establishing themselves as rightful owners of the funds, the acts of commission or omission of the agent or employee of an employer in the filing of the claim, the actual knowledge of the agent, employee, employer, or owner in the filing of the claim, the departure, if any, by the agent or employee from the internal controls and procedures established by the employer with regard to the filing of a claim, the number of defective claims previously filed by the agent, employee, employer, or owner; that such guidelines provide reasonable and meaningful notice of likely penalties that may be imposed for proscribed conduct; and that such penalties be consistently applied by the department.

(c) A specific finding of mitigating or aggravating circumstances shall allow the department to impose a penalty other than that provided for in such guidelines. The department shall adopt by rule disciplinary guidelines to designate possible mitigating and aggravating circumstances and the variation and range of penalties permitted for such circumstances. Such mitigating and aggravating circumstances shall also provide for consideration of, and be consistent with, the legislative intent expressed in paragraph (b).

(d) In any proceeding brought under this chapter, the administrative law judge, in recommending penalties in any recommended order, shall follow the penalty guidelines established by the department and shall state in writing any mitigating or aggravating circumstances upon which the recommended penalty is based.

(5) The department may seek any appropriate civil legal remedy available to it by filing a civil action in a court of competent jurisdiction against any person who has, directly or through a claimant's representative, wrongfully submitted a claim as the ultimate owner of property and improperly received funds from the department in violation of this chapter.

History.—s. 134, ch. 2004-390; s. 18, ch. 2005-163; s. 5, ch. 2021-144; s. 54, ch. 2024-140.

717.1323 Prohibited practice.—A person may not knowingly enter false information onto the Internet website of the Division of Unclaimed Property.

History.—s. 19, ch. 2005-163; s. 41, ch. 2016-165.

717.133 Interstate agreements and cooperation; joint and reciprocal actions with other states.—

(1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The department may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(2) The department may join with other states to seek enforcement of this chapter against any person.

(3) At the request of another state, the department may bring an action in the name of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this

state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred in bringing the action.

(4) The department may request that the attorney general of another state or any other person bring an action in the name of the department in the other state. The department may pay all expenses including attorneys' fees in any action under this subsection.

(5) As necessary for proper administration of this chapter, the department may enter into contracts for the location or collection of property subject to payment or delivery to the department under this chapter.

History.—s. 34, ch. 87-105.

717.1331 Actions against holders.—The department may initiate, or cause to be initiated, an action against a holder to enforce a subpoena or recover unclaimed property. If the department prevails in a civil or administrative action to enforce a subpoena or recover unclaimed property initiated by or on behalf of the department, the holder shall be ordered to pay the department reasonable costs and attorney's fees.

History.—s. 135, ch. 2004-390; s. 20, ch. 2005-163.

717.1333 Evidence; estimations; audit reports and worksheets, investigator reports and worksheets, other related documents.—

(1) In any proceeding involving a holder under ss. 120.569 and 120.57 in which an audit agent or investigator acting under authority of this chapter is available for cross-examination, any official written report, worksheet, or other related paper, or copy thereof, compiled, prepared, drafted, or otherwise made or received by the audit agent or investigator, after being duly authenticated by the audit agent or investigator, may be admitted as competent evidence upon the oath of the audit agent or investigator that the report, worksheet, or related paper was prepared or received as a result of an audit, examination, or investigation of the books and records of the person audited, examined, or investigated, or the agent thereof.

(2) If the records of the holder that are available for the periods subject to this chapter are insufficient to permit the preparation of a report of the unclaimed property due and owing by a holder, or if the holder fails to provide records after being requested to do so, the amount due to the department may be reasonably estimated.

History.—s. 136, ch. 2004-390; s. 21, ch. 2005-163; s. 6, ch. 2016-90; s. 55, ch. 2024-140.

717.134 Penalties and interest.—

(1) For any person who willfully fails to render any report required under this chapter, the department may impose and collect a penalty of $500 per day up to a maximum of $5,000 and 25 percent of the value of property not reported until an appropriate report is provided. Upon a holder's showing of good cause, the department may waive said penalty or any portion thereof. If the holder acted in good faith and without negligence, the department shall waive the penalty provided herein.

(2) For any person who willfully refuses to pay or deliver unclaimed property to the department as required under this chapter, the department may impose and collect a penalty of $500 per day up to a maximum of $5,000 and 25 percent of the value of property not paid or delivered until the property is paid or delivered.

(3) Any person who willfully or fraudulently conceals, destroys, damages, or makes unlawful disposition of any property or of the books, records, or accounts pertaining to property which is subject to the provisions of this chapter is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) In addition to any damages, penalties, or fines for which a person may be liable under any other provision of law, any person who fails to report or pay or deliver unclaimed property within the time prescribed by this chapter shall pay to the department interest at the rate of 12 percent per annum on such property, or value thereof, from the date such property shall have been paid or delivered. The department may waive any penalty due under this subsection with appropriate justification.

(5) The department may impose and collect a penalty of $500 per day up to a maximum of $5,000 and 25 percent of the value of property willfully not reported with all of the information required by this chapter. Upon a holder's showing of good cause, the department may waive the penalty or any portion thereof. If the holder acted in good faith and without negligence, the department shall waive the penalty provided herein.

History.—s. 35, ch. 87-105; s. 21, ch. 96-301; s. 137, ch. 2004-390; s. 56, ch. 2024-140.

717.1341 Invalid claims, recovery of property, interest and penalties.—

(1)(a) No person shall receive unclaimed property that the person is not entitled to receive. Any person who receives, or assists another person to receive, unclaimed property that the person is not entitled to receive is strictly, jointly, personally, and severally liable for the unclaimed property and shall immediately return the property, or the reasonable value of the property if the property has been damaged or disposed of, to the department plus interest at the rate set in accordance with s. 55.03(1). Assisting another person to receive unclaimed property includes executing a claim form on the person's behalf.

(b)1. In the case of stocks or bonds which have been sold, the proceeds from the sale shall be returned to the department plus any dividends or interest received thereon plus an amount equal to the brokerage fee plus interest at a rate set in accordance with s. 55.03(1) on the proceeds from the sale of the stocks or bonds, the dividends or interest received, and the brokerage fee.

2. In the case of stocks or bonds which have not been sold, the stocks or bonds and any dividends or interest received thereon shall be returned to the department, together with interest on the dividends or interest received, at a rate set in accordance with s. 55.03(1) of the value of the property.

(2) The department may maintain a civil or administrative action:

(a) To recover unclaimed property that was paid or remitted to a person who was not entitled to the unclaimed property or to offset amounts owed to the department against amounts owed to an owner representative;

(b) Against a person who assists another person in receiving, or attempting to receive, unclaimed property that the person is not entitled to receive; or

(c) Against a person who attempts to receive unclaimed property that the person is not entitled to receive.

(3) If the department prevails in any proceeding under subsection (2), a fine not to exceed three times the value of the property received or sought to be received may be imposed on any person who knowingly, or with reckless disregard or deliberate ignorance of the truth, violated this section. If the department prevails in a civil or administrative proceeding under subsection (2), the person who violated subsection (1) shall be ordered to pay the department reasonable costs and attorney's fees.

(4) No person shall knowingly file, knowingly conspire to file, or knowingly assist in filing, a claim for unclaimed property the person is not entitled to receive. Any person who violates this subsection regarding unclaimed property of an aggregate value:

(a) Greater than $50,000, is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(b) Greater than $10,000 up to $50,000, is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(c) Greater than $250 up to $10,000, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084;

(d) Greater than $50 up to $250, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083; or

(e) Up to $50, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 138, ch. 2004-390; s. 2, ch. 2011-169.

717.135 Recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs or total net gain.—

(1) In order to protect the interests of owners of unclaimed property, the department shall adopt by rule a form entitled "Unclaimed Property Recovery Agreement" and a form entitled "Unclaimed Property Purchase Agreement."

(2) The Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement must include and disclose all of the following:

(a) The total dollar amount of unclaimed property accounts claimed or sold.

(b) The total percentage of all authorized fees and costs to be paid to the claimant's representative or the percentage of the value of the property to be paid as net gain to the purchasing claimant's representative.

(c) The total dollar amount to be deducted and received from the claimant as fees and costs by the claimant's representative or the total net dollar amount to be received by the purchasing claimant's representative.

(d) The net dollar amount to be received by the claimant or the seller.

(e) For each account claimed, the unclaimed property account number.

(f) For the Unclaimed Property Purchase Agreement, a statement that the amount of the purchase price will be remitted to the seller by the purchaser within 30 days after the execution of the agreement by the seller.

(g) The name, address, e-mail address, phone number, and license number of the claimant's representative.

(h)1. The manual signature of the claimant or seller and the date signed, affixed on the agreement by the claimant or seller.

2. Notwithstanding any other provision of this chapter to the contrary, the department may allow an apparent owner, who is also the claimant or seller, to sign the agreement electronically. All electronic signatures on the Unclaimed Property Recovery Agreement and the Unclaimed Property Purchase Agreement must be affixed on the agreement by the claimant or seller using the specific, exclusive eSignature product and protocol authorized by the department.

(i) The social security number or taxpayer identification number of the claimant or seller, if a number has been issued to the claimant or seller.

(j) The total fees and costs, or the total discount in the case of a purchase agreement, which may not exceed 30 percent of the claimed amount. In the case of a recovery agreement, if the total fees and costs exceed 30 percent, the fees and costs shall be reduced to 30 percent and the net balance shall be remitted directly by the department to the claimant. In the case of a purchase agreement, if the total net gain of the claimant's representative exceeds 30 percent, the claim will be denied.

(3) For an Unclaimed Property Purchase Agreement form, proof that the purchaser has made payment must be filed with the department along with the claim. If proof of payment is not provided, the claim is void.

(4) A claimant's representative must use the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase Agreement as the exclusive means of entering into an agreement or a contract with a claimant or seller to file a claim with the department.

(5) Fees and costs may be owed or paid to, or received by, a claimant's representative only after a filed claim has been approved and if the claimant's representative used an agreement authorized by this section.

(6) A claimant's representative may not use or distribute any other agreement of any type, conveyed by any method, with respect to the claimant or seller which relates, directly or indirectly, to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any engagement, authorization, recovery, or fee agreement that is not authorized by this section is void. A claimant's representative is subject to administrative and civil enforcement under s. 717.1322 if he or she uses an agreement that is not authorized by this section and if the agreement is used to apply, directly or indirectly, to unclaimed property held by this state. This subsection does not prohibit lawful nonagreement, noncontractual, or advertising communications between or among the parties.

(7) The Unclaimed Property Recovery Agreement may not contain language that makes the agreement irrevocable or that creates an assignment of any portion of unclaimed property held by the department.

(8) When a claim is approved, the department may pay any additional account that is owned by the claimant but has not been claimed at the time of approval, provided that a subsequent claim has not been filed or is not pending for the claimant at the time of approval.

(9) This section does not supersede s. 717.1241.

(10) This section does not apply to the sale and purchase of Florida-held unclaimed property accounts through a bankruptcy estate representative or other person or entity authorized pursuant to Title XI of the United States Code or an order of a bankruptcy court to act on behalf or for the benefit of the debtor, its creditors, and its bankruptcy estate.

History.—s. 36, ch. 87-105; s. 1, ch. 91-261; s. 2, ch. 94-191; s. 22, ch. 96-301; s. 30, ch. 2001-36; s. 1889, ch. 2003-261; s. 139, ch. 2004-390; s. 22, ch. 2005-163; s. 7, ch. 2016-90; s. 42, ch. 2016-165; s. 6, ch. 2021-144; s. 71, ch. 2023-144; s. 57, ch. 2024-140.

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013(9), or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

History.—s. 23, ch. 96-301.

717.136 Foreign transactions.—This chapter does not apply to any property held, due, and owing in a foreign country and arising out of foreign transaction.

History.—s. 37, ch. 87-105.

717.138 Rulemaking authority.—The department shall administer and provide for the enforcement of this chapter. The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter. The authority to adopt rules pursuant to this chapter applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported and remitted pursuant to ss. 45.032, 732.107, 733.816, and 744.534.

History.—s. 39, ch. 87-105; s. 220, ch. 98-200; s. 31, ch. 2001-36; s. 1890, ch. 2003-261; s. 27, ch. 2016-132; s. 10, ch. 2018-71.

717.1382 United States savings bond; unclaimed property; escheatment; procedure.—

(1) Notwithstanding any other provision of law, a United States savings bond in possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder in accordance with ss. 717.117(1) and (5) and 717.119, if the department is not in possession of the bond.

(2)(a) After a United States savings bond is abandoned and unclaimed in accordance with subsection (1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, co-owner, or beneficiary, shall vest solely in the state.

(b) Service of process by publication may be made on a party in a civil action pursuant to this section. A notice of action shall state the name of any known owner of the bond, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.

(c) The notice of action shall require a person claiming an interest in the bond to file a written defense with the clerk of the court and serve a copy of the defense by the date fixed in the notice. The date must not be less than 28 or more than 60 days after the first publication of the notice.

(d) The notice of action shall be published once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County. Proof of publication shall be placed in the court file.

(e)1. If no person files a claim with the court for the bond and if the department has substantially complied with the provisions of this section, the court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.

2. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is not entitled to the bonds claimed by such claimant, the court shall enter a judgment that such bonds, or proceeds from such bonds, have escheated to the state.

3. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is entitled to the bonds claimed by such claimant, the court shall enter a judgment in favor of the claimant.

(3) The department may redeem a United States savings bond escheated to the state pursuant to this section or, in the event that the department is not in possession of the bond, seek to obtain the proceeds from such bond.

Proceeds received by the department shall be deposited in accordance with s. 717.123.

History.—s. 1, ch. 2015-152; s. 62, ch. 2024-140.

717.1383 United States savings bond; claim for bond.—A person claiming a United States savings bond escheated to the state under s. 717.1382, or for the proceeds from such bond, may file a claim with the department. The department may approve the claim if the person is able to provide sufficient proof of the validity of the person's claim. Once a bond, or the proceeds from such bond, are remitted to a claimant, no action thereafter may be maintained by any other person against the department, the state, or any officer thereof, for or on account of such funds. The person's sole remedy, if any, shall be against the claimant who received the bond or the proceeds from such bond.

History.—s. 2, ch. 2015-152.

717.139 Uniformity of application and construction.—

(1) It is the public policy of the state to protect the interests of owners of unclaimed property. It is declared to be in the best interests of owners of unclaimed property that such owners receive the full amount of any unclaimed property without any fee.

(2) This chapter shall be applied and construed as to effectuate its general purpose of protecting the interest of missing owners of property, while providing that the benefit of all unclaimed and abandoned property shall go to all the people of the state, and to make uniform the law with respect to the subject of this chapter among states enacting it.

History.—s. 40, ch. 87-105; s. 10, ch. 2016-90.

717.1400 Registration.—

(1) In order to file claims as a claimant's representative, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and numbers of reported shares of stock held by the department, a private investigator holding a Class "C" individual license under chapter 493 must register with the department on such form as the department prescribes by rule and must be verified by the applicant. To register with the department, a private investigator must provide:

(a) A legible copy of the applicant's Class "A" business license under chapter 493 or that of the applicant's firm or employer which holds a Class "A" business license under chapter 493.

(b) A legible copy of the applicant's Class "C" individual license issued under chapter 493.

(c) The business address and telephone number of the applicant's private investigative firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the private investigator, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the private investigator's firm or employer which holds a Class "A" business license under chapter 493.

(2) In order to file claims as a claimant's representative, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and numbers of reported shares of stock held by the department, a Florida-certified public accountant must register with the department on such form as the department prescribes by rule and must be verified by the applicant. To register with the department, a Florida-certified public accountant must provide:

(a) The applicant's Florida Board of Accountancy number.

(b) A legible copy of the applicant's current driver license showing the full name and current address of such person. If a current driver license is not available, another form of identification showing the full name and current address of such person or persons shall be filed with the department.

(c) The business address and telephone number of the applicant's public accounting firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the Florida-certified public accountant, together with a legible copy of their photo identification issued by an agency of the United

States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the accountant's public accounting firm employer.

(3) In order to file claims as a claimant's representative, receive a distribution of fees and costs from the department, and obtain unclaimed property dollar amounts and numbers of reported shares of stock held by the department, an attorney licensed to practice in this state must register with the department on such form as the department prescribes by rule and must be verified by the applicant. To register with the department, such attorney must provide:

(a) The applicant's Florida Bar number.

(b) A legible copy of the applicant's current driver license showing the full name and current address of such person. If a current driver license is not available, another form of identification showing the full name and current address of such person or persons shall be filed with the department.

(c) The business address and telephone number of the applicant's firm or employer.

(d) The names of agents or employees, if any, who are designated to act on behalf of the attorney, together with a legible copy of their photo identification issued by an agency of the United States, or a state, or a political subdivision thereof.

(e) Sufficient information to enable the department to disburse funds by electronic funds transfer.

(f) The tax identification number of the attorney's firm or employer.

(4) Information and documents already on file with the department before the effective date of this provision need not be resubmitted in order to complete the registration.

(5) If a material change in the status of a registration occurs, a registrant must, within 30 days, provide the department with the updated documentation and information in writing. Material changes include, but are not limited to: a designated agent or employee ceasing to act on behalf of the designating person, a surrender, suspension, or revocation of a license, or a license renewal.

(a) If a designated agent or employee ceases to act on behalf of the person who has designated the agent or employee to act on such person's behalf, the designating person must, within 30 days, inform the Division of Unclaimed Property in writing of the termination of agency or employment.

(b) If a registrant surrenders the registrant's license or the license is suspended or revoked, the registrant must, within 30 days, inform the division in writing of the surrender, suspension, or revocation.

(c) If a private investigator's Class "C" individual license under chapter 493 or a private investigator's employer's Class "A" business license under chapter 493 is renewed, the private investigator must provide a copy of the renewed license to the department within 30 days after the receipt of the renewed license by the private investigator or the private investigator's employer.

(6) A registrant's firm or employer may not have a name that might lead another person to conclude that the registrant's firm or employer is affiliated or associated with the United States, or an agency thereof, or a state or an agency or political subdivision of a state. The department shall deny an application for registration or revoke a registration if the applicant's or registrant's firm or employer has a name that might lead another person to conclude that the firm or employer is affiliated or associated with the United States, or an agency thereof, or a state or an agency or political subdivision of a state. Names that might lead another person to conclude that the firm or employer is affiliated or associated with the United States, or an agency thereof, or a state or an agency or political subdivision of a state, include, but are not limited to, the words United States, Florida, state, bureau, division, department, or government.

(7) The licensing and other requirements of this section must be maintained as a condition of registration with the department.

History.—s. 141, ch. 2004-390; s. 133, ch. 2005-2; s. 25, ch. 2005-163; s. 11, ch. 2016-90; s. 44, ch. 2016-165; s. 58, ch. 2024-140.

717.1401 Repeal.—This chapter shall not repeal, but shall be additional and supplemental to the existing provisions of ss. 43.18 and 402.17 and chapter 716.

History.—s. 41, ch. 87-105; s. 62, ch. 92-348; s. 11, ch. 2018-71.

CHAPTER 69G-20
UNCLAIMED PROPERTY

69G-20.001 Registration.

In order to file claims as a Claimant's Representative, receive distributions of fees and costs resulting from approved claims, or to purchase unclaimed property accounts from account owners, Florida-Licensed private investigators, Florida-licensed certified public accountants and Florida-licensed attorneys must register with the Department and maintain the applicable professional Florida license. To register:

(1) A Florida-licensed private investigator must complete and submit Form DFS-A4-2010, Application for Registration as an Unclaimed Property Claimant Representative – Florida Private Investigator, effective 10-13-10, www.fltreasurehunt.gov and must provide the information and documentation specified in the form.

(2) A Florida-licensed certified public accountant must complete and submit Form DFS-A4-2009, Application for Registration as an Unclaimed Property Claimant Representative – Florida Certified Public Accountant, effective 10-13-10, www.fltreasurehunt.gov and must provide the information and documentation specified in the form.

(3) A Florida-licensed attorney must complete and submit Form DFS-A4-2008, Application for Registration as an Unclaimed Property Claimant Representative – Florida Attorney, effective 10-13-10, www.fltreasurehunt.gov and must complete and submit

the documents specified in the form.

(4) The forms referred to herein are hereby incorporated by reference and available from the Florida Department of Financial Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358, www.fltreasurehunt.gov.

Rulemaking Authority 717.138 FS. Law Implemented 92.525, 717.124, 717.135, 717.1400 FS. History-New 1-3-05, Amended 10-13-10, 6-17-15, Formerly 69I-20.001, Amended 10-20-22.

69G-20.0011 Full Disclosure Statement.

Rulemaking Authority 717.138 FS. Law Implemented 717.135, 717.1351 FS. History–New 4-27-09, Formerly 69I-20.0011, Repealed 1-1-24.

69G-20.0021 Procedures for Filing Claim.

(1) Claims for unclaimed property in the custody of the Department shall be submitted to the Department on the claim forms generated by the Department's Unclaimed Property Management Information System (UPMIS), together with identification and documentation proving the claimant's or seller's identity, ownership, and entitlement to the unclaimed property. All forms referenced in this rule are available from and shall be submitted to www.fltreasurehunt.org or to The Florida Department of Financial Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358.

(a) A claim submitted by mail or in person, shall include the correct claim form, fully completed and manually signed and dated by all claimants, proof of the claimant's or seller's identity, ownership, and entitlement, and all supporting documentation as required by this rule, and Rule 69G-20.0022, F.A.C.

(b) A claim submitted electronically via UPMIS, as authorized by Section 717.124(7), F.S., shall include the correct claim form identified in this rule, fully completed and shall include the UPMIS system-generated electronic signature affixed by the claimant.

(c) A claimant or a Claimant's Representative may withdraw a filed, pending claim by making a written request to the Department.

(2) Claims filed by an apparent owner (including business entities and trusts) shall be submitted on Form DFS-UP-106, Claim Filed by Apparent Owner, effective 1-3-05, which is hereby incorporated by reference and available at www.fltreasurehunt.gov.

(a) A Form DFS-UP-106 shall be signed and dated by the claimant and be accompanied by proof of ownership and entitlement and all supporting documentation required in this rule and Rule 69G-20.0022, F.A.C.

(b) A Form DFS-UP-106 submitted via UPMIS as authorized by Section 717.124(7), F.S., shall include an UPMIS system-generated electronic signature affixed by the claimant and be dated by the claimaint at the time the claim is created and filed.

(3) Claims filed by persons other than apparent owners (for example, a guardian, personal representative, heir, beneficiary, or purchasing Claimant's Representative), shall be submitted on Form DFS-UP-107. Claim Filed by Other than the Apparent Owner, effective 1-3-05, which is hereby incorporated by reference and available at www.fltreasurehunt.gov.

(a) Form DFS-UP-107 shall be manually signed and dated by the claimant and accompanied by proof of ownership and entitlement and all supporting documentation requirementation required in this rule and Rule 69G-20.0022, F.A.C.

(b) Form DFS-UP-107 claim forms filed by a purchasing Claimant's Representative shall be accompanied by proof of payment to the seller, proof of the seller's identity, ownership and entitlement to the purchased account, all supporting documentation as required by this rule and Rule 69G-20.0022, F.A.C., and the Form DFS-UP-310, Unclaimed Property Purchase Agreement.

1. The Form DFS-UP-310, Unclaimed Property Purchase Agreement, effective 07/22, is hereby incorporated by reference and available at www.fltreasurehunt.gov and http://www.flrules.org/Gateway/reference.asp?No=Ref-14777.

2. The Unclaimed Property Purchase Agreement must be manually signed and dated by the seller pursuant to Section 717.135, F.S.

3. For claims of $2,000 or less, an apparent owner who is also the seller on the DFS-UP-107 may electronically sign and date the Unclaimed Property Purchase Agreement. If the Unclaimed Property Purchase Agreement is to be signed electronically, the electronic signature and date must be affixed by the seller using the DocuSign® Enterprise Pro for Government platform utilizing the DocuSign Identify ID Verification authentication method.

a. A true copy of the executed Unclaimed Property Purchase Agreement and the DocuSign® Certificate of Completion must be provided to the seller upon signing and dating the agreement.

b. A true copy of the executed Unclaimed Property Purchase Agreement, the DocuSign® Certificate of Completion, and a copy of the seller's current, valid personal photographic identification must be included when the purchasing Claimant's Representative's claim is filed with the Department.

(4) Claims filed by a Claimant's Representative shall be submitted on Form DFS-UP-108, Claim Filed by Claimant's Representative on Behalf of the Claimant, effective 1-3-05, which is hereby incorporated by reference and available at www.fltreasurehunt.gov.

(a) Form DFS-UP-108 shall be manually signed or stamped and dated by the Claimant's Representative and accompanied by the Form DFS-UP-309, Unclaimed Property Recovery Agreement.

(b) The Form DFS-UP-309, entitled Unclaimed Property Recovery Agreement, effective 07/22, is hereby incorporated by reference and available at www.fltreasurehunt.gov and http://www.flrules.org/Gateway/reference.asp?No=Ref-14433.

(c) The Unclaimed Property Recovery Agreement must be manually signed and dated by the claimant pursuant to Section 717.135, F.S.

1. For claims of $2,000 or less, an apparent owner claimant may electronically sign and date the Unclaimed Property Recovery Agreement. If the Unclaimed Property Recovery Agreement is to be signed electronically, the electronic signature and date must be affixed by the claimant on the DFS-UP-108 using the DocuSign® Enterprise Pro for Government platform utilizing the DocuSign Identify ID Verification authentication method.

2. A true copy of the executed Unclaimed Property Recovery Agreement and the DocuSign® Certificate of Completion must be provided to the claimant upon signing and dating the agreement.

3. A true copy of the executed Unclaimed Property Recovery Agreement, the DocuSign® Certificate of Completion, and a copy of the claimant's current, valid personal photographic identification must be included with the purchasing Claimant's Representative's claim.

(5) Claims filed by Holders of Unclaimed Property Paid or Delivered to the Department shall be submitted on Form DFS-UP-110, Claim Filed by Holder for the Return of Unclaimed Property, effective 1-3-05, which is hereby incorporated by reference and available at www.fltreasurehunt.gov. Form DFS-UP-110 shall be manually signed and dated by the authorized representative of the holder.

(6) Claims filed by other states shall be submitted on Form DFS-UP-131, Claim by Other States, effective 1-3-05, which is hereby incorporated by reference and available at www.fltreasurehunt.gov. Form DFS-UP-131 shall be manually signed and dated by the authorized representative of the state filing the claim.

(7) Claims for reimbursement of costs by holders of safe deposit boxes or other safekeeping repositories shall be submitted on Form DFS-UP-112, Safe Deposit Reimbursement Claim Form, effective 1-3-05, which is hereby incorporated by reference and available at www.fltreasurehunt.gov. Claims by holders for cost reimbursement shall be limited to the actual costs of opening a safe deposit box, for any valid lien, or pursuant to a contract providing for the holder to be reimbursed for unpaid rent or storage charges.

(a) Form DFS-UP-112 shall be manually signed and dated by an authorized representative of the holder.

(b) Form DFS-UP-112 shall not be filed with the Department prior to the date of the sale of the contents of the safe deposit box or other safekeeping repository.

(8) Payment and Delivery of Unclaimed Property for approved claims.

(a) Cash.

1. For claims filed by the person entitled to the unclaimed property, the claimant can elect to receive payment by warrant, electronic fund transfer, or stored value product or account. The claimant must select the preferred payment method in writing within five (5) days of claim approval. If the claimant does not select a payment method in writing within the specified time period, the Department will issue a warrant to the claimant.

2. For claims filed by a Claimant's Representative, the claimant can elect to receive payment, net of the Claimant's Representative's fees, as set forth in paragraph (8)(a)1. above. Payment of fees to Claimant's Representatives will be made by electronic fund transfer at least twice a month.

(b) Securities.

1. The Department will liquidate all securities which can be sold as soon as practicable, unless the security cannot be sold due to market conditions.

2. If the securities have been liquidated, payment of the cash proceeds will be made in accordance with paragraph (8)(a) above.

3. Securities that cannot be sold due to market conditions will be electronically transferred to the claimant's existing brokerage, mutual fund, or other securities type account, provided the Department has the information required by the securities industry

4. Certificated securities that cannot be sold due to market conditions will be registered in the name of the claimant and mailed to the claimant's address.

5. Securities that cannot be sold, certificated or electronically transferred will not be paid. Written notice will be provided to the claimant.

(c) Tangible Personal Property.

1. If the property is valued at less than ten thousand dollars ($10,000) and can be accepted for delivery by a common carrier, the property will be shipped to the claimant at the address listed on the claim.

2. If the property is valued at ten thousand dollars ($10,000) or more, the claimant must arrange with a common carrier to pick up the property during normal business hours at the Department's office in Tallahassee, Florida. All claimant communications with the Department regarding how the property is to be delivered must be in writing. Upon request, the Department will provide the claimant with the appraised shipping value.

3. If the property is valued at ten thousand dollars ($10,000) or more, or the property cannot be accepted for delivery by a common carrier, the Department will make the property available for pickup during normal business hours at the Department's offices in Tallahassee, Florida.

a. The claimant must produce the award letter and a personal picture identification in order to pickup the property at the Department's Tallahassee address.

b. Receipt of the property must be acknowledged in writing by the person receiving the property.

c. If the property is not collected at the Department's Tallahassee office within ninety (90) days of the claim approval it may be offered for sale at the next auction and the proceeds delivered the same as cash in paragraph (8)(a), above.

Rulemaking Authority 717.124, 717.135, 717.138 FS. Law Implemented 92.525, 668.50, 717.1201, 717.124, 717.12403, 717.12404, 717.12405, 717.1242, 717.1243, 717.125, 717.126, 717.1261, 717.1262, 717.135, 717.138 FS. History–New 3-20-91, Amended 3-13-96, 3-18-96, 1-18-99, 1-5-00, 4-16-02, Formerly 3D-20.0021, Amended 1-3-05, 6-17-15, 4-20-16, Formerly 69I-20.0021, Amended 9-29-22, 1-9-24.

69G-20.0022 Proof of Ownership and Entitlement to Unclaimed Property.

(1) Any and all persons filing a claim for unclaimed property have the burden to provide to the Department a preponderance of evidence to prove ownership and entitlement to such property being claimed.

(2)(a) All persons claiming an interest in unclaimed property in the possession of the Department shall provide to the Department the claimant's first name, last name, address and a copy of a valid driver's license of the claimant at the time the original claim form is filed. If the claimant has not been issued a valid driver's license at the time the original claim form is filed, the Department shall be provided with a legible copy of a photographic identification of the claimant issued by the United States or a foreign nation, a state or territory of the United States or foreign nation, or a political subdivision or agency thereof. In lieu of filing a copy of a government issued photographic identification of the claimant with the claim, the claimant or the Claimant's Representative may file Form DFS-A4-2007, Notarized Sworn Statement of the Claimant, which has been accurately completed in full, executed by the claimant and the notary. This form is incorporated by reference effective 10-13-10 and available from the Florida Department of Financial Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358, floridaunclaimedproperty@myfloridacfo.com. The notarized sworn statement must accurately affirm the claimant's identity and state the claimant's address.

(b) In the event that a claimant has not been issued any type of valid photographic identification issued by the United States or a foreign nation, a state or territory of the United States or foreign nation, or a political subdivision or agency thereof, a claimant or Claimant's Representative may file Form DFS-A4-1944, Affidavit Attesting to Claimant's Identity, and a buyer may file Form DFS-A4-1945, Affidavit Attesting to Seller's Identity, which must be accurately completed in full, executed by the affiants and the notary. Forms DFS-A4-1944 and DFS-A4-1945 are incorporated by reference effective 10-13-10 and available from the Florida Department of Financial Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358, floridaunclaimedproperty@myfloridacfo.com. Forms DFS-A4-1944 and DFS-A4-1945 must accurately affirm the claimant's or seller's identity and state the address of the claimant or the seller, which ever is applicable. Affiants must have personal knowledge of the claimant or seller. "Personal knowledge" means that the affiant is familiar with the circumstances of the claimant or seller, personally knows and has personally observed the claimant or seller, and has experience in dealing with claimant or seller on a daily basis or is a family member.

(c) For claims electronically submitted for $2,000 or less, the Department may use an identity authentication service in lieu of a copy of the driver's license, government-issued identification, or notarized sworn statement of the claimant to verify the claimant's identity, as authorized by Section 717.124(7), F.S.

(3) Claims by Beneficiaries or Estates.

(a) If the apparent owner is deceased, the claim must include a certified copy of the decedent's death certificate, as well as the following:

1. Open Estates – Records, certified by the clerk of court within one (1) year of the date of filing the claim with the Department, reflecting the personal representative's right to act for the estate of the apparent owner.

2. Closed Estates – A certified copy of a probate court order, certified by the clerk of court identifying the beneficiaries and the proportional entitlement of each to the estate. If a court order, identifying the beneficiaries and the proportional entitlement of each to the property of the estate is not available, the claimant must submit those documents from the probate court file from which this information may be determined. Typically, this information may be obtained from the decedent's will, if one exists, and the Order admitting the will to probate; the Petition for Administration; or the Petition for Discharge with exhibits. If any such combination of documents is submitted, they must be accompanied by a copy of the Order of Discharge and the docket sheet. In no event is the will standing alone, sufficient.

3. Unclaimed Property with Aggregate Value of $10,000.00 or Less – If all of the unclaimed property held by the Department on behalf of a deceased apparent owner has an aggregate value of $10,000 or less, as an alternative to subparagraph (3)(a)2., the claimant may file a copy of the will, if the decedent had a will, and an affidavit signed by all the beneficiaries stating that all the beneficiaries have amicably agreed upon a division of the estate, that no probate proceedings are pending for the estate, and that all funeral expenses, expenses of the last illness and other lawful claims have been paid. The affidavit shall be submitted on Form DFS-UP-1243, Estate Affidavit, effective 1-3-05, which is hereby incorporated by reference and available from the Florida Department of Financial Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358, floridaunclaimedproperty@myfloridacfo.com. No partial payments shall be made.

(b) The claimant must provide appropriate documentation to connect the claimant to the deceased apparent owner.

(4) Claims for Guardianship Assets.

(a) The claim must be filed by the court appointed guardian or Claimant's Representative, who must provide a court order evidencing the guardian's existing authority to act on behalf of the ward, certified by the clerk of court within one (1) year of filing the claim with the Department, along with the guardian's name, address and social security number.

(b) The warrant will be made payable to "Guardian For" the ward.

(5) Claims for Business Accounts. Any person claiming an interest in an unclaimed business account in the possession of the Department as an official of the business shall file with the Department the following:

(a) If the unclaimed business account relates to a proprietorship or a partnership then:

1. Documentation to reflect that the apparent owner is the same proprietorship or partnership; and,

2. Documentation reflecting the individual's authorization to file a claim for the proprietorship's or partnership's unclaimed property.

3. Personal identification shall be provided as specified in subsection (2) of this rule.

(b) If the unclaimed business account relates to an active corporation:

1. The last annual report of the corporation if it is available from the Internet site of the Florida Department of State. The claimant must furnish the Department with a printout from the Florida Department of State Internet site identifying the officers and directors of the corporation. If the last annual report of the corporation is not available from the Internet site of the Florida Department of State, the claimant shall file a microfiche copy of the records on file with the Florida Department of State. If microfiche from the Florida Department of State is not available, the claimant may furnish to the Department a uniform resource locator (U.R.L.) for the address of a free Internet site operated by the state of incorporation of the corporation that provides access to the last corporate filing identifying the officers and directors of the corporation. The claimant must furnish the Department with a printout from the free Internet site identifying the officers and directors of the corporation. If the free Internet site is not available, an authenticated copy of the last corporate filing from an appropriate state official of the state of incorporation shall be provided to the Department which identifies the officers and directors of the corporation.

2. Unless the corporate representative is listed as an officer or director of the corporation, evidence to reflect the claimant's right to act on behalf of the business. Letterhead and business cards alone will not be sufficient to meet the required burden of proof. For example:

a. Signed and dated statement by an officer or director of the corporation, other than the person signing the claim, authorizing the individual authority to file the claim.

b. Bylaws of the corporation identifying the person signing the claim as occupying a position with authority to contractually bind the corporation.

c. Corporate resolution authorizing the person signing, to file the claim on behalf of the corporation.

3. Documents evidencing ownership or entitlement to the account. Letterhead and business cards alone will not be sufficient to meet the required burden of proof. Examples of other documentary evidence include: evidence that the corporation is the sole corporation that has operated under the reported name; utility bills, cancelled checks or deposit slips, copies of annual reports, sales or marketing materials that would identify the corporation and match one of the account identifiers, copy of an occupational license issued to the corporation, price lists, bank statements, loan papers, etc., documents in the corporation's name which establish a relationship with a bank, tax filings, including annual tax returns, quarterly employee withholding filings, employee tax filing records such as W-2 or W-4 forms (with personal information redacted), sales tax filings, other tax filings or bills, financial statements (audited), SEC filings (other than those which are public records), company identification cards, insurance documentation – property and casualty, health and workers' compensation insurance policies, claim forms, premium statements, benefit membership cards.

(c)1. If the unclaimed business account is that of a dissolved corporation, the claimant must specify the corporation's state of incorporation and its last principal business address. The claimant must provide a certified copy of the last corporate filing identifying the officers and directors of the corporation. This document must be obtained from an appropriate authorized official of the state of incorporation. A certified copy of the last corporate filing shall not be required if:

a. The last annual report of the corporation if it is available from the Internet site of the Florida Department of State. The claimant must furnish the Department with a printout from the Florida Department of State Internet site identifying the officers and directors of the corporation.

b. If the last annual report of the corporation is not available from the Internet site of the Florida Department of State, the claimant shall file a microfiche copy of the records on file with the Florida Department of State.

c. If microfiche from the Florida Department of State is not available, the claimant may furnish to the Department a uniform resource locator (U.R.L.) for the address of a free Internet site operated by the state of incorporation of the corporation that provides access to the last corporate filing identifying the officers and directors of the corporation. The claimant must furnish the Department with a printout from the free Internet site identifying the officers and directors of the corporation.

2. The evidence provided must prove that the dissolved corporation is the same corporation as shown on the Department's records. The evidence must prove that the claimant is entitled to all or a proportional share of the dissolved corporation or that the claimant is an officer or director of the corporation. It is not sufficient that the claimant has the same name as that of an officer or director of the dissolved corporation. The claimant must demonstrate a connection to the dissolved corporation. Subparagraph (5)(b)3. herein provides examples of documents which may establish a connection between the claimant and the dissolved corporation.

3. A claim for an unclaimed business account of a dissolved corporation must indicate whether the dissolved corporation has ever been a debtor in bankruptcy. If the dissolved corporation has ever been a debtor in bankruptcy, the claim must identify the bankruptcy chapter under which the bankruptcy case proceeded. The claim must also identify the location of the bankruptcy court, the case number, and the address and telephone number of the Office of the U.S. Trustee in that jurisdiction. If no bankruptcy proceedings of the dissolved corporation are known, the claim must either provide the results of a bankruptcy court website Case Management/Electronic Case Files (CM/ECF) search, if available, or a Public Access to Court Electronic Records (PACER) search. The CM/ECF or PACER search must be conducted in the bankruptcy court of the state and district of incorporation and where the main office is located, if different. The claim must provide the results of both a search by corporate name and a search by tax identification number, if available, for the state and district of incorporation and the location of the main office, if different. As an alternative to the CM/ECF or PACER search, the claim must provide a completed United States Bankruptcy Court Application for Search of Bankruptcy Records from the state and district of incorporation, and from the district where the main office is located, if different.

4. The Office of the U.S. Trustee or the trustee will be contacted by the Department if the dissolved corporation was a debtor in a closed Chapter 7 bankruptcy case and the aggregate value of the unclaimed property is greater than $2,500.00. If the bankruptcy case is reopened, the unclaimed property will be remitted to the bankruptcy trustee.

5. Unclaimed property will be remitted to the bankruptcy trustee for a corporation in a pending bankruptcy case unless the debtor is in possession of the bankruptcy estate. If the debtor is in possession of the bankruptcy estate, the unclaimed property will

be remitted to the debtor corporation.

6. Personal identification shall be provided as specified in subsection (2) of this rule.

Rulemaking Authority 717.124, 717.138 FS. Law Implemented 92.525, 117.05, 668.50, 717.124, 717.12403, 717.12404, 717.12405, 717.1242, 717.1243, 717.126, 717.1261, 717.1262, 732.102, 732.103, 733.103, 733.815, 735.301 FS. History–New 3-20-91, Amended 3-13-96, 8-18-96, 1-28-97, 1-18-99, 4-16-02, Formerly 3D-20.0022, Amended 1-3-05, 10-13-10, 4-20-16, Formerly 69I-20.0022, Amended 10-20-22.

69G-20.0023 Database Submissions.

(1) A claimant, or a claimant's representative, may submit the results of a database search for the Department to consider with the claim for unclaimed property.

(2) In the event that the claim is denied, and a hearing is requested by the claimant or the claimant's representative, the evidentiary requirements of Sections 120.569 and 120.57, F.S., shall apply to the results of a database search.

(3) Unless otherwise provided by Florida law, the results of a database search shall be public record in accordance with Section 119.07, F.S.

Rulemaking Authority 717.138 FS. Law Implemented 717.124, 717.126 FS. History–New 1-3-05, Formerly 69I-20.0023.

69G-20.0024 Investigation or Examination Fees.

(1) The Department shall charge $100.00 per eight hour day for each examiner engaged in an investigation or examination of the records of a holder under Chapter 717, F.S.

(2) Such examination fee shall be calculated on an hourly basis and shall be rounded down to the nearest hour if less than .5 of an hour is spent. If equal to or greater than .5 of an hour is spent the time will be rounded up to the nearest hour.

(3) A holder shall not be required to pay an investigation or examination fee if the investigation or examination fails to disclose property which is reportable and deliverable under Chapter 717, F.S.

(4) The Department shall not charge a fee for the investigation or examination of any governmental unit.

Rulemaking Authority 717.138 FS. Law Implemented 717.1301(6) FS. History–New 11-12-91, Formerly 3D-20.0024, 69I-20.0024.

69G-20.0025 Shareholder Affidavit.

Rulemaking Authority 717.138 FS. Law Implemented 717.124, 717.126 FS. History–New 11-6-96, Formerly 3D-20.0025, 69I-20.0025, Repealed 1-8-20.

69G-20.0026 Claimant Affidavit.

In the event proof of ownership to unclaimed property can not be substantiated, the claimant may, for the Department's consideration, file an affidavit swearing to the authenticity of the claim and to the lack of documentation and agreeing to the release of the claimant's name and address by the Department to subsequent claimants providing substantiated proof of entitlement to the unclaimed property. The affidavit must be accurately completed. The claimant must state on the affidavit why the claimant is entitled to the unclaimed property. The affidavit must be signed by the claimant and on the same day the affidavit is dated by the claimant who must be the "apparent owner" as defined by Section 717.101(2), F.S. No person shall place any writing or other information on the affidavit after the affidavit has been signed and dated by the claimant. The affidavit shall be submitted on Form DFS-A4-2006, Unclaimed Property Claimant Affidavit effective 10-13-10, which is hereby incorporated by reference and available from the Department of Financial Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358, floridaunclaimedproperty@myfloridacfo.com. This section applies only if all of the unclaimed property held by the Department on behalf of the claimant for which entitlement has not been established has an aggregate value of $250 or less.

Rulemaking Authority 717.138 FS. Law Implemented 117.05, 717.101(2), 717.124(3) FS. History–New 1-28-97, Amended 4-16-02, Formerly 3D-20.0026, Amended 10-13-10, Formerly 69I-20.0026.

69G-20.0028 General Principles for Joint Ownership of Property for Accounts that are not Unclaimed Demand, Savings or Checking Accounts Formerly Held by a Financial Institution.

(1) Tenancy in common. Generally, each owner is entitled to receive a percentage share of the unclaimed property. If there are two owners, each owner will receive 50%; if there are 3 owners, each owner will receive 33.33%, etc. If an owner dies, the

percentage share of the unclaimed property shall be remitted to that owner's estate or beneficiary, as defined in Section 731.201, F.S., provided that entitlement is established in accordance with Section 717.126, F.S. Unclaimed property reported with more than one owner designated with the word "and" is treated as a tenancy in common.

(2) Joint Tenancy with Rights of Survivorship. This type of property involves two or more people. Generally, each owner is entitled to receive a percentage share of the unclaimed property. If there are two owners, each owner will receive 50%; if there are 3 owners, each owner will receive 33.33%, etc. If one of the owners dies, the remaining owner or owners are entitled to receive the unclaimed property. If all owners are deceased, the unclaimed property shall be remitted to the estate or beneficiary of the last surviving owner provided that entitlement is established in accordance with Section 717.126, F.S.

(3) Tenancy by the Entirety. This type of tenancy applies only to married persons. Both persons must file a claim for the unclaimed property. If one spouse dies, the surviving spouse is entitled to the unclaimed property. If both owners are deceased, the unclaimed property shall be remitted to the estate or beneficiary of the last surviving spouse provided that entitlement is established in accordance with Section 717.126, F.S. If the spouses divorce, the tenancy by the entirety is converted to a tenancy in common.

Rulemaking Authority 717.138 FS. Law Implemented 717.124, 717.12406, 717.126 FS. History–New 4-27-09, Formerly 69I-20.0028.

69G-20.0029 Survivorship Accounts Reported by a Financial Institution.

(1) In the absence of evidence to the contrary, an unclaimed demand, savings, or checking account from a financial institution as defined in Section 655.005, F.S., reported to the Department as an "and" account or as an "or" account, or otherwise reported in the name of two or more persons shall be treated as a survivorship account notwithstanding Rule 69G-20.0028, F.A.C.

(2) This rule relates to proving entitlement pursuant to Section 717.126, F.S., and shall not be interpreted as affecting any private cause of action that one account holder may have against a joint account holder.

Rulemaking Authority 717.138 FS. Law Implemented 717.12403, 717.126 FS. History–New 4-27-09, Formerly 69I-20.0029. ***Cf.*** *Sections 655.005, 655.79 FS.*

69G-20.0030 Claims for United States Savings Bonds.

(1) A claim for a United States savings bond, or the proceeds from such bond, may be approved if the claimant is able to provide sufficient proof of the validity of the claim.

(a) If no beneficiary or pay-on-death recipient is indicated on the bond:

1. By any person whose name appears on the bond, or

2. By the beneficiary as defined by Section 731.201, F.S., or the personal representative of the estate of the person whose name appears on the bond who died last.

(b) If a beneficiary or pay-on-death recipient is indicated on the bond:

1. By any person (other than the beneficiary or pay-on-death recipient) whose name appears on the bond, or

2. By the beneficiary or pay-on-death recipient named on the bond, if all persons who are named on the bond (other than the beneficiary or pay-on-death recipient) are deceased, or

3. By the beneficiary as defined by Section 731.201, F.S., or the personal representative of the estate of the person whose name appears on the bond who died last if the beneficiary or pay-on-death recipient named on the bond died before such person.

(2) Because the "and" form of registration is not authorized, any person (other than the beneficiary or pay-on-death recipient, if any) whose name appears on the bond may claim a United States savings bond or the proceeds from such bond.

(3) A claim for a United States savings bond by a person who leased the safe deposit box containing the United States savings bond shall be denied unless the person who leased the safe deposit box satisfies the requirements of subsection (1).

Rulemaking Authority 717.124, 717.138 FS. Law Implemented 717.124, 717.12404, 717.12405, 717.1243, 17.1261, 717.1262, 717.135, 717.1351, 717.1382, 717.1383 FS. History–New 4-23-17.

69G-20.0037 Reporting and Remitting Abandoned Property by Mail-in Secondhand Precious Metals Dealers.

(1) All property having a true market value of greater than $50, which is presumed abandoned under section 538.32(7), F.S., shall be delivered to the Department through the U.S. Mail or other carrier. The package should be clearly marked on the outside "Deliver Unopened."

(2) Precious metals or jewelry shall be reported by submitting a duly completed Form DFS-A4-2005, Mail-in Secondhand Precious Metals Dealer Report, effective 10-13-10, hereby incorporated by reference and available from the Department of Financial

Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358, ereporting@myflorida.com. The report shall accompany the precious metal or jewelry. If the package contains precious metal or jewelry belonging to more than one seller, each report shall either be attached to the precious metal or jewelry belonging to each seller or each report must be placed in a separate container with the corresponding precious metal or jewelry of each seller within the package marked on the outside "Deliver Unopened." The report shall specify:

(a) The seller's name, address, telephone number, email address, and drivers license number or other government issued identification number together with the issuing state, if available.

(b) A complete and accurate description of the seller's goods, including:

1. Precious metal type, or, if jewelry, the type of jewelry.

2. Any other unique identifying marks, numbers, or letters.

(c) The date that the seller's goods were received by the mail-in secondhand precious metals dealer.

(d) The name of a person who may be contacted regarding the report and the remittance.

Rulemaking Authority 717.117(1), 717.138 FS. Law Implemented 538.31, 538.32, 717.117, 717.119 FS. History–New 10-13-10, Formerly 69I-20.0037.

69G-20.030 Definitions.

As used in this rule chapter.

(1) The definitions provided in Section 717.101, F.S., shall also apply to this rule chapter.

(2) "Service charge" and "maintenance charge" means all documented charges that are incurred by a banking or financial organization with regard to the handling of an account.

(3) "Presumed Unclaimed" means the apparent owner has not indicated an interest in the property for the applicable prescribed period. The interest should be evidenced by communication by the owner with a record of same on file.

(4) "Safekeeping Repository" means safe deposit boxes held in banks and financial institutions.

(5) "Owner of a Cashiers' Check" is the named payee of the cashiers' check unless the remitter has a release of ownership from the payee.

(6) "Inactive status" means the holder is not required to file a report of unclaimed property with the Department on an annual basis.

(7) "Report of unclaimed property" means a report that complies with all the requirements of Sections 717.101 through 717.117 and 717.119, F.S., created in accordance with the Department's prescribed format and filed through the Department's Holder Reporting Online System.

(8) "Zero report" means a report of unclaimed property that has a zero value due to the reporting entity having no unclaimed property for the reporting period.

(9) "Claimant's Representative" means a Florida attorney-at-law, Florida-certified public accountant, or private investigator who is duly licensed to do business in Florida, registered with the Department, and authorized by the claimant to claim unclaimed property on the claimant's behalf.

(10) "Entity Representative" means one who is legally authorized to represent a claimant that is not a natural person. As used in this definition, the phrase "entity representative" does not include a Claimant's Representative.

(11) "Approximate value" or "approximate dollar value," for purposes of Sections 717.135 and 717.1351, F.S., means within 15% of the actual value.

(12) "Electronic medium," for purposes of Section 717.117(1), F.S., means the Holder Reporting Online System, which is a report filing portal available on the Division of Unclaimed Property's website.

(13) "Auction fees, preparation costs, and expenses," for purposes of Section 717.122(1), F.S., means appraiser and contractor fees, catalogue fees, and travel expenses.

(14) "Claimant" means any person, as defined by Section 1.01(3), F.S., excluding another state, asserting an interest in any portion of any property paid or delivered to the Department on whose behalf a claim is filed.

(15) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(16) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(17) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and

executed or adopted by a person with the intent to sign the record.

(18) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including public records as defined in Section 119.011, F.S.

Rulemaking Authority 717.117(1), 717.124, 717.138 FS. Law Implemented 668.50(2), 717.101, 717.102, 717.103, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.1125, 717.113, 717.115, 717.116, 717.117, 717.119, 717.1201, 717.122, 717.124, 717.1241, 717.1315, 717.1322(5), 717.135, 717.1351, 717.138, 717.139, 717.1400, 731.201, 736.0103 FS. History–New 6-23-91, Amended 1-28-97, 4-16-02, Formerly 3D-20.030, Amended 1-3-05, 4-20-16, Formerly 69I-20.030.

69G-20.034 Report of Unclaimed Property.

(1) The Department has established the Holder Reporting Online System that can be securely used by all holders to report unclaimed property to the Division of Unclaimed Property. The Holder Reporting Online System can be accessed at the Department’s website.

(2) All persons subject to the Florida Disposition of Unclaimed Property Act shall file a report of unclaimed property with the Department, pursuant to Section 717.117, F.S., upon becoming subject to the filing requirement of Chapter 717, F.S., and each year thereafter, including zero reports, where applicable, unless:

(a) Written justification has been received from a holder by the Department stating, but not limited to, the following reasons:

1. The holder is filing a complete and accurate report with another state that has adopted the current National Association of Unclaimed Property Administrators (NAUPA) Reciprocity/Exchange guidelines;

2. The holder is located outside Florida and does not conduct business in Florida in its day-to-day operations;

3. The holder maintains a fiduciary relationship with its clients such as real estate brokers and attorneys and does not, as a normal course of business, maintain unclaimed property; or

4. The holder lacks access to the Internet at the holder’s place of business as demonstrated in a writing submitted to the Department, and the Department subsequently prescribes an alternative medium to file the unclaimed property report for the report year.

(b) Upon receipt of a written request, the Department, after a review, may place the holder in an inactive status.

(3) Holders reporting 25 or more apparent owners shall file a report of unclaimed property using the electronic report format option on the Department’s Holder Reporting Online System.

(4) Holders reporting less than 25 apparent owners shall file a report of unclaimed property using the manual input option or the electronic report format option on the Department’s Holder Reporting Online System.

(5) The report of unclaimed property shall be considered filed only upon receipt of both the funds and the electronic report or the manual input report filed through the Department’s Holder Reporting Online System.

(6) Non-compliant reports will be returned to the holder.

Rulemaking Authority 717.117(1), 717.138 FS. Law Implemented 717.117, 717.119, 717.134, 717.138 FS. History–New 6-23-91, Amended 8-29-94, 2-12-97, Formerly 3D-20.034, Amended 4-20-16, Formerly 69I-20.034.

69G-20.035 Reporting Safe Deposit Box Contents.

Safe deposit box contents must be reported to the Department of Financial Services, Division of Unclaimed Property, by submitting a completed Form DFS-UP-155, Safe Deposit Box Inventory Form of Property Presumed Unclaimed, effective 08/2022, which is hereby incorporated by reference and available at: https://fltreasurehunt.gov/UP-Web/sitePages/ReportUnclaimedPropertyHR.jsf under the Remittance Information tab; or on the following link: https://www.flrules.org/Gateway/reference.asp?No=Ref-14616.

Rulemaking Authority 717.117(1), 717.138 FS. Law Implemented 717.116, 717.117, 717.119 FS. History–New 1-3-05, Formerly 69I-20.035, Amended 11-13-22.

69G-20.036 Remitting of Safe Deposit Box Contents and Reimbursement of Expenses.

(1) All property presumed unclaimed under Section 717.116, F.S., shall be delivered to the Department pursuant to Section 717.119, F.S. The delivery of the property, through the U.S. Mail or other carrier, shall be insured at an amount equal to the estimated value of the property. The package should be clearly marked on the outside “Deliver Unopened.” A holder’s safe deposit box contents shall be delivered to the Department in a single shipment. In lieu of a single shipment, holders may provide the

Department with a single detailed shipping schedule that includes package tracking information for all packages being sent pursuant to this section. The detailed shipping schedule shall specify the name of the apparent owner previously reported to the Department, the physical address of the safe deposit box whose contents are being remitted, and the name of a person who may be contacted regarding the report and the remittance of the safe deposit boxes.

(2) Reimbursement may be made for the actual cost incurred in the opening of a safe deposit box and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage costs pursuant to Section 717.1201(7), F.S. The Department shall reimburse the holder out of the proceeds remaining after the deduction of the Department's selling cost.

(3) Holders shall request reimbursement from the Department by submitting a completed Form DFS-UP-112, Safe Deposit Reimbursement Claim Form, effective 1-3-05, hereby incorporated by reference and available from the Florida Department of Financial Services, Division of Unclaimed Property, 200 East Gaines Street, Tallahassee, Florida 32399-0358, floridaunclaimedproperty@myfloridacfo.com.

(4)(a) All intangible and tangible property held in a safe deposit box or any other safekeeping repository and reported to the Department pursuant to Section 717.117, F.S., shall be delivered to the Department in accordance with Section 717.119(5), F.S. Delivery of property shall be commenced 120 days after the report due date and completed within 180 days after the report is due. In the event that the reporting date is postponed, the time periods specified in paragraph (4)(a), are extended for a period of time equal to the additional time given to the holder to report the unclaimed property.

(b) As used herein, delivery in accordance with Section 717.119(5), F.S., means actual delivery of the unclaimed property to the offices of the Department in Tallahassee, Florida. As proof of actual delivery holders may submit the registered mail return receipt.

(c) Within 120 days of the filing of the report, the Department will review reports submitted and notify the holder if the Department declines to accept certain items as having insufficient value to warrant the expense of notice and sale.

(d) The holder must notify the Department in writing within 120 days of the filing of the report that the safe deposit box contents have either been claimed by the owner or have no commercial value and will not be remitted to the Department by the holder.

(5) Numismatic List. A listing of cash and coin items considered to have numismatic value above face value, as referenced in Section 717.119(5), F.S., is hereby incorporated by reference and entitled Numismatic List, Form DFS-UP-150, effective 10-1-01. This list is also available on the Department's Internet website address, www.fltreasurehunt.gov/files/NumismaticList.pdf, the annual reporting instructions, and upon request from the Department.

Rulemaking Authority 717.138 FS. Law Implemented 717.117, 717.119, 717.1201(7), 717.127 FS. History–New 6-23-91, Amended 8-24-98, 4-16-02, Formerly 3D-20.036, Amended 1-3-05, Formerly 69I-20.036.

69G-20.038 Late Annual Report(s), Late Payment(s), and Late Delivery of Unclaimed Property.

(1) If the due date for filing the Report of Unclaimed Property prescribed under Section 717.117, F.S., falls on a Saturday or Sunday, the following Monday will be considered the due date. In the event the reporting or payment or property delivery date is an official State of Florida holiday under Section 110.117, F.S., the next business day will become the due date.

(2) No penalty shall be assessed on a late report that correctly reflects no property to be reported.

(3) A written request for an extension of time to file an unclaimed property report for the prior calendar year must be postmarked or filed with the Department by April 30th of the subsequent calendar year. A written request that is not timely postmarked or filed shall be denied. The Department shall review the facts and circumstances of each timely postmarked or filed written request on a case-by-case basis and, if the Department finds that the requestor has shown that good cause exists to grant an extension, the Department shall postpone the reporting date or extend the property delivery date for a period of up to sixty (60) days. For purposes of this subsection, "good cause" means:

(a) Natural disasters;

(b) Acts of war or terrorism;

(c) Report to be filed by the holder or its subsidiaries using an electronic medium for the first time;

(d) Significant changes in personnel;

(e) Corporate actions such as mergers, acquisitions, bankruptcy, etc.;

(f) System conversions, updates/changes in reporting software; or

(g) Change in third party administrator.

(4) A written request for a waiver of applicable penalties must be filed with the Department. The Department shall review the

facts and circumstances of each filed written request on a case-by-case basis. A finding by the Department that good cause exists shall constitute appropriate justification to waive applicable penalties. For purposes of this subsection, "good cause" means:

(a) Natural disasters;

(b) Acts of war or terrorism;

(c) Initial report filed by the holder or its subsidiaries which was not induced by an examination from the Department or agents; or

(d) Penalty amount in excess of the reported amount;

(e) Penalty assessed in error; or

(f) System conversions, updates/changes in reporting software.

(5) Extensions for the reason set forth in paragraph (3)(d), above, shall be granted for one reporting period only within a three year time frame from the date of the first extension.

(6) The Department shall grant postponements, extensions and waivers in writing.

Rulemaking Authority 717.119(5), 717.138 FS. Law Implemented 717.117, 717.119, 717.134 FS. History–New 6-23-91, Amended 8-29-94, 1-28-97, Formerly 3D-20.038, Amended 4-20-16, Formerly 69I-20.038.

69G-20.040 Written Notice.

All holders in possession of property presumed unclaimed having a value of $50.00 or more shall give notice to the apparent owner in accordance with Section 717.117(4), F.S. The notice shall, at a minimum, meet the following criteria:

(1) The account must be identified as inactive and subject to reporting and remittance to the Department as provided by Sections 717.101 through 717.117 and 717.119, F.S.

(2) The property value must be clearly stated on the notice.

(3) The notice must include a reasonable description of the property sufficient to inform the property owner of the nature of the unclaimed property and the property identifier assigned by the holder to the account.

(4) The notice must include a telephone number and mailing address of the holder from which additional information concerning the property is available.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 171.109, 717.1101, 717.111, 717.112, 717.1125, 717.113, 717.115, 717.116, 717.117, 717.119 FS. History–New 6-23-91, Amended 8-29-94, 1-28-97, 4-16-02, Formerly 3D-20.040, Amended 4-20-16, Formerly 69I-20.040.

69G-20.041 Reporting Instructions Manual for Unclaimed Property.

The Department's mission is to collect and return unclaimed property to its rightful owners in accordance with the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S. To accomplish this mission, all holders must comply with Florida's Unclaimed Property Law. When reporting and remitting unclaimed property to the Department, holders must follow the procedures in Form DFS-P1-0001, Reporting Instructions Manual, revised July 2019, which is hereby incorporated by reference and available from the Florida Department of Financial Services, Division of Unclaimed Property's website at: www.FLTreasureHunt.gov; and may be viewed on the following link http://www.flrules.org/Gateway/reference.asp?No=Ref-12001.

Rulemaking Authority 717.117(1), 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.1125, 717.113, 717.115, 717.116, 717.117, 717.119, 717.129, 717.1311, 717.134, 717.138 FS. History–New 5-3-10, Amended 4-20-16, Formerly 69I-20.041, Amended 9-20-17, 7-21-20.

69G-20.050 Voluntary Disclosure Agreements, Examinations, and Audits.

(1) The Department's mission is to collect and return unclaimed property to its rightful owners in accordance with the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S. To achieve these results, the Department is encouraging businesses ("Holders") inside and outside the State of Florida who are in possession of unclaimed property to comply with Florida's Unclaimed Property Law. This compliance can be achieved using a program called voluntary disclosure. This program provides the following benefits to a Holder:

(a) It relieves the Holder of associated expense and liability holding unclaimed property; and,

(b) Penalties and fines are not assessed by the Department.

(2) To participate in this program, the Holder must not:

(a) Be currently under examination or audit;

(b) Have filed an annual report of unclaimed property with the Department;

(c) Have agreed to a Department-assisted or Contractor-assisted self-audit;

(d) Have been requested to conduct a Department-assisted or contractor-assisted self-audit; or

(e) Have been notified by the Department or by one of the Department's contract auditors of the intention or desire to conduct an examination or audit of the Holder.

(3) The property to be disclosed must be unreported and unremitted unclaimed property due to the State of Florida. No property will be accepted on behalf of another state.

(4) The Holder must provide the Division of Unclaimed Property with the following information:

(a) Name of entity, mailing address, contact person, telephone number, facsimile number and e-mail address of the contact person, federal employer identification number, and standard industrial code classification;

(b) The Holder's state of incorporation;

(c) The Holder's principal place of business (city and state);

(d) If the Holder's state of incorporation and principal place of business is outside of Florida, the Holder must provide a list detailing the cities in Florida where the Holder conducts business with the number of locations in each city; and,

(e) If the Holder has no locations within Florida, the Holder must so state.

(5) The Holder must submit a detail plan outlining the disclosure process to be completed by the Holder, the estimation calculations used by the Holder, and a report identifying the unclaimed property due to the Department. The unclaimed property remittance must accompany the report.

(6) If companies in the same or similar line of business regularly report unclaimed property such as payroll or vendor checks, unclaimed accounts payable, and unclaimed escrow accounts, and the Holder does not, or if companies of the same approximate size regularly report unclaimed property such as payroll or vendor checks, unclaimed accounts payable, and unclaimed escrow accounts of a certain dollar amount, and the Holder has reported a lower dollar amount, an unclaimed property audit or self-audit should be conducted.

Rulemaking Authority 717.117(1), 717.138 FS. Law Implemented 717.117, 717.119, 717.129, 717.1301, 717.133(5) FS. History–New 1-3-05, Amended 4-27-09, Formerly 69I-20.050, Amended 12-6-22.

69G-20.071 Purpose.

The purpose of Rules 69G-20.071 through 69G-20.080, F.A.C., is to implement the Department's duty to establish penalty guidelines for violations of Sections 717.1322 and 717.1341, F.S.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.071.

69G-20.072 Penalty Guideline Definitions.

The following definitions shall apply for purposes of this rule chapter:

(1) "Administrative complaint" refers to formal administrative charges filed by the Department against a person. The charges consist of factual allegations with citations to violations of the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S., Department rules or orders.

(2) "Aggregate final penalty" means the total of the final penalties against a person in one or more enforcement actions.

(3) "Count" refers to a series of one or more numbered paragraphs of factual allegations in an administrative complaint that are incorporated by reference under the word "Count" followed by a Roman numeral, which are set apart from other counts in an administrative complaint, and which if true would constitute a violation of the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S.

(4) "Convicted" means adjudicated guilty by a court.

(5) "Department" means the Florida Department of Financial Services.

(6) "Final penalty" means the penalty actually imposed on a person.

(7) “Penalty per count” means the total of the stated penalties in a count for each act, transaction or occurrence in violation of the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S.

(8) “Registrant” means a person who has satisfied the requirements of Section 717.1400, F.S., and whose registration is active.

(9) “Stated penalty” means the penalty set forth in Rule 69G-20.075 or 69G-20.076, F.A.C., for each act, transaction or occurrence in violation of the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S.

(10) “Total penalty” refers to the sum of the penalties for each count.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.072.

69G-20.073 Calculating Penalty.

(1) Penalty Per Count. The Department is authorized to find that grounds exist under Section 717.1322, F.S., for disciplinary action based upon a single act, transaction or occurrence of misconduct by a person. “Penalty per count” means the total of the stated penalties in a count for each act, transaction or occurrence in violation of the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S.

(2) Total Penalty. Each penalty per count shall be added together and the sum shall be referred to as the “total penalty.”

(3) Final Penalty. The final penalty means the penalty which will be imposed against a person under these rules, as adjusted to take into consideration aggravating or mitigating factors, if any.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.073.

69G-20.074 Prosecutorial Discretion.

(1) Stipulated Disposition. The provisions of this rule are intended and shall not be construed to limit the ability of the Department to informally dispose of disciplinary actions by stipulation, agreed settlement or consent order whether or not the Department has initiated administrative charges.

(2) Cease and Desist Orders and Orders to Take Corrective Action. This rule chapter shall not preclude the Department from initiating an administrative action against registered or unregistered individuals as authorized by Section 717.132, F.S.

(3) Collateral Actions. The provisions of this rule chapter are not intended and shall not be construed to limit the ability of the Department to pursue or recommend collateral, civil or criminal actions where appropriate.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.074.

69G-20.075 Stated Penalty Guidelines for Violation of Sections 717.1322 and 717.1341, F.S., by Registrants.

(1) If it is found that a registrant has violated any of the following subsections of Section 717.1322, F.S., the following stated penalty guidelines shall apply for each act, transaction or occurrence. The penalty imposed within the range of penalties should be based upon the severity of the violation. It is the Florida Legislature’s intent that minor violations be distinguished from serious violations.

(a) Section 717.1322(1)(a), F.S. – suspension of 6 months to revocation if the act is willful or with reckless disregard or deliberate ignorance of the truth, 1 to 2 months if the act is not willful or with reckless disregard or deliberate ignorance of the truth.

(b) Section 717.1322(1)(b), F.S. – suspension of 6 months to revocation.

(c) Section 717.1322(1)(c), F.S. – suspension of 6 months to revocation.

(d) Section 717.1322(1)(d), F.S. – suspension of 3 to 6 months.

(e) Section 717.1322(1)(e), F.S. – suspension of 3 to 6 months.

(f) Section 717.1322(1)(f), F.S. – suspension of 3 to 6 months if the act is willful, 1 to 2 months if the act is not willful.

(g) Section 717.1322(1)(g), F.S. – suspension of 3 months to revocation and a $500 to $1,000 fine per day of non-compliance.

(h) Section 717.1322(1)(h), F.S. – see Rule 69G-20.077, F.A.C.

(i) Section 717.1322(1)(i), F.S. – suspension of 3 to 6 months if the act is willful, 1 to 2 months if the act is not willful.

(j) Section 717.1322(1)(k), F.S. – suspension of 3 to 6 months and a $500 to $1,000 fine per day of non-compliance if the act is willful, 1 to 2 months suspension if the act is not willful.

(k) Section 717.1322(1)(l), F.S. – suspension of 12 to 24 months.

(l) Section 717.1341(3), F.S. – a fine equal to the value of the property for the first offense, a fine equal to twice the value of the property for the second offense, and a fine equal to three times the value of the property for the third and subsequent offenses.

(2) Any registrant that has an aggregate final penalty of suspension of more than 3 years shall have such person's registration revoked and shall be prohibited from being director, officer, agent, employee, or ultimate equitable owner of a 10% percent or greater interest in an employer of a registrant.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.075.

69G-20.076 Stated Penalty Guidelines for Violation of Sections 717.1322 and 717.1341, F.S., by Persons Who Are Not Registrants.

(1) If it is found that a person, who is not a registrant when the act was committed, has violated any of the following subsections of Section 717.1322, F.S., the following stated penalty guidelines shall apply for each act, transaction or occurrence. The penalty imposed within the range of penalties should be based upon the severity of the violation. It is the Florida Legislature's intent that minor violations be distinguished from serious violations.

(a) Section 717.1322(1)(a), F.S. – fine of $500 to $1,000 if the act is willful or with reckless disregard or deliberate ignorance of the truth, $100 to $250 if the act is not willful or with reckless disregard or deliberate ignorance of the truth.

(b) Section 717.1322(1)(b), F.S. – fine of $500 to $2,000.

(c) Section 717.1322(1)(c), F.S. – fine of $500 to $2,000.

(d) Section 717.1322(1)(d), F.S. – fine of $250 to $750.

(e) Section 717.1322(1)(e), F.S. – fine of $250 to $750.

(f) Section 717.1322(1)(f), F.S. – fine of $500 to $1,000 if the act is willful, $100 to $250 if the act is not willful.

(g) Section 717.1322(1)(g), F.S. – $500 to $1,000 fine per day of non-compliance.

(h) Section 717.1322(1)(i), F.S. – fine of $250 to $750 if the act is willful, $100 to $250 if the act is not willful.

(i) Section 717.1322(1)(j), F.S. – fine of $500 to $1,000 if the person has committed the act for compensation or gain, or in the expectation of compensation or gain, a reprimand if the person has committed the act without the expectation of compensation or gain.

(j) Section 717.1322(1)(k), F.S. – fine of $500 to $1,000 fine per day of non-compliance if the act is willful, $100 to $250 if the act is not willful.

(k) Section 717.1322(1)(l), F.S. – fine of $1,000 to $2,000.

(l) Section 717.1341(3), F.S. – a fine equal to the value of the property for the first offense, a fine equal to twice the value of the property for the second offense, and a fine equal to three times the value of the property for the third and subsequent offenses.

(2) Any person that has an aggregate final penalty of more than $5,000 shall be prohibited from being director, officer, agent, employee, or ultimate equitable owner of a 10% percent or greater interest in an employer of a registrant.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.076.

69G-20.077 Criminal Proceedings.

(1) If a person is found to have committed criminal conduct in the course of such person's business, in violation of Section

717.1322(1)(h), F.S., the following stated penalty shall apply:

(a) If a person is convicted by a court for committing a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, the penalty shall be revocation, if the person is registered, and the entry of an order prohibiting the person from being director, officer, agent, employee, or ultimate equitable owner of a 10% or greater interest in an employer of a registrant.

(b) If a person is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to the commission of a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country, which involves moral turpitude and is a crime involving breach of trust or dishonesty, the penalty shall be revocation, if the person is registered, and the entry of an order prohibiting the person from being director, officer, agent, employee, or ultimate equitable owner of a 10% or greater interest in an employer of a registrant.

(c) If a person is not convicted of, but has been found guilty of or has pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the laws of the United States of America or of any state thereof or under the law of any other country, which does not involve moral turpitude and is not a crime involving breach of trust or dishonesty, the penalty shall be a 24 month suspension, if the person is registered, and the entry of an order prohibiting the person from being director, officer, agent, employee, or ultimate equitable owner of a 10% percent or greater interest in an employer of a registrant for a period of 24 months.

(2) Foreign Law Enforcement Records. In the event that a law enforcement record includes convictions, charges, or arrests outside the United States, the Department shall consider the following factors to reduce or eliminate the penalty:

(a) Whether the crime in the criminal record would be a crime under the laws of the United States or any state within the United States;

(b) The degree of penalty associated with the same or similar crimes in the United States; and,

(c) The extent to which the foreign justice system provided safeguards similar to those provided criminal defendants under the Constitution of the United States.

Rulemaking Authority 717.138 FS. Law Implemented 717.117, 717.119, 717.132, 717.1322, 717.134, 717.1341 FS. History–New 1-3-05, Formerly 69I-20.077.

69G-20.078 Aggravating and Mitigating Factors.

(1) It is the Florida Legislature's intent that minor violations be distinguished from serious violations. A specific finding of mitigating or aggravating circumstances shall allow the Department to impose a penalty other than that provided for in the stated penalty guidelines.

(2) The variation and range of penalties permitted are as follows:

(a)1. A suspension may be reduced to a fine equivalent to $500 to $1,000 for each month of suspension.

2. A total penalty dollar amount may be reduced by up to 50%.

3. A reduction of the penalty may be done only once for each act, transaction or occurrence in violation of the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S.

(b)1. A suspension of 2 years or more may be increased to a revocation.

2. The total dollar penalty amount may be increased by up to 50%; provided that the stated penalty dollar amount shall not exceed the maximum statutory amount for each act, transaction or occurrence.

3. An increase of the penalty may be done only once for each act, transaction or occurrence in violation of the Florida Disposition of Unclaimed Property Act, Chapter 717, F.S.

(3) Aggravating and mitigating factors for penalties assessed under Rules 69G-20.075 and 69G-20.076, F.A.C., and Sections 717.117(3), 717.119(5)(c), and 717.134, F.S.:

(a) Willfulness of person's conduct;

(b) Degree of actual injury to victim;

(c) Degree of potential injury to victim;

(d) Age or capacity of victim;

(e) Timely restitution;

(f) Motivation of person;

(g) Financial gain or loss to person;

(h) Cooperation with the Department;
(i) Related criminal charge; disposition;
(j) Previous disciplinary orders or prior warning by the Department;
(k) The amount of the claim involved;
(l) The complexity of locating the owner;
(m) The steps taken to ensure the accuracy of the claim by the person filing the claim;
(n) The acts of commission and omission of the ultimate owners in establishing themselves as rightful owners of the funds;
(o) The acts of commission or omission of the agent or employee of an employer in the filing of the claim;
(p) The actual knowledge of the agent, employee, employer, or owner in the filing of the claim;
(q) The departure, if any, by the agent or employee from the internal controls and procedures established by the employer with regard to the filing of a claim;
(r) The number of defective claims previously filed by the agent, employee, employer, or owner; and,
(s) Other relevant factors.
(4) Aggravating and mitigating factors for penalties assessed under Rule 69G-20.077, F.A.C.:
(a) Number of years that have passed since criminal proceeding;
(b) Age of person at time the crime was committed;
(c) Whether the person served time in jail;
(d) Whether or not the person violated criminal probation;
(e) Whether or not the person is still on criminal probation;
(f) Whether or not the person's actions or behavior resulted in substantial injury to victim;
(g) Whether or not restitution was, or is being timely paid;
(h) Whether or not the person's civil rights have been restored; and,
(i) Other relevant factors.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-69.078.

69G-20.079 Time for Payment of Administrative Fines and Costs.

In disciplinary cases where the Department has imposed an administrative fine for violation of Florida Disposition of Unclaimed Property Act, Chapter 717, F.S., the fine shall be paid within 30 days of the filing date of the final order unless otherwise directed by the Department.

Rulemaking Authority 717.138 FS. Law Implemented 717.101, 717.102, 717.103, 717.1035, 717.104, 717.1045, 717.105, 717.106, 717.107, 717.1071, 717.108, 717.109, 717.1101, 717.111, 717.112, 717.113, 717.115, 717.116, 717.117, 717.119, 717.124, 717.12404, 717.12405, 717.1261, 717.1262, 717.1301(1), 717.1311, 717.1315, 717.132, 717.1322, 717.1323, 717.134, 717.1341, 717.135, 717.1351, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.079.

69G-20.080 Minor Violations.

Pursuant to Section 717.1322, F.S., the Department sets forth below those minor violations for which there is no substantial threat to the public health, safety, and welfare. Next to each violation is the fine to be imposed.

(1) Section 717.1400(5)(a), F.S. – reprimand if the written notification of the termination of the agency or employment is no more than 30 days late and a $50 fine for each successive 30-day period up to a maximum fine of $2,000.

(2) Section 717.1400(5)(c), F.S. – reprimand if the copy of the renewed private investigator's Class "C" individual license under Chapter 493, F.S., or a private investigator's employer's Class "A" business license under Chapter 493, F.S., is provided to the Department no more than 30 days late and a $50 fine for each successive 30-day period up to a maximum fine of $2,000.

Rulemaking Authority 717.138 FS. Law Implemented 717.1322, 717.1400 FS. History–New 1-3-05, Formerly 69I-20.080.

69G-20.090 Orders or Settlements Requiring Restitution.

In accordance with Chapter 717, F.S., orders or settlements requiring restitution may include one of the following recommended paragraphs which may be modified to fit the particular facts of the case:

(1)(a) The (Defendant/Respondent/Petitioner) shall make a good faith effort to locate each entity or individual who is required to be paid in accordance with this (Settlement/Order).

(b) If the (Defendant/Respondent/Petitioner) is not able to locate any entity or individual who is required to be paid in accordance with this (Settlement/Order) or does not make payment to the entity or individual for any other reason, the (Defendant/Respondent/Petitioner) shall report and remit the amount due to the entity or individual to the unclaimed property program of the state of the last known address of the entity or individual as shown on the records of the (Defendant/Respondent/Petitioner) or to the state of domicile of the (Defendant/Respondent/Petitioner) if the records of the (Defendant/Respondent /Petitioner) do not reflect the last known address of the entity or individual. The funds shall be payable in U.S. dollars using the appropriate reporting forms and electronic reporting format within 60 days after the date that the (Defendant/Respondent/Petitioner) was required to issue payment in accordance with the terms of this (Settlement/Order), unless directed otherwise by the receiving unclaimed property program. If the (Defendant/Respondent/Petitioner) is directed otherwise by the receiving unclaimed property program, the (Defendant/Respondent/Petitioner) shall follow the reporting and remitting instructions of the receiving unclaimed property program. A copy of the (Settlement/Order) requiring restitution shall accompany the unclaimed property report and remittance.

(c) If the (Defendant/Respondent/Petitioner) issues a check to an entity or individual who is required to be paid in accordance with this (Settlement/Order) and the entity or individual does not negotiate or cash the check within 90 days after the issuance of the check, the (Defendant/Respondent/Petitioner) shall report and remit the value of the uncashed check in U.S. dollars to the unclaimed property program of the state of the last known address of the entity or individual as shown on the records of the (Defendant/Respondent/Petitioner) or to the state of domicile of the (Defendant/Respondent/Petitioner) if the records of the (Defendant/Respondent/Petitioner) do not reflect the last known address of the entity or individual. The (Defendant/Respondent/Petitioner) shall report and remit the unclaimed property using the appropriate reporting forms and electronic reporting format within 150 days after the issuance of the check, unless directed otherwise by the receiving unclaimed property program. If the (Defendant/Respondent/Petitioner) is directed otherwise by the receiving unclaimed property program, the (Defendant/Respondent/Petitioner) shall follow the reporting and remitting instructions of the receiving unclaimed property program. A copy of the (Settlement/Order) requiring restitution shall accompany the unclaimed property report and remittance.

(d) Unclaimed Property due and owing to the State of Florida shall be reported and remitted to the Florida Department of Financial Services, Division of Unclaimed Property in accordance with Rules 69G-20.034 and 69G-20.041, F.A.C.

(e) “Domicile” means the state of incorporation, in the case of a corporation incorporated under the laws of a state, and the state of the principal place of business, in the case of a person not incorporated under the laws of a state.

(2)(a) The (Defendant/Respondent/Petitioner) shall make a good faith effort to locate each entity or individual who is required to be paid in accordance with this (Settlement/Order).

(b) If the (Defendant/Respondent/Petitioner) is not able to locate any entity or individual who is required to be paid in accordance with this (Settlement/Order) or does not make payment to the entity or individual for any other reason, the (Defendant/Respondent/Petitioner) shall report and remit the amount due to the entity or individual to the Florida Department of Financial Services, Division of Unclaimed Property, in U.S. dollars using the appropriate reporting forms and electronic reporting format in accordance with Rules 69G-20.034 and 69G-20.041, F.A.C., within 60 days after the date that the (Defendant/Respondent/Petitioner) was required to issue payment in accordance with the terms of this (Settlement/Order). A copy of the (Settlement/Order) requiring restitution shall accompany the unclaimed property report and remittance.

(c) If the (Defendant/Respondent/Petitioner) issues a check to an entity or individual who is required to be paid in accordance with this (Settlement/Order) and the entity or individual does not negotiate or cash the check within 90 days after the issuance of the check, the (Defendant/Respondent/Petitioner) shall report and remit the value of the uncashed check in U.S. dollars to the Florida Department of Financial Services, Division of Unclaimed Property, using the appropriate reporting forms and electronic reporting format in accordance with Rules 69G-20.034 and 69G-20.041, F.A.C., within 150 days after the issuance of the check. A copy of the (Settlement/Order) requiring restitution shall accompany the unclaimed property report and remittance.

Rulemaking Authority 717.117(1), 717.138 FS. Law Implemented 717.117, 717.119 FS. History–New 10-13-10, Formerly 69I-20.090.

Reporting Instructions Manual

www.FLTreasureHunt.gov

DFS-P1-0001
Effective July 2019
Rule 69G-20.041, F.A.C.

The Reporting Instructions Manual is designed to provide information and requirements for reporting and remitting unclaimed property to the Florida Department of Financial Services (Department), as required under the Florida Disposition of Unclaimed Property Act, chapter 717, Florida Statutes (F.S.), and Rule Chapter 69G-20, Florida Administrative Code (F.A.C.).

Section 1 of this manual is a comprehensive guide to provide information and requirements for reporting and remitting unclaimed property to the State of Florida (sometimes referred to herein as "Florida").

Section 2 of this manual is frequently asked questions concerning unclaimed property reporting requirements.

The Holder Reporting Online System (Online System) is the Department's online reporting application that allows reporting entities to file the required unclaimed property report(s) and remittance in a safe and secure online environment. Section 1.3 of this manual contains instructions on how to use this system to report and remit unclaimed property.

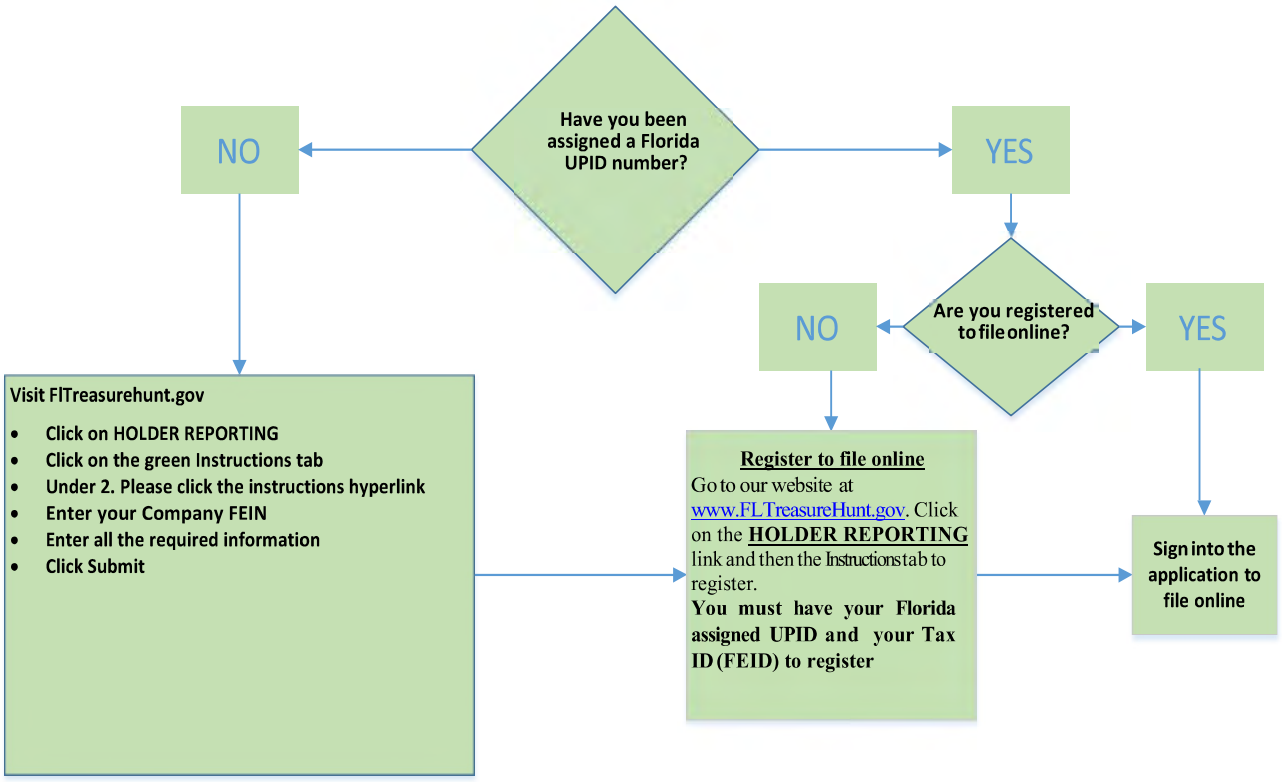
The Department periodically conducts workshops to inform entities regarding reporting and remitting of unclaimed property. Visit our web page at **www.FLTreasureHunt.gov** and click on the **Events** link to see scheduled workshops.

Contact the Department by telephone at (850) 413-5522 or by email at EReporting@MyFloridaCFO.com for questions on the reporting of unclaimed property.

1. SECTION 1: STEPS IN REPORTING AND REMITTING UNCLAIMED PROPERTY TO FLORIDA

The following flow chart summarizes the steps involved in reporting and remitting unclaimed property to the State of Florida:

Online System - If you are not already registered to use our Online System, adopted in Rule 69G-20.034, F.A.C., you must follow the steps identified in the chart below. The Online System can be accessed at www.FLTreasureHunt.gov by clicking on the **HOLDER REPORTING** link. You will find valuable information under this tab including a handbook on how to use the system.



1.1 STEP 1 - IDENTIFY THE UNCLAIMED PROPERTY TO BE REPORTED AND REMITTED

Unclaimed property is primarily an intangible property liability that has been inactive on the books of a holder for a period of time as provided by state law **(dormancy period)** for which there has been no owner-generated activity. Once these liabilities are identified, the first step is to determine which state's unclaimed property law must be followed for each liability and that state's required dormancy period which determines when the liability becomes unclaimed property and subject to being reported and remitted.

Where to report and remit unclaimed property is primarily determined based on the following Supreme Court decisions:

(I) Texas v. New Jersey, 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed.2d 596 (1965).
(II) Pennsylvania v. New York, 407 U.S. 206, 92 S.Ct. 2075, 32 L.Ed.2d 693 (1972).

These decisions establish the Primary and Secondary Rules which determine where a holder must report and remit unclaimed property.

- The **Primary Rule** requires that intangible unclaimed property be reported to the state of the owner's last known address.

- The **Secondary Rule** requires that when there is an unknown owner, no last known address, or the owner's address is located in a state without an applicable unclaimed property law, the intangible property must be reported to the holder's state of domicile.

- The **Transaction Rule** is codified in 12 U.S.C. 2503 as an exception to the Primary and Secondary Rules. The Transaction Rule provides the following where any sum is payable on a traveler's check, money order, or other similar written instrument on which a banking or financial organization or a business association is directly liable:
  1) If the books and records show the state of purchase, that state shall be entitled exclusively to take custody of the sum payable on the traveler's check, money order, or other similar instrument, to the extent that state's laws provide for taking custody.
  2) If the books and records do not show the state of purchase, that state in which the banking or financial organization or business association has its principal place of business shall be entitled to take custody of the sum payable on the traveler's check, money order, or other similar instrument, to the extent that state's laws provide for taking custody.
  3) If the books and records show the state of purchase and the laws of that state do not provide for taking custody of the sum payable on the traveler's check, money order, or other similar instrument, the state in which the banking or financial organization or business association has its principal place of business shall be entitled to take custody of the sum payable on the instrument, to the extent that state's laws provide for taking custody.

Based on these rules, once you have identified the liabilities that will be subject to Florida's unclaimed property law, you must follow the requirements set forth by Florida. The Florida Property Code and Dormancy Table, provided in this manual, is a helpful tool in identifying liabilities and the required dormancy period. Once the liability reaches the required dormancy period, it becomes unclaimed property and subject to being reported and remitted to Florida.

1.2 STEP 2 – PERFORM DUE DILIGENCE

Prior to reporting and remitting unclaimed property valued at $50 or more which has reached its required dormancy period (as explained in STEP 1) during the calendar year, the holder must perform due diligence as outlined by statute.

Due diligence means the use of reasonable and prudent methods under particular circumstances to locate apparent owners of inactive accounts using the taxpayer identification number or social security number, if known, which may include, but are not limited to, using a nationwide database, cross-indexing with other records of the holder, mailing to the last known address (unless the last known address is known to be inaccurate) or engaging a licensed agency or company capable of conducting such search and providing updated addresses.

A written notice must be sent to the apparent owner's last known address, unless the last known address is known to be inaccurate, informing the apparent owner that the holder is in possession of the unclaimed property account subject to chapter 717, F.S., and requesting that the apparent owner respond to the notice. The written notice must clearly state the property value and include a proper description of the property sufficient for identifying that type of property. Per statute, this must be performed not more than 120 days and not less than 60 days prior to the report of unclaimed property due date, which is before May 1 of each year. The holder must provide the name and contact information of the holder representative the owner can contact if they have any questions. **The due diligence letter must not contain any contact information for the state of Florida.** Failure to perform due diligence as provided by statute could result in potential fines and interest penalties.

If the documents establishing a deposit in a banking or financial organization state the address of a beneficiary of the deposit and the account is valued at $50 or more, the holder must also give notice to the beneficiary.

1.2.1 Sample Due Diligence Letter

The following due diligence letter is provided **as an example only.**

SAMPLE DUE DILIGENCE LETTER

January 1, 20XX

Mr./Ms. Good Customer
100 Any Street
City, State 23218

Dear Mr./Ms. Customer:

It is our policy to review and update our account records periodically. Our records indicate that there has been no transaction on your (type) account with a balance of ($XXX) since (LAST DATE OF ACTIVITY). Florida law requires that we contact you when there has been no customer-generated activity on this account for the time period specified by law. If you do not respond to this notice, your account is subject to being reported and remitted to the State of Florida's unclaimed property office. Please check the appropriate box, sign in the space provided below, and return this form to us no later than 5 weeks from the date of this letter to (your address).

☐ I am aware of the account and wish to keep it open.

☐ Please update the account address as follows:

_____

_____

☐ I wish to close this account. Please send a check for the close-out amount to the following address:

_____

_____

_____ _____
Signature Date

Please contact our office at (xxx) xxx-xxxx if you require additional information.
(Note: This is your contact number and not the State of Florida's)

Sincerely,
Your Name

NOTE: This is intended only as an example of a due diligence letter. The holder must design the due diligence letter to meet its needs. Do not include the state of Florida's contact information in this letter.

1.3 STEP 3 – PREPARE AND SUBMIT THE REPORT OF UNCLAIMED PROPERTY AND REMITTANCE/PAYMENT

Once you have identified a liability subject to Florida's unclaimed property law and it has reached the required dormancy period, it becomes unclaimed property and must be reported and remitted to the Department before May 1 of each year. If the due date for filing the report of unclaimed property falls on a Saturday or Sunday, the following Monday will be considered the due date. In the event the due date is an official state of Florida holiday, the next business day will become the due date.

The Department has established the Online System that can be securely used by all entities to submit the report of unclaimed property. The Online System can be accessed at www.FLTreasureHunt.gov. If you need assistance using the Online System, a handbook is available at www.FLTreasureHunt.gov, under the **Holder Reporting** link, **Prepare Report** tab. The report of unclaimed property shall apply to all unclaimed property reaching the required dormancy period during the preceding calendar year ending December 31.

The report of unclaimed property must have sufficient information so that owners can easily search the unclaimed property database to recover their property. Except for traveler's checks and money orders, the report of unclaimed property must include the name, social security number, a taxpayer identification number, and date of birth, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property which is presumed unclaimed. This information will assist the Department in its attempt to locate the owner and ensure the Department pays the correct owner of the property. Each item of property must have a separate property record. If an owner has multiple properties, each property must be identified as a separate record.

IMPORTANT:

a. The report of unclaimed property formatted as an Excel spreadsheet, Word document, Access database, or PDF file **will not be accepted**.
b. Clerks of Court - All intangible property held for the owner that has not been claimed by the owner for more than 1 year after it became payable or distributable is presumed unclaimed and is subject to being reported and remitted to the Department. However, money held in the court registry for which no court order has been issued to determine an owner is not payable or distributable and is not to be reported and remitted to the Department.

NOTE: Regardless of the resource utilized to create the report of unclaimed property, the Department will incur no liability for any errors in the resulting report. It is the responsibility of the holder to accurately report as required by law.

1.3.1 ELECTRONIC REPORT FORMAT OPTION

Entities reporting 25 or more apparent owners must file the report of unclaimed property using the electronic format on the Department's Online System. The Online System provides for two electronic report format options. Option 1 is the Department's Excel template and Option 2 is a National Association of Unclaimed Property Administrators (NAUPA) standard format file.

NOTE: If the report of unclaimed property contains less than 25 apparent owners, either the electronic report format option or the manual input option provided below in section 1.3.2 may be used.

1.3.1.1 CREATING THE DEPARTMENT'S EXCEL TEMPLATE

The Department has created Excel templates that can be used for reporting Cash, Stock, and Tangible unclaimed property through the Online System. These templates are available at no charge and can be used in place of a NAUPA standard format file. You must be registered to use the Online System to access these

templates which are located on the dashboard under "Templates" and designed to work exclusively with the Department's Online System.

The templates must be downloaded and saved to the registered user's computer. After the download is complete, the user must first "ENABLE CONTENT" before adding data and then fill in the information require by each pre-defined column. If you copy and paste information, you must use the "Paste Special" function. Review the property type codes and the relationship codes on pages 15 through 21 of this manual and ensure you apply the correct code for each property on the template.

Once the template is complete, it must be saved as a ".CSV (Comma Delimited)" file and submitted to the Department through the Online System. Save a copy of the template for your records.

1.3.1.2 SUBMITTING THE NAUPA FILE TO THE STATE OF FLORIDA

NAUPA is an organization of all fifty states which facilitates collaboration among state unclaimed property administrators in their effort to reunite unclaimed property with the rightful owner. The NAUPA standard format is designed by NAUPA to help standardize the reporting process in all states. Refer to the NAUPA Standard Format Manual (link) to access the definitions and specifications under each filed in the NAUPA standard format file, as it provides detailed information on the requirements of the NAUPA standard format.

To assist you in preparing the NAUPA standard format file, free reporting software information can be found at www.FLTreasureHunt.gov, under the **Holder Reporting** link, **Prepare Report** tab. You can also choose to use your organization's internal IT resources or any other third-party vendor to create the NAUPA standard format file or utilize any other third-party vendor. Review the property type codes and relationship codes on pages 15 through 20 of this manual to ensure you apply the correct code for each property on the NAUPA standard format file.

After preparing the NAUPA standard format file, you must submit it to the Department through the Online System. Follow the online application chart in Section 1 above if you have not registered to use this system.

1.3.2 MANUAL INPUT OPTION

A holder reporting less than 25 apparent owners may file the report of unclaimed property using either the manual input option **or** the electronic report format option on the Department's Online System. The manual input option allows for properties to be manually entered online and eliminates the need to create the Department's Excel template or the NAUPA standard file, as required under the electronic format option. Review the property type codes and relationship codes on pages 15 through 21 of this manual to ensure you apply the correct code for each property that is manually input.

Entities reporting more than 24 apparent owners must use the electronic report format option described in section 1.3.1

1.3.3 REMITTANCE / PAYMENT

All unclaimed property other than the contents of a safe-deposit box or other safekeeping repository must be remitted once the report is filed through the Online System. Your filing is not complete until both the report and remittance/payment are received by the Department.

1.3.3.1 CASH RELATED PROPERTY

The Online System provides the following options for remitting cash to the State of Florida.

A. **ACH Debit/Online Payment –** This is a safe and secure method of payment, free of charge and preferred by the Department. It allows for easy reconciliation of cash remittances to the filed report of unclaimed property. To use this option, you must provide the following information:
   - The name on your Bank Account
   - Bank Routing Number
   - Bank Account Number

   IMPORTANT: Before utilizing this option, you must contact your financial institution to ensure there are no existing ACH blocks on your account. Your bank will require our ACH Company ID number L272818119 for this payment. A fee for insufficient funds may be charged if your account has a block on it and the transaction is returned by your bank.

B. **Check -** A check made payable to the Florida Department of Financial Services. Include with the check, a copy of the coupon attached to the confirmation email you will receive after filing your report of unclaimed property through the Online System.

C. **Wire Transfer -** Instructions will be emailed to you upon filing the report of unclaimed property through the Online System. The instructions may also be obtained by sending an email to the Department at **EReporting@MyFloridaCFO.com.**

1.3.3.2 SECURITIES RELATED PROPERTY

The holder is responsible for preparing the report of unclaimed property and will be responsible for emailing the Notification of Transfer.

Notification of Transfer of all securities will be emailed directly to:

State of Florida, Department of Financial Services
Attn: Division of Unclaimed Property
At: EReporting@MyFloridaCFO.com

The subject line of the email must include the Florida-assigned Unclaimed Property Identification (UPID) number for your organization and the "Notification of Transfer." The notification must include:

- Florida Assigned UPID Number
- Holder Name
- Holder FEIN (Federal Employer Identification Number)
- Holder Contact Person Name, Telephone Number, & Email Address
- Report Due
- Reporting Year
- Reported CUSIP (Committee on Uniform Securities Identification Procedures) Number
- Reported Security Name
- Number of Shares
- Type of Shares (DTC, Certificate, Mutual Fund, etc…)
- Dollar amount of shares
- Date & time transfer to Florida's Securities Custodian occurred

The notification must be emailed at least 48 hours in advance of the transfer of the securities to the Department's Custodian. Microsoft Excel is the preferred format for processing. A template has been provided for your convenience at: Transfer of Securities Notification template.

When share information (e.g., dividends, capital gains earned, or any other type of corporate action) changes after the report of unclaimed property and the Notification of Transfer has been submitted, both the report of unclaimed property and the Notification of Transfer information must be updated and resubmitted.

Common or Preferred Stock and Mutual Funds eligible for DTC/DWAC transfer must be sent directly to:

DTC participant 901
Agent Bank #26500
State of Florida, Account 822496

At least 48 hours prior to delivery you must email a list of the shares you intend to deliver to upch.custody@avenuinsights.com. The list shall include the information found in the Notification of Transfer section. The Department's FEIN is 27-2818119.

Dividend reinvestment plans must be terminated by converting the whole shares to common stock and liquidating the partial shares. The whole shares can then be sent via DTC to:

DTC participant 901
Agent Bank #26500
State of Florida, Account 822496

Partial shares must be sold and the proceeds mailed to:

Florida Department of Financial Services
Attn: Division of Unclaimed Property
200 East Gaines St
Tallahassee, FL 32399-0358

A listing containing the information found in the Notification of Transfer section must be emailed to the Department Custodian at upch.custody@avenuinsights.com at least 48 hours before the transfer of the securities.

Direct Registration/Book-Entry shares are not accepted by the Department.

Securities remitted by certificate must be transferred via DTC to:

DTC participant 901
Agent Bank #26500
State of Florida, Account 822496

To transfer securities not eligible for DTC, issue a physical certificate registered in the name of "Hare & Co., LLC, FBO Florida Department of Financial Services" and mail to:

The Depository Trust Company
570 Washington Blvd – 5th Floor
Jersey City, NJ 07310
Attn: BNY Mellon/Branch Deposit Department
FEIN: 13-6062916

DO NOT deliver original certificates to the State of Florida with your report. A photocopy must be sent with the original report. If any certificates are registered incorrectly, they will be returned to you for re-registration and your report will be considered incomplete. Only one certificate must be delivered for each security position reported. Copies of the certificates or a list of the certificates including the information found in the Notification of Transfer section must be faxed to 617-722-9660 at least 48 hours prior to delivery.

Delivery of Foreign Securities: When attempting to deliver foreign securities, contact the Department's securities custodian at upch.custody@avenuinsights.com to obtain delivery instructions.

Federal Reserve Book Eligible Securities Delivery Instructions

Federal Reserve Bank of New York
ABA#0210-0001-8
BK of NYC/CUST
FBO - State of Florida; Account # 822496

A listing containing, at a minimum, the information found in the Notification of Transfer section must be emailed to the Department Custodian at upch.custody@avenuinsights.com at least 48 hours before the transfer of the securities.

Open End Mutual Fund Accounts

Accounts held for the State of Florida must be registered to the name Mac & Co., LLC.
The Department's securities custodian will provide account numbers for all mutual funds transferred to the State of Florida's account. Contact the Department's securities custodian at upch.custody@avenuinsights.com to obtain account numbers at least 3 business days prior to attempting delivery.

Closed End Mutual Funds Accounts

Accounts held for the State of Florida must be registered in the name of State of Florida c/o Avenu Insights & Analytics, LLC, 100 Hancock Street, 10 Floor, Quincy, MA 02171 FEIN 27-2818119.

If the fund is DTC eligible, please close the account and deliver full shares to DTC# 901, Agent Bank #26500, Account # 822496.

If the fund is not DTC eligible, please close the account and forward certificates for full shares to:

Avenue Insights & Analytics, LLC
100 Hancock Street
10th Floor
Quincy, MA 02171

Partial shares must be sold and the proceeds mailed to:

Florida Department of Financial Services
Attn: Division of Unclaimed Property
200 East Gaines St.
Tallahassee, FL 32399-0358

A listing containing, at a minimum, the information found in the Notification of Transfer section shall be emailed to the Department Custodian at upch.custody@avenuinsights.com at least 48 hours before the transfer of the securities.

All unclaimed property must be remitted once the report is filed through the Online System.

Do not report stocks or other intangible ownership interests unless you are also able to simultaneously deliver the property. Any unclaimed property delivered to the Department must have value. Should any property that is not transferred become transferable in the future and available for delivery simultaneously with the report of unclaimed property, report the property to the Department and include a brief explanation stating why the property was reported after the reporting due date. Contact the Department at EReporting@MyFloridaCFO.com or at 850-413-5522 if you have any questions.

1.3.3.3 SAFE-DEPOSIT BOX TANGIBLE PROPERTY

A. The contents of a safe-deposit box or other safekeeping repository which have monetary value shall be presumed unclaimed. The contents must be remitted to the Department between 120 and 180 days after the report due date, except for the following contents which are NOT TO BE REMITTED to the Department:

Ammunition
Articles of Incorporation
Audio/Video Tapes
Awards/Diplomas
Bills (e.g., a utility bill; not referring to currency)
Blank or Cancelled Checks
Blank CDs/Discs
Credit Cards
Data Cartridges
Empty Envelopes
Firearms
Flash Drives
Keys
Letters/Notes
Newspaper Clippings
Photographs (Personal Family Photos)
Post Cards

B. The **Safe-Deposit Box Inventory (DFS-UP-155)** form, which is incorporated by reference in Rule 69G-20.035, F.A.C., must be used to inventory the contents of a safe- deposit box. The form must be sent along with the remittance of the safe-deposit contents. Safe-deposit contents must be received by the Department 120 to 180 days after the report due date. DO NOT SEND THE CONTENTS ALONG WITH THE REPORT THAT IS DUE BEFORE MAY 1.

C. If reported item(s) listed on the Safe-Deposit Box Inventory (DFS-UP-155) form will not be sent to the Department, notify the Department in writing by listing the items that will not be sent and include the reason (e.g., no commercial value, items claimed by the owner prior to shipment, etc.).

D. Stock certificates found in a safe-deposit box must be included along with the remittance.

E. Non-numismatic paper currency and coins (paper currency or coins that do not have collectable value) found in a safe-deposit box must be remitted by cashier's check payable to the Department along with the other contents of the safe-deposit box. Numismatic paper currency and coins (paper currency and coins that have collectable value) must be remitted in their original form. Use the **Numismatic List for Financial Institutions** to determine if currency and coins have collectable value.

F. A single cashier's check may be issued for non-numismatic paper currency and coins belonging to multiple safe-deposit box owners; however, a list must be provided which clearly identifies the owners and the amount belonging to each owner. Write the check number on each owner's inventory sheet and

indicate which coins and paper currency listed on the inventory sheet were converted to a cashier's check. Make cashier's checks payable to "Florida Department of Financial Services" and include the check(s) with the safe-deposit box contents.

G. Shipping Contents

1. Contents delivered through the U.S. Mail or other carrier must be insured at an amount equal to the estimated value of the property.
2. All contents must be packaged securely to prevent damage during shipment.
3. Breakables must be wrapped individually and packed in sturdy shipping containers.
4. Heavy items such as large quantities of coins must be placed in cloth coin bags and packed in sturdy shipping containers so they will not break open in shipment.
5. Include the Florida-assigned UPID number of the bank as part of the return address on each shipping container.
6. Ideally, safe-deposit box contents should be delivered to the Department in a single shipment. If contents are shipped at different times or from different locations, you must provide the Department with a detailed shipping schedule that includes package-tracking information for all packages being sent, the name of the safe-deposit box owners included in each shipment, the address of the branch that will be sending the contents, and the name of a person who may be contacted concerning the remittance of the contents.
7. If multiple shipping containers are being sent from the same location, each shipping container must be numbered (e.g., "1 of 6," "2 of 6," etc.). Prominently mark several sides of each container "DELIVER UNOPENED." Mail the containers to:

Department of Financial Services
Division of Unclaimed Property
Asset Management
200 East Gaines Street
Tallahassee, FL 32399-0360

H. The penalty for the receipt of a safe-deposit box container between 180 days after the report due date and 210 days after the report due date will be $100. Thereafter, the penalty will be $500 for each additional successive 30-day period. The penalty assessed against a holder will not exceed $4,000 annually. The holder must remit the penalty to the Department within 30 days after the date of the notification to the holder that the penalty is due.

1.3.4 PROPERTY TYPE CODES, RELATIONSHIP CODES, AND TANGIBLE CATEGORY CODES

For each report format option, you must input a Property Type Code to identify the type of property being reported and a Relationship Code to describe the owner's relationship to the property being reported. If you are a financial institution required to report tangible personal properties from safe-deposit boxes you must input a Tangible Category Code to identify the category type for each item being reported from a safe-deposit box.

1.3.4.1 FLORIDA PROPERTY TYPE CODES AND DORMANCY TABLE

The property type code identifies the type of property reported. The table below is a guide to assist you in identifying the different property types, and it provides a statutory reference and the designated dormancy period which must be met before the property is unclaimed and subject to being reported and remitted to the Department. Other than tangible property held by mail-in secondhand precious metal dealers, the only tangible personal properties that may be reported and remitted are items from safe-deposit boxes in financial institutions as provided in Florida law.

Select the property type code which best identifies the property being reported. The property type code will always be four characters.

NOTE: The codes in the table below are the only property type codes accepted by the Department.

FLORIDA PROPERTY TYPE CODE AND DORMANCY TABLE			
PROPERTY TYPE	**DORMANCY PERIOD (YEARS)**	**PROPERTY CODE**	**STATUTORY REFERENCE**
GENERAL			
Checking Accounts	5	AC01	717.106
Savings Accounts	5	AC02	717.106
Matured CD's or Savings Certificates	5	AC03	717.106
Christmas Club Accounts	5	AC04	717.106
Deposit to Secure Funds	5	AC05	717.106
Security Deposits	5	AC06	717.102
Unidentified Deposits	5	AC07	717.106
Suspense Accounts	5	AC08	717.106
Cashier's Checks	5	CK01	717.105
Certified Checks	5	CK02	717.105
Registered Checks	5	CK03	717.105
Treasurer's Checks	5	CK04	717.105
Bank Drafts	5	CK05	717.105
Warrants	5	CK06	717.102
Money Orders	7	CK07	717.104(2)
Traveler's Checks	15	CK08	717.104(1)
Foreign Exchange Checks	5	CK09	717.105
Expense Checks	5	CK10	717.102
Pension Checks	5	CK11	717.112
Credit Memo or Credit Checks	5	CK12	717.1045(4)
Vendor Checks	5	CK13	717.102
Checks Written Off	5	CK14	717.102
Other O/S Official Checks	5	CK15	717.102
CD Interest Payments/Checks	5	CK16	717.106
Educational Savings Account – Cash	5	CS01	717.112(1)
Educational Savings Account – Mutual Funds	5	CS02	717.112(1)
Educational Savings Account – Securities	5	CS03	717.112(1)
Health Savings Account	5	HS01	717.112(1)
Health Savings Account Investment	5	HS02	717.112(1)
Net Revenue Interests	5	MI01	717.102
Royalties	5	MI02	717.102
Overriding Royalties	5	MI03	717.102
Production Payments	5	MI04	717.102
Working Interests	5	MI05	717.102
Bonuses-Royalties	5	MI06	717.102
Delay Rentals	5	MI07	717.102
Shut-In Royalties	5	MI08	717.102
Minimum Royalties	5	MI09	717.102
Wages, Payroll, Salary	1	MS01	717.115
Commissions	1	MS02	717.115
Worker Comp Benefits	5	MS03	717.102

Payment Goods & Services	5	MS04	717.102
Customer Overpayments	5	MS05	717.102
Unidentified Remittances	5	MS06	717.102
Un-refunded Overcharges	5	MS07	717.102
Accounts Payable	5	MS08	717.102
Credit Balances on Accts Receivable	5	MS09	717.102
Discounts Due	5	MS10	717.102
Refunds	5	MS11	717.102
Gift Certificates/Cards	5	MS12	717.1045(4)
Unclaimed Loan Collateral-Cash	5	MS13	717.106
Pension, Profit Sharing Plans	5	MS14	717.112
Voluntary or Involuntary Dissolution or Liquidation	6 months	MS15	717.111
Miscellaneous Checks	5	MS16	717.102
Miscellaneous Intangible Property	5	MS17	717.102
Suspense Liabilities	5	MS18	717.102
FINANCIAL INSTITUTIONS (TANGIBLE PROPERTY)			
Contents of Safe-Deposit Boxes	3	SD01	717.116
Contents of Safekeeping Repository	3	SD02	717.116
Other Tangible Property	3	SD03	717.116
Unclaimed Loan Collateral – NonCash	3	SD04	717.116
INSURANCE COMPANIES			
Demutualization Cash	2	DM01	717.1071
Demutualization Stock	2	DM02	717.1071
Individual Policy Benefits or Claim Payments	5	IN01	717.107
Group Policy Benefits or Claim Payments	5	IN02	717.107
Death Benefits Due Beneficiaries	5	IN03	717.107
Proceeds from Matured Policy, Endowments, or Annuities	5	IN04	717.107
Premium Refunds on Individual	5	IN05	717.107
Unidentified Remittances	5	IN06	717.107
Other Amounts Due under Policy Terms	5	IN07	717.107
Agent Credit Balances	5	IN08	717.107
Matured Life-Limiting Age	2	IN09	717.107
SECURITIES RELATED			
Unclaimed Dividends	3	SC01	717.1101
Registered Bond Interest – State and Local Government	1	SC02	717.112(5)
Equity Payments	3	SC04	717.1101
Profits	3	SC05	717.1101(4)
Funds Paid Toward Shares or Interest	3	SC06	717.1101
Bearer Bond Principal – State and Local Government	1	SC07	717.112(5)
Shares of Stock & Underlying Shares	3	SC08	717.1101
Cash in Lieu of Fractional Shares	3	SC09	717.1101
Un-exchanged Stock of Successor Corp.	3	SC10	717.1101
Other Certificates of Stock	3	SC11	717.1101
Stock Redemption Funds	3	SC13	717.1101
Bonds (physical bonds and debentures)	3	SC14	717.1101
US Government Securities	1	SC15	717.112(5)
Mutual Fund Shares	3	SC16	717.1101
Stock Warrants	3	SC17	717.1101
Registered Bond Principal –State and Local Government	1	SC18	717.112(5)
Dividend Reinvestment Plans	3	SC19	717.1101

Credit Balances	3	SC20	717.1101(4)
Bearer Bond Principal – Corporate	3	SC21	717.1101
Bearer Bond Interest – State and Local Government	1	SC22	717.112(5)
Bearer Bond Interest – Corporate	3	SC23	717.1101
Registered Bond Principal – Corporate	3	SC24	717.1101
Registered Bond Interest – Corporate	3	SC25	717.1101
FIDUCIARIES			
IRA – Cash (Traditional IRA, SEP IRA, SARSEP IRA, and SIMPLE IRA)	5	IR01	717.112
IRA –Mutual Funds (Traditional IRA, SEP IRA, SARSEP IRA, and SIMPLE IRA)	5	IR02	717.112
IRA – Securities (Traditional IRA, SEP IRA, SARSEP IRA, and SIMPLE IRA)	5	IR03	717.112
IRA – Cash (Roth IRA)	5	IR05	717.112
IRA –Mutual Funds (Roth IRA)	5	IR06	717.112
IRA – Securities (Roth IRA)	5	IR07	717.112
Paying Agent Accounts	5	TR01	717.112
Undelivered or Un-cashed Dividends	5	TR02	717.112
Fiduciary Funds	5	TR03	717.112
Escrow Funds	5	TR04	717.112
Trust Vouchers	5	TR06	717.112
Properties Held Under Trust Instruments	2	TR10	717.1125
UTILITY COMPANIES			
Utility Deposits	1	UT01	717.108
Membership Fees	5	UT02	717.102
Refunds or Rebates	5	UT03	717.102

COURTS AND GOVERNMENTAL AGENCIES - Including any court, government or governmental subdivision or agency, public corporation, or public authority			
Statutory references are to the provisions which give rise to the deposit of funds into the registry of the court (what should be entered in the "property description" field). The Department is authorized by section 717.113, F.S., to take custody of all intangible property held for the owner by any court, government (or governmental subdivision or agency), public corporation, or public authority once the property is presumed unclaimed.	1 Year Dormancy Period unless otherwise expressly provided by statute		717.112(5) and 717.113
OUT OF STATE COURTS			
Escrow Funds	1	CT01	717.112(4) and 717.113
Condemnation Awards	1	CT02	717.113
Missing Heir Funds	1	CT03	717.113
Suspense Accounts	1	CT04	717.113
Deposit Made with Court	1	CT05	717.113
MISCELLANEOUS FLORIDA STATUTORY PROVISIONS			
Guardianship Funds following Death of Ward	1	CT06	744.534
Missing, Unknown, or Unlocatable Beneficiary Determined by Court Order to be Entitled to Estate Proceeds Held by Personal Representative	1	CT07	733.816

Proceeds from Estate of Person Determined by Court Order to have No Surviving Beneficiaries	1	CT08	732.107
Alimony and Child Support Default Bonds	1	CT09	61.18
Chattel Mortgage Payments into the Court Registry	1	CT10	698.03
Cash Deposits or Bonds filed with the Court to Contest an Assessment or a Denial of a refund	1	CT11	72.011
Contested Tax, Tax Certificate, or Assessment Lien Payments into the Court Registry	1	CT12	173.07
Eminent Domain Payments into the Court Registry	1	CT13	73.111, 74.051
Final Judgments and Decree Payments into the Court Registry	1	CT14	55.141
Garnishment Payments into the Court Registry	1	CT15	77.22, 77.082
Real Estate Reserve Proceeds Payments into the Court Registry	1	CT16	475.711
Mobile Home Bonds or Payments into the Court Registry	1	CT17	713.785
Motor Vehicle Bonds or Payments into the Court Registry	1	CT18	713.585
Sale of Partitioned Property Payments into the Court Registry	1	CT19	64.071
Vehicle or Vessel Bonds or Payments into the Court Registry	1	CT20	713.78
Rent Payments into the Court Registry	1	CT21	83.232, 83.60
Mobile Home Park Payments into the Court Registry	1	CT22	723.063
Statutory Liens, Sale Without Proceedings Payments into the Court Registry	1	CT23	85.031
Surplus Proceeds from Judicial Foreclosure	1	CT24	45.032
Tax Certificates, Tax Deeds	1	CT25	197.473, 197.582
Construction Lien Bonds or Payments into the Court Registry	1	CT26	713.24
Unauthorized Insurer Bonds or Payments into the Court Registry	1	CT27	626.908
Restitutions	1	CT28	775.089
Lost Property Sold by Law Enforcement Agency	1	MO97	705.103
Health and Human Services Care and Maintenance Unclaimed Trust Funds	1	MO98	402.17

NOTE for all Florida County Clerks of Court – If there are questions regarding which statute to identify as the source and nature of the funds (for example, section 713.585, F.S., for a motor vehicle lien; section 197.473, F.S. for tax deed redemption funds, etc.), contact the Department at EReporting@MyFloridaCFO.com for assistance with reporting this specific property.

1.3.4.2 RELATIONSHIP CODES

The relationship code indicates the reported owners' association to the unclaimed property account. This information helps the Department return the unclaimed property to the owner. The relationship code will always be two letters.

Examples:

1. One owner – a check made payable to John Doe would be the SO (Sole Owner) relationship code as there is only one owner of the property.
2. Multiple owners – a check made payable to John Doe & Jane Doe would be the AN (And) relationship code as both are the owners of the property. The PA (Payee) code **is not** a valid code when there are multiple owners.

A chart of the NAUPA Relationship Codes is at https://www.unclaimed.org/reporting/naupa-standard-electronic-file-format/ under the NAUPA Standard Electronic File Format link.

The following are relationship codes specific to and accepted by the State of Florida.

RELATIONSHIP CODES		
Code	**Short Description**	**Definition**
AD	Administrator	The person appointed by the court to administer the assets and liabilities of a decedent.
AG	Agent For	A person who is authorized to act for another (the agent's principal).
AF	Attorney For	A person who has been qualified by a state or federal court to provide legal services, including appearing in court, and is authorized to act for the client.
AN	(And) Unspecified Joint Relationship	A designation for tenancy in common.
BF	Beneficiary	Any person or entity (like a charity) designated to receive assets from, by way of example, an estate, a trust, or an insurance policy, or any instrument in which there is distribution.
CN	Conservator	A guardian and protector appointed by a court to protect and manage the assets or financial affairs of a person or a business.
CF	Custodian	A person who is in possession of property or documents.
ES	Estate	The property of a decedent, prior to distribution, or assets managed by a conservator or guardian.
EX	Executor or Executrix	The person appointed to administer the estate of a person who has died leaving a will which nominates that person.
FB	For Benefit Of	Property may be held by a person or entity for the benefit of another person who is entitled to the property.
GR	Guardian	A person who has been appointed to manage the assets of another person.
HE	Heir	As anyone entitled to receive property of a decedent.
IN	Insured	The person or entity covered by an insurer under the terms of an insurance policy.
JT	Joint Tenancy	Ownership by two or more persons in which each owns an undivided interest in the whole, and a right of survivorship is presumed.

RELATIONSHIP CODES		
Code	**Short Description**	**Definition**
TC	Tenancy in Common	Type of property owned by at least two people with no rights of survivorship afforded to any of the owners (i.e., account holders). Generally, the ownership in the account is determined on a pro rata basis, meaning that if there are two tenants in the account, each will have a 50% claim on the account's value.
JE	Tenancy by the Entireties	Joint ownership of property by spouses where, upon the death of one, the property goes to the survivor.
OR	(Or) Unspecified Joint Relationship	A designation where any person on the account may obtain all of the property.
PD	Payable On Death	An account that is payable to the person specified upon the death of the owner of the account.
PA	Payee	The one named on a check or promissory note entitled to receive payment. **NOTE: Only use this code when there is only one payee on a check or promissory note. If there is more than one payee you must use a relationship code that describes the relationship of the payees on the check. For example: If the payees on a check are John Doe & Jane Doe, then the AN relationship code must be used for both owners.**
PO	Power of Attorney	A written document signed by a person called the principal giving another person the power to act for the principal. There are both general powers of attorney which give the authorized party broad authority and special powers of attorney that are more limited in scope. To be recognized, a power of attorney must conform to requirements of law.
RE	Remitter	Used primarily on official checks. The Remitter is the person who purchased the official check. This relationship is different from the reporting entity who remits the unclaimed property to the Department.
SO	Sole Owner	The single owner of a property who has all rights to the ownership of the property.
TE	Trustee	A person or entity who holds the assets (corpus) of a trust for the benefit of the beneficiaries and manages the trust and its assets under the terms of the trust.
UG	Uniform Gifts to Minors Act	An act that permits the designated custodian to act on behalf of the minor. The custodian on the account must be coded as CF, and even after the minor reaches the age of majority the UG relation coding of the account should continue.
UT	Uniform Transfer to Minors Act	An act that permits the designated custodian to act on behalf of the minor. The custodian on the account must be coded as CF, and even after the minor reaches the age of majority the UT relation coding of the account should continue.
UN	Unknown	The owner's relationship to the property is not known.

RELATIONSHIP CODES		
Code	**Short Description**	**Definition**
UF	Usufruct	A right to use a property owned by another, normally for a limited time or until death. Simply stated, it is the right to use the property, to enjoy the fruits and income of the property, to rent the property out and to collect the rents, all to the exclusion of the underlying property owner. The usufructuary has the full right to use the property but cannot dispose of nor destroy the property.

1.3.4.3 *GUIDE ON REPORTING OWNER NAMES FOR UNIQUE PROPERTY TYPES*

Type of Property	How to Report Owner Name	Property Type Code	Relationship Code
Estate	Do not include "Estate of" in the name field on your report. Only include the first and last name of the deceased owner. (The Estate should be reflected in the relationship code field.)	Varies depending on type of property being reported (checking, savings, IRA, etc.)	Owner: ES
IRA	Do not include "IRA" anywhere in the first name, last name, or address fields. Report the last name and first name of the owner, and any beneficiary information, if applicable.	Any of the "IR" property type codes	Owner: SO Beneficiary: BF
Trust	Report "John Smith Living Trust" as a business with the tax ID of the trust. If there is a trustee for the trust, the trustee must be reported as an alternate owner.	Varies depending on the type of property being reported (checking, savings, IRA, etc.)	Owner(s): SO or AN Beneficiary: BF Trustee: TE
Guardianship/Custodian	Do not include the word "Guardian" or "Custodian" anywhere in the name or address fields on the report. The guardian or custodian must be reported as an alternate owner on the account, with the correct relationship code. The guardian or custodian must not be reported as the primary owner. The actual owner of the funds must be listed as the primary owner.	Varies depending on the type of property being reported (checking, savings, IRA, etc.)	Owner(s): SO or AN Guardian: GR Custodian: CF

1.3.4.4 TANGIBLE CATEGORY CODES

The Tangible Category Code is required when using the Electronic Report Format option and is used to identify the category type for each item being reported from a safe-deposit box.

TANGIBLE CATEGORY CODES TABLE (ELECTRONIC FORMAT)	
SB01	Jewelry
SB02	Watches
SB03	Coins
SB04	Stock Certificates
SB05	Other Bonds
SB06	Personal I.D. Documents
SB07	Miscellaneous Other Items
SB08	Numismatic Bills
SB09	Foreign Bills
SB10	Foreign Coins
SB11	Checks, CDs, Traveler's Checks
SB12	U.S. Savings Bonds
SB13	U.S. Gold
SB14	Foreign Gold
SB15	Cashier's Check, Face Value Monies

2. SECTION 2: OTHER REPORTING-RELATED INFORMATION

2.1 REPORT FILING EXTENSION

A written request for an extension of time to file the report of unclaimed property for property that reached the required dormancy period during the prior calendar year must be postmarked or filed with the Department by April 30th of the subsequent calendar year. A written request that is not timely postmarked or filed will be denied. The Department will review the facts and circumstances of each timely postmarked or filed written request and if the Department finds that the requestor has shown that good cause exists to grant an extension, the Department will postpone the reporting date or extend the property delivery date for a period of up to sixty (60) days. Extensions will be granted for one reporting period only within a three-year time frame from the date of the first extension.

Extension requests may be sent by email to EReporting@MyFloridaCFO.com or by mail at the below address.

Florida Department of Financial Services
Division of Unclaimed Property – Reporting Section
200 E. Gaines Street, Larson Bldg.
Tallahassee, FL 32399-0355

2.2 LIMITS ON THE VALUE OF AN ACCOUNT THAT MUST BE REPORTED AND REMITTED

All identified unclaimed property must be reported and remitted except:

- A zero report may be filed if the total unclaimed property for the reporting period has a total value of $10 or less.
- **Credit balances, customer overpayments, security deposits, and refunds** having a value of less than $10 shall not be presumed unclaimed.

2.3 ANNUAL REPORTING

A holder that has previously filed a report of unclaimed property with the State of Florida must file a report of unclaimed property each year thereafter. This includes filing a "zero" report if the holder did not identify any unclaimed property for the current report year.

All entities, regardless of previous reporting history, are subject to the requirements of Florida's Unclaimed Property Law. The Department has the authority to audit any holder to verify compliance with requirements of Florida's Unclaimed Property Law.

2.4 SPECIAL NOTE TO ENTITIES REPORTING UNCLAIMED PROPERTY HELD OR OWING UNDER ANY LIFE OR ENDOWMENT INSURANCE POLICY OR ANNUITY CONTRACT

Unclaimed funds which have a value of $50 or more held or owing under any life or endowment insurance policy or annuity contract must be reported with the full name, taxpayer identification number or social security number, date of birth, if known, and last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds.

This information is in addition to the owner information provided by the holder on the electronic file.

General Questions

How Do Accounts Become Unclaimed Property?

What is unclaimed property?
Unclaimed Property is a financial asset that is unknown or lost, or has been left inactive, unclaimed or abandoned by its owner. The most common types of unclaimed property are dormant bank accounts, unclaimed insurance proceeds, stocks, dividends, uncashed checks, deposits, credit balances and refunds. Unclaimed property also includes contents from abandoned safe deposit boxes in financial institutions. Unclaimed property assets are held by business or government entities (holders) for a set period of time, usually five years. If the holder is unable to locate, re-establish contact with the owner and return the asset, it is reported and remitted to the Florida Department of Financial Services, Division of Unclaimed Property.

Why do the accounts come to the state?
Chapter 717, Florida Statutes, requires the unclaimed property assets be held by business or government entities (holders) for a set period of time, usually five years. If the holder is unable to locate, re-establish contact with the owner and return the asset, it is reported and remitted to the Florida Department of Financial Services, Division of Unclaimed Property.

Are any efforts made to find owners? What if money is not claimed?
Businesses (holders of unclaimed property) are required to try to locate the owner, but when their attempts fail, they report the property and the owner's name, last known address and other information to the Department. The Department acts as custodian for the State of Florida, but never takes legal ownership of the property. The State uses various methods, including database searches, in an effort to notify owners of their property. Citizens have the right to claim their property, at no cost, any time, regardless of the amount.

What does the State do with the money before it is claimed?
Unclaimed funds are deposited into the State School Fund and used to support public schools. However, the original amount reported can always be claimed by the owner, or his/her heirs, at no cost.

Does the state pay interest on claims?
Chapter 717, Florida Statutes, does not provide for the payment of interest on claims other than that reported and remitted to the Department by the holder.

Search for and Claim Unclaimed Property

How do I search for unclaimed property?

Begin by searching the interactive database, available free of charge, 24 hours a day, which allows claimants to initiate a claims process (with instructions) for accounts they believe they are entitled to claim. For the best results, search all known names (maiden name, married names, nick-names).

Start an Unclaimed Property Search (/ControlServlet?ActionForm=GotoNewPublicSearch)

Submitting Claim

I have received my claim form, what do I do now?
Read carefully, fill out completely and sign your claim form. Each claim form will detail the documentation you are required to provide. The required documentation will include (but may not be limited to) a copy of your current identification reflecting your current mailing address and documentation proving your ownership of the account. Please refer to your claim form for the specific documentation required for your particular claim. Mail the completed claim form with the required documentation to the address indicated on the form.

How Do I Prove the Account Belongs to Me?
Each claim form will detail what documentation will be required in order to verify your ownership of the property. Having the same name as that on an account does not establish entitlement, as there are many people who share the same names. Often, claims are received from more than one person with the same name, trying to claim the same account(s). Proper entitlement can only be established by providing the required documentation. Providing your identification alone may not be sufficient. What documentation you are asked to submit may vary depending upon what information the company that reported the funds to the department provided about the owner of the account. You may be asked for documentation of your Social Security Number, a past address or proof of your past connection or relationship to the entity that reported the account to the Department. If you are the heir of a deceased account owner, you will also be asked to provide certified copies of official documentation that establishes your entitlement to the property. Examples of unacceptable documentation are: hand written letters, letterhead and business cards, printouts from the Internet and telephone directories.

What Types of Identification are Accepted?
Florida law requires claimants to provide a copy of their driver's license or another form of government-issued photographic identification. If your Identification does not reflect your current address, please include other documentation (such as a current utility bill, etc.) reflecting your current mailing address in addition to your Identification and proof of ownership. If the account has more than one owner and one of the owners is deceased, a certified death certificate for the deceased owner is required in addition to the Identification for the person claiming the account. Note: Each claimant must submit identification and sign the claim form.

What if the Original Owner of the Property is Deceased?
Proof of ownership (detailed above) must still be established with documentation (as detailed on your claim form). In addition, you must provide a certified death certificate for the owner, along with identification and signed claim forms for all heirs of the owner (or for the personal representative if the estate remains open). Additional documentation may be required depending on the specific case. Please review the Florida Administrative Code (https://www.myfloridacfo.com/appresources/upmis/admin/Administrative-Rules.pdf)section 69G-20.0022 (3) for more information.

After Submitting a Claim

How long does it take to get my money?
The Department is allotted up to 90 days from the date it receives your complete claim package to make a determination. Claims are often processed sooner, but due to the high volume of claims received by the department, the full 90-day period may be required to finalize your claim. Please allow this time period to pass before calling our office. The period may be extended if all of the required documentation is not included with the original claim package. Please read your claim form carefully to ensure you provide all of the necessary documentation. Failure to return your claim form completely filled-out, along with all of the required documentation, will result in the missing information being requested, and the delay of processing your claim.

Was my claim received?
Click here (/ControlServlet?ActionForm=ClaimChkStatusExternal&Action=DIRECT) to see if the Department received your claim.

I've moved since I sent my claim in, what do I do?

To request a change of address, or if you believe your check may have been lost in the mail, please have your claim number ready and call the Customer Service line. You may also email us to inform us of the address change or to make inquiries regarding your check.

What if the Original Owner of the Property is Deceased?

Proof of ownership (detailed above) must still be established with documentation (as detailed on your claim form). In addition, you must provide a certified death certificate for the owner, along with identification and signed claim forms for all heirs of the owner (or for the personal representative if the estate remains open). Additional documentation may be required depending on the specific case. Please review the Florida Administrative Code (https://www.myfloridacfo.com/appresources/upmis/admin/Administrative-Rules.pdf)section 69G-20.0022 (paragraph 3) for more information.

Florida Department of Financial Services
200 East Gaines Street, Tallahassee, FL 32399-0358
Email: FloridaUnclaimedProperty@MyFloridaCFO.com
(mailto:FloridaUnclaimedProperty@MyFloridaCFO.com)

(https://www.myfloridacfo.com)

(e) a written or recorded communication requested by a prospective client;

(f) professional announcement cards stating new or changed associations, new offices, and similar changes relating to a lawyer or law firm, and that are mailed only to other lawyers, relatives, close personal friends, and existing or former clients; and

(g) information contained on the lawyer's Internet website(s).

Adopted January 31, 2013, effective May 1, 2013 (108 So.3d 609).

RULE 4-7.21 FIRM NAMES AND LETTERHEAD

(a) False, Misleading, or Deceptive Firm Names. A lawyer may not use a firm name, letterhead, or other professional designation that violates rules 4-7.11 through 4-7.15.

(b) Trade Names. A lawyer may practice under a trade name if the name is not deceptive and does not imply a connection with a government agency or with a public or charitable legal services organization, does not imply that the firm is something other than a private law firm, and is not otherwise in violation of rules 4-7.11 through 4-7.15. A lawyer in private practice may use the term "legal clinic" or "legal services" in conjunction with the lawyer's own name if the lawyer's practice is devoted to providing routine legal services for fees that are lower than the prevailing rate in the community for those services.

(c) Advertising Under Trade Names. A lawyer may not advertise under a trade or fictitious name, except that a lawyer who actually practices under a trade name as authorized by subdivision (b) may use that name in advertisements. A lawyer who advertises under a trade or fictitious name is in violation of this rule unless the same name is the law firm name that appears on the lawyer's letterhead, business cards, office sign, and fee contracts, and appears with the lawyer's signature on pleadings and other legal documents.

(d) Law Firm with Offices in Multiple Jurisdictions. A law firm with offices in more than 1 jurisdiction may use the same

name in each jurisdiction, but identification of the lawyers in an office of the firm must indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(e) Name of Public Officer in Firm Name. The name of a lawyer holding a public office may not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(f) Partnerships and Business Entities. A name, letterhead, business card or advertisement may not imply that lawyers practice in a partnership or authorized business entity when they do not.

(g) Insurance Staff Attorneys. Where otherwise consistent with these rules, lawyers who practice law as employees within a separate unit of a liability insurer representing others pursuant to policies of liability insurance may practice under a name that does not constitute a material misrepresentation. In order for the use of a name other than the name of the insurer not to constitute a material misrepresentation, all lawyers in the unit must comply with all of the following:

(1) the firm name must include the name of a lawyer who has supervisory responsibility for all lawyers in the unit;

(2) the office entry signs, letterhead, business cards, websites, announcements, advertising, and listings or entries in a law list or bar publication bearing the name must disclose that the lawyers in the unit are employees of the insurer;

(3) the name of the insurer and the employment relationship must be disclosed to all insured clients and prospective clients of the lawyers, and must be disclosed in the official file at the lawyers' first appearance in the tribunal in which the lawyers appear under such name;

(4) the offices, personnel, and records of the unit must be functionally and physically separate from other operations of the insurer to the extent that would be required by these rules if the

lawyers were private practitioners sharing space with the insurer; and

(5) additional disclosure should occur whenever the lawyer knows or reasonably should know that the lawyer's role is misunderstood by the insured client or prospective clients.

Comment

Misleading Firm Name

A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity, or by a trade name such as "Family Legal Clinic." Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in a law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is not a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm.

A sole practitioner may not use the term "and Associates" as part of the firm name, because it is misleading where the law firm employs no associates in violation of rule 4-7.13. *See Fla. Bar v. Fetterman*, 439 So. 2d 835 (Fla. 1983). Similarly, a sole practitioner's use of "group" or "team" implies that more than one lawyer is employed in the advertised firm and is therefore misleading.

Subdivision (a) precludes use in a law firm name of terms that imply that the firm is something other than a private law firm. Three examples of such terms are "academy," "institute" and "center." Subdivision (b) precludes use of a trade or fictitious name suggesting that the firm is named for a person when in fact such a person does not exist or is not associated with the firm. An

example of such an improper name is “A. Aaron Able.” Although not prohibited per se, the terms “legal clinic” and “legal services” would be misleading if used by a law firm that did not devote its practice to providing routine legal services at prices below those prevailing in the community for like services.

Trade Names

Subdivision (c) of this rule precludes a lawyer from advertising under a nonsense name designed to obtain an advantageous position for the lawyer in alphabetical directory listings unless the lawyer actually practices under that nonsense name. Advertising under a law firm name that differs from the firm name under which the lawyer actually practices violates both this rule and the prohibition against false, misleading, or deceptive communications as set forth in these rules.

With regard to subdivision (f), lawyers sharing office facilities, but who are not in fact partners, may not denominate themselves as, for example, “Smith and Jones,” for that title suggests partnership in the practice of law.

All lawyers who practice under trade or firm names are required to observe and comply with the requirements of the Rules Regulating the Florida Bar, including but not limited to, rules regarding conflicts of interest, imputation of conflicts, firm names and letterhead, and candor toward tribunals and third parties.

Insurance Staff Lawyers

Some liability insurers employ lawyers on a full-time basis to represent their insured clients in defense of claims covered by the contract of insurance. Use of a name to identify these lawyers is permissible if there is such physical and functional separation as to constitute a separate law firm. In the absence of such separation, it would be a misrepresentation to use a name implying that a firm exists. Practicing under the name of a lawyer inherently represents that the identified person has supervisory responsibility. Practicing under a name prohibited by subdivision (f) is not permitted. Candor requires disclosure of the employment relationship on letterhead, business cards, and in certain other communications that are not

presented to a jury. The legislature of the State of Florida has enacted, as public policy, laws prohibiting the joinder of a liability insurer in most such litigation, and Florida courts have recognized the public policy of not disclosing the existence of insurance coverage to juries. Requiring lawyers who are so employed to disclose to juries the employment relationship would negate Florida public policy. For this reason, the rule does not require the disclosure of the employment relationship on all pleadings and papers filed in court proceedings. The general duty of candor of all lawyers may be implicated in other circumstances, but does not require disclosure on all pleadings.

Adopted January 31, 2013, effective May 1, 2013 (108 So.3d 609).

RULE 4-7.22 REFERRALS, DIRECTORIES AND POOLED ADVERTISING

(a) Applicability of Rule. A lawyer is prohibited from participation with any qualifying provider that does not meet the requirements of this rule and any other applicable Rule Regulating The Florida Bar.

(b) Qualifying Providers. A qualifying provider is any person, group of persons, association, organization, or entity that receives any benefit or consideration, monetary or otherwise, for the direct or indirect referral of prospective clients to lawyers or law firms, including but not limited to:

(1) matching or other connecting of a prospective client to a lawyer drawn from a specific group or panel of lawyers or who matches a prospective client with lawyers or law firms;

(2) a group or pooled advertising program, offering to refer, match or otherwise connect prospective legal clients with lawyers or law firms, in which the advertisements for the program use a common telephone number or website address and prospective clients are then matched or referred only to lawyers or law firms participating in the group or pooled advertising program;

RULE 4-8.5 JURISDICTION

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

Comment

In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States. In doing so, they remain subject to the governing authority of the jurisdiction in which they are licensed to practice. If their activity in another jurisdiction is substantial and continuous, it may constitute the practice of law in that jurisdiction. See rule 4-5.5.

If the Rules of Professional Conduct in the 2 jurisdictions differ, principles of conflict of laws may apply. Similar problems can arise when a lawyer is licensed to practice in more than 1 jurisdiction.

Where the lawyer is licensed to practice law in 2 jurisdictions that impose conflicting obligations, applicable rules of choice of law may govern the situation. A related problem arises with respect to practice before a federal tribunal where the general authority of the states to regulate the practice of law must be reconciled with such authority as federal tribunals may have to regulate practice before them.

Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252).

RULE 4-8.6 AUTHORIZED BUSINESS ENTITIES

(a) Authorized Business Entities. Lawyers may practice law in the form of professional service corporations, professional limited liability companies, sole proprietorships, general partnerships, or limited liability partnerships organized or qualified under applicable law. Such forms of practice are authorized business entities under these rules.

(b) Practice of Law Limited to Members of The Florida Bar. No authorized business entity may engage in the practice of law in the state of Florida or render advice under or interpretations of Florida law except through officers, directors, partners, managers, agents, or employees who are qualified to render legal services in this state.

(c) Qualifications of Managers, Directors and Officers. No person may serve as a partner, manager, director or executive officer of an authorized business entity that is engaged in the practice of law in Florida unless such person is legally qualified to render legal services in this state. For purposes of this rule the term "executive officer" includes the president, vice-president, or any other officer who performs a policy-making function.

(d) Violation of Statute or Rule. A lawyer who, while acting as a shareholder, member, officer, director, partner, proprietor, manager, agent, or employee of an authorized business entity and engaged in the practice of law in Florida, violates or sanctions the violation of the authorized business entity statutes or the Rules Regulating The Florida Bar will be subject to disciplinary action.

(e) Disqualification of Shareholder, Member, Proprietor, or Partner; Severance of Financial Interests. Whenever a shareholder of a professional service corporation, a member of a professional limited liability company, proprietor, or partner in a limited liability partnership becomes legally disqualified to render legal services in this state, said shareholder, member, proprietor, or partner must sever all employment with and financial interests in such authorized business entity immediately. For purposes of this rule the term "legally disqualified" does not include suspension from the practice of law for a period of time less than 91 days. Severance of employment and financial interests required by this rule will not preclude the shareholder, member, proprietor, or partner from receiving compensation based on legal fees generated for legal services performed during the time when the shareholder, member, proprietor, or partner was legally qualified to render legal services in this state. This provision will not prohibit employment of a legally disqualified shareholder, member, proprietor, or partner in a position that does not render legal service nor payment to an

existing profit sharing or pension plan to the extent permitted in rules 3-6.1 and 4-5.4(a)(3), or as required by applicable law.

(f) Cessation of Legal Services. Whenever all shareholders of a professional service corporation, or all members of a professional limited liability company, the proprietor of a solo practice, or all partners in a limited liability partnership become legally disqualified to render legal services in this state, the authorized business entity must cease the rendition of legal services in Florida.

(g) Application of Statutory Provisions. Unless otherwise provided in this rule, each shareholder, member, proprietor, or partner of an authorized business entity will possess all rights and benefits and will be subject to all duties applicable to such shareholder, member, proprietor, or partner provided by the statutes pursuant to which the authorized business entity was organized or qualified.

Comment

In 1961 this court recognized the authority of the legislature to enact statutory provisions creating corporations, particularly professional service corporations. But this court also noted that "[e]nabling action by this Court is therefore an essential condition precedent to authorize members of The Florida Bar to qualify under and engage in the practice of their profession pursuant to The 1961 Act." In Re The Florida Bar, 133 So. 2d 554, at 555 (Fla. 1961).

The same is true today, whatever the form of business entity created by legislative enactment. Hence, this rule is adopted to continue authorization for members of the bar to practice law in the form of a professional service corporation, a professional limited liability company, or a limited liability partnership. This rule also permits a member of the bar to practice law as a sole proprietor or as a member of a general partnership. These types of entities are collectively referred to as authorized business entities.

Limitation on rendering legal services

No person may render legal services on behalf of an authorized business entity unless that person is otherwise authorized to do so via membership in the bar or through a motion for leave to appear. Neither the adoption of this rule nor the statutory provisions alter this limitation.

Employment by and financial interests in an authorized business entity

This rule and the statute require termination of employment of a shareholder, member, proprietor, or partner when same is "legally disqualified" to render legal services. The purpose of this provision is to prohibit compensation based on fees for legal services rendered at a time when the shareholder, member, proprietor, or partner cannot render the same type of services. Continued engagement in capacities other than rendering legal services with the same or similar compensation would allow circumvention of prohibitions of sharing legal fees with one not qualified to render legal services. Other rules prohibit the sharing of legal fees with nonlawyers and this rule continues the application of that type of prohibition. However, nothing in this rule or the statute prohibits payment to the disqualified shareholder, member, proprietor, or partner for legal services rendered while the shareholder, member, proprietor, or partner was qualified to render same, even though payment for the legal services is not received until the shareholder, member, proprietor, or partner is legally disqualified.

Similarly, this rule and the statute require the severance of "financial interests" of a legally disqualified shareholder, member, proprietor, or partner. The same reasons apply to severance of financial interests as those that apply to severance of employment. Other provisions of these rules proscribe limits on employment and the types of duties that a legally disqualified shareholder, member, proprietor, or partner may be assigned.

Practical application of the statute and this rule to the requirements of the practice of law mandates exclusion of short term, temporary removal of qualifications to render legal services.

Hence, any suspension of less than 91 days, including membership fees delinquency suspensions, is excluded from the definition of the term. These temporary impediments to the practice of law are such that with the passage of time or the completion of ministerial acts, the member of the bar is automatically qualified to render legal services. Severe tax consequences would result from forced severance and subsequent reestablishment (upon reinstatement of qualifications) of all financial interests in these instances.

However, the exclusion of such suspensions from the definition of the term does not authorize the payment to the disqualified shareholder, member, proprietor, or partner of compensation based on fees for legal services rendered during the time when the shareholder, member, proprietor, or partner is not personally qualified to render such services. Continuing the employment of a legally disqualified shareholder, member, proprietor, or partner during the term of a suspension of less than 91 days requires the authorized business entity to take steps to avoid the practice of law by the legally disqualified shareholder, member, proprietor, or partner, the ability of the legally disqualified shareholder, member, proprietor, or partner to control the actions of members of the bar qualified to render legal services, and payment of compensation to the legally disqualified shareholder, member, proprietor, or partner based on legal services rendered while the legally disqualified shareholder, member, proprietor, or partner is not qualified to render them. Mere characterization of continued compensation, which is the same or similar to that the legally disqualified shareholder, member, proprietor, or partner received when qualified to render legal services, is not sufficient to satisfy the requirements of this rule.

Profit sharing or pension plans

To the extent that applicable law requires continued payment to existing profit sharing or pension plans, nothing in this rule or the statute may abridge such payments. However, if permitted under applicable law the amount paid to the plan for a legally disqualified shareholder, member, proprietor, or partner will not include payments based on legal services rendered while the legally

disqualified shareholder, member, proprietor, or partner was not qualified to render legal services.

Interstate practice

This rule permits members of The Florida Bar to engage in the practice of law with lawyers licensed to practice elsewhere in an authorized business entity organized under the laws of another jurisdiction and qualified under the laws of Florida (or vice-versa), but nothing in this rule is intended to affect the ability of non-members of The Florida Bar to practice law in Florida. See, e.g., *The Florida Bar v. Savitt*, 363 So. 2d 559 (Fla. 1978).

The terms qualified and legally disqualified are imported from the Professional Service Corporation Act (Chapter 621, Florida Statutes).

Added June 8, 1989 (544 So.2d 193); amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); amended June 27, 1996, effective July 1, 1996 (677 So.2d 272); amended Sept. 24, 1998, effective Oct. 1, 1998 (718 So.2d 1179); amended May 20, 2004 (875 So.2d 448); amended October 6, 2005, effective January 1, 2006 (916 So.2d 655); amended May 29, 2014; effective June 1, 2014 (140 So.3d 541).

Select Year: 2024 Go

The 2024 Florida Statutes (including 2025 Special Session C)

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CHAPTER 621

PROFESSIONAL SERVICE CORPORATIONS AND LIMITED LIABILITY COMPANIES

621.01 Legislative intent.—It is the legislative intent to provide for the incorporation or organization as a limited liability company of an individual or group of individuals, professional corporations, or professional limited liability companies to render the same professional service to the public for which such individuals, individual shareholders of professional corporations, or members of limited liability companies are required by law to be licensed or to obtain other legal authorization.

History.—s. 1, ch. 61-64; s. 1, ch. 93-110; s. 74, ch. 93-284.

621.02 Short title.—This act may be cited as the "Professional Service Corporation and Limited Liability Company Act."

History.—s. 2, ch. 61-64; s. 2, ch. 93-110; s. 75, ch. 93-284.

621.03 Definitions.—As used in this act the following words shall have the meaning indicated:

(1) The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. By way of example and without limiting the generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified public accountants, public accountants, chiropractic physicians, dentists, osteopathic physicians, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatric physicians, chiropodists, architects, veterinarians, attorneys at law, and life insurance agents.

(2) The term "professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering professional service and which has as its shareholders only other professional corporations, professional limited liability companies, or individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the corporation.

(3) The term "professional limited liability company" means a limited liability company that is organized under this act for the sole and specific purpose of rendering professional service and that has as its members only other professional limited liability companies, professional corporations, or individuals who themselves are duly licensed or otherwise legally authorized to render the same professional service as the limited liability company.

History.—s. 3, ch. 61-64; s. 3, ch. 93-110; s. 76, ch. 93-284; s. 56, ch. 97-264; ss. 220, 289, ch. 98-166.

621.04 Exemptions.—This act shall not apply to any individuals or groups of individuals within this state who prior to the passage of this act were permitted to organize a corporation or limited liability company and perform personal services to the public by the means of a corporation or limited liability company, and this act shall not apply to any corporations or limited liability companies organized by such individual or group of individuals prior to the passage of this act; provided, however, an individual or group of individuals or any such corporation or limited liability company may bring themselves and such corporation or limited liability company within the provisions of this act by amending the articles of incorporation, if a corporation, or the articles of organization, if a limited liability company, in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles that the shareholders or members have elected to bring the corporation or limited liability company within the provisions of this act.

History.—s. 4, ch. 61-64; s. 4, ch. 93-110; s. 77, ch. 93-284.

621.05 Corporation organization.—One or more individuals, professional corporations, or professional limited liability companies, in any combination, duly licensed or otherwise legally authorized to render the same professional services may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of chapter 607 for the sole and specific purpose of rendering the same and specific professional service.

History.—s. 5, ch. 61-64; s. 10, ch. 79-9; s. 5, ch. 93-110; s. 78, ch. 93-284.

621.051 Limited liability company organization.—A group of professional service corporations, professional limited liability companies, or individuals, in any combination, duly licensed or otherwise legally authorized to render the same professional services may organize and become members of a professional limited liability company for pecuniary profit under the provisions of chapter 605 for the sole and specific purpose of rendering the same and specific professional service.

History.—s. 6, ch. 93-110; s. 79, ch. 93-284; ss. 22, 23, ch. 2013-180.

621.06 Rendition of professional services, limitations.—No corporation or limited liability company organized under this act may render professional services except through its members, officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services; provided, however, this provision shall not be interpreted to include in the term "employee," as used herein, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required; and provided further, that nothing contained in this act shall be interpreted to require that the right of an individual to be a shareholder of a corporation or a member of a limited liability company organized under this act, or to organize such a corporation or limited liability company, is dependent upon the present or future existence of an employment relationship between him or her and such corporation or limited liability company, or his or her present or future active participation in any capacity in the production of the income of such corporation or limited liability company or in the performance of the services rendered by such corporation or limited liability company.

History.—s. 6, ch. 61-64; s. 1, ch. 67-590; s. 7, ch. 93-110; s. 80, ch. 93-284; s. 170, ch. 97-102; s. 18, ch. 2008-187.

621.07 Liability of officers, agents, employees, shareholders, members, and corporation or limited liability company.—Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict, or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct; provided, however, that any officer, agent, member, manager, or employee of a corporation or limited liability company organized under this act shall be personally liable and accountable only for negligent or wrongful acts or misconduct committed by that person, or by any person under that person's direct supervision and control, while rendering professional service on behalf of the corporation or limited liability company to the person for whom such professional services were being rendered; and provided further that the personal liability of shareholders of a corporation, or members of a limited liability company, organized under this act, in their capacity as shareholders or members of such corporation or limited liability company, shall be no greater in any aspect than that of a shareholder-employee of a corporation organized under chapter 607 or a member-employee of a limited liability company organized under chapter 605. The corporation or limited liability company shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, agents, members, managers, or employees while they are engaged on behalf of the corporation or limited liability company in the rendering of professional services.

History.—s. 7, ch. 61-64; s. 2, ch. 67-590; s. 11, ch. 79-9; s. 8, ch. 93-110; s. 81, ch. 93-284; ss. 24, 25, ch. 2013-180.

621.08 Limitation on corporation's or limited liability company's business transactions; investment of funds.—No corporation or limited liability company organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically organized; provided, however, nothing in this act or in any other provisions of existing law applicable to corporations or limited liability companies shall be interpreted to prohibit such corporation or limited liability company from investing its funds in real estate, mortgages, stocks, bonds, or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

History.—s. 8, ch. 61-64; s. 9, ch. 93-110; s. 82, ch. 93-284.

621.09 Limitation on issuance and transfer of ownership.—

(1) No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than a professional corporation, a professional limited liability company, or an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of that person's stock.

(2) No person shall be admitted as a member of a limited liability company organized under this act, unless such person is a professional corporation, a professional limited liability company, or an individual, each of which must be duly licensed or otherwise legally authorized to render the same specific professional services as those for which the limited liability company is organized. No member of a limited liability company organized under this act shall enter into any type of agreement vesting another person with the authority to exercise any of that member's voting power in the limited liability company.

History.—s. 9, ch. 61-64; s. 10, ch. 93-110; s. 83, ch. 93-284.

621.10 Disqualification of member, shareholder, officer, agent, or employee; administrative dissolution.—If any member, officer, shareholder, agent, or employee of a corporation or limited liability company organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services or accepts employment that, pursuant to existing law, places restrictions or limitations upon that person's continued rendering of such professional services, that person shall sever all employment with, and financial interests in, such corporation or limited liability company forthwith. A corporation's or limited liability company's failure to require compliance with this provision shall constitute a ground for the judicial dissolution of the corporation or limited liability company. When a corporation's or limited liability company's

failure to comply with this provision is brought to the attention of the Department of State, the department forthwith shall certify that fact to the Department of Legal Affairs for appropriate action to dissolve the corporation or limited liability company.

History.—s. 10, ch. 61-64; ss. 10, 11, 35, ch. 69-106; s. 1, ch. 69-288; s. 1, ch. 70-305; s. 1, ch. 70-439; s. 11, ch. 93-110; s. 84, ch. 93-284; s. 19, ch. 2008-187.

621.11 Alienation of shares and ownership interests; restrictions.—

(1) No shareholder of a corporation organized under this act may sell or transfer her or his shares in such corporation except to another professional corporation, professional limited liability company, or individual, each of which must be eligible to be a shareholder of such corporation.

(2) No member of a limited liability company organized under this act may sell or transfer ownership interest in the limited liability company except to another professional corporation, professional limited liability company, or individual, each of which must be eligible to be a member of the limited liability company.

History.—s. 11, ch. 61-64; s. 3, ch. 67-590; s. 12, ch. 93-110; s. 85, ch. 93-284; s. 171, ch. 97-102.

621.12 Identification with individual shareholders or individual members.—

(1) The name of a corporation or limited liability company organized under this act may contain the last names of some or all of the individual shareholders or individual members and may contain the last names of retired or deceased former individual shareholders or individual members of the corporation, limited liability company, a predecessor corporation or limited liability company, or partnership.

(2) The name shall also contain:

(a) The word "chartered"; or

(b)1. In the case of a professional corporation, the words "professional association," or the abbreviation "P.A." or the designation "PA"; or

2. In the case of a professional limited liability company formed before January 1, 2014, the words "professional limited company" or "professional limited liability company," the abbreviation "P.L." or "P.L.L.C." or the designation "PL" or "PLLC," in lieu of the words "limited company" or "limited liability company," or the abbreviation "L.C." or "L.L.C." or the designation "LC" or "LLC" as otherwise required under s. 605.0112 or former s. 608.406.

3. In the case of a professional limited liability company formed on or after January 1, 2014, the words "professional limited liability company," the abbreviation "P.L.L.C." or the designation "PLLC," in lieu of the words "limited liability company," or the abbreviation "L.L.C." or the designation "LLC" as otherwise required under s. 605.0112.

(3) In the case of a corporation, the use of the word "company," "corporation," or "incorporated" or any other word, abbreviation, affix, or prefix indicating that it is a corporation in the corporate name of a corporation organized under this act, other than the word "chartered" or the words "professional association" or the abbreviation "P.A.," is specifically prohibited.

(4) It shall be permissible, however, for the corporation or limited liability company to render professional services and to exercise its authorized powers under a name which is identical to its name or contains any one or more of the last names of any shareholder or member included in such name except that the word "chartered," the words "professional association," "professional limited company," or "professional limited liability company," the abbreviations "P.A.," "P.L.," or "P.L.L.C.," or the designation "PA," "PL," or "PLLC" may be omitted, provided that the corporation or limited liability company has first registered the name to be so used in the manner required for the registration of fictitious names.

History.—s. 12, ch. 61-64; s. 1, ch. 77-134; s. 1, ch. 87-41; s. 13, ch. 93-110; s. 86, ch. 93-284; s. 26, ch. 2013-180; s. 32, ch. 2015-148; s. 283, ch. 2019-90.

621.13 Applicability of chapters 605 and 607.—

(1) Chapter 607 is applicable to a corporation organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 607. In such event, the

provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act.

(2) Chapter 605 is applicable to a limited liability company organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of chapter 605. In such event, the provisions and sections of this act shall take precedence with respect to a limited liability company organized pursuant to the provisions of this act.

(3) A professional corporation or limited liability company heretofore or hereafter organized under this act may change its business purpose from the rendering of professional service to provide for any other lawful purpose by amending its certificate of incorporation in the manner required for an original incorporation under chapter 607 or by amending its certificate of organization in the manner required for an original organization under chapter 605. However, such an amendment, when filed with and accepted by the Department of State, shall remove such corporation or limited liability company from the provisions of this chapter including, but not limited to, the right to practice a profession. A change of business purpose shall not have any effect on the continued existence of the corporation or limited liability company.

History.—s. 13, ch. 61-64; ss. 10, 35, ch. 69-106; s. 2, ch. 69-288; s. 210, ch. 77-104; s. 179, ch. 90-179; s. 14, ch. 93-110; s. 87, ch. 93-284; s. 20, ch. 2008-187; ss. 27, 28, ch. 2013-180.

621.14 Construction of law.—The provisions of this act shall not be construed as repealing, modifying, or restricting the applicable provisions of law relating to incorporations, organization of limited liability companies, sales of securities, or regulating the several professions enumerated in this act except insofar as such laws conflict with the provisions of this act.

History.—s. 15, ch. 61-64; s. 15, ch. 93-110; s. 88, ch. 93-284.

FLORIDA BAR ETHICS OPINION
OPINION 21-2
March 23, 2021

Advisory ethics opinions are not binding.

A lawyer ethically may accept payments via a Web-based payment-processing service (such as Venmo or PayPal), including funds that are the property of a client or third person, as long as reasonable steps are taken to protect against inadvertent or unwanted disclosure of information regarding the transaction and to safeguard funds of clients and third persons that are entrusted to the lawyer.

RPC: 4-1.1, 4-1.6(a), 4-1.6(e), 4-1.15, 5-1.1(a), (g)

I. Introduction

The Florida Bar Ethics Department has received several inquiries whether lawyers may accept payment from clients via Web-based payment-processing services such as Venmo and PayPal. This also is an increasingly frequent question on the Bar's Ethics Hotline. Accordingly, the Professional Ethics Committee issues this formal advisory opinion to provide Florida Bar members with guidance on the topic.

Several Web-based, mobile, and digital payment-processing services and networks ("payment-processing services") facilitate payment between individuals, between businesses, or between an individual and a business. Some are specifically designed for lawyers and law firms (e.g., LawPay and LexCharge), while others are not (e.g., Venmo, PayPal, ApplePay, Circle, and Square). These services operate in different ways. Some move funds directly from the payor's bank account to the payee's bank account, some move funds from a payor's credit card to a payee's bank account, and some hold funds for a period of time before transferring the funds to the payee. Service fees differ for various transactions, depending on the service's terms of operation. Some offer more security and privacy than others.

The Committee sees no ethical prohibition per se to using these services, as long as the lawyer fulfills certain requirements. Those requirements differ depending on the purpose of the payment—i.e., whether the funds are the property of the lawyer (such as earned fees) or the property of a client or third person (such as advances for costs and fees and escrow deposits). The two principal ethical issues are (1) confidentiality and (2) safeguarding funds of clients and third persons that are entrusted to the lawyer.

II. Analysis

A. *Confidentiality*

1. *The Issue*

The use of payment-processing services creates privacy risk. This arises from the potential publication of transactions and user-related information, whether to a network of subscribers or to a population of users interacting with an application. For example, Venmo users, when making a

payment, are permitted to input a description of the transaction (e.g., "$200 for cleaning service"). Transactions then are published to the feed of each Venmo user who is a party to the transaction. Depending on the privacy settings of each party to the transaction, other users of the application may view that transaction and even comment on it.

For lawyers, accepting payment through a payment-processing service risks disclosure of information pertaining to the representation of a client in violation of Rule 4-1.6(a) of the Rules Regulating The Florida Bar. Rule 4-1.6(a) prohibits a lawyer from revealing information relating to representation of a client absent the client's informed consent. This prohibition is broader than the evidentiary attorney-client privilege invoked in judicial and other proceedings in which the lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The ethical obligation of confidentiality applies in situations other than those in which information is sought from the lawyer by compulsion of law and extends not only to information communicated between the client and the lawyer in confidence but also to all information relating to the representation, whatever its source. R. Regulating Fla. Bar 4-1.6 cmt. para. [4]. Likewise, a lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation. *Id.* R. 4-1.6(e); *see also id.* R. 4-1.6 cmt. paras. [24], [25]. The obligation of confidentiality also arises from a lawyer's ethical duty to provide the client with competent representation. *See id.* R. 4-1.1 cmt. para. [3]. This includes safeguarding information contained in electronic transmissions and communications. *Id.*

Rule 4-1.6(c)(1) permits a lawyer to reveal confidential information to the extent the lawyer reasonably believes necessary to serve the client's interests. Although receipt of payment in connection with legal services benefits the client, the disclosure of information about the payment to a community of users would not. Wide publication of a Venmo payment "for divorce representation" hardly would serve the client's interest.[1]

2. *Recommended and Required Actions*

Payment-processing services typically offer various privacy settings. Venmo, for example, enables users to adjust their privacy settings to control who sees particular transactions. The options are (1) "Public," meaning anyone on the Internet will be able to see it, (2) "Friends only," meaning the transaction will be shared only with the "friends" of the participants to the transaction, and (3) "Private," meaning it will appear only on the personal feeds of the user and the other participant to the transaction. Venmo has a default rule that honors the more restrictive privacy setting between two users: if either participant's account is set to Private, the transaction will appear only on the feeds of the participants to the transaction, regardless of the setting enabled by the other participant.[2]

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[1] Revealing to a bank the limited information needed to make a deposit to the lawyer's account serves the client's interest. In addition, financial institutions are subject to federal and state laws regarding disclosure of financial information.

[2] *See* Venmo Help Center, "Payment Activity & Privacy" available at https://help.venmo.com/hc/en-us/articles/210413717-Payment-Activity-Privacy.

If, as with Venmo, the service being used permits the recipient to control the privacy setting, the lawyer must select the most secure setting to mitigate against unwanted disclosure of information relating to the representation.

Venmo is only one example of a payment-processing service. Each application has its unique privacy settings and potential risks. The lawyer should be aware that these options can and likely will change from time to time. Prior to using a payment-processing service, the lawyer must diligently research the service to ensure that the service maintains adequate encryption and other security features as are customary in the industry to protect the lawyer's and the client's financial information and to preserve the confidentiality of any transaction. The lawyer must make reasonable efforts to understand the manner and extent of any publication of transactions conducted on the platform and how to manage applicable settings to preempt and control unwanted disclosures. *See* R. Regulating Fla. Bar 4-1.6(e); *id.* R. 4-1.1 cmt. para. [3]. The lawyer must take reasonable steps to avoid disclosure by the lawyer as well as by the client, including advising clients of any steps that they should take to prevent unwanted disclosure of information. Although not ethically required, inserting such advice in the lawyer's retainer or engagement agreement or on each billing statement is wise. For example:

> As a convenience to our clients, we accept payment for our services via certain online payment-processing services. The use of these services carries potential privacy and confidentiality risks. Before using one of these services, you should review and elect the privacy setting that ensures that information relating to our representation of you is not inadvertently disclosed to the public at large.
>
> The foregoing is just an example. Variations to fit the circumstances may be appropriate.

These confidentiality obligations apply to any payment that relates to the lawyer's representation of a client, regardless of the purpose of the payment.

B. *Safeguarding Funds of Clients and Third Persons*

1. *The Issue*

A customer's account with most payment-processing services such as Venmo and PayPal does not qualify as the type of bank account in which the trust-accounting rules require the funds of clients or third persons in a lawyer's possession be held. Indeed, with limited exceptions, they are not bank accounts at all, rather they are virtual ledgers of funds trading hands, with entries made by the service in the customers' names.

Rule 5-1.1(a)(1) of the Rules Regulating The Florida Bar establishes the fundamental anti-commingling requirement that a lawyer hold in trust, separate from the lawyer's own funds, funds of clients or third persons that are in a lawyer's possession in connection with a representation ("entrusted funds"). It requires that all such funds, including advances for fees, costs, and expenses, "be kept in a separate federally insured bank, credit union, or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account."

All nominal or short-term entrusted funds must be deposited in an IOTA account. R. Regulating Fla. Bar 5-1.1(g)(2).[3] The IOTA account must be with an "eligible institution," namely, "any bank or savings and loan association authorized by federal or state laws to do business in Florida and insured by the Federal Deposit Insurance Corporation, any state or federal credit union authorized by federal or state laws to do business in Florida and insured by the National Credit Union Share Insurance Fund, or any successor insurance entities or corporation(s) established by federal or state laws, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Florida." *Id.* R. 5-1.1(g)(1)(D).

2. *Recommended and Required Actions*

The Committee concludes that it is permissible for a lawyer to accept entrusted funds via a payment-processing service. To avoid impermissible commingling, the lawyer must maintain separate accounts with the service, one for funds that are the property of the lawyer (such as earned fees), which normally would be deposited in the lawyer's operating account, and one for entrusted funds (such as advances for costs and fees and escrow deposits), which when in a lawyer's possession are required to be held in a separate trust account. The lawyer must identify the correct account for the client or third party making the payment.

Rule 5-1.1 applies to funds of clients and third persons that are "in a lawyer's possession" and requires that any such funds be "kept" in a particular type of account. It does not require that the funds be "immediately" or "directly" deposited into a qualifying account. A payee does not acquire possession—access to and control over—funds transmitted via a payment-processing service until the service makes those funds available in the payee's account. If the funds are the property of the lawyer, the lawyer may leave those funds in that account or transfer them to another account or payee at the lawyer's discretion. The lawyer, however, must transfer entrusted funds from the service account into an account at a qualifying banking or credit institution promptly upon their becoming available to the lawyer. By transferring entrusted funds from the service account into a qualified trust account promptly upon acquiring access to and control over those funds, the lawyer complies with the requirement that those funds be *kept* in a qualified account.

Many banks do not permit linking an IOTA account to an account with a payment-processing service such as Venmo or PayPal. In those situations, the lawyer should establish with the banking institution some type of suspense account to which the account established with the payment-processing service can be linked and into which the payments are transferred, then promptly swept into the lawyer's IOTA account.

Depending upon how quickly the funds are released or other factors, a payment-processing service may charge the payee a transaction fee. Unless the lawyer and the client otherwise agree, the

[3] "Nominal or short-term" describes funds of a client or third person that the lawyer has determined cannot earn income for the client or third person in excess of the costs to secure the income. R. Regulating Fla. Bar 5-1.1(g)(1)(A). That determination involves consideration of several factors, such as the amount of the funds and the period of time that the funds are expected to be held. *See id.* R. 5-1.1(g)(3); *see also id.* R. 5-1.1(g)(1)(C) (definition of "IOTA account").

lawyer must ensure that any such fee is paid by the lawyer and not from client trust funds. Likewise, the lawyer must ensure that any chargebacks are not deducted from trust funds and that the service will not freeze the account in the event of a payment dispute. As with the concern for confidentiality, a lawyer must make a reasonable investigation into a payment-processing service to determine whether the service employs reasonable measures to safeguard funds against loss or theft and has the willingness and resources to compensate for any loss.

III. Conclusion

In sum, the Committee concludes that a lawyer ethically may accept payments via a payment-processing service (such as Venmo or PayPal), including funds that are the property of a client or third person that must be held separately from the lawyer's own funds, under the following conditions:

1. The lawyer must take reasonable steps to prevent the inadvertent or unwanted disclosure of information regarding the transaction to parties other than the lawyer and the client or third person making the payment.

2. If the funds are the property of a client or third person (such as advances for costs and fees and escrow deposits), the lawyer must direct the payor to an account with the service that is used only to receive such funds and must arrange for the prompt transfer of those funds to the lawyer's trust account at an eligible banking or credit institution, whether through a direct link to the trust account if available, through a suspense account with the banking or credit institution at which the lawyer's trust account is maintained and from which the funds automatically and promptly are swept into the lawyer's trust account, or through another substantially similar arrangement.

3. Unless the lawyer and client otherwise agree, the lawyer must ensure that any transaction fee charged to the recipient is paid by the lawyer and not from client trust funds. Likewise, the lawyer must ensure that any chargebacks are not deducted from trust funds and that the service will not freeze the account in the event of a payment dispute.

The Rules of Professional Conduct are "rules of reason" and "should be interpreted with reference to the purposes of legal representation and of the law itself." R. Regulating Fla. Bar ch. 4, pmbl. ("Scope"). When reasonable to do so, the rules should be interpreted to permit lawyers and clients to conduct business in a manner that society has deemed commercially reasonable while still protecting clients' interests. Permitting lawyers to accept payments via payment-processing services under the conditions expressed in this opinion satisfies those objectives.[4]

Note: The discussion about specific applications in this opinion is based on the technology as it exists when this opinion is authored and does not purport to address all such available technology. Web-based applications and technology are constantly changing and evolving. A

[4] The quoted language comes from the Preamble to the Rules of Professional Conduct, which are found in Chapter 4 of the Rules Regulating The Florida Bar. Rule 5-1.1 is part of the Rules Regulating Trust Accounts, which are found in Chapter 5 of the Rules Regulating The Florida Bar). Chapter 5 is incorporated into Chapter 4 by Rule 4-1.15.

lawyer must make reasonable efforts to become familiar with and stay abreast of the characteristics unique to any application or service that the lawyer is using.

Legislative Update 2025 – A Dual Perspective

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LEGISLATIVE SUMMARIES

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CONDOMINIUM AND COOPERATIVE ASSOCIATIONS
CHAPTER 2025-__ (CS/CS/HB 913) – EFFECTIVE JULY 1, 2025

This enrolled bill contains numerous provisions affecting the operations of condominium and cooperative associations in Florida. Of particular interest to real property practitioners, this bill provides:

As to Sec. 468.4334, F.S., relating to professional practice standards applicable to community association managers and community association management companies:

- Sec. 468.4334(1)(a), F.S., is revised to provide that community association managers and community association management firms may not knowingly perform any act directed by the community association if such an act violates any state or federal law;
- Sec. 468.4334(1)(b), F.S., is revised to require a community association manager or a community association management firm that has a contract with a community association that is subject to the milestone inspection requirements in Sec. 553.899, F.S., or the structural integrity reserve study requirements in Secs. 718.112(2)(g) and 719.106(1)(k), F.S., must comply with those sections as directed by the board; and
- Sec. 468.4334(1)(c) and (d), F.S., are created to require that a contract between a community association and a community association manager or community association management firm shall include a disclosure that the community association manager shall abide by all professional standards and record keeping requirements imposed pursuant to Part VIII of Ch. 468, F.S. The professional practice standards cannot be waived or limited.

As to Sec. 468.4335, F.S., concerning conflicts of interest various subsections are amended, including:

- Sec. 468.4335(1)(a), F.S., is amended to provide that a rebuttable presumption of a conflict of interest exists where a community association manager or community association management firm, its officers, relatives or persons with a financial interest in the community association management firm, propose to enter into a contract or other transaction with the association for services other than community association management services.

As to Sec. 553.899, F.S., concerning mandatory structural inspections for residential condominium and cooperative buildings, that are three stories or more in height:

- Sec. 553.899(3)(a), F.S., is revised to require the applicability of the mandatory 30-year milestone inspection to residential condominium and cooperative buildings that are “habitable”;
- Sec. 553.899(11), F.S., is revised to require, rather than authorize, the board of county commissioners or a municipal governing body to adopt a specified ordinance requiring the commencement of repairs for substantial structural deterioration within a specified timeframe; and
- Secs. 553.899(12) and (13), F.S., are created to:
    - Require certain specified professionals who bid to perform a milestone inspection to disclose to the association in writing their intent to bid on services related to any maintenance, repair or replacement recommended by the milestone inspection;

- Prohibit certain specified professionals from having any interest in or being related to any person having any interest in the firm or entity providing the association's milestone inspection unless such relationship is disclosed in writing;
- Define the term “relative” and provide that a contract for services is voidable and terminates upon the association filing a written notice terminating such contract if such professionals fail to provide a written disclosure of such relationship;
- Require the local enforcement agency responsible for milestone inspections to provide to the Department of Business and Professional Regulation (DBPR) specified information in an electronic format by a specified date;
- Require DBPR to provide to the Office of Program Policy Analysis and Government Accountability (OPPAGA) all information obtained from the local enforcement agencies by a specified date; and
- Authorize OPPAGA to request from the local enforcement agency any additional information necessary to compile and provide a report to the Florida’s Legislature.

As to Ch. 718, F.S., the Condominium Act and Ch. 719, F.S., the Cooperative Act, relating to associations, bylaws, administrative matters, budget matters, structural integrity reserve study, mandatory milestone inspections, assessments and recall of board members selected amended or created statutes include:

- Secs. 718.111(16)(a) and (b), and 719.104(13)(a) and (b), F.S., are added to authorize condominium and cooperative associations, respectively, including multicondominium associations, to invest reserve funds using best efforts to make prudent investment decisions that carefully consider risk and maximizing returns;
- Sec. 718.111(11)(a), F.S., is amended to clarify that every condominium association must provide adequate property insurance pursuant to subsection (11)(a) and subparagraphs 1., 2., 3., 3.a., and b., and 4., of Sec. 718.111, F.S., regardless of any requirement in the declaration of condominium for different coverage by the association;
- Sec. 718.103(1), FS., revises the term “alternative funding method” to allow for funding of capital expenditures and deferred maintenance obligations for all multicondominium associations by removing the limitation that such funding method only applied to associations operating at least 25 condominiums;
- Secs. 718.112(2)(b)5., and (c)1., F.S., are amended to allow board meetings to be conducted by video conference, provides related requirements, and requires the Division of Condominiums, Timeshares, and Mobile Homes (Division) to adopt rules;
- Sec. 718.112(2)(d)1., and 2., F.S., concerning “unit owner meetings”, is revised to amend subparagraph 1., and create subparagraph 2., which allows unit owner meetings to be held by video conference pursuant to certain requirements and pursuant to rules to be adopted by the Division. Subparagraph 1. is further amended to allow for electronic voting pursuant to Sec. 718.128, F.S.;

- Sec. 718.112(2)(e)1., F.S., is amended to allow budget meetings to be conducted by video conference;
- Sec. 718.112(2)(e)2.a., F.S., is amended to provide that if the proposed budget requires assessments which exceed 115 percent of the assessments for the preceding year, the board shall simultaneously propose a substitute budget that excludes any discretionary expenditures not required to be in the budget;
- Secs. 718.112(2)(f)2.a., 719.106(1)(j)2.a., 718.112(2)(g)1., and 719.106(1)(k)1., F.S., are amended to increase the monetary threshold from $10,000 to $25,000, with an inflation adjustment, for reserve accounts for capital expenditures, deferred maintenance expense or replacement cost and provides these items must be included in the structural integrity reserve study (SIRS).
- Secs. 718.112(2)(f)6., and 719.106(1)(j)6., F.S., relating to the budgets of condominium and cooperative associations, respectively, are amended to require the Division to annually adjust for inflation in January of each year, the minimum $25,000 threshold amount for required reserves;
- Sec. 718.112(2)(f)2.a., F.S., is amended to provide that, if an association votes to terminate the condominium in accordance with Sec. 718.117, F.S., the members may vote to waive the maintenance of reserves recommended by the association's most recent SIRS;
- Secs. 718.112(2)(f)2.c.(I), and 719.106(1)(j)3.a.(I), F.S., are created to provide that reserves for SIRS items may be funded by regular assessments, special assessments, lines of credit, or loans. See Secs. 718.112(2)(f)2.c.(II) and (III), and 719.106(1)(j)3.a.(II) and (III), F.S., for funding requirements applicable to unit-owner controlled associations which must have a structural integrity reserve inspection, authorization to secure a line of credit or loan for capital expenses required by a milestone inspection under Sec. 553.899, F.S., other loan requirements and exceptions to the foregoing funding provisions;
- Sec. 718.112(2)(f)2.d., F.S., is amended to remove the requirement for approval of a majority of the members of a condominium association before the board may temporarily pause the funding of reserves or reduce the amount of reserve funding if the local building official as defined in Sec. 468.603, F.S., determines the entire condominium building is uninhabitable due to a natural emergency, as defined in Sec. 252.34, F.S.;
- Sec. 719.106(1)(j)2.d., F.S., is created to allow cooperative associations to temporarily pause the funding of reserves or reduce the amount of reserve funding in the same manner as set forth in Sec. 718.112(2)(f)2.d., F.S.;
- Secs. 718.112(2)(g)4.a., and 719.106(1)(k)(4)a., F.S., are amended to require, among other things, that the SIRS, at a minimum, must include a recommendation for a reserve baseline funding plan that provides a reserve funding goal sufficient to maintain the reserve cash balance above zero. It may suggest alternative funding schedules if such funding schedules meet the association's maintenance obligations;
- Secs. 718.112(2)(f)2.e., and 719.106(1)(j)3.b., F.S., are created to allow, with certain exceptions, the boards of condominium or cooperative associations that have completed a milestone inspection pursuant to Sec. 553.899, F.S., within the previous two calendar years, to temporarily pause, for a period of no more than

two consecutive annual budgets, reserve fund contributions or reduce the amount of reserve funding for the purpose of funding repairs recommended by the milestone inspection if approved by a majority of the total voting interests of the association; and
- Secs. 718.112(2)(g)1., and 719.106(1)(k)1., F.S., are amended to clarify that the structural integrity reserve study is applicable to "habitable" buildings three stories or higher.

As to Structural Integrity Reserve Study and Milestone Inspection:

- Secs. 718.112(2)(g)3.b., and 719.106(1)(k)3.b., F.S., are created to provide conflict of interest provisions for persons performing the SIRS and the persons performing maintenance, repair, and replacement services recommended by SIRS for condominium and cooperative associations, respectively;
- Secs. 718.112(2)(g)5., and 719.106(1)(k)5., F.S., are amended to provide that the SIRS requirements do not apply to four-family dwellings with three or fewer habitable stories above ground;
- Sec. 718.112(2)(g)7., F.S., is amended to extend the deadline for completion of a required structural integrity reserve study by associations existing on or before July 1, 2022, and controlled by unit owners other than the developer, from December 31, 2024, to December 31, 2025; and
- Secs. 718.112(2)(g)9., and 719.106(1)(k)9., F.S., are created to allow condominium and cooperative associations that have completed a milestone inspection required by Sec. 553.899, F.S., or an inspection completed for a similar local requirement, to delay performance of a required SIRS for no more than two budget years to permit the association to focus its financial resources on completing the repair and maintenance recommendations of the milestone inspection.

Lastly, the bill revises the provision in Sec. 31 of Ch. 2024-244, Laws of Florida, to provide the amendments made to Secs. 718.103(14), 718.202(3) and 718.407(1), (2), and (6), F.S., may not apply retroactively and shall only apply to condominiums for which declarations were initially recorded on or after October 1, 2024.

MY SAFE FLORIDA CONDOMINIUM PILOT PROGRAM
CHAPTER 2025-__ (CS/CS/HB 393) – EFFECTIVE UPON BECOMING LAW

This enrolled bill amends Sec. 215.55871, F.S., relating to the My Safe Florida Condominium Pilot Program. Specifically, the bill:

- Amends the definition of "condominium" to exclude detached units on individual parcels of land;
- Limits participation in the pilot program to certain structures and buildings with milestone inspection and structural integrity reserve requirements;
- Prohibits a condominium association from applying for an inspection or grant unless the windows of the association property or condominium property are

established as common elements in the declaration and the association has complied with certain inspection requirements;
- Reduces approval of unit owners required to approve the application for the grant from 100 percent to 75 percent of unit owners;
- Clarifies that the two for one grant matching must be toward the actual cost of the project;
- Revises the amount that may be funded for roof-related and "opening protection-related" projects, including projects related to exterior doors, garage doors, windows, and skylights;
- Revises the roof improvements that are eligible for funding;
- Requires improvements be identified in final hurricane mitigation to receive grant funds;
- Requires grant funds be awarded only for water intrusion mitigation devices or water intrusion mitigation improvements that will result in a mitigation credit, discount, or other rate differential; and
- Requires the Department of Financial Services to require mitigation improvements be made to all openings, including exterior doors, garage doors, windows, and skylights, if doing so is necessary for the building or structure to qualify for a mitigation credit, discount, or other rate differential, as a condition of awarding a grant.

AFFORDABLE HOUSING
CHAPTER 2025-__ (CS/CS/SB 1730, SECOND ENGROSSED) - EFFECTIVE JULY 1, 2025

This enrolled bill amends various provisions of the "Live Local Act", Ch. 2023-17, Laws of Fla., which affects affordable housing related programs and policies at the state and local levels, including zoning and land use preemptions favoring affordable housing, funding for state affordable housing programs, and tax provisions intended to incentivize affordable housing development. Specifically, the bill:

- Clarifies the application of the zoning preemption by defining "commercial," "industrial" and "mixed-use" zoning;
- Increases incentives for constructing affordable housing for employees of healthcare providers and governmental entities;
- Authorizes but does not require local governments to permit development on adjacent properties to proposed developments authorized under the Live Local Act;
- Authorizes development of affordable housing on parcels owned by religious institutions, regardless of zoning, under certain conditions;
- Requires authorization of multifamily and mixed-use development in flexibly zoned areas under certain circumstances;
- Prohibits local governments from requiring amendments to developments of regional impact before allowing affordable housing development;
- Prohibits local governments from requiring a certain amount of residential usage in mixed-use developments;

- Prioritizes docketing and prevailing party attorneys' fees (up to $250,000) in lawsuits brought under the Live Local Act;
- Except in certain circumstances, prohibits local governments from enforcing building moratoria that would delay the permitting or construction of affordable housing developments; and
- Clarifies zoning definitions.

Beyond the Live Local Act, the bill also:

- Enacts a state policy under new Sec. 420.5098, F.S., related to public sector and hospital employer-sponsored housing; and
- Clarifies that the Fair Housing Act prohibits local governments from discriminating in land use decisions based on the nature of a development as affordable housing.

EMERGENCY PREPAREDNESS AND RESPONSE
CHAPTER 2025-__ (CS/CS/SB 180, FIRST ENGROSSED) – EFFECTIVE JULY 1, 2025

This enrolled bill makes various changes relating to the preparation and response activities of state and local government when emergencies impact the state. Such changes include, but are not limited to, the following:

- Creates Sec. 252.392, F.S., providing, among other things, post-storm county and municipal permitting procedures and certain limitations on permitting and inspection fees to expedite recovery and rebuilding after a hurricane or tropical storm. Requiring counties and municipalities to publish hurricane and tropical storm recovery permitting guide for residential and commercial property owners on their websites.
- Revises Sec. 161.101, F.S., to authorize the Department of Environmental Protection (DEP) to waive or reduce local government match requirements for counties impacted by erosion caused by Hurricanes Debby, Helene or Milton;
- Revises Sec. 193.4518, F.S., to provide a tangible personal property assessment limitation, during a certain timeframe and in certain counties, for certain agricultural equipment that is unable to be used due to Hurricanes Debby, Helene, or Milton;
- Revises Sec. 252.385, F.S., the public hurricane shelter funding prioritization requirements for the Division of Emergency Management (DEM). Requires DEM to provide an annual report to the Governor, the President of the Florida Senate, and Speaker of the House of Representatives, providing a 5-year statewide emergency shelter plan, which includes, among other required information, general information on shelter needs throughout the state, identifying shelters by county which accept pets and shelters which are special needs shelters, including the location and square footage of such special needs shelters;
- Revises Sec. 250.375, F.S., to authorize the Florida National Guard servicemembers to provide medical care in specified circumstances;

- Revises Sec. 380.0552, F.S., as to the maximum evacuation clearance time for permanent residents of the Florida Keys Area, which time is an element for which amendments to local comprehensive plans in the Florida Keys Area must be reviewed for compliance, etc.;
- Creates Sec. 252.392, F.S., to provide procedures and resources necessary to promote expeditious debris removal following a hurricane or tropical storm; and
- Amends Sec. 403.7071, F.S., to require counties and municipalities to apply to DEP for authorization to designate at least one debris management site; and authorizing municipalities to apply jointly with a county or another adjacent municipality for authorization of a minimum number of debris management sites if such entities approve a memorandum of understanding.

FLOOD DISCLOSURES
CHAPTER 2025-__ (CS/CS/SB 948, FIRST ENGROSSED) - EFFECTIVE OCTOBER 1, 2025

This enrolled bill creates Sec. 83.512, F.S. (residential leases), amends Sec. 723.011, F.S. (mobile home parks), amends Secs. 718.503 and 719.503, F.S., (sales or leases of condominium or cooperative, respectively) to require flood disclosures in sales contracts, and both standard residential (1 year or longer) and long-term rental agreements (defined as an unexpired term of more than 5 years), as applicable.

The required disclosure language is provided in the bill and it:

- Informs the tenant/purchaser that renter's/homeowner's insurance policies do not include coverage for flood damage;
- Requires the landlord/developer to state whether they know of any flood damage to the dwelling unit that has occurred during their ownership;
- Requires the landlord/developer to state whether they have filed an insurance claim for flood damage related to the dwelling unit;
- Requires the landlord/developer to state whether they have received assistance for flood damage to the dwelling unit from the Federal Emergency Management Agency or other entities; and
- Provides remedies for failure to disclose in the event of loss.

ELECTRONIC DELIVERY OF NOTICES BETWEEN LANDLORDS AND TENANTS
CHAPTER 2025-16 (CS/CS/CS/HB 615) – EFFECTIVE JULY 1, 2025

This law amends sections of Ch. 83, F.S., to provide for electronic delivery of notices between landlords and tenants. Specifically, it creates Sec. 83.505, F.S., and amends Secs. 83.49, 83.50, 83.51, 83.56, and 83.575, F.S. Of note, the law:

- Authorizes a landlord or tenant to deliver notices electronically to the other, if the parties have voluntarily signed a specific rental agreement addendum electing electronic delivery and provided a valid email address for such purpose;

- Provides landlord and tenant rental agreement addendum forms which include certain terms relating to voluntariness, revocation and updates;
- Authorizes prospective revocation and specifies revocation effective upon delivery;
- Authorizes email address updates and specifies update effective upon delivery;
- Deems "delivery" to be at time email is sent unless returned undeliverable;
- Establishes record keeping requirements of sender;
- Indicates electronic delivery does not preclude service of notices by any other means permitted by law; and
- Updates notice requirements and forms relating to deposits or advance rent to include electronic delivery.

LIMITED LIABILITY COMPANIES (SERIES LLC)
CHAPTER 2025-__ (CS/SB 316) – EFFECTIVE JULY 1, 2026

This enrolled bill adopts a modified version of the Uniform Protected Series Act promulgated in 2017 by the Uniform Law Commission. Before passage of the bill, Ch. 605, F.S., did not recognize or refer to the series LLC. The bill amends Ch. 605, F.S., to provide for the creation of a protected series limited liability company under Florida law and the transaction of business by a foreign series LLC and its protected series in Florida. The bill:

- Adds a modified version of the Uniform Protected Series Act to Ch. 605, F.S., as Secs. 605.2101-605.2802, F.S.;
- Provides for the formation of a Florida protected series LLC;
- Establishes conventions for naming the series LLC and protected series and requires that the name of each protected series must begin with the series LLC's name and contain the phrase "protected series" or abbreviation "P.S." or "PS";
- Provides that a protected series is a "person" distinct from the series LLC or another protected series of the series LLC;
- Provides for powers and duties of a protected series;
- Provides that a series LLC's operating agreement generally governs the affairs of the series LLC;
- Adopts provisions relating to the conduct of business in Florida by a foreign series LLC and the protected series of the foreign series LLC including certificates of authority to transact business, naming conventions, and identification of a person who has the authority to manage the foreign series LLC and each protected series;
- Adopts requirements when a foreign series LLC or a protected series becomes a party to any civil or administrative proceeding in Florida, including disclosure of each of the foreign protected series, the managers and registered agents, and providing for procedures where the foreign LLC fails to comply;

- Requires that the annual report of a series LLC and a foreign series LLC must list the name of each protected series in its annual report where the series LLC has delivered to the Department of State a protected series designation;
- Adds a definition of “associated assets” to define a process for determining what assets are associated with each protected series based on the creation and maintenance of specified records sufficient to permit a determination by a disinterested reasonable individual about the asset;
- Establishes rules for management;
- Provides that only a member of the series LLC may be a member of a protected series;
- Provides for procedures for the merger of a series LLC;
- Provides for dissolution and winding up and also provides that to complete the winding up of a series LLC that every protected series must also have completed all procedures for winding up;
- Provides for horizontal (protected series to protected series) and vertical (protected series to series LLC) liability shields, and procedures to disregard the liability shields;
- Provides for remedies and limitations on judgment creditors;
- Provides that a judgment against a series LLC may be enforced against assets of a protected series of the series LLC where the assets were a non-associated assets on the incurrence date or the enforcement date of the judgment;
- Provides that a judgment against a protected series may be enforced against assets of the series LLC and the other protected series of the series LLC where the assets were a non-associated assets on the incurrence date or the enforcement date of the judgment;
- Provides that Florida law applies to enforcement of claims against non-associated assets of foreign LLCs and foreign protected series where the asset is real or tangible personal property located in Florida, the claimant is a resident of Florida or is authorized to transact business in Florida and the asset is not identified in the records of the foreign series LLC or foreign protected series in a manner required by Florida law as to a Florida series or Florida protected series;
- As to real estate, provides that a deed into either a series LLC or a protected series is only a “record” that the property is an associated asset, and does not provide that the deed conclusively establishes that the real estate identified in the deed is an associated asset of the grantee. As a result, under this statute a creditor of a foreign or Florida series LLC or a protected series can claim that real estate deeded to a series LLC or a protected series is not, in actuality, an associated asset of the grantee of the deed and thereby attempt to enforce judgments against real estate deeded to either the series LLC or a protected series even where the

series LLC or the protected series is not a party to the judgment or the proceeding resulting in the judgment;

- Provides in Sec. 605.2301(2)(b), F.S., that "[a] deed or other instrument granting an interest in real property to or from one or more protected series of a series limited liability company, or any other instrument otherwise affecting an interest in real property held by one or more protected series of a series limited liability company, in each case to the extent such deed or other instrument is in favor of a person who gives value without knowledge of the lack of authority of the person signing and delivering a deed or other instrument and is recorded in the office for recording transfers or other matters affecting real property, is conclusive of the authority of the person signing and constitutes a record that such interest in real property is an associated asset or liability, as applicable, of the protected series";
- Provides for establishment of registered agents and service of process; and
- Otherwise provides generally for a framework for the formation, operation, and recognition of both Florida and foreign series LLCs and the protected series in Florida.

CUSTOMARY USE OF BEACHES
CHAPTER 2025-__ (CS/SB 1622) - EFFECTIVE UPON BECOMING LAW

This enrolled bill repeals Sec. 163.035, F.S., which provided statutorily for the establishment of recreational customary use of beaches. Additionally, the bill bypasses certain statutory procedures to declare the mean high water line to be the erosion control line (ECL) in certain counties as determined by survey conducted by the Board of Trustees of the Internal Improvement Trust Fund. It also authorizes the Department of Environmental Protection to proceed with beach restoration projects for certain areas it designated as critically eroded, and provides that notwithstanding Sec. 161.141, F.S., such projects do not require public easements. The bill also declares that any additions to property seaward of the ECL which result from the restoration project remain state sovereignty lands.

PROPERTY RIGHTS (SQUATTERS)
CHAPTER 2025-__ (CS/CS/SB 322) - EFFECTIVE JULY 1, 2025

This enrolled bill relates to the right to exclude others from entering or remaining on residential and commercial real property. Specifically, it creates Sec. 82.037, F.S., amends Secs. 82.036, 689.03, 806.13, and 817.0311, F.S., and reenacts Secs. 775.0837(1)(c) and 895.02(8)(a), F.S. Of note, the bill:

- Amends the statutory form Complaint to Remove Persons Unlawfully Occupying Residential Real Property;

- Creates a limited alternative remedy to remove unauthorized persons from commercial real property under certain conditions;
- Permits a property owner or his or her authorized agent to request the sheriff immediately remove unlawful occupants based upon the filing with the sheriff of a complete and verified Complaint to Remove Persons Unlawfully Occupying Commercial Real Property;
- Provides a form for said complaint which contains necessary representations;
- Requires the sheriff upon receipt of a complaint to verify the filer as the property owner or authorized agent;
- Requires sheriff, once filer verified, to without delay serve a notice to immediately vacate on all unlawful occupants and put the owner in possession of the real property and provides procedures therefor;
- Authorizes sheriff's fees and hourly rate charges;
- Immunizes from any liability for loss, destruction, or damage of property: the sheriff completely, and the property owner or his or her authorized agent unless removal was not in accordance with this section;
- Provides restoration of possession and damages as remedies for wrongful removal;
- Cures an incorrect statutory reference in Ch. 689, F.S.; and
- Extends the following crimes applicability to commercial real property: (a) Unlawfully detaining or trespassing and intentionally causing at least $1,000 in damages - second-degree felony, (b) Using a false document purporting to be a valid lease or deed - first-degree misdemeanor, and (c) Fraudulently listing for sale or renting or leasing without possessing an ownership right to or leasehold interest in the property - first-degree felony.

ADVERTISEMENTS FOR REPRESENTATION SERVICES (NOTARY PUBLIC FRAUD)
CHAPTER 2025-__ (CS/HB 915) – EFFECTIVE JULY 1, 2025

This enrolled bill relates to notary public fraud. Specifically, it amends Sec.117.05, F.S., and creates Secs. 117.051 and 501.1391, F.S. Of note, the bill:

- Prohibits non-lawyer notaries public from advertising which conveys or implies professional legal skills in immigration law including prohibiting use of specified terms;
- Requires non-lawyer businesses and persons who offer immigration services to post a specific conspicuous "I am not an attorney" notice; and
- Provides civil actions for violations of the above through declaratory & injunctive relief, damages, attorney fees and costs.

SERVICE OF PROCESS
CHAPTER 2025-13 (CS/HB 157) – EFFECTIVE UPON BECOMING LAW, EXCEPT AS OTHERWISE PROVIDED

This law amends sections of Ch. 48, F.S., relating to service of process. Of note:

- Sec. 48.091, F.S., expands the hours that a registered agent is required to maintain for service of process, specifies that certain registered agents may be served in a specified manner, and provides specifics for service on an employee of a registered agent;
- Sec. 48.101, F.S., revises service on dissolved business entities and entities in receivership; and
- Secs. 48.161 & 48.181, F.S., revises substitute service for parties that conceal their whereabouts.

FLORIDA TRUST CODE
CHAPTER 2025-18 (CS/CS/HB 1173) – EFFECTIVE UPON BECOMING LAW

This law relates to trusts. Specifically, it amends Secs. 736.0110, 736.0106, 736.0405, F.S., and re-enacts Sec. 738.303(2)(b) and (d), F.S. Of note, the law:

- Grants the Attorney General the exclusive authority to represent certain parties having a special interest in a charitable trust, including the general public, in any judicial proceeding, when Florida is the principal place of administration for the charitable trust.

TRUSTS
CHAPTER 2025-__ (CS/CS/SB 262)– EFFECTIVE UPON BECOMING LAW

This enrolled bill relates to trusts. Specifically, it amends Secs. 736.04117, 736.08125, 736.1502, and 736.151, F.S.; and creates Secs. 736.10085 and 736.1110, F.S. Of note, the bill:

- Clarifies that an “authorized trustee” will not be considered a settlor of a second trust;
- Expands the power of the “authorized trustee” to include the power to modify the terms of the “first trust”;
- Bars actions against prior trustees by certain parties;
- Provides that property which is given to a donee or distributed from a revocable trust to a donee during the settlor’s lifetime will act to satisfy a devise to or from a revocable trust under certain circumstances;
- Expands the definition of a “Community Property Trust”; and
- Clarifies that the transfer of homestead property to a Community Property Trust is not considered a “change of ownership” for the purposes of homestead property tax assessments.

PLATTING
CHAPTER 2025-__ (CS/CS/CS/SB 784) - EFFECTIVE JULY 1, 2025

This enrolled bill amends Sec. 177.071, F.S., with respect to how local governments review and approve plats. Specifically, the bill:

- Requires local governments review, process, and administratively approve plats or replat submittals without action or approval by the governing body through an "administrative authority", or official designated by ordinance; and
- Defines the "administrative authority" as a department, division, or other agency of the local government, including administrative officers or employees such as a county or city administrator or manager, or assistant or deputy thereto, or other high-ranking county or city department or division director with direct or indirect oversight responsibility for the local government's land development, housing, utilities, or public works programs.

This authority must provide written notice in response to a submittal within seven days acknowledging receipt, identifying any missing documents or information required, and providing information regarding the approval process including requirements and timeframes.

The authority must approve, approve with conditions, or deny the submittal within the timeframe identified in the initial written notice unless the applicant requests an extension.

Any denial must be accompanied by an explanation of why the submittal was denied, specifically citing unmet requirements.

LEGAL TENDER
CHAPTER 2025-__ (CS/HB 999, FIRST ENGROSSED) – EFFECTIVE JULY 1, 2026, EXCEPT AS OTHERWISE PROVIDED

This enrolled bill relates to legal tender. Specifically, it amends Secs. 212.05, 560.103, 560.109, 560.141, 560.142, 560.204, 560.205, 655.50, 672.511, 731.1065, and 559.952, F.S.; and creates Secs. 215.986, 280.21, 560.145, 560.155, 560.214, and 655.97, F.S. Of note, the bill recognizes effective January 1, 2026, certain high purity gold and silver coins and certain electronic transfers thereof as legal tender for the payment of contractual debt, including judgments. It makes acceptance of such payment optional in most circumstances unless required by contract and provides certain liability protection for refusal to accept it. The bill provides detailed regulation for acceptance, storage, trading and use. Lastly, the bill removes this legal tender from sales tax under Sec. 212.05, F.S. and applies anti-money laundering laws to it.

ANNEXING STATE-OWNED LANDS
CHAPTER 2025-__ (CS/CS/SB 384) – EFFECTIVE JULY 1, 2025

This enrolled bill amends Sec. 171.0413, F.S. After advertising the first public hearing on adopting an ordinance to annex state-owned lands, a municipality must notify the legislative delegation for that county by writing or e-mail. The bill also reenacts Sec.

101.6102, F.S. (mail ballot elections), and Sec. 171.042, F.S. (prerequisites to annexation) for purposes of incorporation.

UNIFORM COMMERCIAL CODE
CHAPTER 2025-__ (CS/CS/HB 515, FIRST ENGROSSED) – EFFECTIVE JULY 1, 2025

This enrolled bill relates to the Uniform Commercial Code. Specifically, it creates Ch. 669, F.S., to incorporate newly-promulgated Article 12 of the Model Uniform Commercial Code relating to controllable electronic records. It provides updated rules for commercial transactions involving virtual currencies, distributed ledger technologies, artificial intelligence, and other technological developments. The bill establishes a framework allowing creditors to secure liens against digital assets owned by debtors.

TIMESHARE MANAGEMENT PLAN
CHAPTER 2025-__ (CS/HB 897) – EFFECTIVE JULY 1, 2025

This enrolled bill exempts community association managers (CAMs) and CAM firms from certain requirements and prohibitions relating to conflicts of interest if the CAM or CAM firm:

- Manages a timeshare plan governed by the Vacation Plan and Timesharing Act (Timeshare Act); and
- Provides certain conflict of interest disclosures under the Timeshare Act.

Further, the bill specifies that timeshare management firms and licensed CAMs that are employed by a timeshare management firm are not governed by Sec. 468.4335, F.S. but rather are governed by Secs. 468.438 and 721.13, F.S. The bill requires timeshare management firms (TMFs) and licensed CAMs, employed by a TMF to act in good faith and defines the standard of care required. It exempts TMFs and licensed CAMs from liability for monetary damages unless the TNF or CAM breached or failed to perform their duties, and the breach or failure constitutes:

- A violation of criminal law as provided in Sec. 617.0834, F.S.;
- A transaction from which the firm or licensed CAM derived an improper personal benefit, either directly or indirectly; or
- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Additionally, the bill requires timeshare condominium boards to meet only once a year, unless additional board meetings are called. Lastly, the bill requires annual disclosure to the members of that owners' association by certain prescribed methods set

forth in the bill if a TMF or an owners' association provides goods or services through a parent, affiliate, subsidiary, or related party.

EDUCATION (CHARTER SCHOOLS)
CHAPTER 2025-__ (CS/CS/HB 443) – EFFECTIVE JULY 1, 2025

This enrolled bill revises current provisions relating to charter schools, charter school sponsors and the use and disposal of school district real property. Of particular interest to real estate practitioners, this bill:

- Amends Sec. 1002.32(9), F.S., to expand a charter lab school's use of its discretionary capital improvement funds for: the purchase real property; the construction of school facilities; the purchase or lease of permanent or relocatable school facilities; the renovation, repair and maintenance of school facilities that the charter lab school owns or is purchasing through a lease-purchase or long-term lease of 5 years or longer; payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities; and payment of the cost of the opening day collection for the library media center of a new school. Subsection (9) is further amended to require that any purchase, lease-purchase or lease must be at or below the appraised value as defined in subsection (9);
- Amends Sec. 163.3180, F.S., to provide that a charter school is a public facility for the purpose of concurrency;
- Amends Sec. 1002.33, F.S., to add subsection (26)(d), which prohibits a landlord, the spouse of a landlord, an officer, director or an employee of an entity landlord, or the spouse of such officer, director or employee, from being a member of a governing board of a charter school unless the charter school was established pursuant to Sec. 1002.33(15)(c), F.S.; and
- Amends Sec. 1002.33(18), F.S., to add subsection (h), to provide that facility capacity for purposes of expansion must include any improvements to an existing facility or any new facility in which the students of the charter school will enroll.

LOCAL GOVERNMENT LAND REGULATION
CHAPTER 2025-__ (CS/SB 1080, SECOND ENGROSSED) – EFFECTIVE OCTOBER 1, 2025

This enrolled bill amends Sec. 125.022, F.S., to specify the minimum information necessary for applications for zoning approval, rezoning approval, subdivision approval, certification, special exceptions or variance. Sec. 163.3180, F.S., is amended to prohibit a school district from collecting, charging or imposing certain fees unless they meet certain requirements. Sec. 163.3184, F.S., is amended to revise the expedited state review process for adoption of comprehensive plan amendments. Sec. 166.033, F.S., is amended to require municipalities to specify minimum information necessary for certain applications.

PUBLIC RECORDS/CONGRESSIONAL MEMBERS AND PUBLIC OFFICERS
CHAPTER 2025-__ (CS/CS/SB 268) - EFFECTIVE JULY 1, 2025

This enrolled bill exempts identifying information of certain state and local officials, their spouses and children, from certain public records copying and inspection requirements. Specifically, the bill exempts from disclosure:

- Partial home addresses, telephone numbers, dates of birth, and photographs of current congressional members, or public officers, their adult children and spouses;
- Names, dates of birth of public officer's minor children, if any; and
- Names and locations of schools and day care facilities of public officer's minor children.

Additionally, the bill provides a process for a qualifying individual to request and to maintain the public records exemption and requires a statement of the office held by the individual and the duration of their term.

GEOENGINEERING AND WEATHER MODIFICATION ACTIVITIES (CONTRAILS/CHEMTRAILS)
CHAPTER 2025-__ (CS/CS/SB 56) – EFFECTIVE JULY 1, 2025

This enrolled bill prohibits geoengineering and weather modification activities. Specifically, the bill:

- Defines Geoengineering and Weather Modification as, and prohibits the injection, release, or dispersion, by any means, of a chemical, a chemical compound, a substance, or an apparatus into the atmosphere within the borders of this state for the express purpose of affecting the temperature, weather, climate, or intensity of sunlight;
- Provides that such activities are now a third-degree felony, punishable by up to five years imprisonment and fines of up to $100,000, except aircraft operators and controllers who are subject to a fine of up to $5,000;
- Directs the Department of Environmental Protection (DEP) to establish a dedicated e-mail address and online form to allow the reporting of suspected activities and requires DEP to investigate any report warranting further review and, when appropriate, to refer reports of observed violations to the Department of Health or the Division of Emergency Management;
- Repeals all other existing weather modification statutes in Ch. 403 F.S.; and
- Removes DEP's authority to conduct programs of study, research, experimentation and evaluation in the field of weather modification.

Beginning on October 1, 2025, all operators of publicly owned airports must file monthly reports to Florida's Department of Transportation (DOT) on the presence of any aircraft equipped with any components or devises that can be used for intentional dispersion of geoengineering agents. Lastly, the bill prohibits DOT from expending state funds to noncompliant airports.

BILLS STILL BEING CONSIDERED IN EXTENDED 2025 REGULAR LEGISLATIVE SESSION

RURAL COMMUNITIES (RURAL RENAISSANCE) (CS/SB 110) - EFFECTIVE JULY 1, 2025

This bill is currently being considered in both chambers in the extended term of the 2025 Legislative Session. As of the writing of this summary, the Senate version addresses several issues for the benefit of rural communities and creates a statewide office to coordinate the advancement of rural communities. The bill amends several programs and regulations in various policy areas and provides funding and appropriations for the initiatives to support a “rural renaissance” in Florida. It impacts various departments including the Departments of Commerce, Transportation, Education and the Florida Housing Finance Agency.

The House proposed Amendment 605877 changes the bill name to “Community and Economic Development”, incorporates the provisions of CS/CS/HB 991 and includes the provisions of CS/SB 110 that only address the Department of Commerce and the FDOT. It excludes appropriations and funding through documentary stamp revenues and title fee revenues to FDOT for the Florida Arterial Road Modernization and Small County Road Assistance programs. The amendment includes various provisions not included in CS/SB 110 relating to terminating community redevelopment agencies; prohibiting local governments from certain building permit requirements and denials; and revising DBPR’s authority by repealing several boards, commissions, and councils within DPBR and modifying many licensure regulations. The amendment was rejected by the Senate and the Senate has asked the House to recede.

TAXATION (CS/HB 7033) – EFFECTIVE JULY 1, 2025

This bill is currently being considered in both chambers in the extended term of the 2025 Legislative Session. This engrossed bill is a comprehensive tax bill which amends or creates numerous sections of the Florida Statutes. Of particular interest to real property practitioners, Chs. 125, 166, 170, 189, 194 and 196, F.S., are amended as described below.

- Sec. 194.011(4) and (5), F.S., are amended to require the property appraiser to provide a value adjustment board (VAB) petitioner with the evidence intended to be presented at a VAB hearing at least 15 days prior to the hearing and removes the current law requirement that a petitioner must provide a written request to receive the property appraiser’s evidence;
- Sec. 194.013(1), F.S., is amended to increase the maximum filing fee that may be required to file a petition with the VAB concerning real property from $15 per parcel to $50 per parcel;

- Sec. 194.032(2)(b), F.S., is amended to allow any party to a VAB hearing to appear telephonically, by video conference, or by other electronic means. The bill also requires the VAB to provide sufficient equipment to allow clear communication and to create any necessary hearing records;
- Sec. 196.1978(1)(b), F.S., concerning affordable housing ad valorem tax exemptions, is amended to include land leased by certain nonprofit corporations, providing certain qualifications are met. This exemption is also expanded to include improvements;
- This bill repeals the opt out provision for local governments from the affordable housing "missing middle" exemption from ad valorem taxes set forth in Sec. 196.1978(3), F.S., thereby making the Live Local Act's missing middle exemption mandatory for all jurisdictions. This bill further specifies that any election to opt out made by a local government on or before July 1, 2025, will continue for the original term of the election but may not be renewed;
- This bill creates Sec. 196.19781, F.S., which provides, under certain conditions, a new property tax exemption for affordable housing projects located on land owned by the state of Florida where the improvements are owned and operated by private parties. The exemption under this section requires an annual application and does not apply to any project receiving an existing affordable housing exemption under Sec. 196.1978, F.S.;
- Sec. 170.201, F.S., is amended to add public and private preschools to the list of educational institutions that municipalities may exempt from special assessments. The bill defines a preschool as a childcare facility licensed under Sec. 402.305, F.S.; and
- Secs. 125.0168, 166.223, and 189.052, F.S., are amended to change the way special assessments may be levied on recreational vehicle parks.

Incidentally, HB 411 also includes the proposed expansion of existing ad valorem property tax exemption to nonprofit charities pursuant to Sec. 196.1978(1), F.S., as discussed above.

****

Note:

This year the Legislature convened on March 4, 2025, adjourned on May 2, 2025, and extended the 2025 Regular Session of the Legislature until June 6, 2025, for consideration of budget related bills and CS/SB 100. See HCR 1631 for further details.

This summary is effective as of May 2, 2025. In addition, please note that this summary is not intended to cover every bill or every aspect of every bill that might be of interest to real estate attorneys. For purposes of this summary, the bills listed have either been signed into law by the Governor or passed both houses and are

awaiting the Governor's signature. They are perceived to be of significant interest to FUND Members. In order to become law, the bill must pass both houses and be signed into law by the Governor.

For more complete information on a certain bill or to download and/or print complete bills, please go to www.myfloridahouse.gov or www.flsenate.gov. You can download and print the bills of both houses at either site. Both sites also have bill trackers so you can track bills for either house during the next legislative session.

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Swift Justice for Victims of Fraudulent Transfer

Megan Crandall Solomon
Underwriting Counsel, The Fund

Swift Justice for Victims of Fraudulent Transfer

Megan Crandall Solomon
Underwriting Counsel, The Fund

1

Combating Title Fraud

- History of the Title Fraud Bill
- Bonus content on related statutes
- Industry stories
- Quieting title; Fraudulent Conveyances
- Summary procedure

2

What is the problem in Florida?

- CNBC named which state best for buying & selling a home in 2024?
- States graded based on balance of affordability & value
- FBI reports 500% increase in vacant-land fraud over last 4 years
- Even Graceland fell victim to title fraud

3

Combating Florida Title Fraud

- Recent increase in title fraud
- Fraudster executes deeds that appear facially valid
- Deed may be legally void ab initio
- Clerk not authorized to remove fraudulent deeds

4

Bonus Content

- Pilot Program to Combat Fraud
- Witness Addresses for Recording Instruments Affecting Real Property
- Form of quitclaim deed prescribed
- Property Fraud Alert

5

Pilot Program to Fight Fraud

Sec. 28.2225, F.S.

- Lee County clerk checks ID for any person recording a document transferring a real property interest
- 2-year program: Clerk will report if helpful in deterring & detecting title fraud—expansion

6

Witness address required

Sec. 695.26, F.S

- Instruments which convey, assign, encumber or otherwise dispose of real property require address for witnesses
- Be mindful, when using witnesses on other documents as clerk may demand addresses to record

7

Form for Quitclaim Deed

Sec. 689.025, F.S

- Must substantially follow statute form
- Legible legal description of real property
- Blank space for parcel identification number
- Parcel number not substitute for legal description

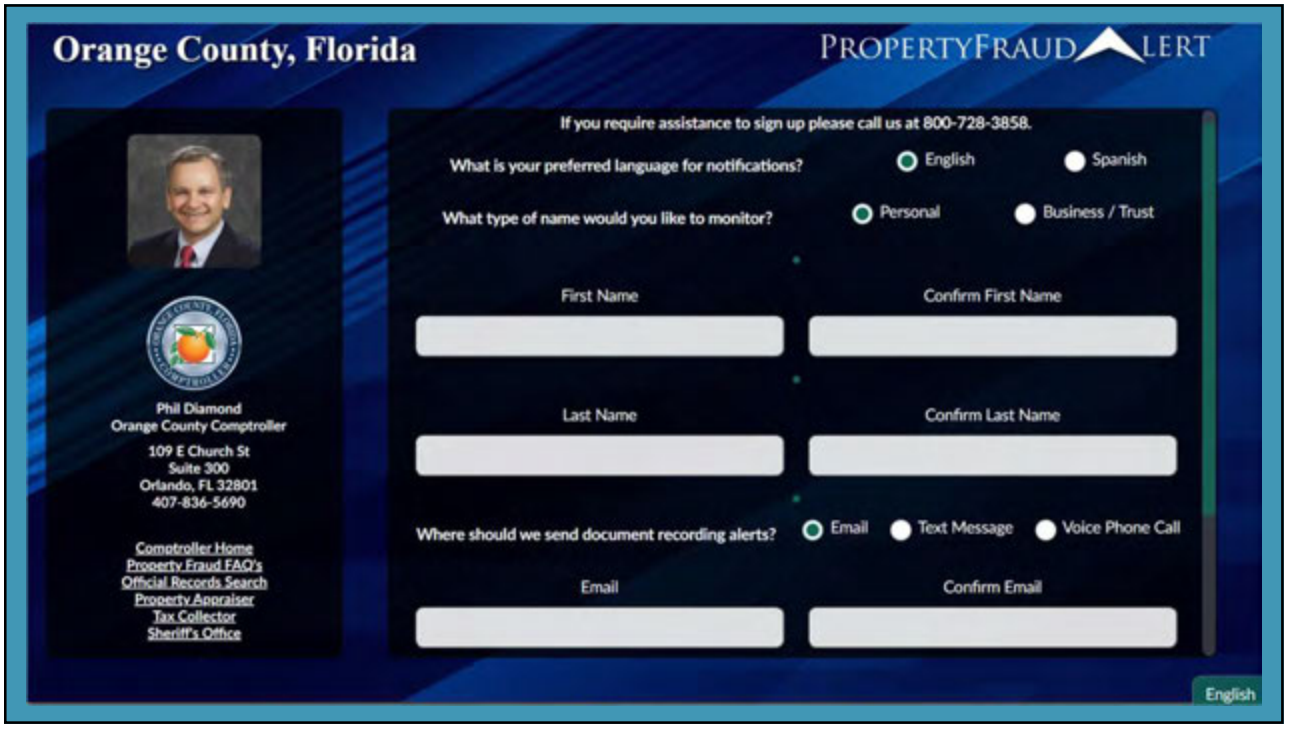
8

Property Fraud Alert

Sec. 28.47, F.S.

- Free recording notification service in all counties
- Operation and maintenance by each clerk of circuit court
- The service is open to all persons wishing to register for it

9



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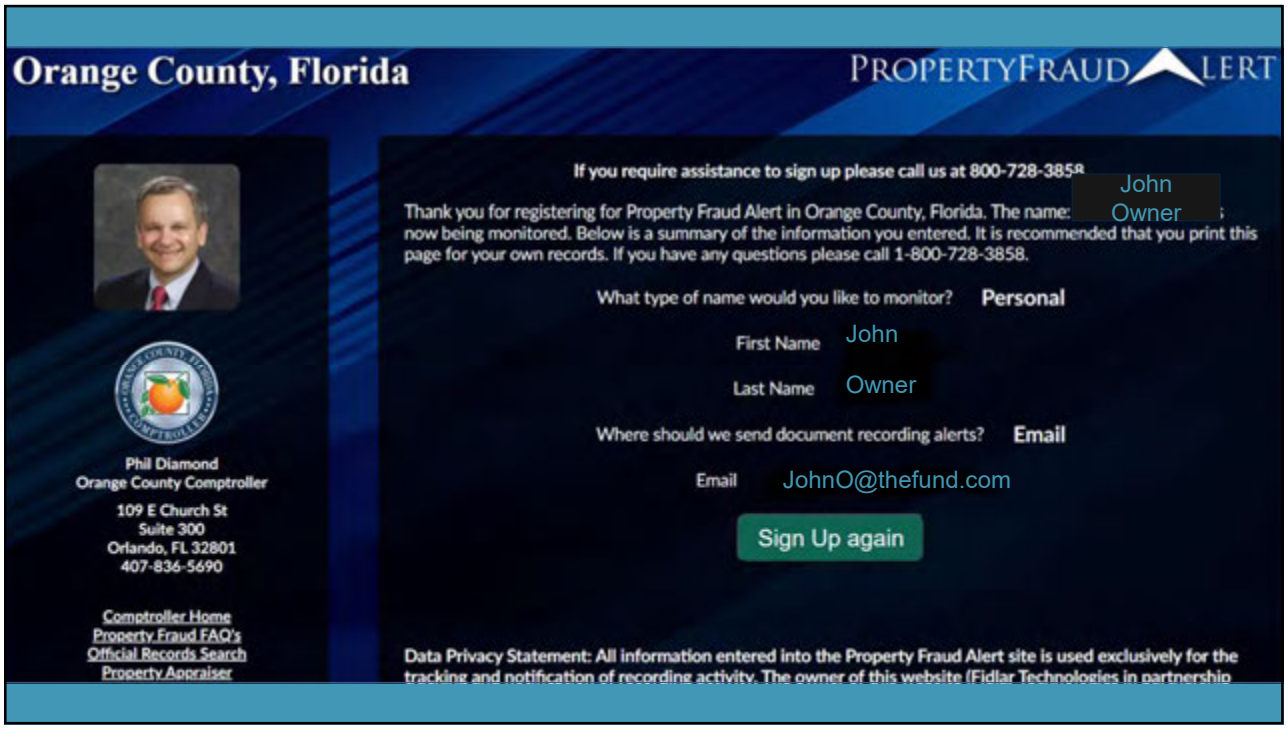

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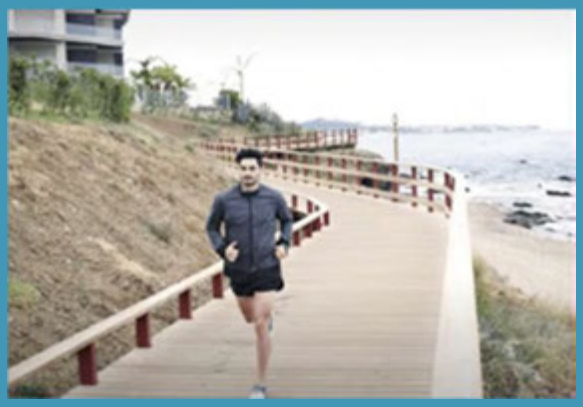
Property Fraud



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Remedies for Title Fraud

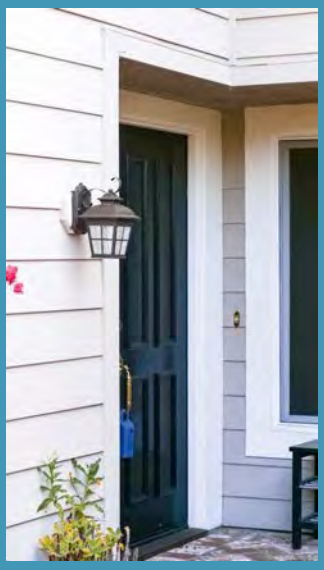
- Civil remedies—declaratory relief or quiet title actions
- Multiple criminal penalties if fraudster can be found
- Third Party Purchasers—title insurance protection
- Process takes months

13

Quieting Title – Fraudulent Conveyances

Sec. 65.091, F.S.

- Aims to restore victim to previous status
- Expedited procedure
- Simplified form
- Summary procedure
- Judicial calendar priority



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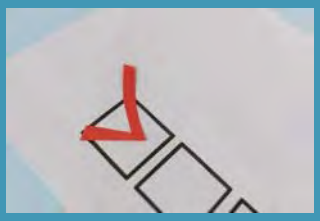
Simplified Form Documents



Prior to filing, get copies of the following:

- Fraudulent deed
- Deed into original owner
- Deraignment of title for at least 7 years prior to fraudulent deed
- All records that prove case including tax records

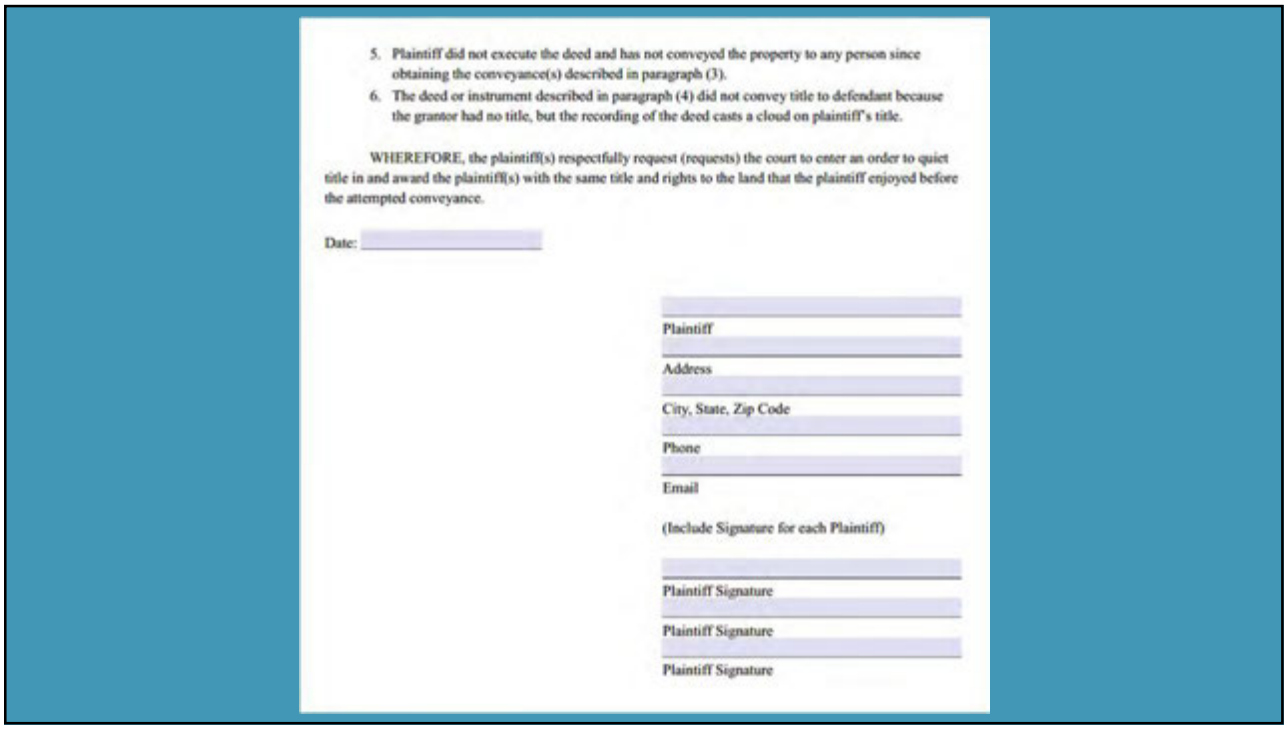
15

COMPLAINT TO QUIET TITLE BASED ON FRAUDULENT CONVEYANCE
UNDER SECTION 65.091, FLORIDA STATUTES

The plaintiff(s), _____, sue(s) defendant(s), _____, defendant's unknown spouse, heirs, devisees, grantees, judgment creditors, and all other parties claiming by, through, under, or against defendants or parties or claiming to have any right, title, or interest in the property described in this complaint, and alleges:

1. This is an action to quiet and confirm title of plaintiff in and to lands located in _____ County, Florida.
2. Plaintiff owns the following real property:
   _____
   _____
   _____
   _____
3. Plaintiff shows entitlement to (deraigns) title as follows (must show chain of title for at least the past 7 years):
   Plaintiff obtained ownership by deed or instrument dated _____, recorded on _____, in official records book _____, page _____ of the public records of _____ County, Florida. The property description in that deed is as follows:
   _____
   _____
   _____
   _____
4. The deed or instrument purported to have been signed by plaintiff(s), or purporting to convey the property to defendant(s), dated _____, recorded _____, in official records book _____, page _____ of the public records of _____ County, Florida, is fraudulent.

16



5. Plaintiff did not execute the deed and has not conveyed the property to any person since obtaining the conveyance(s) described in paragraph (3).
6. The deed or instrument described in paragraph (4) did not convey title to defendant because the grantor had no title, but the recording of the deed casts a cloud on plaintiff's title.

WHEREFORE, the plaintiff(s) respectfully request (requests) the court to enter an order to quiet title in and award the plaintiff(s) with the same title and rights to the land that the plaintiff enjoyed before the attempted conveyance.

Date: _____

Plaintiff

Address

City, State, Zip Code

Phone

Email

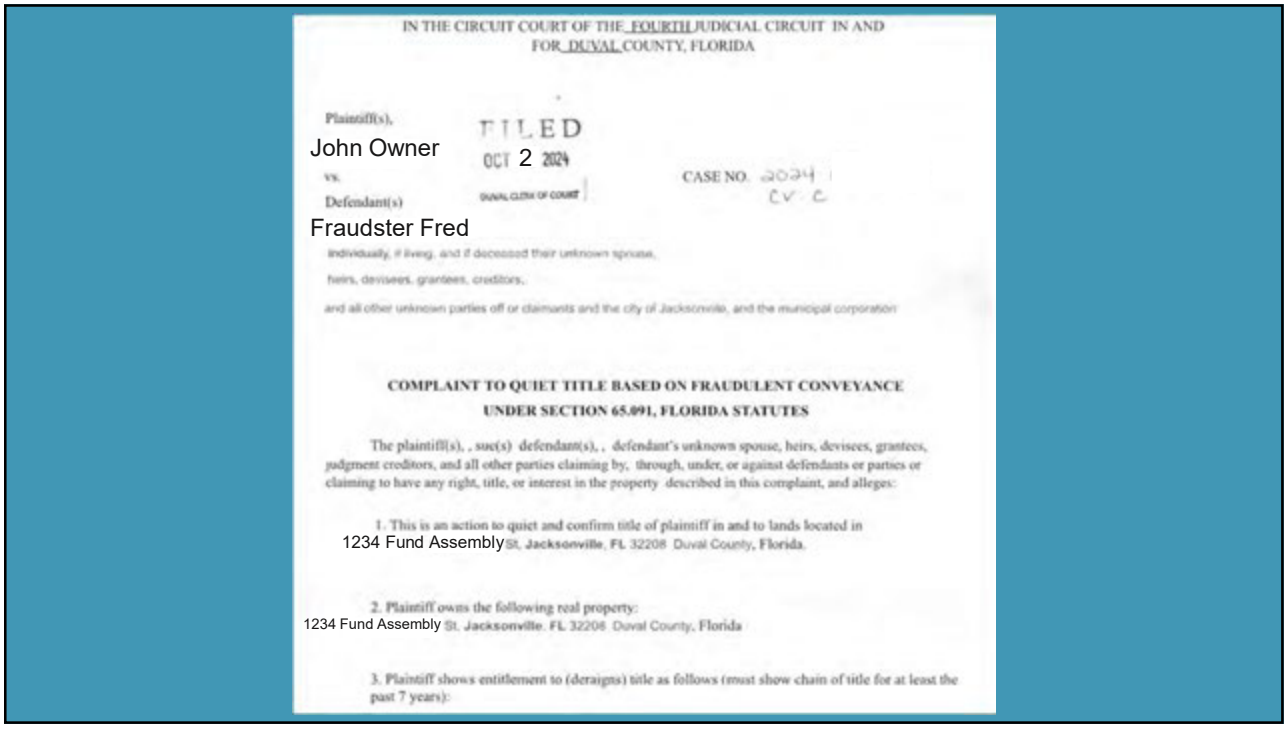
(Include Signature for each Plaintiff)

Plaintiff Signature

Plaintiff Signature

Plaintiff Signature

17



IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT IN AND FOR DUVAL COUNTY, FLORIDA

Plaintiff(s),

John Owner

vs.

Defendant(s)

Fraudster Fred

FILED
OCT 2 2024
DUVAL CLERK OF COURT

CASE NO. 2024 CV C

individually, if living, and if deceased their unknown spouse,

heirs, devisees, grantees, creditors,

and all other unknown parties off or claimants and the city of Jacksonville, and the municipal corporation

COMPLAINT TO QUIET TITLE BASED ON FRAUDULENT CONVEYANCE UNDER SECTION 65.091, FLORIDA STATUTES

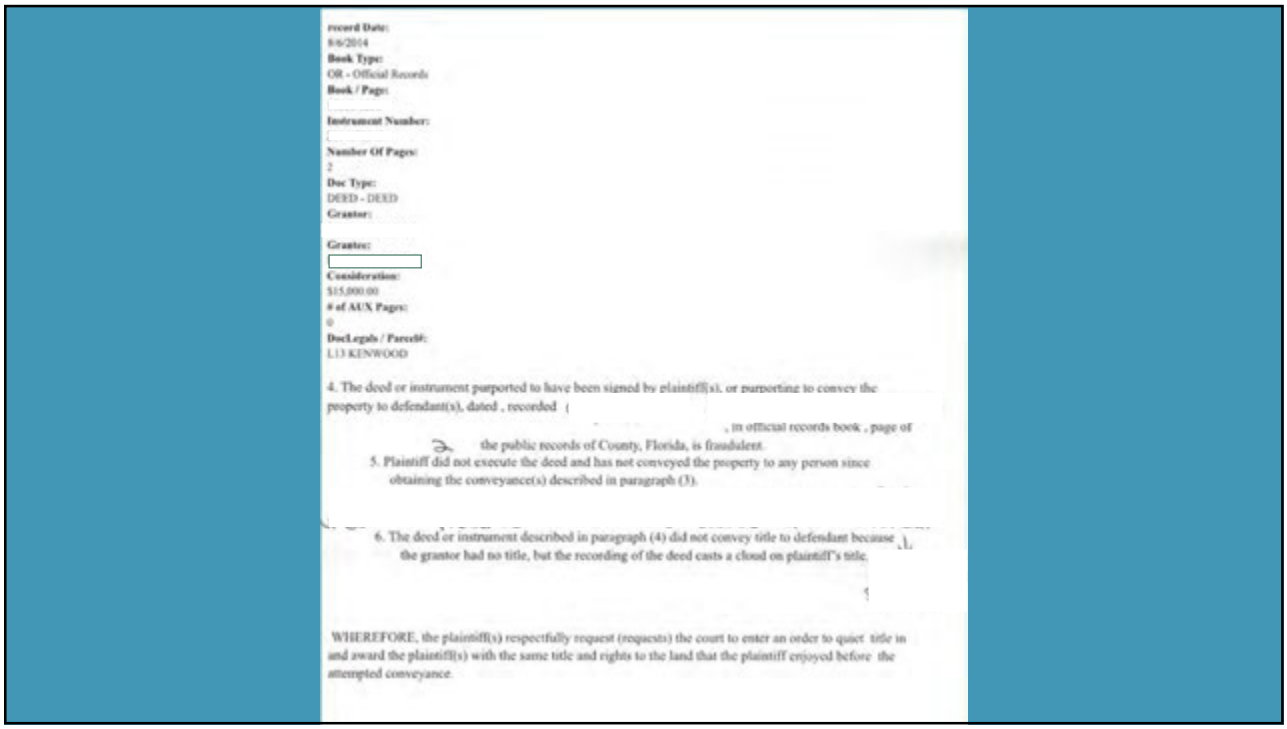
The plaintiff(s), , sue(s) defendant(s), , defendant's unknown spouse, heirs, devisees, grantees, judgment creditors, and all other parties claiming by, through, under, or against defendants or parties or claiming to have any right, title, or interest in the property described in this complaint, and alleges:

1. This is an action to quiet and confirm title of plaintiff in and to lands located in 1234 Fund Assembly St, Jacksonville, FL 32208 Duval County, Florida.

2. Plaintiff owns the following real property:
1234 Fund Assembly St, Jacksonville, FL 32208 Duval County, Florida

3. Plaintiff shows entitlement to (deraigns) title as follows (must show chain of title for at least the past 7 years):

18



record Date:
8/6/2014
Book Type:
OR - Official Records
Book / Page:
Instrument Number:
Number Of Pages:
2
Doc Type:
DEED - DEED
Grantor:
Grantee:
Consideration:
$15,000.00
# of AUX Pages:
0
DocLegals / Parcel#:
L13 KENWOOD

4. The deed or instrument purported to have been signed by plaintiff(s), or purporting to convey the property to defendant(s), dated , recorded , in official records book , page of the public records of County, Florida, is fraudulent.

5. Plaintiff did not execute the deed and has not conveyed the property to any person since obtaining the conveyance(s) described in paragraph (3).

6. The deed or instrument described in paragraph (4) did not convey title to defendant because the grantor had no title, but the recording of the deed casts a cloud on plaintiff's title.

WHEREFORE, the plaintiff(s) respectfully request (requests) the court to enter an order to quiet title in and award the plaintiff(s) with the same title and rights to the land that the plaintiff enjoyed before the attempted conveyance.

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Summary Procedure

Sec. 51.011, F.S.

- Initial pleading shall contain matters required by statute
- Answer filed within **5** days of service
- If counterclaim, answer within **5** days of service
- No other pleadings permitted
- All defensive motions, shall be heard by court prior to trial

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Summary Procedure

Sec. 51.011, F.S.

- Discovery
  - Depositions at any time
  - Other discovery only on order of court
- Jury: If authorized by law, any party may demand
- New Trial: Motion for new trial served within **5** days
- APPEAL: Notice of appeal served within **30** days

21

Combat Fraud

- Seller & Borrower Verification
- Escrow Protector
- Common Sense
- Utilize Secure Protocols
- Routine Training
- Incident Response Plan
- Take Charge of the Closing
- You

22

Breakfast of Champions

Saturday from 8:30 AM - 10:30 AM

- NAR Settlement: Practice changes resulting from recent settlement
- Comprehensive fraud prevention and mitigation strategies

23

Thank you

For more information please contact:

Megan Crandall Solomon

800-336-3862| msolomon@thefund.com | Web site: TheFund.com

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The 2024 Florida Statutes (including 2025 Special Session C)

28.2225 Title fraud prevention through identity verification; pilot program.—There is created in Lee County the Title Fraud Prevention Through Identity Verification Pilot Program.

(1) As used in this section, the term "clerk" means the clerk of the circuit court for Lee County.

(2) Notwithstanding any other provision to the contrary in this chapter, when a deed or other instrument purporting to convey real property or an interest therein is presented to the clerk for recording, the clerk may require the person presenting the deed or other instrument to produce a government-issued photographic identification card as follows:

(a) If a person presents a deed or other instrument purporting to convey real property or an interest therein to the clerk for recording in person, the clerk may require the person to produce a government-issued photographic identification card for inspection by the clerk before recording the deed or other instrument. The clerk must record the name and address of such person, as the information appears on the identification card, in a record to be kept by the clerk, along with the official records book and page number or instrument number of the deed or other instrument recorded in connection to the production of the identification card. Such a record may not be made available for viewing on the clerk's official public website but shall be made available for public inspection and copying as required by the public records laws of this state.

(b) If a person presents a deed or other instrument purporting to convey real property or an interest therein to the clerk for recording through an electronic recording service, the clerk may require the person to submit a photocopy of a government-issued photographic identification card before recording the deed or other instrument. The clerk must note on the photocopy of the identification card the official records book and page number or instrument number assigned to the deed or other instrument recorded in connection to the submission of the photocopy of the identification card and retain the photocopy of such identification card in a record to be kept by the clerk. Such a record may not be made available for viewing on the clerk's official public website but shall be made available for public inspection and copying as required by the public records laws of this state. However, a person who submits a photocopy of his or her identification card under this paragraph may redact from the photocopy of such identification card before submission all of the information he or she does not wish to be made public, except for his or her name, address, and photograph.

The clerk may refuse to record a deed or other instrument purporting to convey real property or an interest therein when the clerk requires the production of a government-issued photographic identification card as specified in this subsection and the person presenting the deed or other instrument for recording does not produce the requested identification card in compliance with this subsection.

(3) A clerk who participates in the pilot program must:

(a) Provide notice of the government-issued photographic identification card requirement on the clerk's official public website.

(b) Require the production of a government-issued photographic identification card from all persons presenting a deed or other qualifying instrument for recording, whether in person or through an electronic recording service, until the clerk no longer participates in the pilot program and provides notice that the production of such an identification card is no longer required on the clerk's official public website.

(c) By December 31, 2025, submit a report containing the following information to the Governor, the President of the Senate, and the Speaker of the House of Representatives:

1. The number of persons who presented a deed or other qualifying instrument for recording:

a. In person.

b. Through an electronic recording service.

2. The types of identification cards produced in connection with the presentation of deeds or other qualifying instruments for recording, and the number of each type.

3. Feedback received from the community, if any, in response to the clerk's participation in the pilot program.

4. Whether the pilot program led to the identification of any persons suspected or accused of fraudulently conveying, or attempting to fraudulently convey, real property, and the outcome of any criminal charges or civil actions brought against such persons.

5. The clerk's recommendation as to whether the production of a government-issued photographic identification card in connection with the presentation of a deed or other instrument for recording is appropriate to require throughout this state.

6. Any other information the clerk deems necessary.

(4) This section does not require the clerk to provide or allow access to a record or other information that is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution or to otherwise violate the public records laws of this state.

(5) This section is repealed on July 1, 2025.

History.—s. 1, ch. 2023-238.

The 2024 Florida Statutes (including 2025 Special Session C)

695.26 Requirements for recording instruments affecting real property.—

(1) No instrument by which the title to real property or any interest therein is conveyed, assigned, encumbered, or otherwise disposed of shall be recorded by the clerk of the circuit court unless:

(a) The name of each person who executed such instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such person and the post-office address of each such person is legibly printed, typewritten, or stamped upon such instrument;

(b) The name and post-office address of the natural person who prepared the instrument or under whose supervision it was prepared are legibly printed, typewritten, or stamped upon such instrument;

(c) The name of each witness to the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such witness and the post office address of each such person is legibly printed, typewritten, or stamped upon such instrument;

(d) The name of any notary public or other officer authorized to take acknowledgments or proofs whose signature appears upon the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath the signature of such notary public or other officer authorized to take acknowledgment or proofs;

(e) A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for use by the clerk of the court; and

(f) In any instrument other than a mortgage conveying or purporting to convey any interest in real property, the name and post-office address of each grantee in such instrument are legibly printed, typewritten, or stamped upon such instrument.

(2) If a name or address is printed, typewritten, or stamped on an instrument in a position other than the position required by subsection (1), the clerk of the circuit court may, in her or his discretion, accept the instrument for recordation if she or he determines that the connection between the signature and the name or the name and the address is apparent.

(3) This section does not apply to:

(a) An instrument executed before July 1, 1991.

(b) A decree, order, judgment, or writ of any court.

(c) An instrument executed, acknowledged, or proved outside of this state.

(d) A will.

(e) A plat.

(f) An instrument prepared or executed by any public officer other than a notary public.

(4) The failure of the clerk of the circuit court to comply with this section does not impair the validity of the recordation or of the constructive notice imparted by recordation.

History.—s. 1, ch. 90-183; ss. 8, 22, ch. 94-348; s. 773, ch. 97-102; s. 5, ch. 2023-238.

The 2024 Florida Statutes (including 2025 Special Session C)

689.025 Form of quitclaim deed prescribed.—A quitclaim deed of conveyance to real property or an interest therein must:

(1) Be in substantially the following form:

This Quitclaim Deed, executed this _(date)_ day of _(month, year)_, by first party, Grantor _(name)_, whose post office address is _(address)_, to second party, Grantee _(name)_, whose post office address is _(address)_.

Witnesseth, that the said first party, for the sum of $ _(amount)_, and other good and valuable consideration paid by the second party, the receipt whereof is hereby acknowledged, does hereby remise, release, and quitclaim unto the said second party forever, all the right, title, interest, claim, and demand which the said first party has in and to the following described parcel of land, and all improvements and appurtenances thereto, in _(county)_, Florida:

(Legal description)

(2) Include the legal description of the real property the instrument purports to convey, or in which the instrument purports to convey an interest, which description must be legibly printed, typewritten, or stamped thereon.

(3) Include a blank space for the parcel identification number assigned to the real property the instrument purports to convey, or in which the instrument purports to convey an interest, which number, if available, must be entered on the deed before it is presented for recording. The failure to include such blank space or the parcel identification number does not affect the validity of the conveyance or the recordability of the deed. Such parcel identification number is not a part of the legal description of the property otherwise set forth in the instrument and may not be used as a substitute for the legal description required by this section.

History.—s. 4, ch. 2023-238.

The 2024 Florida Statutes (including 2025 Special Session C)

28.47 Recording notification service; related services; public records exemption.—

(1) On or before July 1, 2024, each clerk of the circuit court must create, maintain, and operate a free recording notification service which is open to all persons wishing to register for the service. For purposes of this section, the term:

(a) "Land record" means a deed, mortgage, or other document purporting to convey or encumber real property.

(b) "Monitored identity" means a personal or business name or a parcel identification number submitted by a registrant for monitoring under a recording notification service.

(c) "Recording notification" means a notification sent by electronic mail indicating to a registrant that a land record associated with the registrant's monitored identity has been recorded in the public records of the county.

(d) "Recording notification service" means a service which sends automated recording notifications.

(e) "Registrant" means a person who registers for a recording notification service.

(2) The clerk must ensure that registration for the recording notification service is possible through an electronic registration portal, which portal must:

(a) Be accessible through a direct link on the clerk's official public website;

(b) Allow a registrant to subscribe to receive recording notifications for at least five monitored identities per valid electronic mail address provided;

(c) Include a method by which a registrant may unsubscribe from the service;

(d) List a phone number at which the clerk's office may be contacted during normal business hours with questions related to the service; and

(e) Send an automated electronic mail message to a registrant confirming his or her successful registration for or action to unsubscribe from the service, which message must identify each monitored identity for which a subscription was received or canceled.

(3) When a land record is recorded for a monitored identity, a recording notification must be sent within 24 hours after the recording to each registrant who is subscribed to receive recording notifications for that monitored identity. Such notification must contain, at a minimum:

(a) Information identifying the monitored identity for which the land record was filed;

(b) The land record's recording date;

(c) The official record book and page number or instrument number assigned to the land record by the clerk;

(d) Instructions for electronically searching for and viewing the land record using the assigned official record book and page number or instrument number; and

(e) A phone number at which the clerk's office may be contacted during normal business hours with questions related to the recording notification.

(4) There is no right or cause of action against, and no civil liability on the part of, the clerk with respect to the creation, maintenance, or operation of a recording notification service as required by this section.

(5)(a) This section does not require the clerk or property appraiser to provide or allow access to a record or information which is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution or to otherwise violate the public records laws of this state.

(b) All electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser for the purpose of registering for a recording notification service or a related service pursuant to this section are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except upon court order. This paragraph applies to information held by the clerk or property appraiser before, on, or after May 6, 2024. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

(6) This section also applies to county property appraisers who have adopted an electronic land record notification service before July 1, 2023.

(a) The property appraiser may use a verification process for persons wishing to register for the electronic land record notification service to ensure the integrity of the process.

(b) For purposes of this subsection only, and notwithstanding paragraph (1)(a) and subsection (3):

1. "Land record" means a deed or other document purporting to convey real property.

2. When a land record is recorded for a monitored identity, the property appraiser must send a recording notification to each registrant who is subscribed to receive recording notifications for that monitored identity within 24 hours after the instrument being reflected on the county tax roll.

History.—s. 2, ch. 2023-238; ss. 1, 2, ch. 2024-149.

The 2024 Florida Statutes (including 2025 Special Session C)

65.091 Quieting title; fraudulent conveyances.—

(1) An action to quiet title based on a fraudulent attempted conveyance allegation may be maintained under this chapter, and this remedy is cumulative to other existing remedies. A petitioner bringing an action to quiet title based on such allegations is entitled to summary procedure under s. 51.011, and the court shall advance the cause on the calendar.

(2) In an action to quiet title, when the court determines that an attempt was made to fraudulently convey the land at issue away from a plaintiff who had legal title to the land before the conveyance, the court must quiet title in and award the plaintiff with the same title and rights to the land that the plaintiff enjoyed before the attempted conveyance.

(3) The clerk of the circuit court must provide a simplified form for the filing of a complaint to quiet title based on a fraudulent attempted conveyance allegation and instructions for completing such form.

History.—s. 3, ch. 2023-238.

The 2024 Florida Statutes (including 2025 Special Session C)

51.011 Summary procedure.—The procedure in this section applies only to those actions specified by statute or rule. Rules of procedure apply to this section except when this section or the statute or rule prescribing this section provides a different procedure. If there is a difference between the time period prescribed in a rule and in this section, this section governs.

(1) PLEADINGS.—Plaintiff's initial pleading shall contain the matters required by the statute or rule prescribing this section or, if none is so required, shall state a cause of action. All defenses of law or fact shall be contained in defendant's answer which shall be filed within 5 days after service of process. If the answer incorporates a counterclaim, plaintiff shall include all defenses of law or fact in his or her answer to the counterclaim and shall serve it within 5 days after service of the counterclaim. No other pleadings are permitted. All defensive motions, including motions to quash, shall be heard by the court prior to trial.

(2) DISCOVERY.—Depositions on oral examination may be taken by any party at any time. Other discovery and admissions may be had only on order of court setting the time for compliance. No discovery postpones the time for trial except for good cause shown or by stipulation of the parties.

(3) JURY.—If a jury trial is authorized by law, any party may demand it in any pleading or by a separate paper served not later than 5 days after the action comes to issue. When a jury is in attendance at the close of pleading or the time of demand for jury trial, the action may be tried immediately; otherwise, the court shall order a special venire to be summoned immediately. If a special venire be summoned, the party demanding the jury shall deposit sufficient money with the clerk to pay the jury fees which shall be taxed as costs if he or she prevails.

(4) NEW TRIAL.—Motion for new trial shall be filed and served within 5 days after verdict, if a jury trial was had, or after entry of judgment, if trial was by the court. A reserved motion for directed verdict shall be renewed within the period for moving for a new trial.

(5) APPEAL.—Notice of appeal shall be filed and served within 30 days from the rendition of the judgment appealed from.

History.—s. 7, ch. 67-254; s. 23, ch. 73-333; s. 5, ch. 87-405; s. 292, ch. 95-147.

IN THE COUNTY COURT OF _____ COUNTY, FLORIDA

_____,

Plaintiff(s),

vs. CASE NO. _____

_____,

Defendant(s).

COMPLAINT TO QUIET TITLE BASED ON FRAUDULENT CONVEYANCE UNDER SECTION 65.091, FLORIDA STATUTES

The plaintiff(s), _____, sue(s) defendant(s), _____, defendant's unknown spouse, heirs, devisees, grantees, judgment creditors, and all other parties claiming by, through, under, or against defendants or parties or claiming to have any right, title, or interest in the property described in this complaint, and alleges:

1. This is an action to quiet and confirm title of plaintiff in and to lands located in _____ County, Florida.
2. Plaintiff owns the following real property:
   _____
   _____
   _____
   _____
3. Plaintiff shows entitlement to (deraigns) title as follows (must show chain of title for at least the past 7 years):
   Plaintiff obtained ownership by deed or instrument dated _____, recorded on _____, in official records book _____, page _____ of the public records of _____ County, Florida. The property description in that deed is as follows:
   _____
   _____
   _____
   _____
4. The deed or instrument purported to have been signed by plaintiff(s), or purporting to convey the property to defendant(s), dated _____, recorded _____, in official records book _____, page _____of the public records of _____ County, Florida, is fraudulent.

5. Plaintiff did not execute the deed and has not conveyed the property to any person since obtaining the conveyance(s) described in paragraph (3).
6. The deed or instrument described in paragraph (4) did not convey title to defendant because the grantor had no title, but the recording of the deed casts a cloud on plaintiff's title.

WHEREFORE, the plaintiff(s) respectfully request (requests) the court to enter an order to quiet title in and award the plaintiff(s) with the same title and rights to the land that the plaintiff enjoyed before the attempted conveyance.

Date: _____

_____
Plaintiff

_____
Address

_____
City, State, Zip Code

_____
Phone

_____
Email

(Include Signature for each Plaintiff)

_____
Plaintiff Signature

_____
Plaintiff Signature

_____
Plaintiff Signature

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT
IN AND FOR _____ COUNTY, FLORIDA

_____,

Plaintiff(s),

vs. CASE NO. _____

_____,

Defendant(s).

COMPLAINT TO QUIET TITLE BASED ON FRAUDULENT CONVEYANCE UNDER SECTION 65.091, FLORIDA STATUTES

The plaintiff(s), _____, sue(s) defendant(s), _____, defendant's unknown spouse, heirs, devisees, grantees, judgment creditors, and all other parties claiming by, through, under, or against defendants or parties or claiming to have any right, title, or interest in the property described in this complaint, and alleges:

1. This is an action to quiet and confirm title of plaintiff in and to lands located in _____ County, Florida.
2. Plaintiff owns the following real property:
   _____
   _____
   _____
   _____
3. Plaintiff shows entitlement to (deraigns) title as follows (must show chain of title for at least the past 7 years):
   Plaintiff obtained ownership by deed or instrument dated _____, recorded on _____, in official records book _____, page _____ of the public records of _____ County, Florida. The property description in that deed is as follows:
   _____
   _____
   _____
   _____
4. The deed or instrument purported to have been signed by plaintiff(s), or purporting to convey the property to defendant(s), dated _____, recorded _____, in official records book _____, page _____of the public records of _____ County, Florida, is fraudulent.

5. Plaintiff did not execute the deed and has not conveyed the property to any person since obtaining the conveyance(s) described in paragraph (3).
6. The deed or instrument described in paragraph (4) did not convey title to defendant because the grantor had no title, but the recording of the deed casts a cloud on plaintiff's title.

WHEREFORE, the plaintiff(s) respectfully request (requests) the court to enter an order to quiet title in and award the plaintiff(s) with the same title and rights to the land that the plaintiff enjoyed before the attempted conveyance.

Date: _____

_____
Plaintiff

_____
Address

_____
City, State, Zip Code

_____
Phone

_____
Email

(Include Signature for each Plaintiff)

_____
Plaintiff Signature

_____
Plaintiff Signature

_____
Plaintiff Signature

Seller & Borrower Verification

ID: Obtain a valid government-issued color ID and closely scrutinize for authenticity.

Independently Verify Transaction with Property Owner: Confirm independently with the property owner in vacant land or absentee owner situations that the upcoming transaction is legitimate.

Escrow Protector

Independently Verify Payoff & Wire Transfer Instructions (WTI) with a Trusted Source: Beware of unsolicited payoff/WTI and compare for consistency. Beware of changes to routing & account numbers.

Encrypt Wire Communication: Encrypt emails containing WTI or Personal Information (PI).

Avoid Sensitive Terms in Email Subject Lines: (For example, a subject line using "Wire Instructions" is highly susceptible to spoofing and phishing attacks).

Track the Transaction: Keep track of transfers and monitor for any last-minute changes. Track receipt of disbursements (payoffs, insurance, seller proceeds).

Common Sense

Trust Your Instinct: Pause proceedings if there is a rejected wire, substituted unknown notary, or other irregularities. Be cautious of any last-minute changes, especially with vacant land, absentee owners, and foreign sellers.

Documents: Compare signor(s) locations on executed documents (deed/mortgage) with their ID document(s), and compare handwriting & signatures for similarities (witnesses, notary, grantor).

Utilize Secure Protocols

RON Service Providers: Use industry trusted and known RON platforms which incorporate KBA and other ID verifications.

Email Services Providers: Use secure email providers, avoiding public platform providers like Gmail, Yahoo, AOL, etc.

Cybersecurity Measures: Implement strict access controls.

Routine Training

Train Staff: Regularly update staff on fraud and anti-fraud techniques and encourage review of Fund education materials.

Practice Drills: Run drills and action plan rehearsals, including simulated test phishing emails to keep staff alert.

Incident Response Plan (IRP)

Incident Response Plan: Develop and maintain a strong plan with instructions, critical contacts including your bank's security officer, action items, and E&O carrier info.

Immediate Fraud Response: Inform outgoing and receiving banks immediately upon detecting fraud. Diligently work to recall wires.

Take Charge of the Closing

Trusted Sources: Control the closing process. Rely on trusted sources and known notaries.

RON: Use RON notary or require execution of documents with a known attorney or notary for signors who are not present and are unknown.

You

Stay updated on fraud trends and anti-fraud techniques.

Detect and Prevent Fraud: The responsibility ultimately lies with you. Everyone is counting on you to prevent fraud. You are in the best position to detect and thwart fraud.

Protect Yourself: These policies are essential to protect your business and livelihood.

Passwords

- Use strong passwords and change them frequently.
- Adopt ALTA's best practices where appropriate.

Records

- Secure records and purge Personal Information (PI).
- Transfer closed files with PI from internet-exposed servers to an external hard drive or other secured storage.

Operations

- Avoid personal email for work communications.
- Refrain from using open networks.
- Follow secure protocols to protect PI and other sensitive information.
- Regularly update your system to include all security patches by enabling automatic updates, using reliable antivirus software, keeping all software up-to-date, and backing up data to encrypted servers.
- Obtain and scrutinize a second valid government-issued ID.
- Consider sending a check instead of a wire but be aware of check washing risks.

Tools

- Use third-party vendors for wire transfer security, identity, and seller/borrower verification (e.g., CertifID, TLO Skip Tracing, Persona, Verisoul).
- Consider services that confirm bank account ownership.

Errors & Omissions Insurance

- Review and understand coverages and limitations of your E&O policy. Analyze to maximize protection for potential loss and actions taken as a closing agent.
- Ensure your office adheres to policy prerequisites and conditions for claims.
- Promptly review and comply with your E&O policy concerning notice obligations.

Cybersecurity Insurance

- Acquire cybersecurity insurance to cover matters excluded by E&O insurance.

Technology

- Implement Multifactor Authentication (MFA) across all accounts and devices.
- Utilize Positive Pay for escrow accounts.
- Use FaceTime or similar applications to secondarily verify ID photos with unknown seller/borrower on camera.

Residential Real Estate Now - Buyers, Sellers, and Current Economic Fundamentals

Dr. Jessica Lautz
Deputy Chief Economist and Vice President of Research,
National Association of REALTORS®

NO MATERIAL PROVIDED FOR THIS SESSION

Understanding Recent Freddie Mac Multifamily Loan Guidelines

Kara Scott
Legal Education Attorney, The Fund

Understanding Recent Freddie Mac and Fannie Mae Multifamily Loan Guidelines

Kara Scott, Esq.
Legal Education Attorney

Introduction & Background

What are Fannie Mae & Freddie Mac ?

Fannie Mae – Federal National Mortgage Association (FNMA)

Freddie Mac – Federal Home Loan Mortgage Corporation (FHLMC)

What are Fannie Mae & Freddie Mac?

- Government Sponsored Enterprise (GSE)
  - A type of financial services corporation created by Congress
- Created a secondary market in loans through guarantees, bonding and securitization

- Fannie & Freddie buy mortgages from lenders
  - Held in portfolios
  - Packaged into mortgage-backed securities (MBS) – attracting investors by guaranteeing the timely payment of principal and interest
- Secondary mortgage market is more liquid and helps lower interest rates paid by borrowers

Multifamily Properties

5 or more individual units

- Student housing
- Senior housing
- Military housing
- Apartment buildings
- Manufactured housing communities
- Co-operatives

Multifamily Loan Programs

Fannie Mae

- Delegated Underwriting & Servicing (DUS) Lender Partners
- DUS Lender Partners are approved to underwrite, close and sell multifamily loans

Multifamily Loan Programs

Fannie Mae Loans

- Small Loans - $1M to $9M
  - Lower interest rates
  - Higher LTV allowances
  - Relatively fast approvals
- Larger Multifamily loans >$9M

Multifamily Loan Programs

Freddie Mac

- Small Balance Loans (SBL)
  - loans of 1 to 7.5 million
- Other multifamily property loans > 7.5 million

Affordable Housing

Freddie Mac

- Mission-driven affordable housing target of 500,000 for 2024
- Supported 507,191 affordable rental units in the U.S.
- 65% qualified as mission-driven affordable housing in 2024

Freddie Mac MULTIFAMILY

Affordable Housing

Fannie Mae

- Also focused on affordable housing
- Sponsor Initiated Affordability (SIA) loan programs – minimum of 20% of units to tenants earning 80% or less of Area Median Income (AMI)
- Rent & Income restrictions

New Requirements

- Title Insurance Underwriter is required to perform all "funding functions"
- Title/Closing Agents may no longer receive or disburse funds but can continue to conduct the closings, record documents and issue title insurance

Why?

COMBAT FRAUD

PRESS RELEASE

Three Real Estate Investors Ple
to $119M Mortgage Fraud Cons

PRESS RELEASE

Real Estate Investor Pleads Guilty to $165M Mortgage Fraud Conspiracy

- Fannie Mae's 3rd Qtr. 2024 SEC reported instances of mortgage fraud in multifamily lending transactions
- New Guidelines intended to reduce the risk of fraudulent practices

Types of Fraud

- Inflated property valuations allowed borrowers to qualify for larger loans
- Fictitious contracts with inflated purchase prices used to support higher loan amounts

False Settlement Statements

- One true settlement statement used for the legitimate transaction
- A second fake settlement statement used in the fraudulent transaction

Deep Dive into the New Guidelines

Freddie Mac

- April 2024 – implemented new policies designed to detect and deter fraud
  - Increased unit inspections
  - Additional documentation confirming tenant payments
  - First time borrowers will require additional due diligence
  - Additional appraisal review
  - Appraiser independence requirements
- August 2024 – new settlement requirements

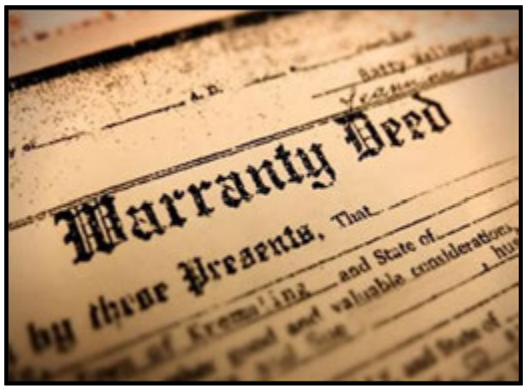
Freddie Mac

August 15, 2024 – Multifamily Seller/Servicer Guide

- Title Insurance Underwriter is REQUIRED to perform all "escrow and settlement functions":
  - ✓ Prepare settlement statement
  - ✓ Deliver settlement statement to lender or lender's counsel
  - ✓ Receive and disburse all funds related to acquisition and loan
- Title Agents can continue to:
  - ✓ Conduct the closings
  - ✓ Prepare conveyancing documents
  - ✓ Record documents
  - ✓ Issue title insurance

Freddie Mac

- Title Commitment and all supporting documents must be sent to lender for review and approval
- Settlement statement sent to lender by underwriter for review and approval
- Lender review and approval of conveyancing documents



Freddie Mac

Audits

- Increased audits
- Lender/Servicer must respond in 5 days with detailed remediation plan (180 days to remediate)
- If no response (or inadequate remediation), Freddie Mac may impose probation, suspension or termination
- Freddie maintains a restricted vendor list and will not approve a loan if any party involved is on the list

Fannie Mae

- September 2024 revised document delivery requirements for their DUS lender partners
- January 2025 proposed new settlement requirements similar to Freddie Mac
- “Blacklisted” Riverside Abstract and Madison Title – 2 companies linked to an investor who pleaded guilty to mortgage fraud conspiracy

Fannie Mae

September 24, 2024

- Additional documents the DUS lender partners must send to Fannie Mae when submitting their loans
  - Underwriting Certificates (and attachments) for borrowers, guarantors and key principals
  - Receipts and disbursements ledger showing the source of all funds and the flow of all funds
  - Site inspection form with additional supplemental materials

Fannie Mae

January, 2025 – proposed new rule

- Title Insurance Underwriter is REQUIRED to perform all "funding functions"
  - ✓ Receive and disburse all funds
  - ✓ Prepare settlement statement (SS)
  - ✓ Maintain a receipts and disbursements ledger
  - ✓ Provide copies of SS, ledger and all wires or checks to lender

Fannie Mae

- Title/Closing Agents may perform “escrow functions”
  - ✓ Prepare conveyancing documents
  - ✓ Record documents
  - ✓ Issue title policies & related endorsements

Fannie Mae

- Title Commitment and all supporting documents must be sent to lender for review and approval

- Settlement statement sent to lender by underwriter for review and approval
- Lender approval of conveyancing documents

Impact on Commercial Real Estate Transactions

Confusion

- Initial deposit under contract – where does it go? If sent to an attorney, then when does it need to be sent to underwriter?
- Additional deposits under the PSA – who acts as escrow agent under the PSA prior to closing?

Increased Costs

- Two entities now charging for services
- Additional time sending information, explaining certain settlement charges, etc.
- Closing agent will still need to prepare draft settlement statements and coordinate with underwriter
- Increased staff time = increased fees to borrower

Delays

- Time spent gathering information for settlement statement and sending to underwriter
- Delays finalizing the settlement statement, explaining line items and adjustment calculations
- Closing attorneys understand local closing customs and requirements – title underwriters likely do not have local operations, and this may cause delays and errors due to lack of local knowledge

Loss of Control

- Attorneys are typically involved in all aspects of the commercial closing – the new rules remove the funding functions and settlement statement from the attorney's control
- Creates uncertainty in the transaction

Impacts Relationships

- Commercial transactional attorneys have established relationships with their clients as well as with other professionals on their "team"
- Title underwriter does not have relationship with team

What to do?

Commercial Services

The Fund Backed with the Strength of OLD REPUBLIC

thefund.com/commercial

Fund Commercial Services

- Florida Underwriting Counsel & Commercial Examiners
- Escrow Services & Support
- Construction Loan Services
- 1031 Exchange Program
- Multi-Jurisdictional Support
- Comprehensive Closing Assistance

Thank you

For more information please contact:

Kara Scott

(321) 234-8294 • kscott@thefund.com • www.thefund.com

Industry News

Fannie Mae, Freddie Mac Multifamily Changes Impact Handling of Funds

November 14, 2024

Fannie Mae and Freddie Mac recently updated their Multifamily Seller/Servicer Guides changing requirements for the handling of escrow and settlement functions involving mortgage transactions and the acquisition of multifamily properties.

The revisions were in response to several fraudulent transactions involving multifamily properties where the actual purchase price was not reported. The fraudulent activity resulted in inflated loans. ALTA is closely monitoring this issue and will be communicating with the government sponsored enterprises on developments in this area.

Freddie Mac

Freddie Mac on Oct. 17 issued a **revision** to its updated **Multifamily Seller/Servicer Guide** changing requirements for the handling of escrow and settlement functions involving multifamily properties. As announced Aug. 15 in a bulletin, Freddie Mac started requiring title insurance underwriters to receive and disburse all the funds associated with these types of transactions. Underwriters must also deliver the Settlement Statement to the Seller/Servicer or the Seller/Servicer's counsel.

In its latest bulletin, Freddie Mac stated that if an underwriter doesn't offer closing services in an attorney state, then an attorney agent can handle the escrow and/or settlement functions.

Specifically, the bulletin says:

- For acquisition Mortgage origination transactions, if the law of the jurisdiction in which the Property is located prohibits the use of anyone other than a licensed attorney for escrow and/or settlement functions, and the Seller/Servicer, Seller/Servicer's counsel or Single Counsel has confirmed that the Title Insurance Underwriter or its wholly-owned subsidiary or affiliate under identical ownership does not have a licensed attorney on staff in such jurisdiction who can fulfill this requirement, the Seller/Servicer's counsel or Single Counsel, as applicable, must notify the applicable Freddie Mac transactional attorney prior to the Seller/Servicer's submission of the full underwriting package.

Fannie Mae

Fannie Mae's change wasn't as drastic, but requires information about the flow of funds involving loans for multifamily transactions. According to **Lender Letter 24-05**, title companies and escrow agents must provide a receipts and disbursements ledger for transactions—or other written evidence—showing:

- the source of all funds deposited (with federal funds wires and full entity names) into the closing escrow (including good faith deposits and all other funds required for acquisition or cash-in refinance, if applicable)
- the flow of all funds disbursed from the closing escrow for the mortgage loan (and any acquisition or assumption, if applicable), whether by check or federal funds wires (with full entity names)

The delivery requirement document may be used immediately and must be used for all mortgage loans with a confirmed commitment date on or after Sept. 24, 2024.

It's expected Fannie Mae will make additional changes after it identified gaps in its processes for managing multifamily loan origination fraud risk and for overseeing our multifamily seller/servicer counterparties.

In its **quarterly SEC filing**, Fannie Mae reported it has "discovered instances of multifamily lending transactions in which one or more of the parties involved engaged in mortgage fraud or possible mortgage fraud, and we continue to investigate additional multifamily lending transactions in which we suspect fraud may have occurred."

Fannie Mae said it delegates underwriting in which lenders make specific representations and warranties about the characteristics of the mortgage loans it purchases and securitizes.

"As a result, we do not independently verify most borrower information that is provided to us," Fannie Mae said in its filing. "This exposes us to the risk that one or more of the parties involved in a transaction (such as the borrower, borrower's attorney, sponsor, seller, broker, appraiser, property inspector, title agent, lender or servicer) will engage in fraud by misrepresenting facts about a mortgage loan."

In February, Fannie Mae notified its lenders that it would no longer accept loans from Riverside Abstract and Madison Title. The title companies were involved in deals with New York City-based investor Boruch Drillman, who **pleaded guilty in a $165 million mortgage fraud case** last year.

Additionally, **three real estate investors** pleaded guilty to conspiracy in a $119 million mortgage fraud scheme involving a Fannie Mae loan, according to the Department of Justice.

Best Practices

Title companies are encouraged to implement **ALTA's Best Practices** and showcase to their lender clients the policies and procedures that are followed to ensure a positive and compliant real estate settlement experience.

Specifically, Pillar 2 of Best Practices recommends procedures to help ensure accuracy and minimize the risk of loss of funds.

With fraud continuing to increase, it's important settlement service providers understand the demands being put on lenders. Financial institutions will be more inclined to work with title companies, attorneys and settlement service providers that can ensure the least amount of risk when closing real estate transactions.

*Contact ALTA at 202-296-3671 or **communications@alta.org**.*

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PRESS RELEASE

Three Real Estate Investors Plead Guilty to $119M Mortgage Fraud Conspiracy

Thursday, August 1, 2024

For Immediate Release

Office of Public Affairs

Three real estate investors have pleaded guilty to engaging in an extensive, multi-year conspiracy to fraudulently obtain a $74 million loan and a $45 million loan and fraudulently acquire multifamily properties.

Fredrick Schulman, 72, of New York, and Chaim “Eli” Puretz, 29, of New Jersey, pleaded guilty today to one count of conspiracy to commit wire fraud affecting a financial institution. Moshe “Mark” Silber, 34, of New York, pleaded guilty on July 9 to one count of conspiracy to commit wire fraud affecting a financial institution.

According to court documents, between 2018 and 2020, Silber, Schulman, and Puretz conspired with others to deceive lenders into issuing a mortgage loan for a multifamily property and Fannie Mae into funding or purchasing the mortgage loan. Silber and Schulman were managing members of Rhodium Capital Advisors, an entity that was involved in the acquisition and management of Williamsburg of Cincinnati, an apartment complex in Cincinnati, Ohio. Puretz was one of the owners of commercial property Troy Technology Park in Troy, Michigan. Silber, Schulman, Puretz, and their co-conspirators provided the lenders and Fannie Mae with falsified documents, including a purchase contract with an inflated purchase price and other fraudulent documents.

In March 2019, Williamsburg of Cincinnati was acquired for $70 million. However, Silber, Schulman, and other co-conspirators utilized a stolen identity to present a lender and Fannie

Mae with a purchase and sale contract for $95.85 million and other fraudulent documents. On March 8, 2019, two closings were performed, one for the true $70 million sales price and another for the fraudulent $95.85 million sales price presented to the lenders. Based on the co-conspirators' false statements, the lender and Fannie Mae funded a loan in the amount of $74.25 million for the purchase of Williamsburg of Cincinnati.

In September 2020, Troy Technology Park was acquired by Puretz and co-conspirators for $42.7 million. However, to support an inflated purchase price of $70 million, Puretz and his co-conspirators submitted to the lender and appraiser a fraudulent letter of intent to purchase the property from another party for $68.8 million and other fraudulent documents. Based on the fraudulent documents, the lender funded a loan for $45 million. To conceal the fraudulent nature of the transaction, Puretz and his co-conspirators arranged for a short-term $30 million loan, which was used to make it appear that they had the funds needed to close on the sale. On Sept. 25, 2020, a title company based in Lakewood, New Jersey, performed two closings, one for the true $42.7 million sales price and another for the fraudulent $70 million sales price presented to the lender.

Silber, Schulman, and Puretz are scheduled to be sentenced on Dec. 3 and each face a maximum penalty of five years in prison. A federal district court judge will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

Principal Deputy Assistant Attorney General Nicole M. Argentieri, head of the Justice Department's Criminal Division; U.S. Attorney Philip R. Sellinger for the District of New Jersey; Inspector General Brian M. Tomney of the Federal Housing Finance Agency Office of Inspector General (FHFA-OIG); and Postal Inspector in Charge Eric Shen of the U.S. Postal Inspection Service's (USPIS) Criminal Investigations Group made the announcement.

The FHFA-OIG and USPIS are investigating the case.

Trial Attorney Siji Moore of the Criminal Division's Fraud Section and Assistant U.S. Attorney Martha Nye for the District of New Jersey are prosecuting the case.

Anyone with information concerning similar multifamily or commercial mortgage fraud can report it by contacting the FHFA-OIG Hotline at 800-793-7724 or via the web at www.fhfaoig.gov/ReportFraud#hotlineform.

Updated February 6, 2025

Topic

PRESS RELEASE

Real Estate Investor Pleads Guilty to $165M Mortgage Fraud Conspiracy

Thursday, December 14, 2023

For Immediate Release

Office of Public Affairs

A New York man pleaded guilty yesterday to engaging in an extensive multi-year conspiracy to fraudulently obtain over $165 million in loans and fraudulently acquire multifamily and commercial properties.

According to court documents, between 2018 and 2020, Boruch “Barry” Drillman, 36, of New York, conspired with at least four others to deceive lenders into issuing multifamily and commercial mortgage loans. Drillman and his co-conspirators provided the lenders with fictitious documents, including purchase and sale contracts with inflated purchase prices. Drillman managed BRC Williamsburg Holdings LLC, which purchased multifamily property Williamsburg of Cincinnati in Cincinnati, Ohio, and Troy Technology Holdings LLC, which purchased commercial property Troy Technology Park in Troy, Michigan.

In March 2019, Williamsburg of Cincinnati was acquired for $70 million. However, Drillman and his co-conspirators from Rhodium Capital Advisors utilized a stolen identity to present a lender and Fannie Mae with a purchase and sale contract for $95.85 million and other fraudulent documents. On March 8, 2019, Madison Title Agency performed two closings, one for the true $70 million sales price and another for the fraudulent $95.85 million sales price presented to the lender.

In September 2020, Troy Technology Park was acquired for $42.7 million. However, Drillman and his co-conspirators presented the lender with a fraudulent purchase and sale contract for

$70 million. Additionally, to support the inflated purchase price, Drillman and his co-conspirators submitted to the lender and appraiser a fraudulent letter of intent to purchase the property from another party for $68.8 million and other fraudulent documents. To conceal the fraudulent nature of the transaction, Drillman and his co-conspirators arranged for a short-term $30 million loan, which was used to make it appear that they had the funds needed to close on the loan. On Sept. 25, 2020, Riverside Abstract performed two closings, one for the true $42.7 million sales price and another for the fraudulent $70 million sales price presented to the lender.

Drillman pleaded guilty to one count of conspiracy to commit wire fraud affecting a financial institution. He is scheduled to be sentenced on April 16, 2024, and faces a maximum penalty of five years in prison. A federal district court judge will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

Acting Assistant Attorney General Nicole M. Argentieri of the Justice Department's Criminal Division, U.S. Attorney Philip R. Sellinger for the District of New Jersey, Inspector General Brian M. Tomney of the Federal Housing Finance Agency Office of Inspector General (FHFA-OIG), and Postal Inspector in Charge Eric Shen of the U.S. Postal Inspection Service's (USPIS) Criminal Investigations Group made the announcement.

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Updated February 6, 2025

Topics

FINANCIAL FRAUD | **MORTGAGE FRAUD**

Components

Criminal Division | Criminal - Criminal Fraud Section | USAO - New Jersey

Press Release Number: 23-1422

MULTIFAMILY DIVE

Fannie Mae investigates potential multifamily mortgage fraud

The government-sponsored enterprise admitted in its Q3 report that it had experienced financial losses due to loan misrepresentation.

Published Nov. 13, 2024

Mary Salmonsen
Reporter

The Fannie Mae headquarters in May 2019. The government-sponsored enterprise reported that it had experienced losses due to mortgage fraud in its third quarter earnings filing. Courtesy of Fannie Mae

Dive Brief:

- Fannie Mae reported that it had experienced financial losses due to mortgage fraud, and that it is currently investigating multifamily lending transactions where it suspects fraud may have occurred, in its recent third-quarter earnings filing with the Securities and Exchange Commission.
- "Certain gaps have been identified in our processes for managing multifamily loan origination fraud risk and for overseeing our multifamily seller/servicer counterparties," Fannie Mae stated in the Oct. 31 report. "In the future, we may experience additional financial losses as a result of mortgage fraud."
- To mitigate the impact of fraud on its business, the government-sponsored enterprise intends to improve its processes for

managing multifamily loan origination fraud risk and oversight of multifamily seller and servicer counterparties, it said.

Dive Insight:

Fannie Mae's underwriting process is delegated, according to the earnings filing, meaning that its lenders are the ones that present the characteristics of the mortgage loans it purchases and securitizes, and it does not usually independently verify this information.

"This exposes us to the risk that one or more of the parties involved in a transaction (such as the borrower, borrower's attorney, sponsor, seller, broker, appraiser, property inspector, title agent, lender or servicer) will engage in fraud by misrepresenting facts about a mortgage loan," the report said.

Until its process improvements are complete, Fannie Mae still anticipates it will experience losses from mortgage fraud. Even then, it cannot guarantee that its improvements will solve the issue entirely, according to the filing. The details of these process changes were not specified in the report.

In February, Fannie Mae notified its lenders that it would no longer accept loans from Riverside Abstract and Madison Title, two Lakewood, New Jersey-based title insurers, according to a report by Bisnow. The firms are allegedly linked to deals by New York City-based investor Boruch Drillman, who pleaded guilty in a mortgage fraud conspiracy in December.

In August, three fraudulent investors also pleaded guilty to conspiracy in a mortgage fraud scheme involving a Fannie Mae loan, according to the Department of Justice. The trio had purchased an apartment building for $70 million in 2019, but presented their lender and Fannie Mae with falsified

documentation stating the property's purchase price was just under $96 million. Fannie Mae and the lender had granted a $74 million loan based on the false information.

Fannie Mae's fellow GSE, Freddie Mac, implemented new policies designed to detect and prevent underwriting mortgage fraud in April. Property inspections at properties with Freddie Mac mortgages now require a larger number of unit inspections and higher leased audit sample sizes. First-time borrowers and borrowers with limited multifamily experience will also require additional due diligence, and all borrowers will need additional liquidity and owned real estate verification.

Fannie Mae Earmarks $752M to Fight Multifamily Fraud - CRE Daily

KEY TAKEAWAYS

- **Fannie Mae allocated $752M for credit losses, partly due to fraud or suspected fraud in its multifamily lending business.**
- **The firm is investigating additional transactions and may uncover more fraudulent loans in the coming months.**
- **Falling multifamily property values and rising delinquencies also contributed to the loss provision.**

Fannie Mae (FNMA) set aside **$752M for multifamily lending credit losses**, citing fraud or suspected fraud as a contributing factor. The provision follows an industrywide crackdown on questionable loans, per Bloomberg.

Behind The Provision

In its annual report, Fannie Mae disclosed that fraudulent or potentially fraudulent transactions contributed to its decision to set aside $752M for credit losses in 2024.

The government-sponsored enterprise (GSE) acknowledged multiple cases of fraud in its multifamily lending transactions and warned that further investigations may reveal additional affected loans.

“We have discovered instances of multifamily lending transactions in which one or more of the parties involved engaged in mortgage fraud or possible mortgage fraud,” Fannie Mae stated in its report.

Weighing Down Multifamily

While fraud was a key factor, falling multifamily property values and rising loan delinquencies also contributed to the provision for credit losses.

Indeed, Fannie Mae reported $2.5B in net income from its multifamily business in 2024, down from $4.7B in net revenue.

The broader multifamily market has struggled with higher interest rates, rising insurance costs, and tightening credit conditions. Due to historically low rates, lending in the sector surged during the pandemic but slowed down significantly as borrowing costs climbed.

Cracking Down on Fraud

Fannie Mae and its sister organization, Freddie Mac (FMCC), have both previously flagged concerns about fraudulent multifamily loans.

Last year, Fannie Mae warned investors about an ongoing fraud investigation, while Freddie Mac temporarily banned one of its top broker partners as part of a wider industry crackdown.

Although Freddie Mac has since lifted those restrictions, fraud-related scrutiny in the multifamily sector remains high.

What's Next

Fannie Mae's single-family lending business remains its dominant segment, generating $14.4B in net income last year compared to $24.4B in net revenue.

However, its growing concerns over multifamily fraud and market conditions suggest increased caution in the sector moving forward.

With investigations ongoing, more fraudulent multifamily loans may be discovered, potentially leading to further financial provisions and stricter lending standards.

Multifamily Seller/Servicer Guide

Chapter 29

Title, Description, Survey, UCC Searches and Opinions

29.1 Title insurance policy requirements (10/17/24)

Each Mortgage purchased by Freddie Mac must be covered by a Title Policy. The final Title Policy delivered to Freddie Mac must be accurate and complete and must reflect any additional requirements that may be imposed by Freddie Mac for a particular Mortgage. The Title Policy must be underwritten by a Title Insurance Underwriter.

It is the responsibility of the Seller/Servicer and its counsel to obtain and review in detail the title commitment, documents evidencing or creating each exception to title and the Title Policy.

a. Maximum single risk amount (08/15/24)

The maximum single risk amount (the risk in connection with any one Mortgage) assumed by one Title Insurance Underwriter may not be more than 25 percent of such Title Insurance Underwriters' surplus to policyholders. Policies for amounts in excess of the maximum single risk amount may be acceptable if any excess amount is covered by reinsurance by another Title Insurance Underwriter meeting the requirements of this chapter.

b. Reinsurance and coinsurance (08/15/24)

- **Reinsurance**

  If the single risk amount exceeds 25 percent of the Title Insurance Underwriter's surplus to policyholders, the excess amount may be covered by reinsurance meeting all of the following requirements:

  - The excess amount may not exceed 25 percent of the reinsuring company's surplus to policyholders. Tertiary insurance will not be permitted.
  - The reinsurer must be a Title Insurance Underwriter.
  - The reinsurance must be provided by the issuance of the most current form of American Land Title Association (ALTA) Facultative Reinsurance Agreement.
  - Pro forma documentation for all reinsured transactions must be submitted to Freddie Mac for review and approval prior to the Origination Date.

  Any Title Policy that is reinsured at the option of the Title Insurance Underwriter must meet all of the requirements of this subsection.

- **Coinsurance**

  Usually, Freddie Mac will not accept coinsurance (multiple Title Insurance Policies issued by multiple Title Insurance Underwriters for the same transaction). Freddie Mac will consider allowing coinsurance only if the Title Insurance Underwriters and Title Policies each meet the requirements of this chapter and the use of coinsurance is approved in writing by Freddie Mac prior to Rate Lock. Prior to the Origination Date, the Seller/Servicer must submit to Freddie Mac for its review and approval the Title Policies for any Mortgage that will be coinsured.

c. Selection of the Title Company (10/17/24)

1. The Seller/Servicer's selection or acceptance of any Title Company must be based solely on considerations typically used by prudent institutional lenders originating or purchasing Mortgages in the jurisdiction where the Property is located, as permitted by applicable law, and acting in the best interests of Freddie Mac. The Seller/Servicer must not base this selection on receipt of anything of value or other consideration by the Seller/Servicer or its employees, officers, or directors paid by or on behalf of a Title Company.

2. As provided in Section 2.19, the Seller/Servicer must approve, evaluate and monitor Title Companies and any other third party to whom functions relating to a Mortgage or REO are outsourced or assigned, including consulting the Multifamily Restricted Vendor List.

   Freddie Mac reserves the right to: (i) refuse to accept Mortgages for purchase, or (ii) approve the assumption of a Mortgage, in each case involving any specific Title Company on the Multifamily Restricted Vendor List. If a Title Company appears on the Multifamily Restricted Vendor List, the Seller/Servicer may not use that Title Company until notified otherwise by Freddie Mac. The decision to place a Title Company on the Multifamily Restricted Vendor List is solely within Freddie Mac's discretion.

   With respect to Title Companies, the Multifamily Restricted Vendor List is made available to Seller/Servicers at mf.freddiemac.com for the sole purpose of ensuring that an unacceptable Title Company does not perform services in connection with Multifamily Mortgage transactions and will constitute "Confidential Information" as defined in Section 2.8. Notwithstanding the Confidential Information classification, when a Borrower has engaged a Title Company on the Multifamily Restricted Vendor List in connection with a Mortgage transaction, the Seller/Servicer is permitted to advise the Borrower and Seller/Servicer's counsel or Single Counsel engaged for that Mortgage transaction that Freddie Mac will require engagement with a different Title Company. Parties are advised of their placement on the Multifamily Restricted Vendor List.

3. Freddie Mac also reserves the right to subject Freddie Mac's acceptance of the engagement of any Title Company to such additional terms and conditions as Freddie Mac deems necessary, reasonable, or appropriate in Freddie Mac's sole discretion. When applicable, Freddie Mac is identifying these Title Companies as Third-Party Vendors on the Vendors With Conditions List, which is attached as a schedule to the Multifamily Restricted Vendor List. These Title Companies may continue to be engaged by Borrowers or Seller/Servicers but will be subject to the additional conditions provided in the schedule to the Multifamily Restricted Vendor List.

4. If the Seller/Servicer, for cause, discontinues the use of a Title Company in connection with a Freddie Mac transaction within the past 12 months and such Title Company is not identified on the Multifamily Restricted Vendor List, the Seller/Servicer must send written notification promptly to Freddie Mac, to the attention of Freddie_Mac_Legal_MF@freddiemac.com.

d. Acquisitions (10/17/24)

1. Effective for any Mortgage origination transaction that is an acquisition which is taken under Seller Application on and after August 15, 2024, the Title Insurance Underwriter, its affiliate under identical ownership, or its wholly-owned subsidiary must directly perform

all escrow and settlement functions for both the Mortgage origination transaction and the acquisition of the Property (*i.e.,* the Title Insurance Underwriter or such affiliate or subsidiary must receive and disburse all funds from all sources related to the acquisition and prepare the settlement statement for the acquisition of the Property and the acquisition financing). The settlement statement must be delivered to the Seller/Servicer or the Seller/Servicer's counsel directly by the Title Insurance Underwriter or such affiliate or subsidiary. (See Section 32.3(c) for additional settlement statement requirements.)

For acquisition Mortgage origination transactions, if the law of the jurisdiction in which the Property is located prohibits the use of anyone other than a licensed attorney for escrow and/or settlement functions, and the Seller/Servicer or its legal counsel has confirmed that the Title Insurance Underwriter or its wholly-owned subsidiary or affiliate under identical ownership does not have a licensed attorney on staff in such jurisdiction who can fulfill this requirement, the Seller/Servicer's legal counsel must notify the applicable Freddie Mac transactional attorney on or prior to the Seller/Servicer's submission of the full underwriting package.

2. For purposes of the requirements described in this chapter, and notwithstanding any identification of the Mortgage origination transaction in the Mortgage commitment or otherwise, a Mortgage origination transaction will be deemed to be an acquisition if the Property (A) is acquired by the Borrower effective as of the Origination Date, or (B) was acquired by the Borrower or an affiliate of the Borrower within a thirty (30) day period prior to the Origination Date.

3. For any Mortgage origination transaction that is not an acquisition, the Title Insurance Underwriter may also perform escrow and settlement functions but is not required to do so.

4. For purposes of clarification and without limitation of any of its requirements, this Section 29.1(d) will apply to the origination of a Supplemental Mortgage in connection with any acquisition of the related Property and the assumption of the related senior Mortgage within the time frame described in Section 29.1(d)(2).

e. Amount of protection (08/17/23)

The Title Policy must insure the mortgagee for an amount no less than the original principal balance of the insured Mortgage.

f. Insured (08/15/24)

The Title Policy must name as the insured either:

- Freddie Mac, its successors or assigns, or

- Seller/Servicer and/or Freddie Mac, its successors or assigns, as their interests may appear

g. Legal description (08/15/24)

The legal description in the Title Policy must conform to the legal description contained in the survey, security instrument, UCC financing statement, lease, and all other documents pertaining to the Mortgage and the Property.

h. Endorsements (08/15/24)

Each endorsement required pursuant to the Title Policy and Endorsement Requirements posted on mf.freddiemac.com must:

- Be either attached to or sufficiently incorporated in the Title Policy.
- Be on the specific form of the endorsement identified in the Title Insurance Policy Certifications as defined in Section 29.2(c).
- Include the number of the Title Policy.
- Be dated as of the date of the Title Policy, if dated.
- Be signed electronically by the Title Company. A PDF signature or a signature that is electronically produced as part of the Title Policy or the endorsement is acceptable.

If affirmative coverage in lieu of an endorsement is acceptable as indicated in the Title Policy and Endorsement Requirements, then the affirmative coverage language in the Title Policy must be equivalent to the affirmative coverage language described in the Title Policy Requirements.

i. Insured Closing Protection Letter (08/15/24)

If either of the recordation of the documents or the escrow and disbursement of funds in connection with the origination of the Mortgage is being handled by a Title Company other than the Title Insurance Underwriter, then if available in the applicable jurisdiction, the Seller/Servicer must also obtain and provide an insured closing protection letter addressed to Freddie Mac, or to the Seller/Servicer and its successors and assigns, that provides coverage for any loss that arises out of (i) the failure of the Title Company to comply with the Seller/Servicer's written closing instructions, or (ii) fraud or dishonesty in handling the funds or documents in connection with the origination of the Mortgage.

29.2 Title exceptions (04/18/24)

a. Approval of title exceptions (04/18/24)

The Seller/Servicer or its counsel must obtain, read, and analyze each document that evidences or creates any exception to the title insurance coverage to determine whether the exception would be acceptable to a prudent institutional lender.

If the Seller/Servicer or its counsel determines that any of the following applies with respect to an exception, such exception requires written analysis in the form and manner described in

Section 29.2(b) and, whenever required pursuant to Section 29.2(b), must be expressly approved by Freddie Mac:

- Any party's exercise of its rights under the exception could have a foreseeable adverse effect on the Borrower's intended use of the Property, including any interference with the present or proposed improvements on the Property or with the operation of the Property.
- Any party's exercise of its rights under the exception could impair lender's ability to enforce its rights under the Mortgage or could adversely affect the lien priority of the Mortgage.
- The exception would not be acceptable to a reasonable, prudent institutional lender in the area where the Property is located.
- The exception results in an exception to the Seller/Servicer Representations and Warranties.
- The exception could create potential safety or environmental issues.
- The exception could result in a material adverse effect on the Mortgage, the security interest in the collateral described by the Mortgage, or the use, value, operation or marketability of the Property or could impair the lien of or the lien priority of the Mortgage.
- The Guide or Legal Issues Analysis separately requires written analysis or approval with respect to such exception (such as, by way of example and not limitation, ground leases, regulatory agreements or condominium declarations).
- The exception contains a purchase option, right of first refusal, right of first offer, right of reverter, or requires consent to a transfer of all or any portion of the Property (including in connection with foreclosure or deed-in-lieu of foreclosure).

b. Submission of analysis (04/18/24)

If the written analysis required pursuant to Section 29.2(a) was not included in the Legal Issues Analysis and/or any other required legal analysis required by the Guide submitted prior to the effective date of the Commitment, then the analysis must be submitted for approval no later than two business days prior to the anticipated Origination Date.

All requests for approval of title exceptions must be in writing and be submitted to the applicable Multifamily Attorney and Legal Analyst by email and include the anticipated closing date and pool name, if applicable, in the email subject line, and be uploaded to DMS. The request must be in the form of:

- An amended Legal Issues Analysis or other analysis previously submitted to the applicable Multifamily Attorney; and
- If applicable, such other legal analysis required by the Guide.

The analysis must describe which category or categories in Section 29.2(a) applies to such exception necessitating written analysis and must include the Seller/Servicer or its counsel's recommendation (i) for mitigating any risk evidenced by the exception or explanation of why mitigation is not necessary or possible and (ii) as to the acceptability of the exception. The recommendation must expressly state why Freddie Mac should consider accepting this exception. The analysis must provide sufficient detail to enable Freddie Mac to make any necessary decision regarding the acceptability of an exception without having to read the document evidencing or creating the exception.

Submission to Freddie Mac of the underlying document creating the exception does not relieve the Seller/Servicer or its counsel of the requirement to submit the written analysis of the exception. However, Freddie Mac reserves the right to require the Seller/Servicer or its counsel to submit the exception document(s).

c. Delivery of a Title Insurance Policy Certification and written analysis approval (04/18/24)

At final delivery of the Mortgage, the Seller/Servicer's counsel must deliver a Title Insurance Policy Certification in the form found at mf.freddiemac.com/lenders/legal/ (the "Title Insurance Policy Certification"). Copies of all emails with express approval of any exceptions for which the Seller/Servicer or its counsel submitted a request for approval must be attached to the Title Insurance Policy Certification, along with the final title policy and all required endorsements.

d. Analysis of title exceptions for Supplemental Mortgages (04/18/24)

For any Supplemental Mortgage purchased under the Freddie Mac Multifamily Supplemental Mortgage Product, the Seller/Servicer or its counsel must provide a written analysis only for:

- Any title exception that did not previously appear as an exception to title in the policy insuring the senior Mortgage and falls into one or more categories set forth in Section 29.2(a), or

- Any title exception that previously appeared as an exception to the title in the policy insuring the senior Mortgage but will not be covered by the same endorsement or equivalent coverage.

Therefore, with respect to a Supplemental Mortgage, a written analysis will be required for any exception that appeared as a subordinate item in the policy insuring the senior Mortgage when such exception is not expressly subordinate to the Supplemental Mortgage as well.

e. Analysis of title exceptions for Assumptions (04/18/24)

For any assumptions, the Seller/Servicer or its counsel must provide the discussion of the exceptions to the Title Policy as required by Section 41.4.

f. Encroachments and violations on Survey (04/18/24)

In addition to any analysis described in Section 29.2(b), the Seller/Servicer or its counsel must submit a written analysis of and receive approval for any encroachment or violation which materially and/or adversely affects the Property's operation, use or value or the

security intended to be provided by the Mortgage (examples: income-producing buildings, parking, access ways). The written analysis must include the following:

- A reasonably detailed description of the encroachment and/or violation (e.g., how many feet a building encroaches over an easement)
- Whether there is building law and ordinance coverage for the Property if the encroachment and/or violation impacts a zoning requirement

If the risk posed by any encroachment or violation can be mitigated by an endorsement identified in the Title Policy Requirements and included in the Title Policy, then the exception does not need to be included in a written analysis. If any such required endorsement is not available or has been modified from the standard required form, then a written analysis of the exception must be submitted.

g. Exception for Private Transfer Fee Covenant (08/17/23)

If the Title Policy contains an exception for a Private Transfer Fee Covenant that was created on or after February 8, 2011, the Mortgage is ineligible for purchase by Freddie Mac. See Section 8.14.

h. Exception for condominium/cooperative conversion restriction (04/18/24)

If the Title Policy contains an exception for a prohibition against or any indemnification in connection with the conversion of the Property to a condominium or cooperative structure, the Seller/Servicer or its counsel must examine the underlying agreement/restriction as provided in Section 8.18(f) to determine that the agreement/restriction meets the requirements set forth in such section.

The Seller/Servicer or its counsel must confirm that all such requirements have been satisfied or that any non-compliant provisions have been identified in the Legal Issues Analysis prior to the effective date of the Commitment.

29.3 Uniform Commercial Code search requirements (04/18/24)

It is the responsibility of the Seller/Servicer to ensure that a First Lien security interest is perfected in (1) all fixtures, (2) all personal property of the Borrower that is located in or on the Property or is used or intended to be used in connection with the Property and (3) any other Uniform Commercial Code (UCC) collateral described in the UCC financing statement (collectively the "UCC collateral").

In order to ensure this First Lien security interest, the Seller/Servicer must perform certain searches of the Uniform Commercial Code records ("UCC search"). For additional search requirements for the MHC Mortgage Product, see Section 22.9(c).

a. Names to search (04/18/24)

The Seller/Servicer must perform a UCC search for the Borrower's name and, if the Property is being acquired, the name of the current owner of the Property. For additional search

requirements for Seniors Housing Mortgages, see the Final Delivery Instructions available at mf.freddiemac.com/lenders/purchase.

b. Location of search (03/03/17)

Each UCC search must include every office where a financing statement would be filed in accordance with the provisions of Revised Article 9 of the UCC.

c. Date of search (02/07/05)

A UCC search must be dated no earlier than 30 days prior to the Origination Date.

d. Prior financing statements (04/18/24)

If a UCC Search indicates that there are any financing statements on file (other than the financing statements filed by the current lender that will be released at origination of the Mortgage) then, prior to the Origination Date, the Seller/Servicer must provide an explanation of those financing statements to the

- *Multifamily TAH Underwriter*, for TAH Mortgages
- Applicable *Freddie Mac Multifamily Regional Office* for all other Mortgages

The Seller/Servicer must also submit a copy of the explanation to the applicable Multifamily Attorney.

e. UCC search (04/18/24)

1. If the UCC search done at underwriting shows that no financing statements have been filed in connection with any of the UCC collateral, then the Seller/Servicer does not need to deliver any documentation regarding the UCC search to Freddie Mac prior to final delivery of the Mortgage.

2. The UCC search must be updated at the time of final delivery to a date no earlier than 30 days prior to the date of origination of the Mortgage. The Seller/Servicers counsel must examine the UCC search to determine that Freddie Mac has a First Lien security interest in all UCC collateral except for those items previously approved by Freddie Mac and those items for which UCC termination statements have been filed. The Seller/Servicer's counsel must use the Seller's Counsel's Certification set forth at mf.freddiemac.com/lenders/legal to provide a certification regarding the UCC search at final delivery of the Mortgage as set forth in the Final Delivery Instructions found at mf.freddiemac.com/lenders/purchase.

f. Product-specific UCC search requirements (04/18/24)

For a Mortgage secured by an MHC Property, where a First Lien security interest in a Borrower-Owned Home cannot, under applicable law, be perfected with the filing of a UCC Financing Statement, the Seller/Servicer must take additional actions necessary to verify the ownership of and ensure a perfected First Lien security interest in any Borrower-Owned Home (e.g., obtaining a copy of the certificate of title evidencing the Borrower as the sole title holder of a Borrower-Owned Home).

For a Mortgage secured by a Seniors Housing Project, in addition to the searches required in Section 21.3, UCC searches are required for:

- The Borrower,
- The Manager, if applicable, and,
- If the Property is being acquired, the current owner of the Property.

Each UCC search must include every office where a financing statement would be filed to perfect a security interest in any of the collateral described in Financing Statement Exhibit B - Seniors Housing. Additionally, each search must include the state of organization for the Borrower and the Manager, if applicable.

g. Newly formed Borrowers and SPE Equity Owners (04/18/24)

For each Borrower and SPE Equity Owner, if applicable, that has been formed within 90 days prior to the origination of the Mortgage, the Seller/Servicer will not be required to provide a UCC search for the Borrower or the SPE Equity Owner. For any entity formed more than 90 days prior to the origination, or if Freddie Mac agrees to permit a "recycled" SPE Borrower or SPE Equity Owner, regardless of the entity's formation date, the Seller/Servicer must provide a UCC search for the Borrower and the SPE Equity Owner, if applicable.

29.4 Survey requirements (04/18/24)

a. ALTA/NSPS requirements; survey waivers (04/18/24)

1. For each Mortgage purchased by Freddie Mac, the Seller/Servicer must submit a survey meeting the then-current minimum standard detail requirements for American Land Title Association/National Society of Professional Surveyors, Inc. (ALTA/NSPS) Land Title Surveys. The survey must be made, dated or revised by a licensed civil engineer or registered surveyor not more than 90 days prior to the date of the Note. The surveyor's certification must:

    - Be the form of certification required by the most current ALTA/NSPS requirements, except that the Table A items need not be listed in the certification

    - Be for the benefit of the Seller/Servicer, Freddie Mac and its successors and assigns and the title insurance underwriter issuing the title insurance policy if required by the title insurance underwriter

2. Unless specifically waived under the terms of the Letter of Commitment, a survey is required for every Mortgage purchased by Freddie Mac. (See also the Waiver of Certain Survey Requirements found at mf.freddiemac.com/lenders/legal/.)

b. Additional Freddie Mac requirements (03/03/17)

In addition to the items that must be included in an ALTA/NSPS Land Title Survey, the survey must also include the following:

- Substantial visible improvements (in addition to buildings) such as entrance or monument signs, parking structures including carports and garages, swimming pools and other recreational facilities such as clubhouses, basketball and tennis courts.

- Indication of access to all public rights of way such as curb cuts, driveways marked, etc.

- Parking areas and type and number of parking spaces (Parking space striping need not be shown.)

- Any setback requirements applicable to the Property (including those imposed via zoning law or building codes and any documents on record affecting the Property).

c. Survey – encroachments and violations (04/18/24)

The Seller/Servicer must analyze all encroachments and violations shown in the survey, as set forth in Section 29.2(f).

d. Special survey requirements for MHC Mortgages (03/03/17)

In addition to the requirements set forth in this Chapter 29 with respect to surveys, if the Property is an MHC Property, the following requirements are applicable:

- The survey must include the number of Home Sites located on the Property, as well as a description of the parking areas or spaces that are generally available for each Manufactured Home (i.e., the number of off-street parking spaces available for each Manufactured Home should be included on the survey).

- The survey must depict the location of:

  1. The extent and approximate dimensions of any encroachments by Manufactured Homes (including any Borrower-Owned Homes), Home Sites, piers, and foundations. If any of the foregoing do not constitute encroachments, their location does not need to be shown on the survey. Instead, a simple indicating mark may be included.

  2. Private interior access roads or streets and visible utilities. Unless such items constitute encroachments, they may be sketched on to the survey to show their approximate location, and can be located by photogrammetric or other approximate methods in lieu of precise field measurements.

29.5 Legal opinions (04/18/24)

a. Legal opinions required (04/18/24)

The Final Delivery Package must include the following legal opinions addressed to the Seller/Servicer (individually and collectively, the "Opinion Letter"):

- A legal opinion with respect to Borrower and any SPE Equity Owner in the form provided on the Freddie Mac Multifamily website (the "Borrower Opinion").

- A legal opinion with respect to any Guarantor in the form provided on the Freddie Mac Multifamily website (the "Guarantor Opinion").

- A non-consolidation legal opinion (the "Non-Consolidation Opinion") for any Mortgage:

  - With an original principal balance equal to or greater than $40,000,000;

  - That is a part of a cross-collateralized and cross-defaulted pool of Mortgages that are, when aggregated, $40,000,000 or greater; or

  - If otherwise required by the Letter of Commitment or early rate lock application

- Any other legal opinions required by Freddie Mac under the Guide, in the applicable Letter of Commitment or early rate lock application, or otherwise.

Notwithstanding the foregoing, the enforceability opinions and local law opinions may be omitted from the Borrower Opinion and Guarantor Opinion for a supplemental mortgage originated under the Freddie Mac Multifamily Supplemental Mortgage Product.

b. Review and analysis of legal opinions (04/18/24)

Seller/Servicer's counsel must review and analyze all Opinion Letters to ensure the Opinion Letters conform to Freddie Mac's requirements. Additional guidelines and requirements for the review of opinions are set forth in the Opinion Letter Guidelines and, if applicable, the Requirements for Review of Non-Consolidation Opinions, provided on the Freddie Mac Multifamily website.

All Opinion Letters must contain the following use and reliance provision, without modification:

> "This opinion letter is furnished to you solely for your benefit, the benefit of subsequent holders of the Note, and any statistical rating agency that provides a rating on securities backed in part by the Loan, all of which we understand may receive copies of this opinion letter. This opinion letter may not be used, quoted from or relied upon by any other person without our prior written consent; however, you or a subsequent holder of the Note may deliver copies of this opinion letter to (a) independent auditors, accountants, attorneys and other professionals acting on behalf of you or a subsequent holder of the Note, (b) governmental agencies having regulatory authority over you or a subsequent holder of the Note, (c) designated persons pursuant to an order or legal process of any court or governmental agency, and (d) prospective purchasers of the Note."

The counsel rendering the opinions must be acceptable to Freddie Mac or to the Seller/Servicer if Seller/Servicer is authorized to approve the opinion. The Letter of Commitment or the early rate lock application may require that the counsel state additional conclusions in the opinion. Freddie Mac reserves the right to require Seller/Servicer at any time to deliver to Freddie Mac all documents on which the counsel based or should have based the opinion.

c. Opinions requiring Freddie Mac review and approval (04/18/24)

The Seller/Servicer must submit a copy of the following opinions for Freddie Mac's review and approval not less than three business days prior to the scheduled origination date of the Mortgage:

- All Opinion Letters for any Mortgage with an original principal balance equal to or greater than $100,000,000.

- Any Seniors Housing Mortgage licensure opinion, specifically opinions #27 and #28 from the Borrower Opinion form.

Such opinions must be marked to clearly indicate the additions to and deletions from the appropriate form of Opinion Letter. The Borrower or the Seller/Servicer must pay for any legal fees associated with the review and approval of any such additions to or deletions from the appropriate form of Opinion Letter in connection with the origination of the Mortgage.

The Seller/Servicer's counsel must provide an analysis and recommendation with respect to such opinions (the "Opinion Analysis"). Freddie Mac will not be responsible for any loss, costs or damages incurred by the Seller/Servicer or Borrower as a result of the origination of the Mortgage being delayed due to the failure of the Seller/Servicer to timely deliver to Freddie Mac a draft Opinion Letter and/or the Opinion Analysis.

d. Non-Consolidation Opinion Requirements (04/18/24)

Non-Consolidation Opinions must state that if any equity owner or group of affiliated equity owners (or group of family members) who own more than 49% of the equity in Borrower were to become insolvent, neither Borrower, nor its assets and liabilities, would be substantively consolidated with that of the equity owner or group of affiliated equity owners (or group of family members) or with the SPE Equity Owner.

A "should" Non-Consolidation Opinion is not acceptable; all Non-Consolidation Opinions must be "would" opinions.

All Non-Consolidation Opinions must be submitted to Freddie Mac for review and approval prior to origination of the Mortgage as provided in the Requirements for Review of Non-Consolidation Opinions provided on the Freddie Mac Multifamily website. The Borrower or the Seller/Servicer must pay for any legal fees associated with the review and approval of any Non-Consolidation Opinion required in connection with the origination of a Mortgage.

e. Required Opinion Provisions for Seller Application (04/18/24)

The Seller/Servicer must include, as part of its Seller Application with or loan commitment to the Borrower, the following provision.

> Delivery of Opinion Letters to Be Delivered to Freddie Mac
>
> Borrower acknowledges and agrees that as part of the loan closing process it is required to deliver to [Seller/Servicer to Insert Seller/Servicer's Name] certain legal opinion letters in form and substance acceptable to the Federal Home Loan Mortgage Corporation ("Freddie Mac") addressing, among other things, enforceability, due formation, execution

and delivery, non-consolidation (under certain circumstances) and such other matters as may be required by Freddie Mac (collectively if more than one, the "Opinion Letter"). In order to properly review any Opinion Letter requiring Freddie Mac's approval Freddie Mac must receive a draft of the Opinion Letter, with analysis and recommendations from [Seller/Servicer to Insert Seller/Servicer's Name], not less than three business days prior to the anticipated consummation of the loan transaction. Accordingly, Borrower acknowledges and agrees to deliver to [Seller/Servicer to Insert Seller/Servicer's Name], not less than ___ business days [Seller/Servicer to Insert Number of Days as Required by Seller/Servicer's Counsel] prior to the anticipated consummation of the loan transaction, a draft Opinion Letter for review. Borrower acknowledges and agrees that [Seller/Servicer to Insert Seller's/Servicer Name] will not be responsible for reviewing any Opinion Letter received less than ___ Business Days [Seller/Servicer to Insert Number of Days as Required by Seller/Servicer's Counsel] prior to the anticipated consummation of the loan transaction and that Borrower's failure to timely deliver such Opinion Letter may result in the consummation of the loan transaction being delayed. Borrower further acknowledges and agrees that neither [Seller/Servicer to Insert Seller/Servicer's Name] nor Freddie Mac will be responsible for any loss, costs or damages incurred by Borrower as a result of the consummation of the loan transaction being delayed due to the failure of Borrower to timely deliver a draft Opinion Letter.

So Long GTOs; Hello Residential Real Estate Rule: FinCEN's New Paradigm

Jay St. Lawrence
Regulatory Compliance Counsel, The Fund

So Long GTOs; Hello Residential Real Estate Rule

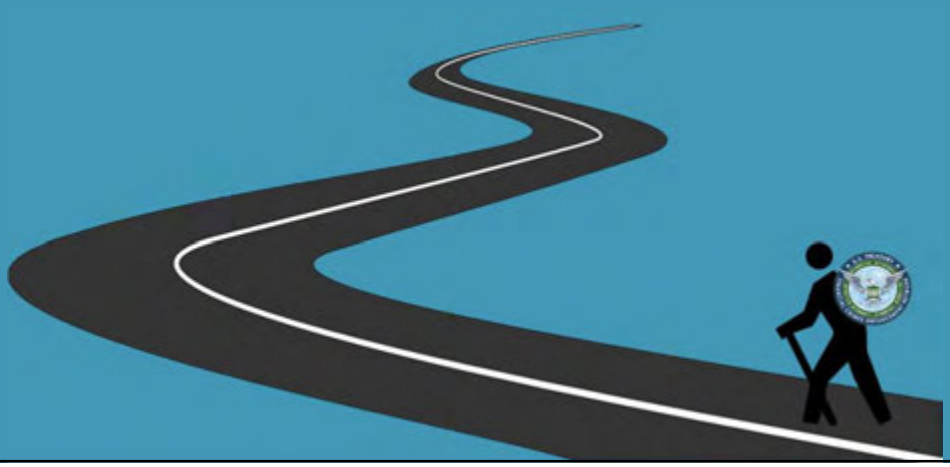
FinCEN's New Paradigm

John B. "Jay" St. Lawrence
Fund Regulatory Compliance Counsel

Roadmap

- Where we started
- Where we're headed
- What's covered?
- Who must report?
- What's exempt?
- Meet the Report
- What can go wrong?
- What now?

Where We Started



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The Bank Secrecy Act (BSA)

- The BSA – primary U.S. anti-money laundering (AML) law and tool for detecting, deterring and disrupting terrorist financing networks
- Authorizes Treasury to issue regulations requiring banks and other financial institutions to take precautions against financial crime, including establishing anti-money laundering programs and reports useful in criminal, tax, and regulatory investigations and proceedings, and certain intelligence and counter-terrorism matters. See 31 U.S.C. 310
- Originated in 1970; subsequently amended and expanded
  - Ex) Anti-Money Laundering Act of 2020 (AMLA)

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FinCEN's Anti-Money Laundering Mission

"The mission of the Financial Crimes Enforcement Network is to safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence."

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Geographic Targeting Orders (GTOs)

Jan 2016: 1st "temporary" 180-day GTO aimed at money laundering in real estate transactions

Required title insurance companies and agents to report on "Covered Transactions"

- Residential real property
- Purchased by a legal entity
- At or above a given price threshold (initially $1mm)
- In specific enumerated geographic areas
- Without financing through an institution required to maintain an anti-money laundering program

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Revealing the "Beneficial Owners"

Required Reporting under the GTOs

- Within 30 days of closing a Covered Transaction
- Title agent must file a Currency Transaction Report (CTR) through the BSA E-filing system
- Naming each individual who directly or indirectly owns 25% or more of the equity interests in the Legal Entity purchasing the property
- Reporting person must obtain and record driver's license, passport or similar identifying documentation and describe it in the report

The Current GTO

- Continuous string of 180-day GTOs with small changes since Jan. 2016
- As of GTO Issued October 2024 (note: check for new GTO April 2025)
- Threshold $300,000 ($50,000 in City or County of Baltimore)
- 11 Florida Counties now covered: Miami-Dade, Broward, Palm Beach, Hillsborough, Pasco, Pinellas, Manatee, Sarasota, Charlotte, Lee and Collier
- Following this pattern, it was expected that someday, FinCEN would propose a permanent, wider-reaching rule.

It appears that day has arrived …

Where we're headed:
The Residential Real Estate Rule

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FinCEN Final Rule

- Formal Name: "Anti-Money Laundering Regulations for Residential Real Estate Transfers" Title 31, Chapter X
- Effective **December 1, 2025**
- "Non-financed" (as with GTOs) closings of residential property in which an entity or a trust is the transferee MUST BE REPORTED
- No dollar threshold; most "gifts" covered
- ALL U.S. States and Territories covered

FINANCIAL CRIMES ENFORCEMENT NETWORK

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What's covered?

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Covered Transfers and Transferees

- Transfers in ownership requiring reporting include
  - Deeds
  - Interests in residential cooperative housing via stock shares, memberships, or other contractual evidence of ownership

- Covered transferees now include
  - Non-profit organizations
    - "Beneficial owners" = Individuals who exercise substantial control as defined in 31 CFR 1010.380(d)(1)
  - Pooled investment vehicles not registered with the SEC
  - Trusts

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Who Must Report?

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Behold The "Reporting Cascade"

Highest on the list is responsible for reporting

- 1st tier: Settlement agent
- 2nd tier: Person who prepared closing or settlement statement
- 3rd tier: Person filing deed or other instrument of transfer
- 4th tier: The title insurance underwriter
- 5th tier: Person who disburses the greatest amount of funds
- 6th tier: Person who evaluates title, and finally,
- 7th tier: Person who prepared the deed

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Covered Property

- Real property located in the U.S. containing a structure designed principally for occupancy by 1-4 families;
- Land located in the U.S. on which the transferee intends to build a structure designed principally for occupancy by 1-4 families;
- A unit designed principally for occupancy by 1-4 families within a structure on land located in the U.S.; or
- Shares in a cooperative housing corporation where underlying property is located in the U.S.

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What's exempt?

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Exempt Transferees

Exemption	Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Insurance company
11	State-licensed insurance producer
12	Commodity Exchange Act registered entity
13	Public utility
14	Financial market utility
15	A registered investment company
16	Subsidiary of an exempted entity

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Exempt Transferee Trusts

Exemption	Short Title
1	Securities reporting issuer
2	Trustee that is a securities reporting issuer
3	Statutory trust (treated as a transferee entity, not a transferee trust)
4	Subsidiary of an exempted trust

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Exempt Transfers ("low-risk")

- Transfer of an easement
- Transfers resulting from the death of an owner
- Transfers due to divorce
- Transfers due to bankruptcy
- Transfers supervised by a U.S. court

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Exempt Transfers (cont'd)

- Transfer for no consideration to a trust where grantor or spouse or both are grantors or settlors
- Transfer to a qualified intermediary for 1031 exchange
- Transfers that do not involve a "reporting person"
- Transfers to natural persons still excepted as under the GTOs

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Meet the Real Estate Report

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The Real Estate Report

- Must be filed electronically through BSA portal by later of
  - Final day of month following the month of closing or
  - 30 calendar days after closing
- Detailed information required for transaction & transferee
- Limited information required to be reported as to transferor & reporting person

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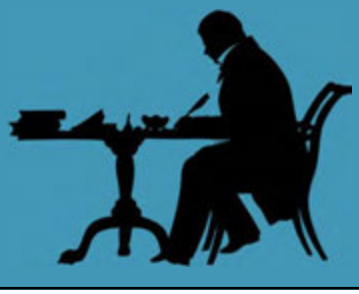
Information to be Collected – Reporting Person

- Full legal name
- Category into which reporting person falls in the reporting cascade
- Street address of their principal place of business in the U.S.



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Information to be Collected – Property

For each residential real property that is the subject of the reportable transfer, the reporting person shall report:

- Street address, if any
- Legal description, such as the section, lot, and block; and
- Date of closing

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Information to be Collected – Payments

As to each payment other than a payment disbursed from an escrow or trust account held by a transferee entity or transferee trust made by or on behalf of itself:

- Amount of the payment
- Method by which the payment was made
- As to any payment from an account held at a financial institution
  - Name of the financial institution and the account number
- Name of payor on any wire, check, or other type of payment if the payor is not the transferee entity or transferee trust

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Information to be Collected – Payments (cont'd)

The reporting person shall report

- Total consideration paid or to be paid by the transferee entity or transferee trust regarding the reportable transfer, and
- Total consideration paid by or to be paid by all transferees regarding the reportable transfer and
- Information concerning hard money, private, and other similar loans
- Whether the transfer involved credit extended by a person that is not a financial institution with an obligation to maintain an anti-money laundering (AML) program and an obligation to report suspicious transactions

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Information to be Collected – Transferee Entity

- Full legal name
- Trade name or “doing business as” name, if any
- Street address of principal place of business

- If principal place of business not in the U.S., the street address of the primary location in the U.S. where the transferee entity conducts business, if any, and
- Unique identifying number such as an IRS TIN
- If the transferee entity has not been issued an IRS TIN or a foreign tax identification number, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction

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Information to be Collected – Transferee Entity Beneficial Owners

- Full legal name
- Date of birth
- Complete current residential street address; and
- Citizenship
- Unique identifying number consisting of IRS TIN; or where none issued
  - Tax ID number issued by a foreign jurisdiction and name of jurisdiction; or
  - The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual

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Information to be Collected –Signing Individuals

- Each individual who signed documents on behalf of the transferee
- Full legal name
- Date of birth
- Complete current residential street address
- Unique identifying number consisting of:
  - IRS TIN or
  - Where IRS TIN not issued: Tax identification number issued by a foreign jurisdiction and the name of such jurisdiction or unique number from non-expired passport
- Description of the capacity in which the individual is authorized to act as the signing individual; and
- If the signing individual is acting in that capacity as an employee, agent, or partner, the name of individual's employer, principal, or partnership

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Information to be Collected – Transferee Trust

- Full legal name, such as the full title of the agreement establishing the transferee trust
- Date trust instrument executed
- Unique identifying number, if any, consisting of IRS TIN or
  - Where IRS TIN not issued, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction; and
- Whether the transferee trust is revocable
- Name, DOB, citizenship, ID etc. & category of each beneficial owner, which includes
  - Trustees
  - Other individuals with authority to dispose of trust assets
  - Beneficiaries who are sole recipient of trust income or can demand distributions
  - Grantors or settlors with right to revoke or withdraw assets
  - Beneficial owners of trust or legal entity that holds one of the above positions

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30

Information to be Collected – Individual Transferor

- Full legal name
- Date of birth
- Complete current residential street address; and
- Unique identifying number consisting of IRS TIN; or
- Where an IRS TIN has not been issued:
  - Tax ID number issued by a foreign jurisdiction and
  - Name of such jurisdiction; or
  - The unique identifying number and the issuing jurisdiction from a non-expired passport issued by a foreign government to the individual

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Information to be Collected – Entity Transferor

- Full legal name
- Trade name or “doing business as” name if any
- Street address of principal place of business
- If principal place of business not in U.S
  - Street address of primary U.S. location where entity conducts business, and
  - Unique identifying number, if any, consisting of IRS TIN, or
    - If no TIN, tax ID number issued by a foreign jurisdiction and the name of such jurisdiction; or
    - If neither, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction

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Information to be Collected – Trust Transferor

- Full title of agreement establishing trust
- Date trust executed
- Street address of principal place of business
  - Unique identifying number, if any, consisting of
    - IRS TIN
    - If no TIN, tax ID number issued by a foreign jurisdiction and the name of such jurisdiction; or
    - If neither, an entity registration number issued by a foreign jurisdiction and the name of such jurisdiction
- For each trustee – name, trade name address; unique ID

33

Designation Agreements

- Can designate any other person in "the cascade" to be the reporting person
- On a per-transaction basis. No "blanket" designation agreements
  - Ex) Settlement agent cannot designate a title underwriter for all transactions
- Must be in writing and contain:
  - Date of agreement
  - Name and address of transferor
  - Name and address of transferee entity or transferee trust
  - Information identifying transferred residential real property
  - Name and address of the person designated as the reporting person
  - Name and address of all other parties to the agreement

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Record Retention

- 5 years
  - Beneficial ownership certification forms
  - Any designation agreement
    - Must be retained by all parties to DA
- NOT REQUIRED TO BE RETAINED
  - Copies of Real Estate Reports

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Brief Summary of GTOs vs. New Rule

Regulation	Geographic Targeting Orders (GTOs)	New Residential Real Estate Rule
Location	Designated counties, boroughs; cities	All U.S. locations and territories
Duration	180 days	Permanent
Who Reports?	Title insurance companies and their agents	The “Cascade” beginning with settlement agents
What is Reported?	Non-financed residential transactions $300k or more ($50k in Baltimore)	Non-financed residential transactions regardless of amount
Covered Entities	Legal entities, excluding most trusts	Legal entities, specifically including trusts and non-profits
Penalties	Civil & criminal fines, enforcement actions; imprisonment	Civil & criminal fines, enforcement actions; imprisonment

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What can go wrong?

37

37

Reasonable Reliance Standard

What if parties refuse to cooperate?

- Reporting person is still required to file the report
- No exception allowing for an incomplete report
- Reporting person generally may rely on information provided by any other person for purposes of reporting information or to make a determination necessary to comply with the final rule
  - But only if the reporting person does not have knowledge of facts that would reasonably call into question the reliability of the information
- May rely on information provided by relevant lender as to whether the lender has an obligation to maintain an AML program

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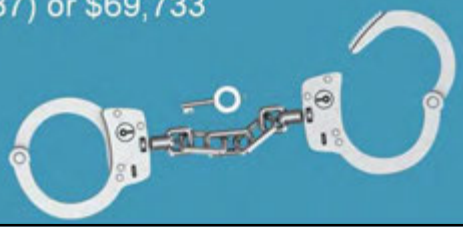
Penalties

- Negligent violations - civil penalty not more than $1,394 per violation
- Pattern of negligent activity - Additional civil penalty up to $108,489
- Willful violations – Imprisonment of not more than 5 years or
  - Criminal fine of not more than $250,000
  - Or both
- Additional civil penalty not more than the greater of the amount involved in the transaction (not to exceed $278,937) or $69,733



39

39

What now?

40

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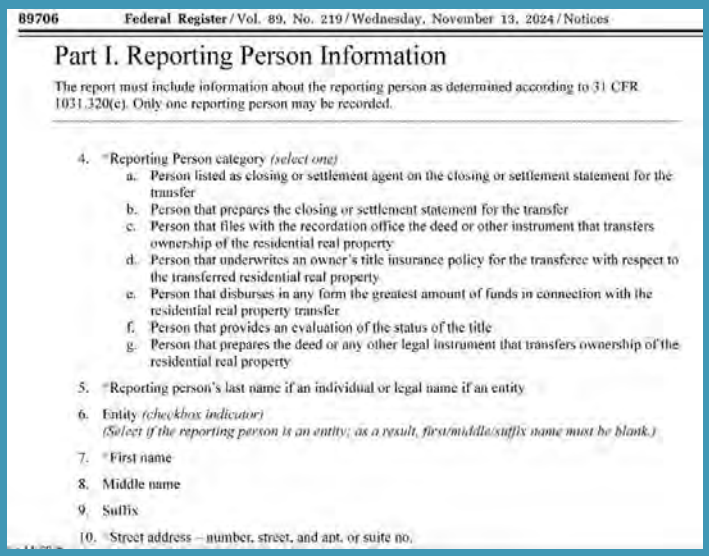
What will the form look like?

- 111 fields of information
- Form still under review



89706 Federal Register / Vol. 89, No. 219 / Wednesday, November 13, 2024 / Notices

Part I. Reporting Person Information

The report must include information about the reporting person as determined according to 31 CFR 1031.320(e). Only one reporting person may be recorded.

4. *Reporting Person category *(select one)*
   a. Person listed as closing or settlement agent on the closing or settlement statement for the transfer
   b. Person that prepares the closing or settlement statement for the transfer
   c. Person that files with the recordation office the deed or other instrument that transfers ownership of the residential real property
   d. Person that underwrites an owner's title insurance policy for the transferee with respect to the transferred residential real property
   e. Person that disburses in any form the greatest amount of funds in connection with the residential real property transfer
   f. Person that provides an evaluation of the status of the title
   g. Person that prepares the deed or any other legal instrument that transfers ownership of the residential real property
5. *Reporting person's last name if an individual or legal name if an entity
6. Entity *(checkbox indicator)*
   (Select if the reporting person is an entity; as a result, first/middle/suffix name must be blank.)
7. *First name
8. Middle name
9. Suffix
10. *Street address – number, street, and apt. or suite no.

How to Prepare

- Keep up with the rule on the FinCEN website, the Fund, ALTA, etc.
- Determine personnel to be responsible for dealing with covered transactions
- Design a process in your workflow to accommodate
  - Time needed to train personnel on compliance with the rule
  - Time needed to collect and submit the required reporting information
- Consider how extra requirements may impact costs and settlement fee
- Keep up with the GTOs likely to be issued prior to December 1, 2025 implementation of the new rule

What's going to happen in the meantime?

October 2024 GTO expired April, 2025

Unconfirmed at the time this presentation was published:

- Likely a new GTO issued April 2025 good through October 2025
- Likely one final GTO to issue October 2025 effective through December 1, 2025 implementation of the Residential Real Estate Rule

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How to stay up to date

- The Fund will continue to inform and educate in the coming months
- Other industry groups will have information; likely work aids
- Check the FinCEN Newsroom at https://fincen.gov/news-room/news
- Subscribe to FinCEN for updates: https://service.govdelivery.com/accounts/USFINCEN/subscriber/new

The Fund®

U.S. TREASURY FINANCIAL CRIMES ENFORCEMENT NETWORK

ALTA American Land Title Association

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Thank you

for coming!

For more information please contact:

John B. "Jay" St. Lawrence
jst.lawrence@thefund.com

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Title Teasers

Caleb Hinton
Senior Underwriting Counsel, The Fund

Brian Stringer
Underwriting Counsel, The Fund

Scott Jackson
Underwriting Counsel, The Fund

Title Teasers 2025

Moderator: Caleb Hinton, Sr. Underwriting Counsel

Panel of Experts:
Scott Jackson, Underwriting Counsel
Brian Stringer, Underwriting Counsel

1

NOCs and Mobile Home Parks

Big Developer contracts to purchase a 70-acre parcel that is currently operating as a mobile home park where tenants lease their lot from the underlying fee owner. The title search revealed several Notices of Commencement have been filed for work being done by different tenants. Under the terms of the purchase and sale agreement, all construction matters affecting fee title must be resolved prior to closing and the buyer is unwilling to accept any exceptions for the Notices of Commencement or resulting liens. The seller contacts your office to discuss how to handle the Notices of Commencement.

For the purposes of issuing title, how must the Notices of Commencement be resolved?

3

NOCs and Mobile Home Parks

A. The Notices of Commencement must be terminated.

B. The Notices of Commencement do not need to be terminated because the master lease contains safe harbor language.

C. The Notices of Commencement do not need to be terminated as any resulting liens do not affect the interest of the fee owner.

4

Out of State Conservator

Casey, a famous radio host and resident of California owned a vacation condo in Florida. In 2013, Casey became incapacitated, and a conservatorship was established in California with Casey as the ward. As part of the conservatorship proceedings, the Court authorized the conservator to transfer the ward's Florida property from him individually to a trust created for the benefit of the ward and named the conservator as the trustee. In 2014, Casey passed away and the conservator recorded a deed along with certified copies of the letters of conservatorship and the order authorizing the conservator to transfer the property. The Trustee now wishes to sell the property that was a transferred to the trust and has come to you to do the closing.

For insuring purposes, was the deed by the conservator effective to transfer the condo into Casey's trust?

5

Out of State Conservator

A. The deed is effective since certified copies of the California court orders were recorded with the deed.

B. The deed is ineffective without a sale to a third-party purchaser at the time of transfer to the trust.

C. The deed is ineffective since the conservatorship was never domesticated in Florida.

6

Homestead

Gerald Graves died in Florida owning homestead property in Miami-Dade County. Gerald's brother Pete has been appointed by the probate court as personal representative of Gerald's estate. According to the residuary clause of Gerald's will, the property is devised to his two adult daughters. The will grants the personal representative the power of sale. The probate attorney has no intention to file a petition to determine homestead as the creditor claims period has expired with no claims made. Pete has found a buyer for the property and the court has granted an order authorizing the sale by Pete.

For insuring purposes, can Pete, solely as personal representative, convey title?

7

Homestead

A. Pete cannot solely convey title because the property must be treated as homestead even where no order determining homestead was issued.

B. Pete cannot solely convey title because the will only grants the personal representative a general power of sale.

C. Pete can solely convey title because the creditor claims period has expired and there are no creditors of the estate.

8

Disclaimer & Federal Tax Liens

Last year, John Ranger died an unmarried widower survived by three (3) adult children, Abby, Betty, and Carl. The children want to sell the home, but Carl has judgments against him, including a $47,000 federal tax lien (FTL) that was recorded 4 years ago. Carl, who had recently filed for bankruptcy, decided to disclaim his interest in his dad's estate so his two sisters can have his share of the estate and avoid any of his creditors. Carl executed a disclaimer with the formalities of a deed, which was recorded in Orange County and the personal representative distributed the property to the two sisters. Abby and Betty are now selling their dad's homestead and have brought the deal to your office to close.

For insuring purposes, is the disclaimer valid so that the Fund Member can issue a policy with a deed from Abby and Betty?

9

Disclaimer & Federal Tax Liens

A. The disclaimer is valid since it was executed with the proper formalities and the property is no longer affected by Carl's outstanding FTL or judgments.

B. The disclaimer was valid but unnecessary as the FTL and judgments would not attach since title to the property was held in John Ranger's name and not Carl's.

C. The disclaimer is not valid and a deed from Carl should be obtained along with clearance of the judgments and FTL against him.

10

Easements

Charles and Delia Deetz and their daughter, Lydia reside on a large residential lot. Tiring of their daughter's strange pursuits and ghostly shenanigans within their family home, they decide to move out. Charles and Delia obtain a lot split and build a little house for Lydia on the west side of their lot which abuts a side street along the property. The sewer service line runs under and across their backyard to the new home requiring an appurtenant utility easement as part of the lot split. After a few years living next to Lydia, Charles and Delia put the east side of the property for sale and enter into a contract that includes notice of the easement. The buyer wants to sever all ties to the little house and is questioning the validity of the easement appearing as an exception in his title commitment.

For insuring purposes, can the property be insured without an exception for the easement?

11

Easements

A. The easement is valid and remains an exception to title for the property being sold.

B. The easement is valid but can be removed as an exception as Lydia can hook up to sewer service from the street abutting her little house.

C. The easement is invalid under the common law merger doctrine which prevents an owner from creating an easement over their own property and the exception can be deleted.

12

Condominium Termination

Paradise Oaks Condominium was created and recorded in the public records of Lee County in 2009. The declaration does not contain language incorporating future changes to Florida's Condominium Act. In 2023, a proposed plan of optional termination was circulated among all unit owners for approval. The proposed plan was approved by 83% of the unit owners, with 7% voting against the proposed plan. The buyer is purchasing all the units and terminating the condominium regime.

For insuring purposes, is the plan of termination effective to terminate the condominium?

13

Condominium Termination

A. The plan of termination is not effective unless deeds are obtained from those who voted against termination.

B. The plan of termination is not effective.

C. The plan of termination is effective because a supermajority of owners voted for termination.

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Acknowledgments

You are handling the closing on a sale of platted, residential property situated in Hendry County, Florida. The seller took title in 2021 from a former business partner via quit claim deed resulting from a bad business deal. The deed shows minimum doc stamps paid, and no title insurance was written. Your title examination reveals the deed into your seller was witnessed by two witnesses and signed by the notary but the acknowledgement in the deed lacks the notary's seal and signature. Neither of the witnesses was the notary. The seller tells you that he has no way to contact his former business partner and would prefer to never speak to him again.

For insuring purposes, how should this issue with the quit claim deed be resolved?

15

Acknowledgments

A. A corrective deed must be signed because the five-year curative statute has not run yet.
B. The quit claim deed may be re-recorded along with a proper Proof of Subscribing Witness from one of the deed's witnesses.
C. The issue may be corrected via a recorded affidavit from the notary that the notary took the acknowledgment in the quit claim deed.

16

Deeds & Off-Record Matters

Woody Esq. received a contract previously executed by his client, with a title-insurance request to insure the purchaser of a strip mall in Duval County that is occupied by multiple tenants. To clear the exception for parties in possession, Woody obtained a rent roll, tenant estoppels and reviewed the leases. He diligently drafted a specific tenant exception to be inserted in the policy and planned to attach a certified rent roll to the owner's policy as an exhibit. Seller's counsel, Buzz, pointed out that under the contract, the warranty deed will include an exhibit of permitted title exceptions along with a listing of all the tenant leases. Woody is hesitant to place the list of tenant leases on the record for fear that it will be a cloud on title for his client in subsequent transactions. Buzz will not change the contract but is agreeable provided there is no delay in closing.

For insuring purposes, must the list of tenant leases be part of the exception listed in the deed?

17

Deeds & Off-Record Matters

A. No, exceptions from the title policy, including tenant leases should not be attached as an exhibit to the insured deed.

B. No, the title exceptions may be listed in the deed, including a general exception for lessees under unrecorded leases.

C. Yes, all the exceptions, including a list of tenant leases must be listed in the deed.

18

Fraud & Forgery

Trusty Fund Member is closing a purchase and sale of a vacant waterfront property in Palm Beach County. The property is encumbered by a mortgage and a mortgage payoff statement has already been obtained by Trusty Fund Member's staff. Two days before closing, an updated mortgage payoff statement was provided from the seller via email. Additionally, the email informs Trusty Fund Member's staff that the seller has a preferred notary and will be using their notary to complete the transaction. On the day of closing, Trusty Fund Member attempts to wire the sales proceeds to the seller's bank, but the wire bounces back. In response, the seller provides new wiring instructions and requests the proceeds to be sent to the account shown on the updated wiring instructions. At this point Trusty Fund Member realizes something may be amiss.

Which of the following events is a common indication of potential fraud for this transaction?

19

Fraud & Forgery

A. Updated mortgage payoff and updated wiring instructions.

B. Updated mortgage payoff, updated wiring instructions, and the notary change.

C. Updated mortgage payoff, updated wiring instructions, notary change, and the wire bouncing back.

20

Out-of-State Series LLCs

Landshark Series LLC, a Delaware Series LLC, Series 1, the record title holder of Florida real property, wants your office to represent their interest in the sale. In compliance with commitment requirements, you have reviewed with Fund Underwriting Counsel all documents of formation of the Series LLC and the title holding entity including the operating agreement that establishes the series, articles of organization, etc. During this process, it was determined that Landshark Series LLC also has a Series 2 which was properly formed, legally able to hold real property and currently exist under Delaware law. Buyer's counsel thinks that this is all smoke and mirrors and is demanding that all three entities referenced in the operating agreement convey because Florida does not have a series LLC statute.

For insuring purposes, who are the proper parties to sign the deed?

21

Out-of-State Series LLCs

A. Landshark Series, LLC and Landshark Series LLC, Series 1

B. All three entities.

C. Landshark Series LLC, Series 1.

22

Mortgage Satisfaction

In 2020, Donald and Daisy purchased a piece of property in Florida as a married couple. In 2022, the couple moved to Arizona and sold the property to Goofy secured by a seller financed note and mortgage which once recorded, was promptly placed in their Arizona safety deposit box for safe keeping. The self-prepared note and mortgage does not recite tenants by the entirety or a married couple nor does it contain governing law or venue provisions. In 2024, Donald succumbed to a terminal illness and passed away. Goofy is now selling the property and has reached out to Daisy for a payoff of the mortgage.

For insuring purposes, can Daisy, as Donald's surviving spouse, satisfy the mortgage by herself or does Donald's estate need to be probated?

23

Mortgage Satisfaction

A. Since the mortgage is now held by both Daisy and the heirs of Donald's estate, a probate is necessary.

B. Daisy alone can satisfy the mortgage as she and Donald were a married couple which can be established by an affidavit of continuous marriage.

C. Let sleeping ducks lie, Goofy does not have to pay off the loan since one of the mortgagors has passed away.

24

Trusts

Johnny Rose, a resident of New York, is the settlor of the Rose Family Trust. Last year, Johnny, as trustee of the Rose Family Trust, purchased property in Florida as a vacation home for himself and his family. Unfortunately, Johnny recently died and his spouse, Moira, wants to sell the property in Florida to fund a new independent film that she plans to star in. The terms of the trust provide that, after Johnny's death, Moira is the successor trustee, and that the Florida property goes to Moira free of trust. So, Moira reached out to Fund Member David to assist with the sale. David reviewed the trust, and he discovered that the trust was not executed in the presence of any witnesses.

For insuring purposes, can David rely on the testamentary provisions of the trust?

25

Trusts

A. David may not rely on the testamentary aspects of a trust because the trust must be executed with the formality of a will.

B. David may rely on the testamentary aspects of the trust because the Florida property is titled in the name of the trust.

C. David may rely on the testamentary aspects because the trust was executed with the formalities required in New York.

26

Notaries

Monica and her husband, Chandler, are buying a new house in the suburbs to raise their children. Unfortunately, because of an outbreak of measles in the family they cannot come to the office of their Trusty Fund Attorney for the closing. Monica tells Trusty not to worry; her brother is a notary, and he can notarize all the closing documents for their purchase.

Can the notary acknowledgment by Monica's brother be relied upon for the purposes of insuring title?

27

Notaries

A. Monica's brother can act as their notary because he is not a party to the transaction.

B. Monica's brother cannot act as their notary since they are related.

C. Monica's brother has a valid notary commission but can only notarize Monica's husband's signature.

28

NOCs & Payment Bonds

In 2021, ABC Construction begins building a high-rise condominium and timely filed a notice of commencement (NOC) with proof of a payment bond attached when the NOC was recorded. As the project has progressed, the NOC has been amended to extend its expiration multiple times. In 2023, Unit 104 was sold to Daredevil, a third-party purchaser, who received a title policy without exception for the NOC. Today, Daredevil has a contract to sell his condo unit to the Punisher. Upon receipt of the title commitment, you notice three claims of lien listed on Schedule B-I for which a Notice of Bond was filed for each. The first lien is recorded by the general contractor listed on the NOC and the other two were filed by the roofing contractor and the pool contractor.

For insuring purposes, who do we need to obtain releases from to insure the current transaction?

29

NOCs & Payment Bonds

A. None of them, the payment bond handles all three liens.

B. Only the general contractor.

C. The general contractor, the roofing contractor, and the pool contractor

30

(More) Acknowledgments

Mike Jones is in the hospital and unable to attend the closing of his South Florida home. While in the hospital and legally competent, Mike executes a properly drafted power of attorney naming his cousin Jason Williams as his attorney in fact. At the time of signing, Mike did not have his wallet or any form of identification. Jason has provided your office with a copy of the power of attorney in which the notarial certificate states that the type of identification used for Mike's acknowledgment is "two credible witness affidavits." Attached to the power of attorney is a credible witness affidavit. The affidavit includes a jurat as to each of the two credible witnesses signed by the notary public under seal.

For insuring purposes, can we rely on the POA with the use of the credible witness affidavits?

31

(More) Acknowledgments

A. The POA cannot be relied upon as POA execution requirements do not allow for the use of credible witness affidavits.

B. The POA can be relied upon provided the credible witness affidavit is prepared in strict compliance with the applicable Florida Statute.

C. The POA presented to you is a copy and the credible witness affidavit must be used with an original only.

32

(More) Homestead

Your review of the John Dutton probate file reveals that an order determining homestead was rendered as to Yellowstone Manor by the probate court. The order determining homestead further states that John Dutton was not survived by a spouse or minor children and that title to Yellowstone Manor passes to his adult children Beth Dutton and Kayce Dutton pursuant to the terms of John Dutton's will. John Dutton's will specifically disinherits' John's legally adopted son, Jamie Dutton, who has been personally served and noticed as to the probate proceedings.

For insuring purposes, who must execute a deed to the insured buyer?

33

(More) Homestead

A. The personal representative, Beth Dutton, and Kayce Dutton.

B. Beth Dutton and Kayce Dutton only.

C. Beth Dutton, Kayce Dutton and Jamie Dutton who are all statutorily protected heirs.

34

Code Violations

Barry the Buyer is purchasing a condominium unit in Brickell on the Bay in Miami–Dade County. A notice of violation is recorded against the Brickell on the Bay Condominium Association using the common area parcel ID number in the notice details as the property affected. The commitment includes a requirement for proof of compliance to be recorded. Seller's counsel requests the requirement for proof of compliance be removed from the commitment since it is not a violation against the specific unit and is against association-controlled property.

For insuring purposes, should the notice of violation requirement be deleted from Schedule B-I of the commitment?

35

Code Violations

A. The requirement may not be deleted as it was properly included.

B. The requirement may be deleted since it is against the Association and not the individual unit owner.

C. The requirement may be deleted provided the buyer is made aware of the violation and that any assessment post-closing would not be covered under their policy.

36

NOCs & Mixed-Use Condominiums

You are handling the closing of a $4 million condominium unit in Miami-Dade County with a purchase money mortgage being secured by the buyer. The condominium building consists of commercial spaces on the first and second floors with a parking garage, and residential condominium units on the remaining top eight floors. The title examination reveals that in December 2024, a contractor filed a notice of commencement (NOC) which describes the work being done as a "commercial buildout" and the interest of the owner as "tenant" but uses the entire project's underlying legal description. The work is still ongoing, and seller's counsel has no further information as it relates to a tenant in the lower commercial units and does not affect title to the unit being sold.

For insuring purposes, what must be done with the NOC to insure the priority of the buyer's lender?

37

NOCs & Mixed-Use Condominiums

A. No action necessary.

B. Reach out to the contractor listed on the NOC and obtain a unit specific release.

C. Hold an estimated amount of work to be done in escrow until you are certain that the work is completed.

38

Corporate Conveyance

JCO, Inc., a Florida corporation, is selling property to a third-party purchaser for full consideration. Sunbiz shows the President of JCO, Inc. is Janice Jones. The closing is set for October 1, 2025. A title search reveals the vesting deed into JCO, Inc. is an uninsured quit claim deed executed by Tom Jones, as president and director of TCO, Inc., for which documentary stamps were paid. Upon inquiry, you are told that Janice Jones is the stepchild of Tom Jones who insists that Janice Jones never had any financial involvement in TCO, Inc.

For insuring purposes, what must be done about the apparent conflict in the JCO, Inc. vesting deed?

39

Corporate Conveyance

A. Based on Tom's assertions that Janice was never involved in TCO, Inc., no further inquiry is required.

B. Since Janice is a stepchild related to Tom and an officer of JCO, Inc, an inquiry as to whether the transaction was fair to TCO, Inc. must be made.

C. Since the deed indicates that documentary stamps were paid, no further inquiry is required.

40

Cryptocurrency

Savvy Investor is under contract to purchase real property in Broward County, Florida which provides he will accept the sellers proceeds from the Buyer via a meme coin called Wild Goat Coin. When you ask why, Savvy exclaims Wild Goat Coin value has gone to the moon (increased) over the last four weeks. The parties are using the most recent FAR/BAR contract and added sufficient language to Section 20 regarding the Seller's agreement to accept seller's proceeds via Wild Goat Coin. Savvy Investor also indicates he will provide the deposit and any other closing costs in US Dollars so that the title agent does not have to accept or handle any of the cryptocurrency as part of the closing.

For insuring purposes, can the transaction be completed using the proposed cryptocurrency for seller's proceeds?

41

Cryptocurrency

A. The transaction can be completed in part using cryptocurrency because the contract provided no prohibition against the use of cryptocurrency.

B. The transaction cannot be completed unless all funds are converted to US dollars and tendered to the settlement agent.

C. The transaction can be completed provided a line item on the closing statement indicates the cryptocurrency funds are being delivered directly to the seller.

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Thanks for playing

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Fraud, Forgery & Impersonation: Keeping the Transaction Safe

Linda Monaco
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Tom Cronkright
Co-Founder and Executive Chairman/CEO, CertifID / Sun Title

2024
Sued for Wire Fraud

CERTIFID

Table of Contents

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Executive Summary

There's been an alarming rise in real estate wire fraud, and it's having a devastating impact on buyers, sellers, and the industry as a whole. Those victimized by such scams are turning to the courts to seek damages after their life savings or business liquidity is stolen by scammers.

With this increasing pressure in and out of court, real estate firms can no longer be passive observers. The fallout from a single fraudulent transaction can lead to lost business and a tarnished reputation that takes years to rebuild. This means that the onus is on professionals to understand their risks and take action to prevent fraud before it happens.

This report delves into the intricacies of legal liability when funds are mistakenly wired to fraudulent bank accounts, suggesting that agents, brokers, and title companies are increasingly held accountable if a consumer loses money — but may not have success in recovering from banks or insurance companies when funds are diverted from their escrow accounts.

It will also advocate for stringent security measures, education, and collaboration between industry professionals to mitigate the risk of wire fraud and the wake of litigation and reputational risk that follows.

By understanding today's legal landscape and taking proactive steps, professionals can better safeguard clients and their businesses. In the pages to follow, we'll provide the necessary insights and recommendations to navigate this complex issue effectively.

I. Introduction: The New Reality of Real Estate Wire Fraud

Unveiling the impact and evolution of wire fraud from 2021-2024

I. Introduction: The New Reality of Real Estate Wire Fraud

> ***Cybercrime rings have taken aim at U.S. real estate transactions at an alarming rate.***
>
> *- Katie Pierce, Assistant to the Special Agent In Charge U.S. Secret Service Global Investigative Operations Center*[1]

As a real estate title agent or escrow attorney, could you afford the risk of a $250,000 judgment? How about two? These questions might seem hypothetical, but they underscore the real and growing threat of real estate wire transfer fraud.

Full Panic Mode

Consider the chilling experience of real estate attorney Nicole Quinn, which epitomizes the pervasive threat professionals now face.[2]

With just enough financial and personal information, a scammer posing as her client convinced Quinn and her paralegal to transfer $240,000 in client funds to the impersonator's account.

"I went into full panic mode," Quinn admits. "I called everyone… the state bar… the FBI… the police… I think they could all hear in my voice how distraught I was."

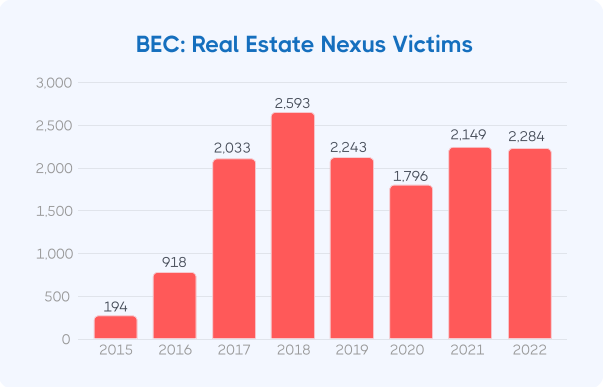
Big Problems With Business Emails

Fortunately, Quinn caught the error in time to retrieve her client's money, but other attorneys and firms aren't always so fortunate.

For criminals, routine business email is an easy access point.[3] The FBI's cybercrime division reports Business Email Compromise (BEC) accounts for **23% of all reported cybercrime losses.**[4]

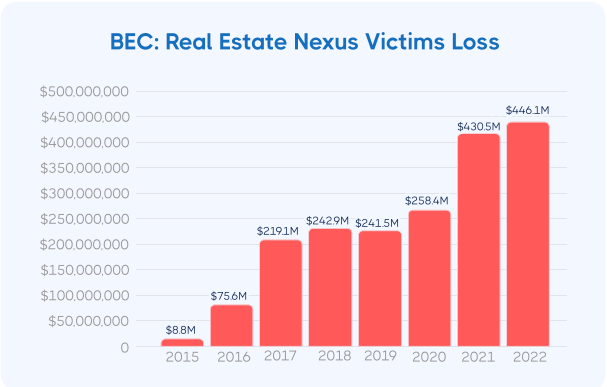
In 2023, the FBI investigated **21,489 BEC complaints**, with adjusted losses totaling over **$2.9 billion.**[4]

Real estate wire fraud is the new reality…



Source: F.B.I. IC3 Report, March 2024

… And the losses are staggering.



Source: F.B.I. IC3 Report, March 2024

Real Estate: A Lucrative Target

Of the $2.9 billion lost in business email compromise, **$446 million (or 17%)** of all scams involve **real estate**.[5]

Real estate transactions are a top target for fraud due to increasingly large sums of cash transferred between parties. The **median consumer loses $106,557**[6] in buyer down payments or seller net proceeds. Imagine you're on the hook for this loss—and shouldering the cost of your own defense in court.

The Silent Epidemic

Most of these cases will never be reported, much less go to trial, but they'll exact a hefty toll—costing real estate professionals significant sums in out-of-court settlements.[3]

As real estate wire fraud continues to climb, companies will need to pay close attention to potential legal liability in order to prevent drain on financial resources.

Who's Targeted and How It Happens

Buyers

Impersonation of title agency to provide fraudulent bank details to the buyer.

Scammer typically reaches out well before payment is required in an average closing process, making it less likely the fraud will be discovered until the buyer is at the closing table.

Sellers

Impersonation of a property owner in a fraudulent listing. Often called seller impersonation.

Scammer typically obtains property and owner identity details from public records, and creates an elaborate backstory to enable a quick remote sale.

Title and Law firms

Impersonation of lender-provided mortgage payoff instructions during a closing process.

Scammer intercepts and replaces payoff instructions to the closing agent. Title professionals miss the fraud because verification processes can be time-consuming and susceptive to manual error.

Source: 2024 CertifID State of Wire Fraud[6]

Contributing Factors: Why Real Estate?

- The pandemic-era housing boom led to soaring prices.
- Inflation is driving high interest rates, tightening housing inventory.
- There's extreme pressure to close transactions quickly.
- Digital currency and real-time payments accelerate money laundering.
- Property information is easy to obtain through data breaches and public records.
- Real estate wiring instructions are increasingly sent via email.
- Unprotected email systems are ripe for phishing-enabled breaches.
- Multiple parties in a transaction provide spoofing opportunities.
- Large sums of money are transferred in a single wire.
- Lack of transactional familiarity exposes buyers and sellers.

2024 Update: Patterns and Precedents Emerge in Courtrooms

Our investigation began with ***Sued For Wire Fraud***,[3] where we delved into the emerging real estate security threat and legal theories of liability for the resulting losses.

Through analysis of 100+ real estate wire fraud cases, it's become clear that title companies, law firms, banks, and real estate professionals may bear potential liability if client funds are diverted to fraudulent accounts.

This liability arises from legal theories such as:

Negligence:

Companies owe clients a "duty of care"—to educate consumers about wire fraud, clearly and securely communicate wiring instructions, and protect personally identifiable information.

Deceptive Business Practices:

Divergence between a business's representation and the actual service it provides, particularly when these discrepancies result in significant failures beyond reasonable expectations, can lead to heightened legal consequences.

Breach of Contract:

Contracts for escrow services may be oral, written, or implied. Parties must clarify the nature of the client relationship and reasonable business expectations to prove breach of terms.

Breach of Fiduciary Duty:

Agreeing to accept and disburse funds places a fiduciary obligation on real estate parties, requiring careful examination of shared information, technology, and processes.

Even though it's criminals who are orchestrating the business email compromise scams, recent court decisions suggest that the professionals involved in a real estate transaction are required to do more to protect consumers from wire fraud scams or face a potential court judgment for damages.

Over the last four years, fraudsters have become even more brazen in their attacks, prompting the courts to piece together more definitive standards of liability by looking outside of real estate fraud cases to draw upon well-established theories of duty and liability.

Expanding upon our previous work, we now scrutinize the evolving landscape of legal liability, combing through hundreds of pages of recent legal documents and decisions to analyze specific court opinions, trends, rulings, and key takeaways. Legal bright lines are emerging as it relates to liability for wire fraud losses, as title and escrow companies continue to bear more of the responsibility to protect the funds in their custody and mitigate the risk of a consumer falling victim to a scam.

By staying informed and proactive, real estate professionals put themselves—and their customers—in the best possible position to decrease the surface area of risk.

II. The Blame Game: Banks and Insurance Companies Pivot from Liability

II. The Blame Game: Banks and Insurance Companies Pivot from Liability

Exploring financial institution and insurance company liability in wire fraud cases

II. The Blame Game: Banks and Insurance Companies Pivot from Liability

"Almost any reasonable person would assume that a person who committed a fraud should be responsible for loss associated with the fraud. But fraudsters are not always easy to find, and not always easy to hold financially responsible."

- Elisabeth Feeney, Cochair of the Payment Systems Litigation Subcommittee[8]

Lawyers gearing up to take on banks in wire fraud cases must understand the ins and outs of Uniform Commercial Code Article 4A.[9]

What is UCC Article 4A?

UCC Article 4A governs the rights and responsibilities of parties involved in electronic funds transfers.

Who falls under its scope?

The article governs not only the big banks, but also smaller financial institutions, businesses, high-net-worth individuals, and payment processors.

> Parties whose conflict arises out of a funds transfer should look first and foremost to Article 4A for guidance in bringing and resolving their claims.
>
> *- Approved Mortgage v. Truist*[10]

What's missing from UCC Article 4A?

Within the UCC Article 4A framework, certain procedural and security requirements are missing. Notably, there's:

- No mandate for account matching;
- No duty to vet new account openings;
- No requirement to identify, monitor, or report suspicious account activity.

Other Legal Theories in Wire Fraud Cases:

- State Consumer Protection Acts
- Breach of Bank Agreements
- Negligent Misrepresentation
- Unfair & Deceptive Conduct
- Aiding & Abetting
- Duty of Care

When your client loses money to fraud, what options are available for recourse?

In cases where the perpetrator cannot be identified, is it possible to allocate responsibility for the loss to the insured banks, which facilitate the transfer of funds?

In short, the courts are not in your favor. As we discovered in our case analysis, if your organization is suing a bank, it doesn't matter whether you are a consumer or real estate company—**you may lose**.

Commercial Court Cases

Let's take a look at nine landmark cases involving wire fraud and liability of financial institutions and other entities.

1. Approved Mortgage v. Truist [10]

> ***"Parties whose conflict arises out of a funds transfer should look first and foremost to Article 4A for guidance in bringing and resolving their claims."***

The plaintiff pursued recovery under Article 4A and common law negligence. The court ruled that under Article 4A, the reimbursement claim failed due to lack of privity (a direct relationship between the parties involved in the transaction). The court also noted that Article 4A of the UCC covers issues of bank liability and security procedures, leaving no room for additional negligence claims under common law. The case was dismissed without prejudice, as the purpose of Article 4A is to provide clear rules for banks in electronic transfers on behalf of customers.

2. Fragale v. Wells Fargo [11]

> ***"It is at least arguable that the plaintiff, rather than Wells Fargo, was in the best position to prevent the harm he allegedly suffered."***

The plaintiff transferred $166,054.96 to a fraudlent account after he received an email from a party falsely claiming to be his title company. In court, he contended that Wells Fargo should be held liable and enforce identity verification for significant withdrawals from new accounts.

However, the court disagreed, deeming such a duty was overly burdensome for banks. They also emphasized that the absence of a relationship between the bank and Fragale, along with the extensive regulation of the banking industry, made it inappropriate to impose a new common law duty on the bank to protect against wire fraud. Consequently, the plaintiff faced blowback, with the court suggesting they could have taken preventive measures to avoid harm.

3. Star Title Partners v. Illinois Union Insurance Co. [12]

> ***"Star Title made no attempt to verify the authenticity of CMS's alleged wire transfer instructions pursuant to its internal procedures."***

Star Title's insurance claim for deceptive transfer fraud was denied. As a mortgage lender, Capital Mortgage Services was not a "customer, client, or vendor," so the fraudulent communication fell outside policy requirements. Further, Star Title failed to call to authenticate wire information according to their standard operating procedures.

4. King v. Wells Fargo[13]

> ***"A plaintiff must demonstrate that the losses sustained were the foreseeable consequence of the defendant's deception."***

Wells Fargo invoked ***Chapter 93A*** of the Massachusetts General Laws, setting a high burden of proof. The courts concluded that the plaintiff's loss was caused by a third-party criminal who absconded with the funds, not "unfair and deceptive conduct" of Wells Fargo. This case emphasizes that the scammer — not the bank — was the proximate cause of the plaintiff's loss.

5. Helms v. Hanover Insurance[14]

> ***"The exclusion's plain language... states that no coverage is provided for claims based on or arising out of the theft, stealing, conversion, or misappropriation of funds."***

A mishap in a buyer cash-to-close real estate transaction led to a couple wiring $120,000 to fraudsters. They sued their broker and real estate agent, alleging negligence. Seeking defense from Hanover Insurance, the agent's E&O policy claims were flat-out denied, based on the terms of the insuring agreement. The agent's E&O insurance was never designed to cover wire fraud, containing unambiguous "fund misappropriation and fraudulent transfer policy" exclusions, ultimately causing the agent's bankruptcy.

6. Tracy v. PNC Bank[15]

> ***"PNC Bank's role here was limited, and those limitations were set forth in the account-holder agreement with its customer."***

Following the court's determination that PNC Bank hadn't breached its implied duty of good faith, Mr. Tracy refocused his claim on post-wire-transfer negligence. The court's summary judgment affirmed PNC acted in accordance with its consumer agreement and there was no account name matching duty owed.

7. Nicklas v. Professional Assistance LLC[16]

> ***"Not all federal circuits appear certain that the lack of adequate security measures equates to an 'unfair' act... Although some states allow recovery for failure to notify of a data breach."***

The plaintiffs' claims lack assertion of fraudulent practices, thus not qualifying for relief under the Wyoming Consumer Protection Act, which targets "deceptive marketing practices." The court also questioned why the FTC didn't file the consumer claim.

8. Thuney v. Lawyers Title of Arizona[17]

> ***"Chase released the funds to fraudsters even though Chase knew about the alleged fraud. Plaintiffs have stated a plausible aiding and abetting claim."***

Chase argued that Article 4A governs their alleged release of funds to fraudsters. However, claims based on actions outside the funds transfer process, like aiding and abetting, aren't preempted. Plaintiffs' claims aren't dismissed, but must meet plausibility standards.

9. Authentic Title Services v. Greenwich Insurance[18]

> ***"The policy provided that the insurer had no obligation to pay any sums... for any claim... based upon or arising out of the actual or alleged theft."***

Authentic Title Services sought to reclaim $480,750.96 from their insurer after falling victim to an email spoofing scam, resulting in the transfer of real estate loan funds to a fraudulent account.

The court found there was no need for interpretation beyond plain language doctrine and no ambiguity in exclusion 14(a) stating the policy does not cover "claims related to stolen funds."

Conclusions

When a client is tricked into sending funds to a fraudulent account, title and escrow companies often ask, "Will my bank or insurance company help me out or share in some of the risk exposure?"

The findings from the above court cases provide a harsh response to this question:

There is no practical way to hold a bank responsible for wire fraud losses if the account holder or authorized representative initiated the transfer. Likewise, unless there is specific insurance coverage for stolen funds and *all requirements* to coverage in an insuring contract are satisfied, a claim for damages will be denied.

Litigation involving financial institutions and liability for wire fraud losses boils down to the court's deference to **UCC 4A** and the determination of the relationships and duties that exist between parties, as spelled out in deposit and consumer agreement terms—and intentionally written in the bank's favor.

Under UCC 4A, banks are protected against wire fraud losses, provided they adhere to commercially reasonable security procedures—which include the verification of account ownership or authority before funds are transferred out of an account. This legal framework ensures that banks are shielded from liability as long as they follow the established protocols set forth by UCC 4A to authenticate wire transfers and detect fraudulent activity.[9]

If you attempt to sue the bank, the bank simply needs to demonstrate that the account holder or authorized representative requested the transfer—either online, in person, digitally, or over the phone. So long as it was the account holder or authorized representative requesting the transfer, **the bank is not liable for the loss**.

These court cases reflect what **an uphill battle** plaintiffs face when seeking expert witnesses that are qualified to testify as to industry best practices or uncover proof of bank negligence, deceptive practices, or misconduct.

The cases we analyzed ran the full gamut of possible factual scenarios that could have led to some form of bank liability including irregularities in account activity, failure to respond and render assistance after being notified of an unlawful transfer, failure to verify the status of funds before returning them back to a victim, and the failure of suspending or canceling accounts with unusual activity.

No matter the scenario or how shocking the fact pattern that was pleaded, **the courts seem to move quickly to provide summary judgment in favor of banks, time and time again.**

When could a bank be liable?

Feasibly, a bank ***could*** potentially be held liable if the person requesting the transfer is a bad actor and the movement of money can be traced back to flawed verification measures or a security failure that allowed hackers into the bank's system—though we have not seen any such cases come to light. A bank may also be held liable if they have actual "knowledge" of a mismatch between the beneficiary's name and account number and still process the transaction, as made evident in *Studco Building System U.S., LLC v. 1st Advantage Federal Credit Union*[28]. In this case, Studco was tricked into sending a large payment to a personal account of an unwitting money mule even though the ACH payment included a business name and specifically referenced a commercial transaction as part of the transfer.

Despite receiving alerts and having actual knowledge of potential fraud due to a mismatch between the account name and number, and placing a commercial payment into a personal account, the bank processed the transfer. The court ruled that the bank's failure to act on these red flags made it liable for the fraudulent transaction. While this decision may suggest that banks may have some sort of liability for name matching, it is contrasted by other decisions where courts have held that banks may solely rely upon account number matching and essentially disregard any notice of name mismatches.

As it stands, **common sense practices**—like monitoring irregular account activity, calling senders prior to transferring the money, or responding promptly to a freeze attempt after a transfer has initiated—**are not codified into law** and therefore, may not be admissible in court.

Though the notion that banks should do more to protect consumers from wire fraud has elevated to the state attorney general level in recent months[26], there is **no indication** that the conversation will ultimately translate to a heightened standard of care for wire transfers or actual liability in court.

The courts have held—and will likely continue to hold—that banks are simply completing a transaction, and the proximate cause for the loss is the fraudster who committed the crime. Since the fraudsters often abscond with the money and suing the banks rarely succeeds, the blowback often falls to the sender of funds—a title, escrow, or other real estate company (and sometimes even the consumers themselves)—for failing to exercise their due diligence in verifying where the money was headed.

As for insurance company liability? If you suffer a loss and file a claim against your errors and omissions policy, it will likely be denied unless the loss is specifically covered in the insurance policy and you satisfy all requirements to coverage. The courts will apply the four corners rule and examine the specific contractual language regarding covered claims, terms and conditions, and exclusions.

All too often, policies are written in a way that would seemingly cover a loss, but the steps title and escrow companies must take, and the amount of documentation required, often excludes policy coverage, as they are not able to satisfy all of them. What's more, if wire transfer or social engineering fraud is covered in the policy, it will likely be subject to a significant sublimit of coverage as compared to the overall policy limits, leaving the insured to self-insure any shortfall.

There is a clear, firm precedent set:

Banks and insurance companies will not come to your rescue.
If you're sued for wire fraud, assume you are on your own!

III. Winner and Losers: Recent Legal Battles

III. Winners and Losers: Recent Legal Battles

What legal pleadings reveal about lawyer, agent, broker, and intermediary liability

III. Winners and Losers: Recent Legal Battles

> ***"The case presents a novel issue requiring the analysis of who bears the responsibility for escrow fraud that took place in this case."***
>
> *- Hoffman v. Atlas Title*[19]

Courts often empathize with victims of fraud, but deciding who should financially reimburse them for the loss is complicated. The cases involving banks establish that the proximate cause of the wire fraud loss is not the transferring of money itself, but rather the intentional and criminal act of the scammer.

But here's the twist: if you're entrusted with sharing wire instructions and collecting funds for a real estate closing, recent court cases suggest that you could be on the hook for some (or all) of the loss if funds are diverted into a fraudulent account—even if you were not responsible for the transfer of funds.

Legal Framework: A Glossary of Court Terms

Understanding the legal theories used in real estate wire fraud cases serves as a helpful guide for companies and individuals looking to improve communication processes and mitigate security risks.

Here are some common threads:

Breach of Contract

A contract dispute arises when two or more parties disagree over the terms or performance of a contract. Legal remedies may be sought when one party fails to fulfill their obligations, resulting in the other party's financial loss. Specific contractual terms apply.

Burden of Proof

The burden of proof is the responsibility to provide evidence and persuade the court of the truth of a claim or assertion in a legal proceeding.

Breach of Duty

A party that fails to fulfill their obligations as required by law or contract commits a "breach of duty." In real estate wire transfers, all parties involved generally owe a duty to "exercise reasonable care and judgment" as another person with similar knowledge, experience, and role.

Comparative Fault

Comparative fault is a legal principle used in certain states to determine responsibility for damages according to each party's level of fault in a lawsuit.

Breach of Fiduciary Duty

To make a breach-of-fiduciary-duty claim, you need to show three things: first, that there was a duty due to a *fiduciary* relationship; second, this duty wasn't upheld; and third, that harm resulted from this failure. Essentially, a breach of fiduciary duty is like a negligence claim with a higher standard of care in that the fiduciary must act in the best interest of the client.

Negligence

Parties that fail to exercise "the level of care that a reasonably prudent person would in similar circumstances," resulting in harm, may be held liable for general negligence. A plaintiff might argue that proper precautions were not taken to prevent fraudulent activities, to verify email addresses, or to take other steps that ensure the security of the transaction.

Negligent Infliction of Emotional Distress

To claim damages under this legal theory, a plaintiff must demonstrate that the defendant's conduct was "extreme or outrageous," "outside the bounds of decency," and is "utterly intolerable in a civilized community."

Plain Language

"Plain language" refers to clear, straightforward communication that is easily understandable to the average person and is the indisputable starting point for the court's analysis of a contract under state law.

Negligent Misrepresentation

Negligent misrepresentation involves providing false information or making misleading statements, which harms another party who reasonably relies on the information.

Punitive Damages

Punitive damages are awarded to punish a defendant for egregious behavior and deter similar conduct in the future. They may be sought if the actions of banks, title companies, or real estate agents were considered reckless or intentional and resulted in loss.

Consumer Court Cases

Let's take a closer look at six landmark cases involving escrow and title agent liability.

1. Hoffman v. Atlas Title

> ***"The escrow agent is a fiduciary agent for both parties to a purchase agreement... Although the economic-loss rule sweeps widely, it does not preclude all tort claims for economic damages."***[19]

Atlas Title, despite past breaches, sent unencrypted wire instructions, leading to interception and a loss of $289,772.19 for plaintiffs Hoffman and McMahon. The court dismissed breach of contract, due to the absence of a material contract, but allowed negligence and breach of fiduciary duty claims to proceed.

Key Takeaways:

"The case presents a novel issue requiring the analysis of who bears the responsibility for escrow fraud that took place in this case." The Court of Appeals confirmed that this is, in fact, a "novel" pattern—and there is no clearly defined case precedent in this area of law.

The economic loss rule says: if you have an agreement, and your agreement is clear, and you're harmed, then you're limited to economic losses. Under this legal framework, you can't say, "You've breached my contract—and I'm going to sue you for tort" and layer on the damages.

"Ohio courts have held that escrow agreements do not have to be in writing." Even without an escrow agreement, you may be obligated under breach of contract or fiduciary duty if the buyer loses their savings to wire fraud. The Ohio court holds that escrow agreements need not be formal or in writing, and "may be deemed to exist where there are only closing instructions."

"A plaintiff may pursue a tort claim, if based exclusively on a discreet pre-existing *duty* in tort and not any terms of contract or rights accompanying privity." Even if there wasn't an implied contract, there was at least an implied duty for professional services or fiduciary duty—for which the economic loss of the rule is not going to prohibit plaintiffs from seeking damages in tort. Tacit understandings and implied-in-fact contracts may proceed on counts of negligence, fraud, and breach of fiduciary duty.

2. Mago v. Arizona Escrow & Financial Corp

> ***"Mago waived his breach of contract claim... by failing to timely raise the specific theory... and instructing Arizona Escrow to perform in a manner contrary to the delivery-by-mail provision."***[20]

Mago's email hack led to Arizona Escrow wiring funds incorrectly during a Subway franchise sale. The court dismissed Mago's breach of contract claim, citing untimeliness and failure to follow mailing instructions, awarding $50,000 in attorney's fees to Arizona Escrow.

Despite the outcome, the case raised the question: Did the title company have a breach of fiduciary duty and a standard of negligence?—thus, opening the door for Mago to appeal these unresolved claims in district courts.

Key Takeaways:

This particular case featured a lower burden of proof due to its perceived simplicity. Though Mago presented expert testimony, the court asserted that the legal issue was understandable to laypersons. The transaction—characterized as a simple payment between a single buyer and seller—was "not complex," with the alleged breach stemming from the escrow agent's failure to recognize fraud indicators.

To prove breach of contract, Mago had to show that Arizona Escrow acted outside standard procedures. His claim unsuccessfully centered on a delivery-by-mail provision, which—as it was written, did not explicitly apply to wiring instructions.

Negligent standard of care is a lower threshold. Citing *Maganas v. Northroup, 135 Ariz. 573, 576 (1983)*: "The relationship of the escrow agent to the parties to the escrow is one of trust and confidence." On appeal, the court of appeals affirmed that the superior court did not expressly address Mago's breach of standard of care claim.

Comparative negligence may come into play. Arizona Escrow asserts that Mago failed to notify them about his compromised email account, introduced the imposter's email into the transaction, and instructed them to wire funds as directed by the imposter. Mago contests having prior knowledge of the hack, which the court ruled as a matter of fact for a jury to eventually decide.

3. Cook v. McGraw Davisson Stewart LLC

> ***"Cook failed to demonstrate... whether Defendants' email was hacked by fraudsters [and] whether Defendants' security measures, or alleged lack thereof, fell below the standard of care."***[21]

Plaintiff Cook had to prove defendants breached a duty of care by failing to safeguard his data. As some of the bank liability cases made clear, defendants can sometimes evade liability by claiming *the fraudster* was the "proximate cause of the loss," and shifting the burden back to the plaintiff. Lacking expert witnesses or evidence beyond a National Association of Realtors article warning of the rise in wire transfer fraud, the court required email security expert testimony—and granted summary judgment in favor of the defendant.

Key Takeaways:

State decisions vary greatly—and when a negligence claim centers on a broker's "failure to maintain proper email account security," expert witnesses may be required to establish a standard of care and that a breach of such standard occurred. Offering stark contrast to the Arizona appeals court opinion in the Mago case, the Oklahoma court determined, "the average juror is unlikely to be familiar with industry standards for email security that one in broker and company's position would take, as well as whether failure to adopt such standards caused client's injury."

The case failed to pass summary judgment without expert testimony establishing both standard of care and a negligent security breach.

4. Wheeler v. Clear Title Company Inc.

> ***"Nevada does recognize a claim for negligent infliction of emotional distress, but under limited circumstances not present here."***[22]

Wheeler sued Clear Title Company for emotional distress due to a fraudulent wire transfer. Though the claim was brought in good faith, the court ruled that Wheeler failed to prove Clear Title's conduct was "extreme and outrageous, outside all possible bounds of decency." This case also highlights the importance of understanding state laws. In Nevada, there are separate title and escrow licenses. Because the escrow company handled the funds, the title company owed no duty to notify the plaintiff about the risk of wire fraud. The courts ruled in favor of the title company partly because the plaintiff sued the wrong party.

Key Takeaways:

A duty can exist even before a contract is signed. Clear Title tried to argue they owed no duty until the contract was formally signed—15 minutes after the funds had been unknowingly transferred to a fraudster. The courts disagreed, stating, "this interpretation would make the contract created by the escrow instructions meaningless."

What constitutes "reasonable duty of care" cannot be assumed. In the absence of expert testimony stating otherwise, the courts concluded the title company's only duty was to "safekeep any money that it received directly." There was no duty to ensure the money was transferred to the title company, let alone by a specified timeframe.

Escrow agents do not have a duty to investigate fraud. Though the plaintiff did request help in verifying the wire transfer instructions after the fact—to which the agent replied she'd "check the wires later," as per company protocol—that was deemed sufficient by the courts.

Negligence must directly cause the loss. The plaintiffs argued Clear Title was negligent "because they were [supposed] to work with the buyer in receiving money." However, the court determined the title company's actions (or inactions) did not cause the plaintiff's loss.

Extreme or outrageous conduct is difficult to prove. As distressing as the situation was, the plaintiff was unable to prove that the defendant's conduct directly caused the emotional distress because they were not responsible for the receipt of Plaintiff's funds.

5. Bain v. Platinum Realty

> ***"In forwarding wiring instructions, Ms. Sylvia could only have intended that plaintiffs would use those instructions to purchase her clients' house. A question of fact remains for trial."***[23]

Real estate agent Ms. Sylvia forwarded a hacker's altered wiring instructions to plaintiff Mr. Bain, who transferred $196,622.67 to the wrong account. Charges of punitive damages, breach of duty, and negligence were dropped, but the court allowed the negligent misrepresentation claim to proceed and a judgment was issued in favor of the Plaintiffs against the real estate broker and real estate agent involved in the transaction.

Key Takeaways:

Courts prioritize the reasonableness of a plaintiff's reliance over their level of experience. The defendants' attempt to argue for summary judgment was unsuccessful because, although Mr. Bain was an experienced investor, the court believed his reliance on Ms. Sylvia's correct wiring information was justifiable. The court disagreed that "he should have noticed red flags" in the correspondence.

These cases are not all-or-nothing. Tortfeasors can be added, dropped, or share the blame. Initially, the plaintiffs had pursued claims for breach of fiduciary duty, general negligence, and punitive damages against their title company and bank, invoking federal law for jurisdiction. But since the point of loss stemmed from the fraudulent wiring details, the plaintiffs later focused solely on pursuing claims against Ms. Sylvia and Platinum Realty, with summary judgment granted to the other counts.

6. Otto v. Catrow Law LLC

> ***"Petitioners failed to prove a breach of duty [with] specific evidence showing that the respondent had ever received bulletins warning of phishing schemes targeting closing funds."***[24]

Plaintiffs relied on the expert opinion of a lawyer whose disclaimer precluded him from assessing the standard of care in West Virginia. The circuit court also found that alleged insurance bulletins warning against fake wiring instructions were ineffective at proving a breach of duty.

Key Takeaways:

Negligence has a high burden of proof. The burden of proof for negligence was high in this case. According to *Calvert v. Scharf (2005)*, damages arising from the negligence of an attorney "are not presumed," and so the plaintiff "has the burden of proving both his loss and its causal connection to the attorney's negligence."

Standard duty of care claims are more straightforward to prove. Standard of care may have been a more straightforward argument, but under the theory of negligence, the Ottos needed to demonstrate that the defendant's actions "were a departure by members of the legal profession in similar circumstances," directly resulting in their loss. Since the plaintiffs did not take the extra step to produce any evidence that the defendant "actually knew about specific bulletins warning of phishing schemes," they lost the case.

Expert witness contracts must be entered into carefully, as proper jurisdiction matters. While it was the plaintiffs who failed to exercise due diligence in this case, the advice can apply to defendants as well. The circuit court found the hired witness placed a disclaimer in his retainer agreement that expressly stated he was "unable to render an opinion as to West Virginia law."

Navigating Legal Complexities

- A number of legal theories come into play in real estate wire fraud cases, with third parties quickly finding themselves swamped in document requests and depositions. The added pressure of reputational risk and potential media attention compounds the challenges.
- While some defendants appeared to have benefitted from plaintiffs that were unprepared and lacked expert witness testimony to support their legal claims, the path to success for a plaintiff is becoming clearer. Yet court opinions still vary wildly from jurisdiction to jurisdiction. Further laws and legal precedents are necessary to establish duty of care and standard security procedures among real estate parties.
- Nine out of 10 cases filed in the United States end in settlement because the cost of litigation could exceed the amount of damages requested by the plaintiff.[3] Settlements are further propelled by the reputational risk and potential loss of business for the title, escrow and real estate companies involved.

Conclusions

If a buyer loses cash-to-close or a seller loses their net proceeds, there is a strong issue of fact regarding breach of contract—whether that contract is implied or explicit—and breach of duty.

If you're in the position of receiving or sending funds on behalf of your client, you're considered "a legal custodian of funds," which heightens your standard of care as a fiduciary "in a position of trust," in the eyes of the court.

Real estate companies are held to a higher standard of care than banks.

Banks are well protected with UCC 4A. While some may be trying to change that today—as evidenced by a recent case against Citibank[26]—the precedent to protect financial institutions is mostly in place. The courts generally hold title and escrow companies to a higher standard of care in preventing and detecting fraudulent activities in real estate transactions.

Consumer court cases are a jump ball right now.

When a consumer is victimized by a wire fraud, their ability to obtain a legal judgment for monetary damages against the professionals involved in their real estate transaction will depend largely on the facts and circumstances surrounding their loss and the jurisdiction where the case is filed. Violation of state consumer protection act laws appears to be unsuccessful at the moment, but counts of breach of duty, professional negligence, and express or implied contract appear to have the likelihood of raising issues of fact that will require a judge or jury ruling.

There have been cases where it's determined no explicit escrow agreement is needed to apply a heightened negligence standard. Some courts lean heavily into the assumed duty of care argument, while others pick apart steps the consumer could have taken to prevent harm—and find no material point of fact in the claim. As it stands, there is not enough legal precedent or overarching laws to establish what is required of real estate parties in these transactions.

Kenigsberg v. 51 Sky Top Partners[25] *sets a potential new direction for a real estate company's duty of care.*

In the wake of rising consumer cases involving seller impersonation and deed fraud, a pivotal case is already shaping the legal landscape. In *Kenigsberg v. 51 Sky Top Partners, LLC et. al.*, a retired doctor's family land was fraudulently sold and a transferring deed was recorded by a licensed attorney that relied upon a forged document allegedly provided by the property owner. Shortly after the fraudulent land sale was closed, Sky Top Partners commenced construction of a $1.5 million single family residence on the property. Despite the buyer's innocence, the court granted quiet title in the name of Dr. Kenigsberg in order to void the fraudulent deed. In connection with the quiet title judgment, the parties settled the case for an undisclosed amount. A relevant portion of the stipulated order reads:

"The parties, as part of a settlement, hereby stipulate and agree that the Court may enter judgment on the First Count of Plaintiff's complaint [Quiet Title as to Sky Top Partners under Conn. Gen. Stat. § 47-31] confirming that Kenigsberg has a good and marketable title to the Property and that the Power of Attorney and the Monelli deed are declared void and of no effect."

The U.S. District Court of Connecticut affirmed Dr. Kenigsberg's ownership rights, dismissing all other claims such as slander, trespassing, conversion, and forgery. Kenigsberg, through a settlement, received substantial damages, allowing the completion of the house while preserving the buyer's rights.

This landmark decision underscores the responsibility of all professionals involved in a real estate transaction to confirm the identity of buyers and sellers, setting a crucial precedent in combating seller impersonation and deed fraud.

Decisions of wire fraud liability are still subject to individual district court scrutiny. As we await further legal precedent, it's important to take steps to mitigate the risks.

IV. Final Recommendations: Proven Strategies for Risk Mitigation

IV. Final Recommendations: Proven Strategies for Risk Mitigation

How to lock down security and fortify your defenses against wire fraud risks

IV

IV. Final Recommendations: Proven Strategies for Risk Mitigation

> ***Wire fraud has become largely uninsurable in response to the alarming increase in claims. Wire fraud falls outside the scenarios of employee malfeasance and negligence or systems breaches that traditional professional and cyber policies cover. Carriers who serve this space now recommend partnering with technology providers to reduce their risks."***
>
> *- Chad Gaizutis, VP of Stateside Underwriting Agency*[6]

This discussion brings to light the growing risk of real estate wire fraud—as well as the many avenues that you can find yourself in court defending your standard of care should one of your clients become the next target.

If there is a silver lining, it's that federal law enforcement have focused on investigating and helping to recover funds. Notably, the U.S. Secret Service has recovered $210 million in stolen real estate funds since 2019.[27]

However, while law enforcement can certainly help, they can't be the only solution.

Since 2019, the U.S. Secret Service has recovered $210 million in stolen real estate funds.[27]

Despite the success stories, cooperation with these investigations can be time-consuming, costly, and may not always result in a full recovery—and this is just the tip of the iceberg.

The emotional toll on the affected clients and the reputational damage you may suffer as a real estate professional can be significant. Taking a proactive approach to prevent wire fraud incidents protects your clients' interests and your professional integrity.

Let's consider what you can do, right now, to batten down your hatches against the rising tide of bad actors.

Tips To Protect Against Wire Fraud

1. Educate, educate, educate

Notably, in *Mago v. Arizona Title*, the Arizona Supreme Court stated: **"An escrow agent cannot close her eyes in the face of known facts and console herself with the thought that no one has yet confessed fraud,"** and further suggested that scrutinizing and verifying email addresses could be interpreted as a reasonable standard of care.

The failure to spot trickery is a common thread in every single case of wire fraud.

- In Authentic *Title Services v. Greenwich Insurance*, harm could have been mitigated if Maryanski had noticed the email sender was Brittany "Clork" instead of Brittany Clark.
- Similarly, a mimicked seller email address in *Mago v. Arizona Escrow* inconspicuously substituted the letters "rn" for an "m."
- Ms. Sylvia in *Bain v. Platinum Realty* confessed she could've been more diligent in reviewing her contact's email address before passing along fraudulent wiring instructions to her client.
- A series of emails littered with spelling, punctuation, and capitalization irregularities were at issue in *Otto v. Catrow Law*.

Due to an expert witness disclaimer in *Otto v. Catrow*, the plaintiffs were unable to establish the elements of legal malpractice or prove breach of a duty owed to them, but their plea cited that the defendant "should have informed as to the prevalence of wire fraud schemes, and that if an email seemed suspicious, they should take no action until they confirmed, by independent means, that the communication was legitimate."

One of the easiest ways to protect your business from liability is to thoroughly train employees to check spelling and email addresses—and to verify instructions through another method rather than by email alone. Practicing "good digital hygiene" means limiting the amount of personal information that is publicly available, like email addresses, phone numbers, and account information, and therefore limiting the amount of data that can be hijacked by fraudsters.

As a custodian of funds, you are in a position of trust and knowledge. You hold a legal responsibility to not only train employees to spot red flags and follow proper protocols, but to counsel consumers on the risks they may face in light of the increase in scams as well.

2. Update standard operating procedures across your business

As highlighted in *Cook v. McGraw*, businesses sometimes rely on outdated security measures and don't realize how far their wire transfer procedures veer from industry standards and modern security protocols—until it's too late. Demonstrating adequate security measures "according to industry standards" is likely to come up in court.

The series of events in *Wheeler v. Clear Title* brought up a number of pertinent questions: Should the title company have told the client they hadn't sent out wire instructions prior to their in-person meeting? Looked over the alleged instructions? Educated the consumer on the dangers of potential wire fraud? State laws vary, but putting protective procedures in place costs precious little—while saving you a ton of trouble.

What are a few simple steps to lower your risk?

- **Edit Contracts**. Make sure all your contracts are clear and understood by all parties involved.
- **Look into Verification Technology**. Independently verify the phone and account numbers rather than relying on email. In *Authentic Title v. Greenwich*, Maryanski was asked to transfer the funds and confirm only by email—a common tactic used by cybercriminals.
- **Use Multi-Factor Authentication (MFA)**. Human-verify account digits and require passcodes to send funds.
- **Flag Errors**. Report suspicious emails that include spelling, capitalization, or punctuation mistakes.
- **Slow Down**. Rather than going through fast third-party payment processors or crypto platforms, go through standard channels—even if they take a few days extra.

There is no single procedural silver bullet that will save your business across all scenarios. A layered approach works best—putting yourself and your customer in the best possible position with a waterfall of steps to identify wire fraud, report to law enforcement, and quash the threat right away.

3. Reduce your risks with technology

Amid the hustle and bustle of a busy day, human eyes and basic email spam filters often fail to detect subtle email anomalies—but modern security systems will flag them.

Advanced technology can prevent fraud from becoming a costly legal issue. Implementing an advanced perimeter security system will safeguard enterprise data with web content filtering, antivirus scanning, and advanced threat protection.

CertifID is dedicated to fighting real estate wire fraud — providing advanced software, direct first-party insurance, and proven recovery services to protect buy side, sell side, and payoff transactions. CertifID ensures the safe transfer of funds in real estate transactions with robust identity verification, secure sharing of bank details, and verification of payoff and other business-to-business transactions. Since 2018, CertifID has protected over $300B in real estate transactions and recovered $60M in stolen funds.

The use of fraud protection software can help organizations identify suspicious transactions more effectively at scale. In the event of a legal dispute over wire fraud liability, the use of technology can also demonstrate your focus on security and client safety to the courts.

4. Mitigate impact with incident response planning and testing

It's your duty to have an incident response plan and protocols in place to minimize loss. Knowing how to respond effectively and freeze or recover funds potentially allows you to evade court altogether.

As we saw in *Hoffman v. Atlas Title*, cyberthreats need to be taken seriously and tended to immediately to prevent further harm. Two months prior to the transaction at issue in this case, Atlas Title had been notified of hacking and email-spoofing incidents involving the same fraudster.

They contacted their internet technology security provider, but did not believe the hacker obtained any information, despite being in their system for about an hour. As a result, they did not inform their clients, nor did they encrypt subsequent emails containing sensitive information. They also failed to notify the client they had not received the wire transfer on schedule until two days later—at which point, the banks were unable to freeze or recover the funds.

Unannounced, company-wide simulated testing is one way to pinpoint your team's baseline level of fraud awareness and rectify your company's weaknesses before a cybercriminal can exploit them. Incident response planning has become essential for every real estate firm operating in this era of wire fraud risks. Every organization must build a comprehensive understanding of key resources, owners, and steps to be able to act quickly when a fraud occurs.

5. Add first-party insurance to protect you from loss

If you try to sue your insurer for breach of contract, the court will dissect your policy's explicit terms—most often, not in your favor, as we saw with *Helms v. Hanover*.

Know your policy by asking your insurance agent the following questions:

- **What type of bond do I have?** Ensure you have either a Fidelity Bond or an Escrow Security Bond, distinct from a surety bond. Fidelity bonds, also referred to as escrow security bonds, safeguard businesses from losses due to employee theft, dishonesty, or fraud—which is particularly advisable for firms handling client funds or sensitive data.
- **Do I have coverage for wire fraud?** The insurance industry typically does not cover wire fraud. Where you don't have coverage, you'll need a technology partner to cover your liability. Insurance carriers may discount your premium if you have a technology solution for wire fraud.
- **Do I have coverage for owner/seller fraud?** The insurance industry also typically lacks coverage for owner/seller fraud, which is another reason to consider partnering with a tech solution provider.
- **What are my policy exclusions?** Insurance contracts typically have a long list of exclusions specifying coverage limits. For instance, your insurance policy may exclude coverage for situations where there's an unintentional violation of the terms outlined in the title underwriting contract. Look, specifically, for language which excludes claims based on "wire fraud," "social engineering," "breach of underwriting authority," and "negligent failure to prevent dishonest conduct" by any known or unknown non-insured party.
- **If I do have coverage, what are the sub-limits?** Even if wire fraud is covered, it may still be subject to a sub-limit. For instance, socially engineered wire fraud might be covered in a cyber policy with a $1 million limit. However, it could be capped at $100,000 or $250,000 with a higher deductible. Despite having insurance, the insured could still face significant losses. If you have a sub-limited policy, you may consider purchasing cyber gap insurance to help mitigate potential losses that exceed the primary policy limits.
- **What are my conditions precedent to coverage?** While terms are unique to each particular policy, every insurer will have some sort of stipulation that ensures you did your part to prevent fraud. Key conditions could include:
    - Timely reporting
    - Detailed documentation of the incident and proof of loss
    - Full cooperation with the insurer's investigation, providing evidence as requested
    - Meeting any and all agreed-upon conditions set forth by the policy
- **What are my reporting duties?** Most contracts stipulate that you report to the insurer any circumstances that could possibly give rise to a claim within 30-60 days. There may be additional documentation steps you must take in order to secure coverage for your claim.

While employee education and updated security measures are key, adding advanced verification tech and insurance will most effectively close the risk gap and protect your business from potential costly litigation.

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About the Author

Tom Cronkright is the Executive Chairman of CertifID, a technology platform designed to safeguard electronic payments from fraud. He co-founded the company in response to a wire fraud he experienced and the rising instances of real estate wire fraud. He also serves as the CEO of Sun Title, a leading title agency in Michigan. Tom is a licensed attorney, real estate broker, title insurance producer and nationally recognized expert on cybersecurity and wire fraud.

About CertifID

CertifID is a leader in wire fraud protection. We safeguard billions of dollars every month from fraud with advanced software, insurance, and proven recovery services. Trusted by title companies, law firms, lenders, realtors, and home buyers and sellers, CertifID provides further peace of mind with up to $1M in direct coverage on every wire it protects.

Contact us at www.certifid.com to protect your business, or for help with a fraud incident.

CERTIFID

ALTA American Land Title Association

National Notary Association

Tips for Checking State Identification Cards During an In-Person Notarization

1. Use tools of the trade

- **Magnifying glass for microprint:** Many state driver's licenses and IDs have microprinting as a security feature, but you will need a magnifying glass to read it.
- **UV light for holograms:** Many IDs have holographic images that you can see only with a "blue" (UV) light.
- **ID Checking Guide:** Has pictures and information on drivers' licenses and state IDs of all 50 states. Use it to master your state's IDs and also to verify an out-of-state ID that is presented to you.

2. Know your state's IDs

- Most notarizations you will perform will involve state residents who present your state's driver's license or state ID to verify their identity.
- Know the versions of IDs that are currently valid in your state.
  - Real ID.
  - Non-Real ID.
  - Current but no longer issued versions.
- Know the security features of your state IDs, including: Ghost photos, microprinting, holograms, laser perforations and tactile security features.

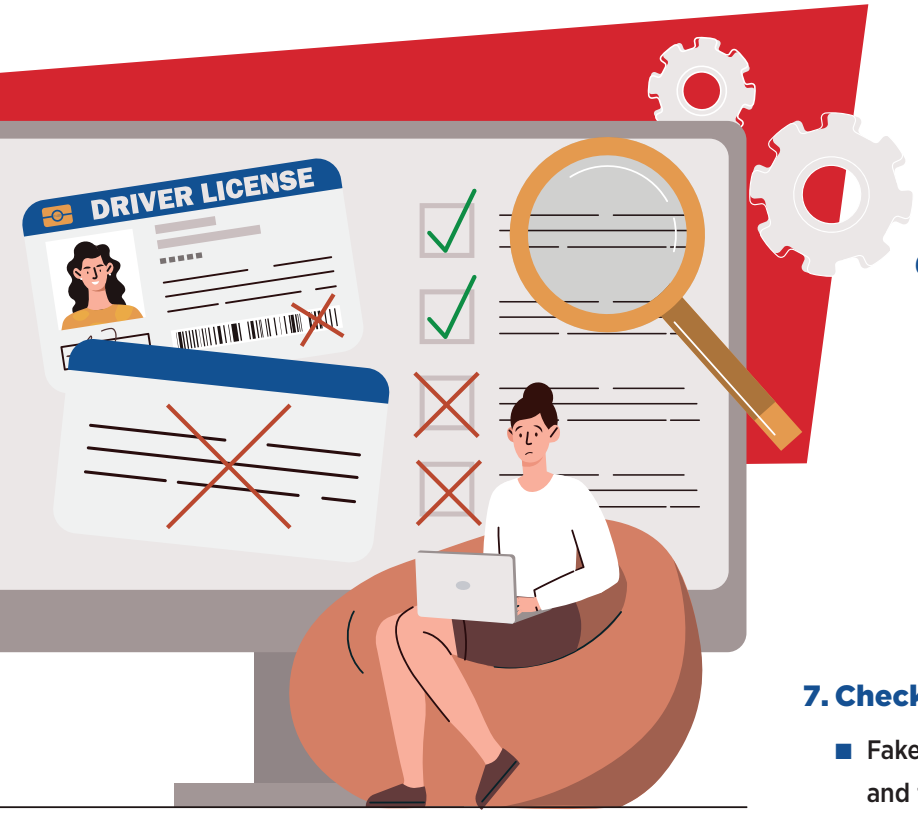
3. Handle the ID

Ask the signer to take the ID out of their wallet or from behind the "ID window" of their wallet so you can handle it. To check the physical attributes of an ID, you must inspect the ID up close and touch it.

While handling the ID, check for tell-tale signs that the lamination is fake (ragged edges, peeling, air pockets underneath, creasing, etc.)

4. Compare the physical description, photo and signature

- The physical description of the person on the ID should reasonably match the appearance of the individual who appears before you.
- While a person may change their hair color, length or style, certain facial elements such as the position of the eyes, eyebrows, ears, nose and chin usually will not change. Focus on these elements in the photo and the person before you.
- Does the signature on the ID reasonably resemble the signature on the document being notarized and in the journal of notarial acts?



5. Inspect the front

- Physical attributes of the ID.
  - Thickness.
  - Rounded and smooth corners (a state DL or ID that does not have rounded corners is likely a fake).
  - Smoothness of photo: A "bump" could indicate an altered photo was placed on top.
- Design elements: For example, the current California driver's license has a fine-line state map, mountains, orchards, gold prospector, sailboats and California poppies on the front of the license.
- Fonts and color of fonts (mismatched and miscolored fonts are evidence of a fake ID).
- License number should reflect the proper type and number of characters. For example, in California, the first character is a letter followed by seven unspaced digits.
- Photo and ghost photo.
- Holograms and visual security features (laser perforations that require you to hold the ID at a certain angle or up to the light to see).
- Tactile security features such raised lettering that you can feel by touch.
- Overlapping elements and printing.
- License or ID term length.
- Does the signature on the ID reasonably resemble the signature on the document being notarized and in the journal of notarial acts?

6. Inspect the back.

- Fake IDs may compellingly reproduce the front of the ID but not the reverse side.
- Check the back side for the inclusion of all elements that should appear such as a magnetic swipe strip, barcode, and design and security elements (The ID Checking Guide will identify these elements).

7. Check for signs of tampering.

- Fake IDs may tamper with the signature, photo and typed information.
- If the ID contains overlapping type as a feature, the absence of overlapping type could be a sign of tampering.

8. Check the ID expiration date

9. Ask questions

- Ask the cardholder to verify personal data on the card. If they can't, it is a red flag.
- Ask the cardholder what the middle initial in their name stands for.
- Purposely mispronounce their name or misstate their middle initial to see if the cardholder instinctively gives the correct information.

10. Look for signs of deceit

- Nervousness.
- Lack of eye contact.
- Hesitation when answering questions.
- Eyes tracking upward (as a sign they may be trying to remember or make something up).

SELLER IMPERSONATION FRAUD IN REAL ESTATE

ALTA
American Land Title Association

FRAUDSTERS are impersonating property owners to illegally sell commercial or residential property. Sophisticated fraudsters are using the real property owner's Social Security and driver's license numbers in the transaction, as well as legitimate notary credentials, which may be applied without the notary's knowledge.

Fraudsters prefer to use email and text messages to communicate, allowing them to mask themselves and commit crime from anywhere.

Due to the types of property being targeted, it can take months or years for the actual property owner to discover the fraud. Property monitoring services offered by county recorder's offices are helpful, especially if the fraud is discovered prior to the transfer of money.

Where approved by state regulators, consumers can purchase the American Land Title Association (ALTA) Homeowner's Policy of Title Insurance for additional fraud protection.

WATCH FOR RED FLAGS

CONSIDER HEIGHTENED SCRUTINY OR HALT A TRANSACTION WHEN A PROPERTY

- Is vacant or non-owner occupied, such as investment property, vacation property, or rental property
- Has a different address than the owner's address or tax mailing address
- Has no outstanding mortgage or liens
- Is for sale or sold below market value

CONSIDER HEIGHTENED SCRUTINY OR HALT A TRANSACTION WHEN A SELLER

- Wants a quick sale, generally in less than three weeks, and may not negotiate fees
- Wants a cash buyer
- Is refusing to attend the signing and claims to be out of state or country
- Is difficult to reach via phone and only wants to communicate by text or email, or refuses to meet via video call
- Demands proceeds be wired
- Refuses or is unable to complete multifactor authentication or identity verification
- Wants to use their own notary

SHUTTERSTOCK / TANYA ANTUSENOK

For more information about real estate fraud, ask an ALTA member or visit **homeclosing101.org**

SELLER IMPERSONATION FRAUD IN REAL ESTATE

ALTA
American Land Title Association

TAKE PRECAUTIONS

SOURCES

- Contact the seller directly at an independently discovered and validated phone number
- Mail the seller at the address on tax records, property address, and grantee address (if different)
- Ask the real estate agent if they have personal or verified knowledge of the seller's identity

MANAGE THE NOTARIZATION

- Require the notarization be performed by a vetted and approved remote online notary, if authorized in your state
- If remote online notarization is not available, the title company should select the notary. Examples include arranging for the seller to go to an attorney's office, title agency, or bank that utilizes a credential scanner or multifactor authentication to execute documents

VERIFY THE SELLER'S IDENTITY

- Send the seller a link to go through identity verification using a third-party service provider (credential analysis, KBA, etc.)
- Run the seller's email and phone number through a verification program
- Ask conversational questions to ascertain seller's knowledge of property information not readily available in public records
- Conduct additional due diligence as needed

USE THE PUBLIC RECORD

- Compare the seller's signature to previously recorded documents
- Compare the sales price to the appraisal, historical sales price, or tax appraisal value

CONTROL THE DISBURSEMENT

- Use a wire verification service or confirm wire instructions match account details on seller's disbursement authorization form
- Require a copy of a voided check with a disbursement authorization form
- Require that a check be sent for seller proceeds rather than a wire

FILE FRAUD REPORTS

- IC3.gov
- Local law enforcement
- State law enforcement, including the state bureau of investigation and state attorney general
- Secretary of state for notary violations

FIGHT FRAUD WITH INDUSTRY PARTNERS

- Educate real estate professionals in your community, such as county recorders, real estate agents, real estate listing platforms, banks, and lenders
- Host educational events at the local or state level
- Alert your title insurance underwriter of fraud attempts

ALTA Outgoing Wire Preparation Checklist

Date: _____

File Number: _____

Company Name/Location: _____

Section 1:

Provide the source of the wiring instructions:

☐ I received the initial outgoing wire instructions directly from the **payee in person**. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions directly from the **payee via the United States Postal Service or a known overnight mail or messenger service** and **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions directly from the **payee via fax** and **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number shown in the package. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions from the **payee**, which have been modified or amended in writing in person at the following date/time: _____. **Proceed to Section 2.**

☐ I received the initial outgoing wire instructions directly from the **payee by email** and **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number shown in the email. The instructions have not been modified or amended. **Proceed to Section 2.**

☐ I received the initial outgoing wiring instructions **via a 3rd party** (e.g., attorney, realtor, lender) and have **verified** the accuracy of the instruction by **calling the payee** at a phone number obtained independently from any phone number obtained via the 3rd party. The instructions have not been modified or amended. **Proceed to Section 2.**

Section 2:

Verify instructions received by email or from someone other than the payee.

☐ **Wire Payee Name:** _____

☐ **Wire Amount:** _____

☐ **Payee Phone Number:** _____

☐ **Source of Phone Number**
(never use the phone number included in an email):

- ☐ Original Order or Contract: _____
- ☐ Secure Portal: _____
- ☐ Internet Search: _____
- ☐ Other (describe): _____

☐ **Name of Person I Spoke With:** _____

☐ **Date:** _____

☐ **Wire Information confirmed.** Account and ABA Routing Number, and Account Name match payee in the file. Wire instruction notes indicate correct payment information (e.g., loan number, beneficiary, other information).

☐ **Wire Information confirmed.** Account and ABA Routing Number match an entry on our company's list of validated wire instructions for common bank payoffs.

Wire Creator: _____
(Signature) (Date)

_____
(Printed Name)

Wire Authorizer: _____
(Signature) (Date)

_____
(Printed Name)

ALTA Outgoing Wire Preparation Checklist

Section 3:
Verify Delivery of Wired Funds.

- ☐ Date Wire Was Sent: _____
- ☐ Date Wire Was Received: _____
- ☐ Person Confirming Receipt: _____
- ☐ Purpose of Wire: _____
  - ☐ Loan Payoff _____
  - ☐ Equity Loan Payoff _____
  - ☐ Seller Proceeds _____
  - ☐ Real Estate Commission _____
  - ☐ Other (describe): _____

Verified By: _____
(Signature) (Date)

_____
(Printed Name)

MEMBER AMERICAN LAND TITLE ASSOCIATION

For more information and tools to prevent wire fraud, **visit the ALTA Website:**

alta.org/business-tools/information-security.cfm

Protect Your Practice From Wire Fraud Schemes

Every day, hackers try to steal your money by emailing fake wire instructions. Criminals will use a similar email address and steal a logo and other info to make it look like the email came from a reputable source you know.

Protect yourself and your firm by following these steps:

Be Vigilant

- **Call, don't email:** Confirm your wiring instructions by phone using a known number before transferring funds. Don't use phone numbers or links from an email.
- **Be suspicious:** If anything about the transaction doesn't feel right, STOP!

Protect Your Money

- **Confirm everything:** Ask the bank to confirm all info on the account before any money is sent.
- **Verify immediately:** Within four to eight hours, call and confirm the money was received.

What To Do If You've Been Targeted

- **Immediately call the bank** and ask them to issue a recall notice.
- **Report the crime to IC3.gov**
- **Call your regional FBI office and police.**
- Detecting that you sent money to the wrong account **within 24 hours** is the best chance of recovering your money.

Seller & Borrower Verification

ID: Obtain a valid government-issued color ID and closely scrutinize for authenticity.

Independently Verify Transaction with Property Owner: Confirm independently with the property owner in vacant land or absentee owner situations that the upcoming transaction is legitimate.

Escrow Protector

Independently Verify Payoff & Wire Transfer Instructions (WTI) with a Trusted Source: Beware of unsolicited payoff/WTI and compare for consistency. Beware of changes to routing & account numbers.

Encrypt Wire Communication: Encrypt emails containing WTI or Personal Information (PI).

Avoid Sensitive Terms in Email Subject Lines: (For example, a subject line using "Wire Instructions" is highly susceptible to spoofing and phishing attacks).

Track the Transaction: Keep track of transfers and monitor for any last-minute changes. Track receipt of disbursements (payoffs, insurance, seller proceeds).

Common Sense

Trust Your Instinct: Pause proceedings if there is a rejected wire, substituted unknown notary, or other irregularities. Be cautious of any last-minute changes, especially with vacant land, absentee owners, and foreign sellers.

Documents: Compare signor(s) locations on executed documents (deed/mortgage) with their ID document(s), and compare handwriting & signatures for similarities (witnesses, notary, grantor).

Utilize Secure Protocols

RON Service Providers: Use industry trusted and known RON platforms which incorporate KBA and other ID verifications.

Email Services Providers: Use secure email providers, avoiding public platform providers like Gmail, Yahoo, AOL, etc.

Cybersecurity Measures: Implement strict access controls.

Routine Training

Train Staff: Regularly update staff on fraud and anti-fraud techniques and encourage review of Fund education materials.

Practice Drills: Run drills and action plan rehearsals, including simulated test phishing emails to keep staff alert.

Incident Response Plan (IRP)

Incident Response Plan: Develop and maintain a strong plan with instructions, critical contacts including your bank's security officer, action items, and E&O carrier info.

Immediate Fraud Response: Inform outgoing and receiving banks immediately upon detecting fraud. Diligently work to recall wires.

Take Charge of the Closing

Trusted Sources: Control the closing process. Rely on trusted sources and known notaries.

RON: Use RON notary or require execution of documents with a known attorney or notary for signors who are not present and are unknown.

You

Stay updated on fraud trends and anti-fraud techniques.

Detect and Prevent Fraud: The responsibility ultimately lies with you. Everyone is counting on you to prevent fraud. You are in the best position to detect and thwart fraud.

Protect Yourself: These policies are essential to protect your business and livelihood.

Passwords

- Use strong passwords and change them frequently.
- Adopt ALTA's best practices where appropriate.

Records

- Secure records and purge Personal Information (PI).
- Transfer closed files with PI from internet-exposed servers to an external hard drive or other secured storage.

Operations

- Avoid personal email for work communications.
- Refrain from using open networks.
- Follow secure protocols to protect PI and other sensitive information.
- Regularly update your system to include all security patches by enabling automatic updates, using reliable antivirus software, keeping all software up-to-date, and backing up data to encrypted servers.
- Obtain and scrutinize a second valid government-issued ID.
- Consider sending a check instead of a wire but be aware of check washing risks.

Tools

- Use third-party vendors for wire transfer security, identity, and seller/borrower verification (e.g., CertifID, TLO Skip Tracing, Persona, Verisoul).
- Consider services that confirm bank account ownership.

Errors & Omissions Insurance

- Review and understand coverages and limitations of your E&O policy. Analyze to maximize protection for potential loss and actions taken as a closing agent.
- Ensure your office adheres to policy prerequisites and conditions for claims.
- Promptly review and comply with your E&O policy concerning notice obligations.

Cybersecurity Insurance

- Acquire cybersecurity insurance to cover matters excluded by E&O insurance.

Technology

- Implement Multifactor Authentication (MFA) across all accounts and devices.
- Utilize Positive Pay for escrow accounts.
- Use FaceTime or similar applications to secondarily verify ID photos with unknown seller/borrower on camera.

Alert

Alert - Imposter Fraud Variant

Fund Members should be on alert for the following variant of the Imposter Fraud Scheme. This appears to have been attempted, caught and prevented by at least one Fund Member who, during a recent large residential condominium transaction, investigated the imposter when each red flag observed was quickly dismissed by the imposter. The Member's insistence on not being rushed thwarted the criminal. However, recent significant claims have also been observed.

Each of these transactions shares the following fact pattern:

- Unencumbered high-value condominium unit in South Florida.
- Property originally owned by an absentee Foreign National (the person being impersonated).
- Shortly before the closing, the Imposter conveys the property from the individual's name to a newly formed LLC. The LLC bears the name of the Foreign National owner plus the words "Beach Investments, LLC."
- The Property Owner's Association provided the appraiser with access to the property based on an emailed request from the Imposter.
- The loans involve hard money lenders originated through a mortgage broker and are cash-out refinances.
- The closing agent is instructed to wire the loan proceeds to a Citizens Bank, N.A. account in the name of the Foreign National.
- The Imposter appears in person for closing and presents high-quality foreign identification credentials to the notaries.

Combating this type of fraud is becoming more difficult as the imposters become more sophisticated. Fund Members are the front line to prevent imposter fraud. Your diligence in determining the identity and the authority of

the parties presenting themselves is what can eliminate this conduct and protect the parties, your firm, and Old Republic. The Fund has produced and will continue to produce materials to alert its Members to this issue and to provide guidance on how to limit this very real risk. Please consult previous Alerts, General Counsel Blog posts, Fund Concept articles and webinars.

Note also, The Fund has previously developed a Title Note to warn you to be on the lookout when you see a relatively recent conveyance in advance of your closing. Certain red flags may be present in the recent deed that indicate a possible forgery, fraud, coercion, or undue influence. See TN 10.03.09. The TN focuses on quitclaim deeds because that is what is generally used; however, these imposter fraud schemes very well may use a warranty deed, which bears some of the same red flags Members should be on the lookout for. Also, to help signal to you further diligence should be undertaken to confirm the validity of a recent transfer, Fund examiners are on the lookout for relatively recent deeds that may bear some of these red flags and will often include the following requirement:

> *Fund Member must determine through any reasonable means necessary that the quitclaim deed recorded in ___, Public Records of ___ County, Florida, is a legitimate conveyance of title involving no fraud or undue influence.*

Members should consider implementing additional safeguards such as:

1. Requiring the production of multiple forms of photo identification.
2. Requiring credential analysis through a vendor such as Intellicheck or CertifID.
3. Sending a letter to the mailing address listed for the owner on the property appraiser's website confirming you are closing a transaction on the property.
4. Recognize that requests to disburse proceeds to anyone other than the vested owner's bank account could be a red flag and may result in additional liability for you as the agent.

Please contact Fund Underwriting with any questions.

The Claims Game 2: Claims v. Members

George Perez
Senior Manager, Claims, Risk Analysis & Member Compliance, The Fund

Chezare Palacios
Claims Counsel, The Fund

Elsa Camacho
Claims Counsel, The Fund

APPENDIX OF CASES

Question #1 - Forgery – a handwriting expert's testimony that a document is a forgery, standing alone, is legally insufficient to overcome the testimony of unimpeached eyewitnesses.

Dozier v. Smith, 446 So.2d 1107 (Fla. 2nd DCA 1984)

Question #2 – Adverse Possession – the grantee on a deed purporting to convey the entire fee interest from one who only holds an undivided interest may acquire title by adverse possession against other co-tenants.

Morrison v. Byrd, 72 So.2d 657 (Fla. 1954)

Question #3- Easements – upon demonstration that an otherwise landlocked owner is entitled to a statutory way of necessity, said owner is not entitled to claim a prescriptive easement.

Sapp v. General Development Corp., 472 So.d2d 544 (Fla. 2nd DCA 1985)

Question #4 – Priority of Liens – Part 1 – that portion of an acquisition and development loan that is in the nature of purchase money takes priority over any lien arising through the mortgagor even though the latter was given after the competing lien.

BancFlorida v. Hayward, 689 So.2d 1052 (Fla. 1997)

Question #5 – Priority of Liens – Part 2 - that portion of an acquisition and development loan that is in the nature of development funds takes priority over any lien arising through the mortgagor even though the latter was given after the competing lien so long as the competing lienholder expressly subordinated itself to any subsequently given liens.

Posnansky v. Breckenridge Estates Corp., 621 So.2d 736 (Fla. 4th DCA 1993)

Question #6 – Fraud in the Inducement – in order to successfully set aside a mortgage on the grounds of fraud or duress in its procurement, the party seeking to avoid the mortgage carries the burden to prove that the mortgagee participated in the fraud.

JAK Capital, LLC v. Adams, 306 So.3d 1285 (Fla. 2nd DCA 2020)

Question #7 – Witness Requirements – F.S. 689.01 does not require that the witnesses to a deed sign in the presences of the grantor or in the presence of each other, nor does it require that the witnesses sign the deed before delivery.

Sweat v. Yates, 463 So.2d 306 (Fla. 1st DCA 1984)

Question #8 – Standing – a party lacks standing to challenge the validity of mortgage based on fraud if they are not a party to the relevant note and mortgage at issue.

Wells Fargo Bank, N.A. v. Rutledge, 230 So.3d 550 (Fla. 2nd DCA 2017)

Question #9 – Title Defects – although a title defect is of record, an insured may not recover for a title defect which it had actual knowledge of and failed to disclose to the insurer prior to securing title policy.

Nourachi v. First American Title Ins. Co., Case No. 5D09-2554 (Fla. 5th DCA 2010)

Question #10 – Joint Tenancies – a mortgage on an undivided interest held as JTWROS does not sever the joint tenancy and the lien of the mortgage terminates upon the death of the mortgagor.

D.A.D., Inc. v. Moring, 218 So.2d 451 (Fla. 4th DCA 1969)

Question #11 – Reformation – an otherwise voidable mortgage may be successfully reformed to add the signature of a missing mortgagor.

Countrywide Home Loans, Inc. v. Kim, 898 So.2d 250 (Fla. 4th DCA 2005)

Question #12 – Definition of Public Records – under an ALTA ’92 and ’06, public records is limited only to those records that are designed to impart constructive notice to the general public.

Hon Realty Corp. v. First American Title Ins. Co., No. 07-15844 (11th Cir. 2008)

Question #13 – After-Acquired Title – the doctrine of after-acquired title applies to mortgages.

BCML Holding, LLC v. Wilmington Trust, N.A., 201 So.3d 109 (Fla. 3rd DCA 2015)

Question #14 – Statute of Limitations – a mortgagee bringing an action solely on a note and obtaining a final judgment for the amount owed under the note does not extend the statute of limitations period for a later filed mortgage foreclosure suit.

Maki v. NCP Bayou 2, LLC, 368 So.3d 1081 (Fla. 6th DCA 2023)

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446 So.2d 1107
Thomas A. DOZIER, as Personal Representative of the Estate of Floretta Snyder, and Mary R. Fletcher, Appellants,
v.
Suzanne SMITH, Appellee.
No. 83-1092.
District Court of Appeal of Florida, Second District.
Feb. 15, 1984.
Rehearing Denied March 21, 1984.

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Charles E. Early of Early & Early, Sarasota, for appellants.

James R. Hutchens of McDaniel, Ball & Hutchens, P.A., Sarasota, for appellee.

OTT, Chief Judge.

Thomas Dozier, as personal representative of the Estate of Floretta Snyder, and Mary R. Fletcher appeal from a probate court order revoking a will duly admitted to probate on the ground of forgery. We hold that the evidence was insufficient as a matter of law to support the court's finding of a forgery.

Floretta Snyder died on September 23, 1981. She was survived by one daughter, two brothers, and five sisters. A will, dated July 28, 1981, was duly admitted to probate. The decedent's entire estate was left to appellant Mary Fletcher, one of decedent's five sisters. The will was drafted by appellant Fletcher's husband, attorney Philip Fletcher. Thomas Dozier, a lawyer who handled the estate of the testator's deceased husband, was named as executor.

Appellee, the decedent's daughter, petitioned for revocation of the will. Appellee filed a five-count petition for revocation of probate of will: Count I, forgery and not the true signature of decedent; Count II, lack of testamentary capacity or mental competence of decedent; Count III, will not executed in accordance with section 735.502, Florida Statutes (1981); Count IV, will procured by undue influence; Count V, execution procured by fraud. After discovery and prior to pretrial conference, the appellee voluntarily withdrew all counts except Counts I and III--forgery and failure to comply with the formalities of execution required by law. At trial, no testimony was offered to show that the requirements of section 732.502, Florida Statutes (1981), were not met. After a trial without jury, the probate court revoked the will as a forgery and ordered the matter to proceed intestate.

According to attorney Fletcher, his sister-in-law entered his law office on July 28, 1981, demanding that he draw a will for her prior to an upcoming flight to Las Vegas with her sister, appellant Fletcher. When informed that the sole beneficiary was his wife, attorney Fletcher informed the decedent that he could not draft the document but finally consented. He instructed her to see attorney Thomas Dozier about redrafting the will upon her return from Las Vegas. While the decedent waited, attorney Fletcher used a typewriter to fill in the blank spaces of a commercial will form himself. He read the will to the decedent and placed it in front of her. She indicated that the will was satisfactory. Art Barth, Jay Baerveldt, and Thomas Paine entered the room. The decedent signed the will with a felt tip pen. Ms. Baerveldt, Mr. Paine, and attorney Fletcher then signed the will as witnesses. The signatures of the testator and the witnesses to the will were notarized by Barth, but not in such a manner as to make the document self-proving. [1]

Both Ms. Baerveldt and Mr. Paine arrived at attorney Fletcher's office on July 28, 1981, to attend to their own business. Both were employees of appellant Fletcher in another business operation at the time the will was executed. Mr. Paine had been discharged by appellant Fletcher prior to

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the time of trial. Both were familiar with the decedent and testified that the decedent personally published and executed the will in their presence.

Mr. Barth was called as a witness by appellee. Apart from the will execution ceremony, he had never met the decedent. He assumed her identification as correct based on the attorney's introduction and the fact that everyone else seemed to know her. At trial, he identified the decedent from a photograph taken during her Las Vegas vacation in August, 1981. Strangely, Mr. Barth was called as a witness at trial by appellee and there was no effort to establish him as a hostile witness.

Appellee presented the testimony of two handwriting experts, George Mesnig and Richard Casey, who testified unequivocably that the signature of the decedent on the will was a forgery. Mr. Mesnig indicated that use of a felt tip pen tends to hide the possibility of a forgery.

Ordway Hilton, a handwriting expert of notable acclaim, concluded that the signature of the decedent found on the will was "most probably" written by the same person that wrote the decedent's established exemplars. The second of appellants' handwriting experts, Ronald Dick, was not able to reach a definite conclusion, but indicated that the evidence leaned quite heavily toward the signature being genuine.

Irene Laurie, a close friend of the decedent, stated that the decedent came to her home during the week prior to her death and indicated that the Fletchers were "trying to get [her] to make out a will."

There was other limited but conflicting evidence on the consistency of the will with the decedent's previously expressed dispositional intentions. In that regard, it was uncontradicted that appellant Fletcher was the only one of decedent's siblings who had maintained any relationship with decedent for years. Appellee and decedent had not maintained a close relationship, since appellee had been taken away from decedent when a small child. However, such testimony was incidental and sketchy at best, as the trial court ruled it was irrelevant to the issue of forgery.

The probate court granted appellee's petition for revocation of probate of the will. In doing so, the probate court relied on the two expert witnesses presented by appellee, the unusual circumstances of the will execution--the fact that the will was prepared by the husband of the sole beneficiary named in the will, the decedent signed the will with a felt tip pen, the unnecessary repetition of the bequest to appellant Fletcher in the second paragraph, and the unnecessary use of a notary public--and the failure of the testator to mention her siblings or lineal descendant in the will.

The decision of the probate court is affirmed if there is substantial competent evidence to support the finding of the probate judge and the judge did not misinterpret the legal effect of the evidence as a whole. In re Estate of Krugle, 134 So.2d 860 (Fla. 2d DCA 1961).

In Krugle, a will admitted to probate was challenged on the ground that it was a forgery. The probate court found that the will admitted to probate was a forged instrument. On appeal, this court stated that a handwriting expert's testimony that a document was a forgery, standing alone, and without corroboration by circumstances indicative of forgery or fabrication, was legally insufficient to overcome the testimony of unimpeached eyewitnesses. 134 So.2d at 862. Finding the lack of such corroborating circumstances, this court reversed the factual finding of the probate court.

We believe the instant case falls within the rule of Krugle. Although the circumstances of the will execution cited by the probate court may be considered superfluous or even peculiar, we find that they and the other evidence do not suggest a forgery or fabrication of the decedent's signature. The circumstances may, somewhat remotely, suggest undue influence, a will inconsistent with a previous expression, or overreaching or other

breach of ethical or legal standards. However, appellee

expressly withdrew such issues and agreed that the only issues to be tried were whether or not the signature was genuine and whether the will was executed with the requisite testamentary formalities. We find that the testimony of the two handwriting experts is the only evidence of forgery. The expert testimony, standing alone, is insufficient to overcome the unimpeached testimony of the several eyewitnesses as a matter of law. None of the other evidence presented by appellee even remotely dealt with whether or not decedent signed the will or was the person presented to the witnesses and the notary as the testator. Moreover, there was no significant impeachment of the testimony or truth and veracity of the eyewitnesses or the notary.

Accordingly, the judgment of the probate court is REVERSED with instructions to deny appellee's petition to revoke probate of the will and to reinstate the probate of the will.

GRIMES and CAMPBELL, JJ., concur.

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1 See section 732.503, Florida Statutes (1981), for the requirements to make a will or codicil self-proving.

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72 So.2d 657
MORRISON et al.
v.
BYRD et al.
Supreme Court of Florida, En Banc.
May 11, 1954.
Rehearing Denied June 5, 1954.

Adams & Wade, Crestview, for appellants.

Jerry Sullivan, Pensacola, for appellees.

DREW, Justice.

Dock Byrd acquired title to 160 acres of land in Okaloosa County, Florida, shortly before the turn of the century. There he lived until his death in 1933, intestate. Surviving him, as lawful heirs, were seven children, one of whom bore the name of D. W. Byrd.

D. W. Byrd continued to reside on the homestead. In 1937 he acquired a tax deed thereto. On August 2, 1943, he and his wife sold the land to Esther S. Morrison, and conveyed title by warranty deed, which was immediately recorded. According to the record Mrs. Morrison promptly returned the same for taxes and has paid the taxes thereon since said time. She entered into the actual possession of the land and for more than seven years prior to the institution of this suit for partition by the remaining heirs of Dock Byrd, she cultivated a large portion of the tract, improved the fences and built new fences around the cultivated portion of the land, filled in gullies and used the unenclosed portion for wood and grazing and maintained the same against trespassers. Such, she alleged, constituted adverse possession under color of title and a defense to the action.

The lower court, after testimony was taken, held inter alia:

'The defendant, Esther Steele Morrison, claims title through D. W. Byrd, one of the surviving heirs of Dock Byrd, who, on December 6, 1937, obtained a tax deed to the property, subsequently, on August 2, 1943, conveying to Mrs. Morrison who is joined by her husband as a defendant. The defendant resist partition on the further ground of adverse possession for a period sufficient to vest title in Mrs. Morrison based upon the conveyance to her from one of the heirs, D. W. Byrd as above indicated.

'It appears by the evidence that the original owner through whom plaintiffs claim died in 1933, prior to the effective date of F.S. § 95.22 [F.S.A.] which contains a provision to the effect that the seven year statute of limitations mentioned in the first paragraph of the statute shall not apply in a case where the person through whom claim is made died prior to the effective date of the statute, that date being July 1, 1941, but that the twenty year limitation of Section 1 of Chapter 10168, Acts of 1925, C.G.L. 4659, should apply.

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'Even if the seven-year statute of limitations is applicable the evidence fails to establish adverse possession in the light of adjudicated cases on the subject and under the circumstances here presented. No notice was brought home to any of the heirs except one who made claim to Mr. Morrison for his share of the purchase price but Mr. Morrison disregarded the claim on the theory that the complaining heir had no interest to be recognized, relying solely upon the validity of the tax deed issued to his wife's grantor, one of the heirs. It also appears that the heir who obtained the tax deed and conveyed to Mrs. Morrison was left by the other heirs in possession of the property with the right to use and occupy the same but with no right to dispose of their interests. In short, Mr. and Mrs. Morrison in purchasing the property relying upon the validity of the tax deed to their grantor did so at their peril. See Williams v. Clyatt, 53 Fla. 987, 43 So. 441, followed in Andrews v. Andrews, 155 Fla. 654, 21 So.2d 205; Spencer v. Spencer, 160 Fla. 749, 36 So.2d 424, and other cases.'

The statute referred to by the Chancellor below is, as he held, not applicable to the question

before the Court for the obvious reason that, at the time of the death of Dock Byrd the period within which an action could be brought was twenty years.

The statute governing the question before the lower court is Section 95.16, Florida Statutes 1951, F.S.A. The primary and controlling questions are whether the deed to Mrs. Morrison constitutes color of title and, if so, whether her possession was of the character designated in Section 95.17, Florida Statutes 1951, F.S.A.

It is well settled in this State that the attempt of D. W. Byrd to divest his co-tenants of title by the process of the tax deed was wholly ineffectual, and, if this were litigation between the co-tenants over that question of ownership, the cases cited by the eminent Chancellor below would be controlling. Each of the cited cases involved a claim of title by a co-tenant, who had acquired the title to the whole through a tax deed, against his other co-tenants.

While the law on the foregoing question is well settled and no longer open to question in this State, it is equally well settled that a deed purporting to convey the entire interest from one who holds only an undivided interest therein may constitute color of title, and the grantee may acquire title by adverse possession against the other co-tenants. Futch v. Parslow, 64 Fla. 279, 60 So. 343; Robinson v. Herrman, 101 Fla. 865, 132 So. 827. Under some circumstances this is true, even as between co-tenants. See Futch v. Parslow, supra. In this case, while Mrs. Morrison lived in the neighborhood and knew there were other heirs, she was a complete stranger to the title. As to why she took the deed from only one heir, her husband testified that they thought the tax deed was sufficient to divest the other co-tenants of any interest in the property. We hold, under the facts in this record, that the deed from D. W. Byrd did constitute color of title.

On the question of adverse possession, we are compelled to hold, in the light of undisputed evidence in the record, that the conclusion of the lower court that 'the evidence fails to establish adverse possession in the light of the adjudicated cases on the subject and under the circumstances here presented' is a misinterpretation of the legal effect of the evidence. We hold that such evidence established title by adverse possession under color of title in the appellant within the provisions of Sections 95.16, 95.17, supra.

The cause is reversed with directions to enter an appropriate decree favorable to the defendants.

ROBERTS, C. J., and TERRELL, SEBRING, HOBSON and MATHEWS, JJ., concur.

THOMAS, J., dissents.

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472 So.2d 544
10 Fla. L. Weekly 1655
Christopher SAPP, Appellant,
v.
GENERAL DEVELOPMENT CORPORATION, a Delaware Corporation, Appellee.
No. 84-2342.
District Court of Appeal of Florida, Second District.
July 3, 1985.

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William L. Blackwell of Blackwell & Beal, P.A., Naples, for appellant.

Jesus M. Hevia of Wotitzky, Wotitzky, Wilkins, Frohlich & Jones, Punta Gorda, for appellee.

GRIMES, Judge.

This is an appeal from a summary judgment entered against a claim for a prescriptive easement.

Appellant, Christopher Sapp, filed suit for the declaration of a prescriptive easement over the property of appellee, General Development Corporation. He also sought an injunction and damages. The complaint alleged in part that: (1) Sapp owns a parcel of real property which is completely surrounded by General Development's property; (2) Sapp's only access to his property is by a dirt road which crosses General Development's property; (3) Sapp and his predecessors in title have made continuous uninterrupted use of this roadway for over twenty years; (4) on April 12, 1984, General Development began tearing up the road, rendering it unusable to Sapp; (5) General Development began hauling away fill dirt which Sapp had previously placed on the roadway; and (6) by virtue of General Development's conduct in blocking access to Sapp's property, Sapp was prevented from irrigating and caring for a grapefruit grove located thereon. As one of its affirmative defenses, General Development contended that because Sapp either had a common law or statutory way of necessity across its property, he could not claim a prescriptive easement. The court ultimately entered a summary judgment for General Development on this premise.

Where a grantor conveyed land to which there was no access except over the remaining land of the grantor, the common law presumed that the parties intended for the grantee to have an access easement over the land of the grantor. Dixon v. Feaster, 448 So.2d 554 (Fla. 5th DCA 1984). This implied grant of a way of necessity has been codified as section 704.01(1), Florida Statutes (1983). The legislature also provided a statutory way of necessity to enable the owner of landlocked property to have access across his neighbor's land when title to both properties is not deraigned from a common grantor. § 704.01(2), Fla.Stat. (1983). The servient owner is entitled to compensation for a statutory way of necessity. § 704.04, Fla.Stat. (1983).

One of the requirements of obtaining an easement by prescription is twenty years of adverse use by the dominant owner without permission of the servient owner. Crigger v. Florida Power Corp., 436 So.2d 937 (Fla. 5th DCA 1983). The inconsistency between a prescriptive use and a

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common law way of necessity is evident because the latter is based on the presumption of an implied grant. The contradiction with respect to a statutory way of necessity is not quite so clear.

General Development relies upon this court's decision in Hanna v. Means, 319 So.2d 61 (Fla. 2d DCA 1975). In that case the Meanses filed suit claiming alternatively either a common law way of necessity or an easement by prescription over the Hannas' lands. The court denied both claims but held that the Meanses had a statutory way of necessity. On appeal, the court first rejected the Hannas' contention that the Meanses were not

entitled to a statutory way of necessity because a more reasonable way of access existed over another owner's property. The court then considered the Meanses' cross-appeal in which they urged that the trial judge should have granted them a prescriptive right of way across the Hannas' lands. This court reasoned that the Meanses were not entitled to a prescriptive easement because they had failed to prove an adverse claim of right. However, the court went on to say:

Apart from that issue, however, we can dispose of appellees' contention ... as a matter of law, simply under the well-settled rule that a prescriptive right never accrues in a way of necessity so long as the necessity continues....

319 So.2d at 63-64 (footnote omitted).

Sapp correctly points out that on this record, General Development did not prove that title to both properties was deraigned from a common source. Sapp then seeks to limit the quoted statement from Hanna v. Means to the case of a common law way of necessity by arguing that a person is not entitled to a statutory way of necessity until the court determines its existence. However, the statute belies his position. Section 704.01(2) provides that "a statutory way of necessity ... exists when any land ... shall be shut off or hemmed in ... so that no practical route of egress or ingress shall be available therefrom to the nearest practicable public or private road." (Emphasis added.) The landlocked owner "may use and maintain an easement ... over and upon the lands which lie between said shut-off or hemmed-in lands and such public or private road by means of the nearest practical route." Moreover, "the use thereof ... shall not constitute a trespass; nor shall a party thus using the same be liable in damages for the use thereof; provided that such easement shall be used only in an orderly and proper manner."

In order to obtain an easement by prescription, the use must be such that the owner has a legal right to prevent it through an action for trespass or ejectment. Downing v. Bird, 100 So.2d 57 (Fla.1958). Yet, under section 704.01(2), the servient owner cannot establish a claim of trespass against the dominant owner. Assuming the use is not unreasonable, the only recourse available to the servient owner is to seek compensation under section 704.04. At this point, a lawsuit is filed, and the court is then called upon to determine "all questions including the type, extent and location of the easement and the amount of compensation." That portion of section 704.04 which provides that "[t]he easement shall date from the time the award is paid" refers only to the court-ordered easement rather than to the statutory way of necessity which existed all of the time.

In practical terms, a landlocked owner always has either a common law way of necessity or a statutory way of necessity, depending upon the status of his title, even though the precise location may not be known. At such time as he commences using a way of access across adjoining property, the location becomes presumptively established, subject always to a redetermination by the court upon a contention of unreasonable use. Consequently, the use under either a common law or statutory way of necessity is not adverse and cannot form the basis of a claim for a prescriptive easement. [1]

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We recognize that this court in both Anderson v. Toole, 329 So.2d 33 (Fla. 2d DCA 1976), and Baya v. Central & Southern Florida Flood Control District, 166 So.2d 846 (Fla. 2d DCA 1964), appeared to treat prescriptive easements as alternatives to ways of necessity. However, there was no issue raised in either case with respect to whether a landowner with a way of necessity has the right to claim a prescriptive easement.

By virtue of having demonstrated that his property was landlocked, Sapp established that he had a way of necessity. Therefore, he was not entitled to claim a prescriptive easement. We do find, however, that he may have a cause of action for injunctive relief [2] or damages. As we interpret

section 704.04, a servient owner cannot arbitrarily block the use of a statutory way of necessity. He can, of course, register an objection to the further uncompensated use of the way. If the parties cannot agree upon appropriate compensation, either of them may obtain a determination by the court. Since General Development has not refuted Sapp's contention that it closed the road and effectively denied access to Sapp, the court should have considered Sapp's claim for an injunction and damages.

We affirm the court's determination that Sapp cannot obtain a prescriptive easement. We reverse the summary judgment insofar as it precludes Sapp from attempting to prove his right to an injunction and damages and remand for further proceedings.

RYDER, C.J., and SCHEB, J., concur.

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1 A different case might be presented if the landlocked owner were seeking a second route across adjoining property.

2 The claim for injunction may now be moot because the record suggests that another means of access became available to Sapp after this lawsuit was filed. See Jonita, Inc. v. Lewis, 368 So.2d 114 (Fla. 1st DCA 1979).

689 So.2d 1052
22 Fla. L. Weekly S95

BANCFLORIDA, etc., Petitioner,
v.
Robert T. HAYWARD, et ux., et al.,
Respondents.

No. 86646.
Supreme Court of Florida.
Feb. 27, 1997.

Robert C. Grady of Katz, Barron, Squitero & Faust, P.A., Miami, and Herbert Stettin of Herbert Stettin, P.A., Miami, for Petitioner.

Mark V. Silverio and Cynthia Byrne Hall of Silverio & Hall, Miami, and Glenn J. Holzberg, Miami, for Respondents.

GRIMES, Justice.

We review BancFlorida v. Hayward, 659 So.2d 1329, 1333 (Fla. 3d DCA 1995), in which the court certified the following question as being of great public importance:

Where a lender requires a pre-qualified contract purchaser before it will lend on the construction loan which creates a purchase money mortgage, does the contract purchaser's prior equitable lien against the purchase money mortgagor have priority over the lender's subsequent purchase money mortgage?

We have jurisdiction under article V, section 3(b)(4) of the Florida Constitution.

Shores Contractors, Inc. (developer) was in the business of developing lots and constructing single-family homes in several subdivisions. American Newlands owned the real property in these subdivisions. The developer held an option to acquire individual lots from American Newlands. The developer arranged for BancFlorida (bank) to provide funds for the acquisition of the individual lots and for the construction of single-family homes on those lots. The most frequent

method of lot acquisition and construction [1] required that the developer obtain a written purchase and sale agreement on a particular lot from a prequalified purchaser. The bank would then make a construction loan to the developer, with a portion of the proceeds being paid directly to American Newlands in exchange for deeds of the lots to the developer. None of the payments made by the purchasers on their contracts with the developer were used to acquire the lots.

Unfortunately, the developments failed, and the homes were not completed. The developer filed suit against the bank, alleging that breach of the construction loan agreements caused the failure. In turn, the bank sought foreclosure of its mortgages on the lots. Thereafter, the contract purchasers intervened and claimed equitable liens on the lots described in their purchase and sale agreements. The bank responded by claiming the superiority of its mortgages.

By agreement of all parties, summary final judgment of foreclosure was entered which permitted the bank to foreclose on the lots. They were sold at foreclosure sale, and the bank was the successful purchaser. By stipulation, the properties were then sold in bulk by the bank to a third party and the net proceeds were deposited in an escrow account pending the ultimate disposition of the competing claims.

The trial court entered summary judgment in favor of the contract purchasers, holding that they held equitable liens on the lots which were entitled to priority over the bank's mortgages. The premise for the trial court's holding was that before the bank loaned any money to Shores for construction of the homes, the bank had actual notice of the purchase and sale agreements and the deposits paid by the contract purchasers to the developer. The court rejected the bank's contention that its mortgages were purchase money mortgages.

Contrary to the finding of the trial court, the Third District Court of Appeal held that the bank's

mortgages were purchase money mortgages. Nevertheless, it affirmed the judgment in favor of the contract purchasers on the following rationale:

In the case at issue, knowledge is part and parcel of the same transaction in which the purchase money mortgage was created. BancFlorida structured this transaction and required the existence of pre-qualified contract purchasers before it would lend any money to Shores under the construction loan line of credit. It is well settled law in Florida that purchase money mortgage priorities may be subject to the equities of the particular transaction. Van Eepoel Real Estate Co. v. Sarasota Milk Co., 100 Fla. 438, 129 So. 892 (1930). Thus, we agree with the reasoning of Caribank [v. Frankel, 525 So.2d 942 (Fla. 4th DCA 1988)] that BancFlorida's actual knowledge of the contract purchasers' equitable liens against Shores, which arose before BancFlorida executed purchase money mortgages to Shores as part of the construction loan, and indeed, at BancFlorida's insistence, gave the equitable liens priority over the purchase money mortgages.

BancFlorida v. Hayward, 659 So.2d at 1333.

At the outset, we agree with the court below that the bank's mortgages were purchase money mortgages. Traditionally, a purchase money mortgage was a mortgage given by the purchaser of real property directly to the seller to secure some or all of the purchase price. 1 Paul C. Gibson, Florida Real Estate Transactions § 4:01 (1996). However, it is well settled that where the proceeds of a third-party mortgage loan are used to purchase property, the mortgage on that property is also considered to be a purchase money mortgage. Cheves v. First Nat'l Bank, 79 Fla. 34, 83 So. 870 (1920); Sarmiento v. Stockton, Whatley, Davin & Co., 399 So.2d 1057 (Fla. 3d DCA 1981). 2 Ralph E. Boyer & William H. Ryan, Florida Real Estate Transactions § 32.22 (1996), explains:

The most common real property security transaction involves a "purchase money" loan from a bank, savings and loan association, or other lender, that enables the borrower to purchase the subject property.

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The seller receives the loan proceeds, less whatever may be due to the seller's purchase money lender, if any, and conveys title to the purchaser. The purchaser, then being the owner, executes and delivers a mortgage in favor of the lender. As long as a mortgage is executed in conjunction with a purchase and given as security for a portion of the purchase price, it is a purchase money mortgage, even though the money is advanced by a third party and the mortgage is executed in the third party's favor.

The determination that a mortgage is a purchase money mortgage is important because purchase money mortgages take priority over all prior claims or liens that attach to the property through the mortgagor. Id. As this Court explained in Van Eepoel Real Estate Co. v. Sarasota Milk Co., 100 Fla. 438, 450-51, 129 So. 892, 897 (1930):

[A] purchase-money mortgage, made simultaneously with the conveyance to the mortgagor, takes precedence over any lien arising through the mortgagor, even though the latter be prior in point of time.

This rule applies even though the purchase money mortgagee was put on constructive notice of the prior lien by virtue of its recording in the public records. Thus, a purchase money mortgage has been recognized to be senior to prior recorded judgment liens, Citibank Mortgage Corp. v. Carteret Sav. Bank, 612 So.2d 599 (Fla. 4th DCA 1992); Sarmiento; Associates Discount Corp. v. Gomes, 338 So.2d 552 (Fla. 3d DCA 1976), and a prior recorded welfare lien. Pinellas County v. Clearwater Fed. Sav. & Loan Ass'n, 214 So.2d 525 (Fla. 2d DCA 1968).

Presumably, the rule giving superiority to purchase money mortgages came about because of the recognition that the prior lienholder is no

worse off than before. Without the proceeds from the purchase money mortgage loan, the property would not have been acquired. However, purchase money protection applies only to the amount of the proceeds actually used to acquire the property and its existing improvements. Carteret Sav. Bank v. Citibank Mortgage Corp., 632 So.2d 599 (Fla.1994).

When these principles are applied to the instant case, it is clear that the court below erred in holding that the claims of the contract purchasers were superior to the bank's purchase money mortgages. That court relied heavily upon the fact that the bank had actual notice of the purchase and sale agreements. However, purchase money mortgages have superiority over prior recorded liens, and actual notice is simply the equivalent of constructive notice.

We cannot answer the certified question as worded because it presupposes that the contract purchasers had a prior equitable lien on the lots. However, at the time the purchase and sale agreements were executed, the developer did not own the lots but merely held an option to purchase. Under Florida law, an option to purchase property creates neither an equitable interest nor an equitable remedy. Wolfle v. Daugherty, 103 Fla. 432, 137 So. 717 (1931). Therefore, the developer had no real property interest upon which an equitable lien could attach.

The contract purchasers rely heavily upon Caribank v. Frankel, 525 So.2d 942 (Fla. 4th DCA 1988). On facts analogous to those in the instant case, the district court of appeal held that a contract purchaser had a prior lien over a subsequent purchase money mortgage given by the developer to purchase the lot he had contracted to sell. It may be that the law applicable to the priority of purchase money mortgages discussed above was never raised because the opinion makes no mention of it. In any event, on its facts Caribank was erroneously decided.

We also reject the contract purchasers' argument for estoppel predicated upon this Court's decision in Van Eepoel Real Estate Co., 100 Fla. at 438, 129 So. at 892. That case involved a dispute between a purchase money mortgagee and a mechanic's lienor. A purchase money mortgage had been executed prior to the time the mechanic commenced work on the property. However, the mortgage was not recorded until after the work was done. Under these circumstances, the court held that the mortgagee was estopped to claim priority because of its failure to record the mortgage until after the mechanic had completed his work without any

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knowledge of the existence of the mortgage. These facts are inapposite to the instant case. Here, there is no contention that the purchase money mortgages were not timely recorded, and the bank did nothing to mislead the contract purchasers.

The legal principles applicable to the remaining four lots in litigation are different but the outcome is the same. The developer had already acquired these lots through the execution of recorded purchase money mortgages at the time the purchase and sale contracts were executed. Thereafter, the bank entered into construction loan agreements with the developer which required that the previous bank mortgage be satisfied out of the funds advanced under the new loan. The construction loan agreement required a new first mortgage lien in favor of the bank to be placed on the subject property. Obviously, the parties intended that the bank would preserve the same security it held for its earlier loan. Under these circumstances, the bank was entitled to the priority established by its original mortgage under the doctrine of equitable subrogation.

In Schilling v. Bank of Sulphur Springs, 109 Fla. 181, 147 So. 218 (1933), a third-party purchase money mortgage was utilized by the mortgagor to acquire certain property. Three years later, the purchase money mortgage matured, and the mortgagor went to the bank in

order to obtain a mortgage loan to satisfy the purchase money mortgage. However, there was a judgment lien against the mortgagor which predated the purchase money mortgage. The bank loaned the money to the mortgagor to satisfy the original purchase money mortgage and recorded a new mortgage. On these facts, this Court held that equity required that the bank be subrogated to the rights of the original third-party money mortgage. We held that equity would not displace the purchase money mortgage since the result would leave the holder of the judgment lien in no worse position than if the original purchase money mortgage had not been discharged. See also Federal Land Bank v. Godwin, 107 Fla. 537, 145 So. 883 (1933)(new mortgage given by same mortgagee as renewal of old mortgage held to take priority over intervening mortgage).

Accordingly, we hold that the bank's mortgages on the twenty-two lots have priority over the claims of the contract purchasers but only to the extent that the bank's funds were used to purchase the lots. The bank loses its priority with respect to the additional construction monies advanced to the developer.

We quash the decision below and remand for further proceedings pursuant to this opinion.

It is so ordered.

OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concur.

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1 Eighteen of the twenty-two lots in issue in this suit were acquired and financed in this manner.

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621 So.2d 736
18 Fla. L. Week. D1436
William E. POSNANSKY and Adele D. Posnansky, Appellants,
v.
BRECKENRIDGE ESTATES CORPORATION, a Florida corporation, and
Glendale Federal Bank, F.S.B., Appellees.
No. 92-1675.
District Court of Appeal of Florida, Fourth District.
June 16, 1993.
Opinion Modifying Decision on Rehearing Aug. 18, 1993.

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William E. Blyler, Coral Springs, for appellants.

Linda Conahan and Sabrina Weiss, English, McCaughan & O'Bryan, P.A., Fort Lauderdale, and William Berger and Jaana T. Moisio of Goldberg & Young, P.A., Fort Lauderdale, for appellee-Glendale Federal Bank, F.S.B.

PER CURIAM.

This appeal is from a final judgment in an action to foreclose a vendee's lien. We affirm the judgment in favor of Defendant Glendale Federal Bank, which proved it held a lien superior to Plaintiffs', but we reverse and remand for the entry of a final judgment of foreclosure against Defendant Breckenridge Estates Corporation, which at the time of filing suit was the owner of the property to which the lien attached. [1]

The Plaintiffs' vendee's lien arose when they contracted with Breckenridge for the latter to build and sell them a home, and Breckenridge defaulted on the contract and refused to return the Plaintiffs' deposit, which had not been escrowed. [2] They filed suit to foreclose, naming Glendale and others as junior lienors. A default was entered against Breckenridge, and the case proceeded on the question of the relative priority of the Plaintiffs' lien as against Glendale's mortgage. Dispositive of that issue was the fact that the Plaintiffs had executed an agreement to subordinate any interest they had under the contract to Glendale's mortgage lien.

After entering final judgment in favor of Glendale, the trial court denied Plaintiffs' request for a final judgment against Breckenridge. We see no error in the trial court's ruling as to Glendale; however, the trial court erred in failing to enter judgment against Breckenridge.

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On review of the record, we conclude that the enforceability of the Plaintiffs' lien did not become an issue at trial until Glendale filed its written "final argument" with the trial court, taking the position that a lien may not be enforced against a property which has subsequently been foreclosed by a senior mortgagee. [3] However, Glendale never disputed the existence of the lien. There is no counterclaim, and no affirmative defense or other pleading raises this issue. We also note that Glendale took no action to compel the Plaintiffs to exercise their right of redemption or have the same barred. The Plaintiffs were given no opportunity prior to their motion for rehearing to attempt to rebut Glendale's argument. It appears they never consented to trying the question of whether they should have intervened in Glendale's foreclosure action, and whether they lost any rights in the instant case by failing to do so. Therefore, it was improper for the trial court to refuse on that basis to enter a judgment in their favor against Breckenridge after its default, and no other basis for failing to do so appears in the record. Accordingly, we remand for the trial court to enter a final judgment of foreclosure against Breckenridge.

Having determined that the only issue in this case involving Glendale was one of priority, resolved in its favor, this opinion should not be construed as resolving any other issues raised in this appeal with respect to the title to the

property. Nothing contained in the opinion should be construed as restricting any right of Glendale Federal to reforeclose its mortgage against Appellants.

GLICKSTEIN, C.J., and HERSEY and STONE, JJ., concur.

ON MOTION FOR REHEARING

PER CURIAM.

Appellants' motion for rehearing is denied except that our opinion of June 16, 1993 is modified for clarification. We strike the last sentence of the opinion and substitute the following sentence: [

HERSEY, GLICKSTEIN and STONE, JJ., concur.

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1 While this action was pending in the trial court, Glendale acquired title at foreclosure sale pursuant to a foreclosure action it previously had filed (and to which it failed to make the Plaintiffs herein party Defendants).

2 The concept of a vendee's lien is premised on the doctrine of equitable conversion. All that is required of the non-defaulting buyer of a defaulting seller, in order to claim an equitable lien to secure the payments made, is that he establish his right to recover the money paid under the contract. The buyer is entitled to claim the lien even if the contract provides that he is entitled only to the return of his deposit. Sparks v. Charles Wayne Group, 568 So.2d 512 (Fla. 5th DCA1990).

3 On appeal, Glendale argued that the Plaintiffs should be estopped from asserting their unrecorded lien because they failed to intervene in Glendale's foreclosure. However, the general rule is that in order for a foreclosure action to affect a junior lien, the junior lienholder has to be made a party to it; failure to join the holder of a junior lien leaves the holder in the same position as if no foreclosure took place. Kurz v. Pappas, 116 Fla. 324, 156 So. 737 (1934); Crystal River Lumber Co. v. Knight Turpentine Co., 69 Fla. 288, 67 So. 974 (1915); Marks Bros. Paving Co. v. Ouellet, 124 So.2d 514 (Fla. 3d DCA1960). (The owner of the property may re-foreclose in a later action against the omitted junior lienor. Trueman Fertilizer Co. v. Lester, 155 Fla. 338, 20 So.2d 349 (1944).) Exceptions to this general rule have been made when an unforeclosed junior lienor comes before the court requesting equity with unclean hands, one factor in which may be the failure to intervene in a prior foreclosure of which he had notice. Riley v. Grissett, 556 So.2d 473 (Fla. 1st DCA1990); Sponder v. Equity Capital Co., 248 So.2d 251 (Fla. 3d DCA), cert. denied, 252 So.2d 804 (Fla.1971). See also Orr v. Allen-Hanford, Inc., 158 Fla. 34, 27 So.2d 823 (1946). For a variety of reasons apparent from the record, the equities in this case appear to favor the Plaintiffs, who did not delay in bringing their action and did not initially understand their position to be that of junior lienors who properly could intervene in Glendale's action. Furthermore, while the Plaintiffs' lien was unrecorded, it is undisputed that Glendale had actual notice of it; therefore, as to them it had the same effect as if it had been of record. Caribank v. Frankel, 525 So.2d 942 (Fla. 4th DCA1988).

306 So.3d 1285 (Mem)

JAK CAPITAL, LLC, Appellant,
v.
Katrina ADAMS, John Adams, and Marketking, LLC, Appellees.

Case No. 2D19-4371

District Court of Appeal of Florida, Second District.

Opinion filed December 9, 2020.

Ryan W. Owen and David L. Boyette of Adams and Reese LLP, Sarasota, for Appellant.

Robson D.C. Powers and Alvaro C. Sanchez of Burandt, Adamski, Feichthaler & Sanchez, PLLC, Cape Coral, for Appellees Katrina and John Adams.

No appearance for Appellee MarketKing, LLC.

VILLANTI, Judge.

JAK Capital, LLC, appeals the amended final judgment that stripped its mortgage from a house owned by Katrina Adams, quieted title to the house in favor of the Adamses, and denied JAK Capital's claim for foreclosure of the mortgage. Because the trial court misapplied the law in entering the amended final judgment, we reverse and remand for entry of a foreclosure judgment in favor of JAK Capital.

Background

The record before this court shows that in July 2010, Katrina Adams inherited a home in Lee County from her father. She and her husband, John Adams, moved into the home shortly thereafter. At that time, there was a relatively small mortgage remaining on the property in favor of HSBC, which the Adamses assumed.

In early 2015, Katrina[1] met Thomas Errico, who was a regular at the restaurant where Katrina worked. Over the course of several discussions, Katrina learned that Errico owned and operated a

[306 So.3d 1286]

business called MarketKing, LLC, that flipped houses, and she expressed an interest in learning about that business. Ultimately, the two discussed going into business together, with Katrina contributing capital while Errico taught her the ins and outs of running that type of business.

As part of the process of "going into business together," Errico requested various documents from Katrina, allegedly to show her creditworthiness and her ability to contribute capital. The documents he requested—and that she produced without question in early 2016—included insurance information on her house, a payoff statement from HSBC, and some other financial information. In addition, Katrina obtained a survey of her home and had it appraised, and she provided the survey and appraisal to Errico as well. Katrina testified at the bench trial that she provided all of this information to Errico to show him that she had equity in her house from which she could make her capital contribution and also to show that she was financially responsible.

After receiving all of this information from Katrina, Errico provided the Adamses with a packet of documents to review and sign. Both Katrina and John testified that they understood these documents to be a "draft" of the business plan for the new business. However despite the documents allegedly being only a "draft" rather than the final version, both Katrina and John signed the documents and returned them to Errico. One of these documents turned out to be a mortgage on Katrina's house.

Errico, through MarketKing, then used the mortgage signed by the Adamses to obtain a $150,000 loan from JAK Capital. MarketKing gave a promissory note to JAK Capital for $150,000 and secured that note with the mortgage on Katrina's house.[2] As part of the closing on that loan, which occurred in mid-March 2016, JAK Capital paid off the existing HSBC mortgage loan on Katrina's house in the amount of $15,928.41. After various other closing

costs were paid, the remainder of the funds were paid to MarketKing.

The loan in question was a two-year, interest-only loan with a balloon payment of the principal due in April 2018. During 2016 and 2017, JAK Capital received only sporadic interest payments on the loan from MarketKing. In late 2017, JAK Capital sent a letter to MarketKing and the Adamses stating its intent to begin foreclosure proceedings on the house. In response, the Adamses filed a single-count complaint against JAK Capital seeking to quiet title to the house. In their complaint, the Adamses alleged that they had never signed the mortgage and that their signatures on the mortgage were forged by Errico.

JAK Capital filed a counterclaim for foreclosure of the mortgage.[3] In the Adamses' affirmative defenses to this counterclaim, they alleged only that their signatures on the mortgage were forgeries.

[306 So.3d 1287]

Nowhere in either their complaint or their affirmative defenses to the counterclaim did they allege that they were tricked, fooled, deceived, or otherwise defrauded into signing the mortgage by either Errico or JAK Capital.

During the bench trial, however, both Katrina and John admitted that they signed the "draft" business plan documents from Errico without knowing what they were, claiming that the mortgage must have been included in the "draft" business plan without their knowledge. While Katrina continued to assert that she had not signed the mortgage, John testified that he might have signed the mortgage by mistake while they were signing all the other "draft" business plan documents. JAK Capital presented testimony from a handwriting expert that the Adamses' signatures on the mortgage were authentic.

After hearing the testimony and reviewing all of the documents admitted into evidence, the trial court found that the mortgage was the product of fraud and deceit by MarketKing through Errico and that the Adamses' signatures, and therefore the mortgage to which they were affixed, were not given "knowingly, intelligently and voluntarily." Thus, while the trial court did not find that the Adamses' signatures were forgeries, it refused to enforce the mortgage on the basis that it was procured by fraud. Having made this ruling, the trial court entered final judgment in favor of the Adamses and denied relief to JAK Capital on its counterclaim for foreclosure. JAK Capital now appeals this final judgment.

Analysis

In this appeal, JAK Capital contends that the trial court erred by stripping its mortgage from the house, quieting title in the Adamses' favor, and denying its claim for foreclosure of the mortgage for two separate reasons. We conclude that both of these reasons require reversal of the amended final judgment.

First, because the Adamses never pleaded fraud as a defense to the mortgage, the trial court erred as a matter of law by providing them with relief on this unpleaded basis. Florida Rule of Civil Procedure 1.110(d) identifies fraud as an affirmative defense that must be specifically pleaded or it is waived. In addition, "the circumstances constituting fraud ... shall be stated with such particularity as the circumstances may permit." Fla. R. Civ. P. 1.120(b) ; see also Morgan v. W.R. Grace & Co.–Conn., 779 So. 2d 503, 506 (Fla. 2d DCA 2000) ; Zikofsky v. Robby Vapor Sys., Inc., 846 So. 2d 684, 684 (Fla. 4th DCA 2003) ("[T]o raise an affirmative defense of fraud, the 'pertinent facts and circumstances constituting fraud must be pled with specificity, and all the essential elements of fraudulent conduct must be stated.' " (quoting Cocoves v. Campbell, 819 So. 2d 910, 912 (Fla. 4th DCA 2002))). When a defense listed in rule 1.110(d) is not pleaded, or is not pleaded with sufficient specificity, it is deemed waived and cannot form the basis for relief. See, e.g., Derouin v. Universal Am. Mortg. Co., LLC, 254 So. 3d 595, 601 (Fla. 2d DCA 2018) (providing that "[l]itigants in civil controversies must state their legal positions within a particular document, a pleading, so that

the parties and the court are absolutely clear what the issues to be adjudicated are" and thus "[a]n issue that has not been framed by the pleadings, noticed for hearing, or litigated by the parties is not a proper issue for the court's determination" (first quoting

[306 So.3d 1288]

Bank of Am., N.A. v. Asbury, 165 So. 3d 808, 809 (Fla. 2d DCA 2015) ; and then quoting Gordon v. Gordon, 543 So. 2d 428, 429 (Fla. 2d DCA 1989))). In short, the trial court cannot award relief on the basis of a defense that has not been pleaded. Id.

Here, the only allegation made in the Adamses' complaint to quiet title and raised in their affirmative defenses to JAK Capital's counterclaim was that their signatures on the mortgage were forged. They specifically alleged that they never signed the mortgage. They did not allege in any pleading at any time that they signed the mortgage by mistake or because Errico misled them into believing that they were signing some other documents or because Errico hid the mortgage in a stack of other documents to trick or deceive them into signing it. The specific fraud that they alleged—but did not prove—was that Errico forged their signatures on the mortgage without their knowledge. Since the Adamses never alleged that they were defrauded into signing the mortgage, the trial court erred by providing them with relief on that basis.

In this appeal, the Adamses argue that their allegations of forgery were sufficient to allege a claim of fraud, and they cite several cases for their theory that forgery is a species of fraud. See, e.g., Padilla v. Padilla, 278 So. 3d 333, 335 (Fla. 3d DCA 2019). However, rule 1.120(b) requires that the circumstances comprising the fraud be alleged with particularity. While forgery may be a species of fraud, the Adamses never alleged that Errico defrauded them into signing the mortgage. Their only allegation was that they did not sign the mortgage at all. Having failed to prove the allegations they made, the Adamses may not save the judgment by claiming that they could have alleged something else but did not.

Moreover, the record is clear that the issue of fraud—rather than forgery—was not tried by consent. "An issue is tried by consent 'when there is no objection to the introduction of evidence on that issue.' " Derouin, 254 So. 3d at 603 (quoting Fed. Home Loan Mortg. Corp. v. Beekman, 174 So. 3d 472, 475 (Fla. 4th DCA 2015)). Here, when the Adamses moved at the close of evidence to "conform the pleadings to the evidence," JAK Capital objected, and the trial court denied the motion. Further, JAK Capital objected in its written closing argument to the court's consideration of any claim of fraud other than forgery. Hence, it is clear from the record that the issue of fraud by any means other than forgery was neither pleaded nor tried by consent. The Adamses were not entitled to a judgment in their favor on the basis of a fraud they failed to allege, and the amended final judgment in their favor must be reversed on this basis.

Second, even if the issue of fraud had been properly before the court, the Adamses did not prove that they were entitled to relief on that basis against JAK Capital. To be entitled "[t]o set aside a mortgage on the ground of fraud or duress practiced or exercised in its procurement," the party seeking to avoid the mortgage carries the burden to prove that "such fraud or duress [was] participated in to some extent by the mortgagee." Sheppard v. Cherry, 118 Fla. 473, 159 So. 661, 662 (1935) (citing Smith v. Commercial Bank, 77 Fla. 163, 81 So. 154, 155 (1919)); see also Baron v. Estate of Clare, 372 So. 2d 1005, 1006-07 (Fla. 4th DCA 1979). In the absence of evidence of such fraud by the holder of the mortgage, the mortgage will be valid and enforceable.

For example, in Baron, Ronald Baron loaned $7500 to Granville Clare, who provided

[306 So.3d 1289]

a mortgage on real estate he owned as security. 372 So. 2d at 1006. After Clare died, his heirs attempted to invalidate the mortgage, arguing

that Clare had been incompetent and "unable to transact any business" at the time he purportedly signed the mortgage. Id. The heirs produced evidence that showed that two individuals who had been caring for Clare at the time had obtained Clare's signature on the mortgage by fraud and had converted the proceeds received from Baron for their own use. Id. However, the evidence showed that Baron was completely unaware of the actions of Clare's caretakers and had not participated in the fraud in any way. Id. Despite no evidence that Baron had been involved in the scheme, the trial court refused to enforce the mortgage, finding that it was "permeated with fraud." Id. The Fourth District reversed this ruling, holding that the trial court erred in refusing to enforce the mortgage held by Baron "because there is simply no evidence that [Baron] was engaged in any fraudulent conduct to the detriment of [Clare]." Id. at 1007. In the absence of such evidence, Baron was entitled to enforce the mortgage against Clare. Id. at 1006-07.

Like the trial court in Baron, the trial court here erred in refusing to enforce the mortgage held by JAK Capital when there was no evidence that JAK Capital engaged in any fraud or deceit. The trial court in this case refused to enforce the mortgage because it found that the Adamses had been defrauded into giving the mortgage. However, the trial court did not find that the holder of the mortgage—JAK Capital—had participated in the fraud to any extent, nor would there have been any evidence to support such a finding had it been made. Instead, all of the evidence showed that if any fraud occurred, it was perpetrated by Errico. In the absence of any evidence whatsoever that JAK Capital participated in committing the fraud, it was entitled to enforce the mortgage, and the trial court erred by holding otherwise.

In this appeal, as they did in the trial court, the Adamses argue that JAK Capital should not be entitled to enforce the mortgage because it never took any steps to confirm that the Adamses had actually consented to the mortgage. However, on the facts here, JAK Capital had no such obligation. When faced with a mortgage that is regular on its face—such as the mortgage here—a bank or other lender has no obligation to question the legitimacy of that document. See Dines v. Ultimo, 532 So. 2d 1131, 1132 (Fla. 4th DCA 1988) (finding that the bank could enforce its mortgage despite the fraud perpetrated on the homeowners by their son in obtaining their signatures when the mortgage was in the proper legal form and there was nothing to alert the lender to anything out of the ordinary). Given the facial regularity of the mortgage, the Adamses' only avenue of relief would be to prove that JAK Capital "deliberately refused to examine that which it was his duty to examine, or made representations as to a condition which had not been examined without knowing whether it was true or false, and it proved to be untrue." Ocean Bank of Miami v. Inv-Uni Inv. Corp., 599 So. 2d 694, 697 (Fla. 3d DCA 1992). But the Adamses offered no such evidence in this case, and the trial court made no finding that JAK Capital had deliberately refused to investigate a document the authenticity of which it knew or should have known was questionable. Simply put, JAK Capital had no obligation to go behind the Adamses' signatures on the mortgage when the document was regular on its face.

In sum, the trial court erred by entering final judgment in favor of the Adamses on

[306 So.3d 1290]

a claim of fraud that they neither pleaded nor proved. We therefore reverse the amended final judgment, reverse the corresponding judgment for attorney's fees and costs entered in favor of the Adamses, and remand for the trial court to enter final judgment granting foreclosure in favor of JAK Capital. On remand, the trial court should consider the evidence presented at the bench trial concerning the amount of the Adamses' indebtedness to JAK Capital, taking such other evidence as is necessary to enforce the terms of the mortgage.

Reversed and remanded with directions.

BLACK and ATKINSON, JJ., Concur.

Notes:

[1] We identify the Adamses by their first names only for clarity when they took actions independent of each other.

[2] JAK Capital's principal testified at trial that JAK Capital was in the business of making business loans that were secured by Florida real property. When asked whether it was unusual to have a note signed by one party and a mortgage provided by another, he testified: "[T]hat's not unusual. I mean, we make business loans, and sometimes there's, you know, people that are involved in the business that are willing to, you know, put up some real estate as collateral for the loan."

[3] JAK Capital's counterclaim also alleged alternative counts for an equitable lien and equitable subrogation. Given our resolution of this appeal, we need not address those counts.

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463 So.2d 306
Cheryl Yates SWEAT, Appellant,
v.
Maria YATES, as Personal Representative of the Estate of William C. Yates, Appellee.
No. AY-257.
District Court of Appeal of Florida, First District.
Dec. 17, 1984.
Rehearing Denied Feb. 27, 1985.

John R. Forbes and Mark S. Kessler, Jacksonville, for appellant.

William H. Maness of Maness & Kachergus, Jacksonville, for appellee.

NIMMONS, Judge.

Appellant Sweat appeals from a summary judgment. We reverse the summary judgment because there is a genuine issue as to the validity of the deed in question.

The facts are undisputed. On September 18, 1982, William G. Yates signed a deed to property owned by him. The deed purported to convey the property to Yates and his daughter, Cheryl Yates Sweat, as joint tenant with right of survivorship. Yates entered the hospital on September 19, 1982. The next day, September 20, 1982, two persons, who had not been witnesses to the signing of the deed, signed their names to the deed as witnesses.

Yates died on Saturday, September 25, 1982. Sweat recorded the deed on Monday, September 27, 1982. Thereafter, two persons said to have been present when Yates signed the deed added their names as witnesses and the deed was re-recorded on October 5, 1982. Sweat took possession and claimed ownership of the property.

On July 2, 1983, Marie Yates, as personal representative of the Estate of William Yates, filed a complaint seeking cancellation of the deed. Mrs. Yates moved for summary judgment on the basis that the deed was void as a matter of law because it was not executed in the presence of two subscribing witnesses as required by Section 689.01, Florida Statutes. In granting summary judgment, the trial court concluded that "the deed in question was not duly executed and delivered in the lifetime of the purported grantor and was, therefore, null and void and of no legal effect." Contrary to the trial court's ruling, we find that the record in this case does not demonstrate that there is no genuine issue as to the validity of the deed.

Section 689.01, Florida Statutes, does not require that witnesses must subscribe in the presence of the grantor or in the presence of each other, nor does it require that the subscribing witnesses sign the document before delivery is accomplished. See Medina v. Orange County, 147 So.2d 556 (Fla. 2nd DCA 1962). Moreover, a deed takes effect from the date of delivery, and the recording of a deed is not essential to its validity as between the parties or those taking with notice. The failure of Sweat to record the subject deed before the grantor died did not render the deed void. The recording statute has always been primarily intended to protect the rights of bona fide purchasers of property and creditors of property owners, rather than the immediate parties to the conveyance. Fong v. Batton, 214 So.2d 649 (Fla. 3rd DCA 1968).

The only finding of the trial court that could possibly support the summary judgment was a finding that the deed was unwitnessed, but this finding is rebutted by the trial court's additional finding that there were two persons "said to have been present at the time and place Yates signed the deed" who added their names as witnesses. Since there is some evidence that there were two witnesses to the signing of the deed, there exists a genuine issue as to the validity of the deed.

Accordingly, the summary judgment is Reversed and the case is Remanded for further proceedings consistent with this opinion.

JOANOS and WIGGINTON, JJ., concur.

230 So.3d 550

WELLS FARGO BANK, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006 FRE1 Asset–Backed Pass–Through Certificates, Appellant/Cross–Appellee,
v.
Calvin RUTLEDGE, Appellee/Cross–Appellant,
and
Bruce Dias; Harbor Towers Owners Association, Inc. ; Mary Lynne Dias; Unknown Tenant(s) in Possession of the Subject Property, Appellees.

Case No. 2D16–244

District Court of Appeal of Florida, Second District.

Opinion filed October 20, 2017
Rehearing Denied November 28, 2017

Shaib Y. Rios of Brock & Scott, PLLC, Ft. Laudersale (withdrew after initial briefing); Morgan L. Weinstein of Van Ness Law Firm, PLC, Deerfield Beach (substituted as counsel of record), for Appellant/Cross–Appellee.

John C. Dent., Jr., and Jennifer A. McClain of Dent & McClain, Chartered, Sarasota, for Appellee/Cross–Appellant Calvin Rutledge.

No appearance for remaining Appellees.

KHOUZAM, Judge.

This appeal/cross-appeal involves two parallel foreclosure actions against Bruce and Mary Lynne Dias, one initiated by Wells Fargo Bank in December 2010 and the other initiated by Harbor Towers Owners Association in February 2011. In Harbor Towers' suit, summary judgment was entered in favor of Harbor Towers and the property was sold at public auction to Calvin Rutledge. The summary judgment in that suit was later vacated as void as to Wells Fargo, which had been improperly joined as a party.

In Wells Fargo's suit, summary judgment was entered in favor of Rutledge, who had been added as a party to the Wells Fargo suit after he bought the property. Concluding that the uncontroverted evidence showed Mary Lynne Dias's signature on the note and mortgage was forged, rendering the documents void, the court granted Rutledge title free and clear of Wells Fargo's claims. Though Wells Fargo challenged Rutledge's standing to raise the forgery defense, the court did not explicitly address the standing argument in its summary judgment order. This court reversed on appeal, determining—without mention of standing—that a material issue of fact remained on the forgery defense. See Wells Fargo Bank, N.A. v. Rutledge, 148 So.3d 533, 535 (Fla. 2d DCA 2014).

On remand, a bench trial was held. Rutledge submitted additional evidence in support of the claim that Ms. Dias's signature had been forged. Specifically, he submitted Ms. Dias's deposition, in which she testified that she had not signed the note or mortgage and that she was not present when they were signed. She also testified that she and Mr. Dias were no longer married. Asked when they were "separated or divorced," she responded simply "2007." Wells Fargo did not present any evidence to rebut Ms. Dias's deposition testimony, and the trial court found that Ms. Dias's signature had been forged. However, the court requested the parties submit memoranda addressing the effect of the forgery, considering that the Diases were no longer married.

Wells Fargo again challenged Rutledge's standing to raise the forgery defense, but the trial court was under the misimpression that this issue had been resolved in Rutledge's favor in the previous appeal and that, therefore, it could not be addressed on remand. Ultimately, the trial court entered a final judgment of foreclosure on Mr. Dias's one-half interest in the property in favor of Wells Fargo, reasoning that the Diases owned the property as tenants in common following their divorce. Wells Fargo timely appeals, and Rutledge timely cross-appeals. We reverse and remand

[230 So.3d 552]

because Rutledge does not have standing to raise Ms. Dias's forgery defense and there was no evidence presented to support the court's conclusion that Wells Fargo was entitled to foreclose on a one-half interest in the property.

The question of whether Rutledge could raise the forgery defense was not squarely addressed by this court's previous opinion, and therefore the trial court erred in declining to resolve the issue on remand. Rutledge is not a party to or a third-party beneficiary of the note and mortgage, the agreements that Wells Fargo seeks to enforce in its foreclosure suit. See Pealer v. Wilmington Trust Nat'l Ass'n ex rel. MFRA Trust, 212 So.3d 1137, 1139 (Fla. 2d DCA 2017) (Sleet, J., concurring) ("[T]he bank's standing to foreclose derives from its right to enforce the note and mortgage." (citing St. Clair v. U.S. Bank Nat'l Ass'n, 173 So.3d 1045, 1047 (Fla. 2d DCA 2015))). Rather, Rutledge is a subsequent purchaser who was at least constructively aware of Wells Fargo's recorded lis pendens when he purchased the property. Rutledge, 148 So.3d at 535 ; see also Whitburn, LLC v. Wells Fargo Bank, N.A., 190 So.3d 1087, 1091 (Fla. 2d DCA 2015) (holding that constructive notice of any superior interest documented in the official records is imputed to subsequent purchasers), review denied, No. SC16-945, 2016 WL 6998444 (Fla. Nov. 30, 2016) ; CCM Pathfinder Palm Harbor Mgmt., LLC v. Unknown Heirs of Gendron, 198 So.3d 3, 7 (Fla. 2d DCA 2015) ("[T]he law is clear that if a recorded mortgage is valid on its face, a subsequent purchaser 'is assumed to have recognized it as a valid lien against the property which he is buying.' " (quoting Spinney v. Winter Park Bldg. & Loan Ass'n, 120 Fla. 453, 162 So. 899, 904 (1935))). Accordingly, Rutledge purchased the property subject to Wells Fargo's superior interest, and his subordinate interest stemming from his possession of the property is limited. See Pealer, 212 So.3d at 1138–39 ; Whitburn, 190 So.3d at 1091–92. He cannot participate in Wells Fargo's foreclosure action as if he were a party to the note and mortgage; thus, he cannot challenge the mortgage's validity, as he attempted to do in this case. See Eurovest, Ltd. v. Segall, 528 So.2d 482, 483 (Fla. 3d DCA 1988) ("[A] purchaser who takes title to property subject to a mortgage without assuming any personal liability for repayment of the underlying debt is ... estopped from contesting the validity of the mortgage."); Gendron, 198 So.3d at 7 (quoting Eurovest with approval). Until the sale is formally set aside, he may still assert those limited rights available to him as a subsequent purchaser. See Eurovest, 528 So.2d at 483 (stating that a subsequent purchaser does retain some legal and equitable remedies, including "his equitable right of redemption [and] his right to participate in excess proceeds of the sale following any foreclosure proceeding").

Moreover, there was no evidence presented to support the court's determination that Wells Fargo was entitled to foreclose on a one-half interest in the property. It was not until the end of the trial, after finding that Ms. Dias's signature had been forged, that the court sua sponte asked the parties what effect the forgery and the Diases' divorce had on the validity of the note and mortgage. The parties submitted memoranda but never took discovery or presented evidence specifically on this issue. Reasoning that the Diases originally owned the property as tenants by the entirety and then by tenants in common upon their divorce, the court concluded that Mr. Dias retained a one-half interest in the property and that Wells Fargo could foreclose on his interest—even though Wells Fargo's lien against Ms. Dias's one-half interest in the property was unenforceable. But there was no evidence (such as a final judgment of dissolution)

[230 So.3d 553]

or testimony presented to establish when the couple was divorced or whether the property had been awarded in a judgment of dissolution. Ms. Dias only testified that she had been married to Mr. Dias in 2006, that they were "separated or divorced" in 2007, and that they were no longer married at the time of her deposition in 2015. While Ms. Dias did state that she and Mr. Dias owned the property, she also maintained that she

never signed the relevant note or mortgage—raising the question of whether Mr. Dias had the authority to enter into the note or mortgage without her in the first place. See Sharp v. Hamilton, 520 So.2d 9, 10 (Fla. 1988) ("Entireties property is not subject to a lien against only one tenant"). Without any evidence to support the court's findings that the note and mortgage continued to be valid and enforceable as to a one-half interest retained by Mr. Dias, it was error to enter final judgment of foreclosure on that interest.

For the reasons set forth above, we reverse and remand for proceedings consistent with this opinion.

Reversed and remanded.

BLACK and SLEET, JJ., Concur.

DAVID NOURACHI, AS TRUSTEE, etc.,
Appellant,
v.
FIRST AMERICAN TITLE INSURANCE COMPANY, Appellee.

Case No. 5D09-2554

District Court Of Appeal Of The State Of Florida
Fifth District

JULY TERM 2010
August 6, 2010

Patrick A. Mcgee, of McGee & Perez, P.A. Orlando, for Appellant.

Bryce W. Ackerman of Ackerman & Haines, P.A., Ocala, for Appellee.

Appeal from the Circuit Court for Marion County, Brian Lambert, Judge.

EVANDER, J.

David Nourachi, as trustee of The HWY 44 Lakefront Trust ("Nourachi"), timely appeals from a final judgment in favor of First American Title Insurance Company ("First American") rescinding a title insurance policy. We affirm. The evidence supported the trial court's conclusion that Nourachi had knowledge of an express defect in title to the property in question at the time he sought title insurance from First American and

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deliberately failed to disclose this information. Where a party does not rely on a title insurance company to advise it of encumbrances *prior* to acquiring title to property, it may not recover on a material title defect of which it had actual knowledge and which it failed to disclose to the insurer at the time it applied for the title policy.

The underlying cause proceeded to a non-jury trial on First American's second amended complaint in which First American sought to rescind a title insurance policy it had issued to Nourachi. The facts, as found by the trial court, are set forth below:

In December 2002, for the sum of $22,600, Nourachi obtained a tax deed to certain unimproved real property located in Marion County. Nourachi then filed a quiet title action and obtained a default judgment on February 10, 2004. After the quiet title judgment was entered, Nourachi had "no trespassing" signs posted on the property. A forester with the United States Forest Service observed the signs on land that had long been part of the Ocala National Forest. On March 9, 2004, the United States Forest Service sent Nourachi a letter demanding that the signs be removed and notifying Nourachi that the land had been part of the Ocala National Forest since January 1937 when the United States purchased the tract from C.A. Savage, Jr. The following day, two of Nourachi's agents, Leo Nourachi and Sam Zalloum, met with officials of the Marion County Property Appraiser's Office. At the meeting, Nourachi's agents were advised that the county had made a mistake in adding the property to the county tax rolls and subjecting it to a tax sale because the property was actually owned by the United States. The subject property (along with other land) had been conveyed to the United States by C.A. Savage, Jr., and his wife, Dorothy Savage, on January 19, 1937,

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pursuant to a deed that had been recorded in Marion County's public records. The County officials offered to refund Nourachi his money.[1]

Immediately after the meeting, the "no trespassing" signs were removed from the property. Approximately one week later, a copy of the 1937 deed from the Savages to the United States was faxed to Zalloum. Zalloum then contacted a land surveyor, Larry Efird, Jr., to obtain a boundary survey for the property. Efird was provided with both a copy of the 1937 deed and the tax sale deed. At Zalloum's request, Efird sketched out the property described in the 1937 deed and his drawing reflected that at least a part of the property described in the 1937 deed fell

within the property described in the tax deed. Efird quoted Zalloum a $3,000 fee to complete an actual survey. However, Nourachi did not retain Efird to perform an actual survey until December 2008 well after the commencement of the instant lawsuit.

In August 2004, Nourachi contacted First American, represented himself as the owner of the subject property, and requested First American issue a title insurance policy in the amount of $550,000. Nourachi deliberately failed to disclose the existence of the United States' claim to the property and First American negligently failed to discover same. As a result, First American issued a title policy to Nourachi in the requested amount. Approximately one year later, at Nourachi's request, the amount was increased to 1.3 million dollars. First American would not have issued the title policy if it had known of the United States' claim.

In June 2006, after Marion County refused to accept Nourachi's tax payment, Nourachi notified First American that the United States claimed ownership of the

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property. On October 5, 2006, First American filed a one count complaint against Nourachi seeking a declaration of its rights under the policy. In January 2007, First American filed an amended complaint, again asserting a single count for declaratory judgment. On July 9, 2008, First American filed a motion to amend its complaint to add a count for rescission. The motion was granted[2] and trial was held on June 10, 2009.

In entering judgment in favor of First American, the trial court found that Nourachi should not benefit by deliberately concealing a known, express defect in the title and then argue that the insurer should have been more circumspect or astute in performing its title search duties. The trial court granted First American's claim for rescission and directed First American to refund any title insurance premiums paid within thirty days.

On appeal, Nourachi argues that he had no duty to disclose facts that First American could, by its own diligence, have discovered in this arms-length transaction. Nourachi contends that a title company should not avoid liability when a defective condition of title, not excepted from coverage, subsequently causes a loss to the insured even though the insured knew of the particular defect. We reject Nourachi's argument and conclude that where an insured purchases property, subsequently learns of facts establishing that he does not have good title to the property, and then seeks title insurance without disclosing this known, express defect in title to the insurer, he is not entitled to recover under the policy.

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In reaching our conclusion, it is important to recognize the general nature and purpose of title insurance. Usually, a prospective purchaser of title insurance avails himself of a title insurance company's services *prior* to acquiring title to property for which he is seeking to have title insured. The prospective purchaser will typically lack knowledge of encumbrances which may cloud the title and, accordingly, will employ the services of the title insurance company so that he can learn whether encumbrances exist and to obtain insurance against those claims against title that may arise after issuance of the policy. The title company is to perform a title search and advise the prospective purchaser of any encumbrances upon the land that are revealed by the search. Thus, the prospective purchaser will typically rely on the title insurance company's expertise in searching the records and its willingness to issue a title policy in making a final decision as to whether to purchase a particular piece of real estate. *Commonwealth Land Title Ins. Co. v. Ozark Global, L.C.,* 956 F. Supp. 989 (S.D. Ala.), *aff'd,* 127 F.3d 41 (11th Cir. 1997).

In recognition of a prospective purchaser's presumed reliance on a title company's search, the general rule is that where a title company

issues a policy in conjunction with the insured's purchase of property, the title company is obligated to answer for any defect that is a matter of public record which is not excepted by the policy. *See Parker v. Ward,* 614 So. 2d 975, 977 (Ala. 1992); *Lawyers Title Ins. Corp. v. D.S.C. of Newark Enters, Inc.,* 544 So. 2d 1070, 1072 (Fla. 4th DCA 1989). This rule has been found to apply even where the insured is alleged to have had actual knowledge of a material defect in title at the time of closing. *L. Smirlock Realty Corp. v. Title Guarantee Co.,* 418 N.E.2d 650, 654 (N.Y. 1981).

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However, where an insured does not apply for or receive a title insurance policy (or otherwise request a title search) from an insurer until *after* he has acquired title to the property, the insured's failure to disclose a material defect in title of which the insured had actual knowledge will preclude coverage. *Ozark Global; Pioneer Nat'l Title Ins. Co. v. Lucas,* 382 A.2d 933 (N.J. Super. Ct. App. Div.), *aff'd,* 394 A.2d 360 (N.J. 1978).

In *Ozark Global,* Fletcher Oil Company executed and delivered a warranty deed to Ozark Global L.C. ("Global") conveying certain real property in Mobile County, Alabama. The deed was expressly made subject to six state of Alabama revenue tax liens against Fletcher Oil Company, which secured an indebtedness in excess of $50,000. Global *subsequently* applied for a title insurance policy from Commonwealth. Commonwealth issued a title policy, which, through inadvertence or oversight, failed to list as exceptions those State of Alabama Department of Revenue tax liens that had been set forth in the deed but had not been released. The parties stipulated that Global knew or should have known at all applicable times that such liens had not been released. Global further acknowledged that it had not relied to its detriment on Commonwealth's failure to except those tax liens from the policy. Nevertheless, Global contended that Commonwealth was responsible for the liens based on the language of the policy.

In resolving the case in favor of Commonwealth, the court emphasized that Global did not rely on Commonwealth to advise it of encumbrances on the property, stating:

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Global's non-reliance upon Commonwealth for advisement as to whether the purchased land was encumbered is of utmost importance, for this fact displaces the general rule that a title insurer is liable for all title defects not specifically listed as exceptions to coverage.

Id. at 992.

The court observed that the purpose of title insurance is to protect a purchaser of real estate against title "surprises." When an insured has already purchased the property and is aware of title defects prior to applying for a title policy "it cannot be said that the insured will experience 'surprise' when the title insurance policy does not list the known encumbrance as an exception to coverage." *Id; see also D.S.C. of Newark Enters, Inc.,* 544 So. 2d at 1072-73 ("Also, since there is an element of reliance involved in the analysis of whether the title insurer should be held liable it is more difficult for an insured to recover where title is first taken and then title insurance is procured.")

The dissent attempts to distinguish *Commonwealth* by arguing that the title defects in question were the subject of an exclusion provision in the policy. In fact, the primary basis of the court's decision was as described above. The court only addressed the exclusion provision of the policy toward the end of its opinion as an alternative ground for its decision. *"Alternatively,* the court holds that the six tax liens fell within the 'created, suffered, assumed or agreed to by the insured claimant exclusions in the title policy...." 956 F. Supp. at 993 (emphasis added). The dissent's attempt to distinguish *Ozark Global* is actually a request to ignore what the *Ozark Global* court itself deemed to be the primary holding of the case.

In *Lucas,* the public records reflected that Lucas owned certain property on which she had been paying taxes for several years. She then learned that approximately

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thirteen acres of her property was apparently owned by a neighbor. The title defect occurred because sometime in the 19th Century, the insured's predecessors in title twice conveyed the subject property. In the second conveyance (to Lucas' predecessor), they were attempting to pass title to land they did not own. Armed with this information, the insured contacted Pioneer Title and requested a sixty-year title search. Not surprisingly, the sixty-year title search performed by Pioneer did not uncover the defect in Lucas' title. After receiving the sixty-year title search, Lucas then obtained a title insurance policy from Pioneer. When the neighbor subsequently brought a quiet title action against Lucas, Pioneer sought to rescind the title policy. The trial court denied Pioneer's claim, finding that no fraud had been committed by the insured. The appellate court reversed, finding that the record established "beyond question" that the policy was procured by half-truths and concealment. The court found that the insured had deliberately failed to disclose to Pioneer known matters relating to the title, material to the risk insured against, and as part of the design to mislead the insurer into issuing a substantial policy. The appellate court further observed that the insured had lulled Pioneer into a false sense of security by suggesting that a sixty-year search would be sufficient. Like Nourachi, Lucas argued that she was under no duty to disclose to the insurer those defects that appear in the public records. The court concluded that one who engaged in the above-described conduct may not urge that her victim should have been more circumspect or astute. 382 A.2d at 342.

The dissent attempts to distinguish *Lucas* by categorizing it as a "garden variety fraud case" because Lucas' agent went beyond simple non-disclosure by initially only requesting a sixty-year title search and suggesting that a sixty-year title search should

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be sufficient. The dissent ignores the distinction between a request for a title search and a title policy. Lucas requested and Pioneer provided a sixty-year title search. Based on Lucas' request, Pioneer was not required to do more at that time. However, when Lucas subsequently applied for a title policy, Pioneer was obligated to search further and was negligent if it failed to do so. Notwithstanding that negligence, the court determined that Lucas' claim must fail because of her intentional failure to disclose the known material defect in title. The dissent's argument is also internally inconsistent. On the one hand, the dissent calls *Lucas* a "garden variety fraud case." On the other hand, it contends that fraud cannot be found where the insured makes representations that are refuted by recorded documents in the chain of title--the type of representations made by Lucas' agent.

The *Lucas* decision was based primarily on the insured's intentional failure to disclose a material defect in title at the time she sought to obtain a policy on property she had already acquired. Lucas' agent's aforedescribed actions were evidence that Lucas had actual knowledge of the defect and refused to disclose same in the hope that the title search performed by Pioneer in conjunction with the *request for the title policy* would be deficient.

Our decision is also consistent with the general principle that a party may not insure against a loss that he knows has already occurred and that he fails to disclose to the insurer. *Mass. Bonding & Ins. Co., v. Hoxie,* 176 So. 480, 482 (Fla. 1937); *see also Natl Life Ins. Co. v. Harriott,* 268 So. 2d 397, 400 (Fla. 2d DCA 1972). In *Hoxie,* the insured had permitted two premises liability insurance policies to expire. Approximately two months later, an individual was injured on the premises by a falling light fixture.

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Immediately after learning of the occurrence of this incident, the insured paid a new premium

and had the policies reinstated effective back to the initial expiration date. The insured failed to advise the insurance company of the above-described incident. Our supreme court determined that the insurer was entitled to a cancellation of the policy because the insured's non-disclosure constituted a fraudulent concealment of a material fact which was equivalent to a false representation that the fact did not exist. The court cited with approval to the following language from *Joyce on Insurance* (1st Ed.) Vol. 1 page 159, section 99:

If the delivery [of an insurance policy] be obtained by misrepresentation or fraud, it can have no effect as a binding contract, as in case the assured has knowledge of the loss at the time the application is made and conceals the fact.

Hoxie, 176 So. at 482.

The dissent attempts to limit *Hoxie's* holding to situations where the insured had "superior knowledge not available to the other party." However, there is no such limitation expressed in *Hoxie.* Indeed, the insurer in *Hoxie* could have placed itself in an equal position of knowledge with regard to the claim in question by simply "asking the right questions" in its application form. Alternatively, the insurer could have neutralized the superior knowledge position of the insured by inserting an appropriate exclusion provision in the policy. Our supreme court did not require the insured to do either--thereby reflecting that its decision was not based on the comparable positions of knowledge of the insurer and the insured.

Our sister court in *Harriott* properly concluded that the *Hoxie* decision was based on the general principle that an insured cannot seek to insure against a loss known by the insured but not disclosed to the insurer. Citing to *Hoxie,* the court stated:

Settled law forbids insuring against a loss which the insured knows has already occurred and which he fraudulently conceals from the insurer. Sound policy forbids procuring insurance against a reasonably certain loss in the immediate future without disclosing the risk.

Harriott, 268 So. 2d at 400 (footnote omitted).

Here, the facts amply support the trial court's determination that Nourachi had knowledge of an express defect in title at the time he sought a policy from First American. Indeed, the very entity that sold the property to Nourachi specifically advised him that it (Marion County) did not have good title at the time of the conveyance. Immediately thereafter, Nourachi was provided a copy of the 1937 Savage deed to the United States confirming Nourachi's lack of good title. Nourachi then delayed the actual employment of a surveyor after being advised by the surveyor that at least part of the property he had obtained by tax deed was encompassed within the legal description set forth in the 1937 deed.

Furthermore, the United States' claim against Nourachi's property interest had fully matured by the time Nourachi had applied for a title policy. The United States had notified Nourachi in writing that it had a superior claim to the subject property pursuant to the 1937 deed that had been recorded in Marion County's Public Records. The United States had further made written demand upon Nourachi to remove personal property (the "No Trespassing" signs) that he had placed on the disputed parcel. Thus, we face the issue of whether a party having actual knowledge of a specific claim against his existing property interest has a duty to disclose that information where the claim has matured to the extent that the insurer's duty to defend against that specific claim would come into existence the instant the policy was issued. We believe, and *Hoxie* strongly

suggests, that the answer is "yes." *Ozark Global* and *Lucas* reached the same conclusion. Notably,

the dissent has failed to cite to a single case that answered this question in the negative.[3]

The dissent also suggests that the title policy in question expressly provides coverage for defects of which the insured had actual knowledge and which could be discovered in the public records. It does not. The policy simply excludes from coverage title defects of which the insured had actual knowledge and which are not recorded in the public records. As explained *supra,* the insured's obligation to disclose title defects of which the insured had actual knowledge and which are recorded in the public records is dependent on when the title policy was procured and whether the insured presumptively relied on the insurer's title search. *See Ozark Global,* 956 F. Supp 989; *D.S.C. of Newark Enters., Inc,* 544 So. 2d 1020.

Regardless, the dissent's suggestion that this case be determined solely on contract language was effectively rejected by our supreme court in *Hoxie.* In *Hoxie,* the literal language of the policy would apparently have provided coverage. Alternatively, the supreme court could have determined that to preclude liability, the insurer in *Hoxie* should have inserted an appropriate exclusion provision in the policy. Instead, the supreme court imposed a duty to disclose on the insured. The imposition of this duty was recognition that an insurance policy is designed to protect an insured against a

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potential risk--not to provide compensation for a claim that has already been made against the insured at the time the policy is sought.

The dissent also argues that *Hoxie* is distinguishable because it involves an indemnity policy rather than a title policy. There are valid policy reasons to treat the two policies differently when an insured procures a title policy in conjunction with the acquisition of an interest in property. In that situation, it is appropriate to presume that the insured has relied upon the title company's expertise in searching the public records. Additionally, prior to closing, the insured will ordinarily not have a property interest against which a third party may make a claim. Where there is no reliance by the insured on the insurer's search and a claim has already been made against the insured's property interest, there is no valid reason to depart from the general principle articulated in *Hoxie* and *Harriott.*

This is not a case of a party seeking to insure against the risk of a potential adverse claim. In fact, under Nourachi's legal theory, he had a valid claim against First American the instant it issued its policy. Nor is this a situation in which a party relied on a title company to properly perform a title search. Rather, the evidence suggests that Nourachi hoped that First American's title search would be deficient so as to afford him the opportunity to seek a recovery on a title policy.

To accept Nourachi's argument would promote unsavory gamesmanship. For example, a party having actual knowledge of its defective title (but refusing to disclose same) could seek title insurance from one insurer after another until eventually finding an insurer that negligently failed to discover the title defect, and then make a claim on

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that insurer's subsequently-issued policy. The law should not encourage this type of conduct.

AFFIRMED.

LAWSON, J., concurs specially with opinion.

TORPY, J., dissents with opinion.

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LAWSON, J., concurring.

I concur in the majority opinion, but write to address what I view as the fundamental analytical flaw in an otherwise well-reasoned dissenting opinion. The dissent very logically and persuasively sets forth basic contract law and tort

principles that, if applied to this case, would lead to a different result. This analysis, however, fails to recognize that there are some common law principles related to insurance (sometimes called "insurance law") that uniquely apply in the insurance context. This case is nothing more than a straight-forward application of one of the most basic insurance law principles--most often referred to as the "fortuity" principle or "known loss doctrine."

As explained in Appleman's latest insurance treatise:

One of the fundamental assumptions deeply embedded in insurance law is the principle that an insurer will not pay for a loss unless the loss is "fortuitous, " meaning that the loss must be accidental in some sense. The public policy underlying the fortuity requirement is so strong that if the insurance policy itself does not expressly require that the loss be accidental courts will imply such a requirement. The fortuity principle is often expressed with reference to certainty: losses that are certain to occur, or which have already occurred, are not fortuitous.

Robert H. Jerry, II, *Insurance Law's Fundamental Concepts and Assumptions, in New Appleman on Insurance Law Library Edition* § 1.05 (2010). "[T]he fortuity and known loss doctrines are 'integral to the nature of insurance and thus apply as a matter of public policy, irrespective of specific policy terms.'" *HSB Group, Inc. v. SVB Underwriting, Ltd.,* 664 F. Supp.2d 158, 183 (D. Conn. 2009) (quoting *Nat'l Union Fire Ins. Co. v. Stroh Companies, Inc.,* 265 F.3d 97, 107 (2d Cir. 2001); *see also General Housewares Corp. v. Nat'l Surety Corp.,* 741 N.E.2d 408, (Ind. App. 2000) ("the known

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loss doctrine is not so much an exception, limitation, or exclusion as it is a principle intrinsic to the very concept of insurance").

"Essentially, the doctrine provides that one may not obtain insurance for a loss that either has already taken place or is in progress." *Pittston Co. Ultramar America Ltd. v. Allianz Ins. Co.,* 124 F.3d 508, 516 (3d Cir. 1997); *see also Rohm & Hass Co. v. Cont'l Cas. Co.,* 781 A.2d 1172, 1177 (Pa. 2001) ("[W]hen an insured knows of an insurable harm incurred prior to the purchase of an insurance policy, the insured has suffered a 'known loss' and the damage is no longer a mere risk and is deemed uninsurable."); 7 Lee R. Russ and Thomas F. Segalla, *Couch on Insurance,* § 102:8 at 20 (3d ed. 1997) ("losses which exist at the time of the insuring agreement, or which are so probable or imminent that there is insufficient 'risk' being transferred between the insured and insurer, are not proper subjects of insurance").

This basic doctrine does not arise from a desire to protect an individual insurance company from something akin to fraud, as the dissent seems to suggest, but from a recognition that "the insured's risk is, in a real sense, borne by the insurer's policyholders as a group, from whose pool of premiums all claims must be paid if the insurer is to remain in business." *Fairfield Ins. Co. v. Stephens Martin Paving, LP.,* 246 S.W. 3d 653, 673-74 (Tx. 2008). In other words, because society as a whole relies on insurance, public policy will not permit a transaction that is anathema to the very concept of insurance which, if allowed in the aggregate, could put insurance at risk for all.

In this case, the finder of fact expressly found that David Nourachi committed "fraud" by not disclosing the "known, express defect in title" created by the United

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States' superior ownership interest in the land. Although I agree with the dissent that the facts should not have been viewed through the lens of Florida tort law (fraud being an intentional tort), still, the trial court's finding can only be understood as a finding that Nourachi knew that he had suffered a loss compensable under the title policy before he purchased the First American policy. Because "one may not obtain insurance for a loss... that the insured either knows of, planned,

intended, or is aware is substantially certain to occur" prior to contracting for insurance, 43 Am Jur 2d *Insurance,* § 479, the policy was properly rescinded.

The dissent is correct in its observation that, analytically, the fortuity doctrine would support a broader rule in the title insurance context than the rule applied in the majority opinion (and the cases relied upon therein). However, unlike the dissent, I see no reason to reject the more narrow rule simply because a broader rule might also be justified.

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TORPY, J., dissenting.

The analysis of this case should begin and end with the insurance contract, which not only insures that title is vested in Appellant, but also provides coverage for undisclosed claims of the type at issue here. Although the policy contains an exclusion for known and undisclosed claims, it expressly excepts from that exclusion claims that may be discerned from the public record. *See J.S.U.B., Inc. v. U.S. Fire Ins. Co.,* 906 So. 2d 303, 309 (Fla. 2d DCA 2005) (exception to exclusion considered in determining scope of coverage). Specifically, the policy excludes coverage for:

Defects, liens, encumbrances, adverse claims, or other matters... not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to [the effective date of the policy].

The majority opinion dismisses this contract language by concluding that it only applies in the event that title insurance is procured before the property is purchased, a limitation not mentioned at all in the policy. With a stroke of the court's pen, the majority rewrites the contract to incorporate this limitation. The majority relies in part on fraud cases to support its holding, yet it conspicuously avoids any analysis of the elements of the law of fraud, the proof of which is woefully lacking here. Apparently conceding the absence of fraud, which was the basis upon which the lower court granted relief, the majority announces a customized, unlabeled legal theory that it purports to exact from two readily distinguishable decisions of foreign jurisdictions. Because established legal doctrine does not support Appellee's right to rescind the insurance contract, I dissent.

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What the trial judge stated as his "critical factual finding" was that Appellant "was specifically placed on notice that the United States of America was claiming a superior interest in the real property," but failed to disclose it to Appellee. The actual ownership of the parcel was far from settled at the time Appellant purchased the insurance and even by the time of trial. The legal descriptions in the competing deeds were difficult to compare, so much so that both the property appraiser and title insurer had (apparently) incorrectly determined the ownership of the parcel. The surveyor could not figure it out without a full-blown survey costing several thousand dollars. His off-the-cuff opinion, which the trial judge did not include in his detailed findings of fact, even if properly considered by our Court, only implicated "part" of the property. Appellant had a deed to the property and had completed a quiet title action. The trial judge made no finding that Appellant's claim of title was not colorable, nor was there evidence from which such a finding could be made. Appellant's deed had not been cancelled.

Unlike the majority, I do not think what Appellant did was unusual or unsavory. Appellant had purchased the property without the benefit of a warranty deed, which is typically the case in a tax deed sale. He filed and concluded a quiet title action--again, typical. Once he became aware of the claim of the United States, he consulted with a surveyor who could not give him a definitive answer without a full-blown survey. Instead of paying a surveyor $3,000, to investigate the claim on a piece of land that cost Appellant only $22,000, he took the prudent step of seeking a

title policy at no initial cost. Cost aside, the procurement of title insurance afforded a more definitive and secure resolution of any doubt about ownership. The fact that Appellant sought a policy in excess of the purchase price was not unusual at all. The policy amount sets the

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ceiling on damages; it is not the measure of damages. This was vacant land. No doubt, Appellant desired to develop the property and sought to protect his future investment. Property owners not only rely upon title insurance in the acquisition of property, but also in connection with the exploitation of property already acquired, especially when the acquisition is without a warranty deed.

The trial judge permitted the rescission of the insurance contract based upon a finding that Appellant had procured the insurance through fraud.[4] Because Appellant made no affirmative misrepresentation of fact, the lower court based its finding of fraud on the failure to disclose that which Appellant had a duty to disclose. The majority affirms the rescission without any analysis of the elements of the law of fraud. This is a critical omission because a party may not avoid the effect of a contract by claiming fraud in the inducement when the subject of the representation is expressly addressed in the contract. *Mac-Gray Servs., Inc. v. DeGeorge,* 913 So. 2d 630, 634 (Fla. 4th DCA 2005). This is a point missed by the majority, which cites *Massachusetts Bonding & Insurance Co. v. Hoxie,* 176 So. 480 (Fla. 1937), for the general proposition that "literal language" may be avoided when a contract is procured by fraud. When a contract specifically addresses the very issue that is the subject of the alleged misrepresentation, this general proposition does not apply. *Id.* Here, this contract actually addresses the issue of nondisclosure by the insured of known claims and expressly excepts any duty of disclosure when the claims are matters in the public record. The duty of disclosure is thus negated by the contract itself, and the insurer

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assumes the risk of all claims of this sort, whether known or not known, or disclosed or not disclosed.

Even if the contract itself did not negate any duty of disclosure on Appellant's part, the general rule is that there is no duty to disclose facts during the formation of a contract. *Maxwell v. First United Bank,* 782 So. 2d 931, 934 (Fla. 4th DCA 2001). Under Florida law, there are four categories of exceptions to the general rule. First, when the parties are in a fiduciary relationship. *Dale v. Jennings,* 107 So. 175 (Fla. 1925). Second, where a party not under a duty to disclose undertakes to do so, but does so with half-truths. *Vokes v. Arthur Murray, Inc.,* 212 So. 2d 906 (Fla. 2d DCA 1968). Third, when a statute imposes the duty. *See, e.g.,* § 517.061(11)(a)3., Fla. Stat. (2008) (dealing with sale of securities). Fourth, where one party has superior knowledge unavailable to the other, but then only under limited circumstances. *See, e.g.*, *Johnson v. Davis,* 480 So. 2d 625 (Fla. 1985) (sale of residence containing known, latent, material defects). These exceptions do not apply here.

In the specific context of title insurance, the rule is that "an insured under a policy of title insurance... is under no duty to disclose to the insurer a fact which is readily ascertainable by reference to the public records. Thus, even an intentional failure to disclose a matter of public record will not result in a loss of title insurance protection." *L. Smirlock Realty Corp. v. Title Guarantee Co.,* 418 N.E.2d 650, 654 (N.Y. 1981); *see also Lawyers Title Ins. Corp. v. D.S.C. of Newark Enters., Inc.,* 544 So. 2d 1070, 1072 (Fla. 4th DCA 1989) (general rule is that title insurer cannot avoid liability for condition discernable from public record, even if insured knew of defect and failed to disclose it to

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insurer). Indeed, this policy expressly incorporates this rule. The majority opinion acknowledges this "general rule."

Although the cases upon which the majority relies all fit within one of the four exceptions to the general rule, this case does not fit within any of these exceptions. Instead of denying relief, the majority creates today a fifth exception to the general rule of nondisclosure-where an applicant for insurance becomes aware of a claim after he buys the property, but before he procures the insurance. Setting aside the fact that this policy expressly negates that duty for recorded claims, this holding is without doctrinal support in the law of contracts.

The majority fails to label the legal theory upon which it relies and offers flawed logic for the rule, which appears to apply only in the context of title insurance. It reasons that the owner relies upon the insurer's expertise only before it purchases the property, but not after, and that the general rule of nondisclosure should not apply when reliance is lacking. The fallacy in this distinction is that the insured has knowledge of the defect in both scenarios, so reliance from the standpoint of the insured is the same in both situations. Under the majority's approach, an insured who knows of a defect in title, but purchases property in the face of this knowledge, thereby intentionally damaging himself, is protected, whereas an insured who purchases property without knowledge of a defect, but who learns of the defect before procuring the insurance, is not. I fail to see how this factual distinction should make a difference in the rule of law. In both circumstances, the conduct of the insured is similarly "unsavory," using the majority's characterization of the conduct. The misdirection of the majority's rationale lies, in part, with its purported reliance on two decisions from foreign jurisdictions. When

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the holdings of these decisions are confined to the facts in each case, they do not support the holding here. Only by seizing on the superfluous language in these decisions does the majority find any precedential support for its rule of law. To this extent, however, these decisions do not embody the law of Florida. In any event, they are both readily distinguishable on the facts.

In *Commonwealth Land Title Insurance Co. v. Ozark Global, L.C.,* 956 F. Supp. 989 (S.D. Ala. 1997), the contract contained an express exclusion that precluded coverage. There, the insured purchased property that was encumbered by six state tax liens. The warranty deed under which the insured took title was expressly made subject to the liens. The insured procured a title policy without disclosing the liens and the title company did not expressly delineate the liens in the exclusions. The policy did, however, exclude defects that had been "created, suffered, assumed or agreed to by the insured claimant." *Id.* at 993 (emphasis supplied). The court concluded that the tax liens fell within this exclusion because the insured had taken title with an express assumption of the liability. *Id.* Here, Appellant never expressly assumed or even acknowledged the validity of the defect. The policy here contains the same exclusion, but Appellee has made no contention that Appellant ever "assumed" the defect. Thus, *Ozark Global* presents a dramatically distinct scenario where the insured sought to insure against an obligation that it had expressly assumed and the contract expressly excluded from coverage.

Pioneer National Title Insurance Co. v. Lucas, 382 A.2d 933 (N.J. Super. Ct. App. Div.), *aff'd,* 394 A.2d 360 (N.J. 1978), the second case on which the majority relies, is nothing more than a garden variety fraud case. In that case, the insured had been

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informed by his attorney that his title was defective. The attorney told the insured that an exhaustive investigation had been conducted and the outcome certain. The insured engaged a second attorney who acted as his agent in procuring title insurance. Even though the second attorney was fully aware of the defect and that it could only be detected if the title company searched beyond the customary sixty-year period, he, in a letter, requested a sixty-year search and

only agreed to pay for the sixty-year search. The attorney also directed the insurer's attention to a particular concern for the purpose of diverting its attention from the real concern. The court concluded that "[t]he record establishe[d] beyond question that [the] policy was procured by half-truths and concealment by [the insured's attorney] that justify its rescission." *Id.* at 937. It found that the attorney had taken "advantage of [the insurer's] credulity by leading it to believe that the usual 60-year search would suffice, when he knew that an adverse claim was being made by reason of conveyances well beyond that period in the 19th Century." *Id.* In drawing a distinction from the general rule, the *Lucas* court stated:

However, here more than awareness of a title defect is involved. The insured's attorney actually knew of an adverse claim discoverable only by a search beyond the usual 60 years; yet by deliberate silence, he induced the title company to rely on a 60 year search. Moreover, in the letter to [the insurer] confirming the request for a title search, [the insured's attorney] stated that the problem he wanted examined consisted of a disparity between the description of the property in the deed and the tax map. This reflects an attempt to lull [the insurer] into believing that the difficulty, if any, was something quite different from the real problem.

Id. at 938 (emphasis supplied).

Lucas illustrates an exception to the general rule--that a party who undertakes to disclose information, even when not under a duty to do so, must disclose all material

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information. The very use of this exception presupposes that there exists no duty to disclose unless and until there is a partial disclosure. Here, by contrast, Appellant made no attempt to lull Appellee into a negligent search.

Neither do the Florida cases cited by the majority support its conclusion. *Hoxie,* 176 So. 480, is clearly distinguishable. It involved the exception to the general rule that applies when a party has superior knowledge not available to the other party. There, the insured was seeking retroactive renewal of an indemnity policy, but did not disclose that someone had fallen on the property during the lapse in coverage. Here, by contrast, it was Appellee, the insurer, that had superior access to the information. It was specially trained to find the information, and legally obligated to find it. *Hoxie* also involved indemnity insurance, an entirely different creature than title insurance. This is a distinction overlooked by my concurring colleague whose reliance on the "fortuity" doctrine is misplaced.[5] Indemnity insurance protects against the risk of a subsequent

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occurrence. The premium is based on an actuarial prediction. Title insurance, by contrast, is issued based upon past events and represents the "informed opinion of title examining experts employed by the company that title is in the condition expressed in the policy." *D.S.C. of Newark Enters.,* 544 So. 2d at 1072. Title insurers routinely issue policies in the face of ambiguous documents and known claims. They are in the peculiar position to assess their risk with reasonable certainty and disclaim that which they are unwilling to assume. Here, Appellee expressly assumed the risk of claims that were discernable from the public record, even those known by Appellant. Again, New York's highest court makes this very point:

[T]itle insurance is procured in order to protect against the risk that the property purchased may have some defect in title. The emphasis in securing these policies is on the expertise of the title company to search the public records and discover possible defects in title. Thus, unlike other types of insurance, the insured under a title policy provides little, if any, information to the title company other than the lot and block of the premises and the name of the prospective grantor. Armed with this information, the title company then can search the various indices and maps to ascertain the state of title to

the property. Indeed, it is because title insurance companies combine their search and disclosure expertise with insurance protection that an implied duty arises out of the title insurance agreement that the insurer has conducted a reasonably diligent search.

L. Smirlock Realty Corp., 418 N.E.2d at 654-55.

National Life Insurance Co. v. Harriott, 268 So. 2d 397, 400 (Fla. 2d DCA 1972), also involved the nondisclosure of a fact known only by the insured (in the procurement of a credit life insurance policy) and unavailable to the company. Central to the court's

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decision was the nature of the credit life insurance itself, which is issued without an application, health examination or investigation. Thus, as with the other cases the majority relies on, *Harriott* is similarly distinguishable.

Even if a duty to disclose exists, the second part of the trial court's conclusion-that Appellant fraudulently concealed his knowledge-is an erroneous application of the law of fraud. Again, the majority opinion is devoid of any analysis of the elements of fraud. A central premise in the analysis of a fraud claim based upon nondisclosure is that the party advancing the claim must prove the claim as if the culpable party had "represented the nonexistence of the matter he failed to disclose." Restatement (Second) of Torts § 551; *see Humana, Inc. v. Castillo,* 728 So. 2d 261, 265 (Fla. 2d DCA 1999) (reliance is element of fraud based on nondisclosure). In other words, the proof of fraud based upon nondisclosure requires proof of all the elements of common law fraud, except that the nondisclosure may serve as a substitute for the "affirmative misrepresentation" element. Otherwise, proof of fraud of the nondisclosure variety would be easier than if the culpable party had affirmatively misled the aggrieved party by denying the existence of the nondisclosed fact, a considerably more reprehensible variety of fraud. Thus, whether based upon an affirmative misrepresentation or a nondisclosure, the proponent of a fraud claim must establish materiality, the intent to induce reliance and justifiable reliance. Proof of any of these elements is woefully lacking here, something the majority totally overlooks.[6]

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First, the nondisclosure was not material. The immateriality of the nondisclosed facts is conclusively proven here by the policy itself. The policy expressly addresses claims that are unknown by Appellee and known by Appellant, but only excludes from coverage those claims that are not discernible from the public record. By excepting from the exclusion those claims that are recorded in the public records, Appellee affirmatively eliminated any duty to disclose these facts because it expressly undertook the responsibility to find them and expressly accepted liability in the event that it did not find them. Even without this policy language, a reasonable title insurance company would attach no significance to an insured's representation of ownership or that his title to the property is free from claims of record. Title insurance companies are in the business of discerning ownership by resort to their own research and peculiar expertise. "Examination of record title or an abstract of the record title of real property is both an esoteric and a painstaking process[,]" which requires "considerable expertise." *D.S.C. of Newark Enters.,* 544 So. 2d at 1072.

Second, there was no intent to induce reliance by the nondisclosure. Again, the policy itself expressly addresses itself to claims that are unknown by Appellee and known by Appellant, but only excludes from coverage those claims that are not discernible from the public record. There can be no intent to induce reliance by failure to disclose that which is expressly addressed by the contract. Even absent this policy language, Appellant had every reason to expect that Appellee, the title insurer, would get to the bottom of who had title to this property using its

own expertise. As New York's highest court explained:

[B]ecause record information of a title defect is available to the title insurer and because the title insurer is presumed to

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have made itself aware of such information, we hold that an insured under a policy of title insurance such as is involved herein is under no duty to disclose to the insurer a fact which is readily ascertainable by reference to the public records.

L. Smirlock Realty Corp., 418 N.E.2d at 654.

Finally, Appellee cannot establish justifiable reliance under an objective standard. In *M/I Schottenstein Homes, Inc. v. Azam,* 813 So. 2d 91 (Fla. 2002), our high court considered whether the purchaser of property can justifiably rely on misrepresentations that are refuted by recorded documents in the chain of title. It concluded that it could not:

[W]here recorded information which is clearly contained in the chain of title of the parcel purchased is asserted as the basis for an action for misrepresentation by the purchaser, a distinct and very different matter than the situation discussed herein exists. Knowledge of clearly revealed information from recorded documents contained in the records constituting a parcel's chain of title is properly imputed to a purchasing party, based upon the fact that an examination of these documents prior to a transfer of the real property is entirely expected. For this reason, it may often be the case that where fraud regarding information contained in and clearly revealed through a parcel's chain of title is alleged, reliance is not justified and a cause of action will not exist. It is also plain that there may be situations in which a party's allegations of fraudulent misrepresentation fail to state a cause of action. Where the pleadings of the parties make it evident that reliance on the part of a purchaser was not justified as a matter of law, a trial court may certainly be correct in ruling as a matter of law that no cause of action exists.

Id. at 95. (citations omitted). Where the allegedly defrauded party is sophisticated, the lack of justifiable reliance is especially compelling. *See Wasser v. Sasoni,* 652 So. 2d 411, 413 (Fla. 3d DCA 1995) (sophisticated party not justified in relying on fact available to party through reasonable diligence); *see also Nicholson v. Ariko,* 539 So. 2d 1141,

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1142 (Fla. 5th DCA 1989) (party may not reasonably rely upon interpretation of legal document to support claim for fraud). If this type of information is imputed to a lay purchaser, it must certainly be imputed to a title insurer trained and duty-bound to find it. *See D.S.C. of Newark Enters.,* 544 So. 2d at 1072 (title insurer has legal duty to make "thorough and competent search"). A title insurer is more sophisticated at discerning claims of this nature than anyone, including most lawyers. To suggest that it can reasonably rely upon anything that a layperson discloses about ownership turns the law of fraud on its head. *See Giallo v. New Piper Aircraft, Inc.,* 855 So. 2d 1273, 1275 (Fla. 4th DCA 2003) (party cannot recover in fraud for alleged oral misrepresentations that are adequately covered or expressly contradicted in contract).

The majority justifies its holding using the policy argument that the creation of this duty is necessary to avoid "unsavory" conduct in the future. Whether Appellant's conduct was unsavory begs the question. To create a duty to avoid unsavory conduct that is not unsavory but for the duty is the product of dyslexic logic. If there was no duty to speak, then there was nothing wrong with what Appellant did here. Certainly, his conduct defies no natural law. Indeed, before today, in an arm's-length transaction, there was no duty to disclose matters about which the other party has equal, if not superior, access. This is like the client who shops from lawyer to lawyer until he finds one who gives him the opinion that his proposed course of

conduct comports with the law. As long as he does not misrepresent the facts, the client has no duty to tell the negligent lawyer that prior opinions have differed from his. The fact that the client had been given correct opinions by prior lawyers does not excuse the last lawyer from his duty to use due care.

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In my view, established public policy, embodied in Florida jurisprudence, actually supports a contrary conclusion. Public policy favors freedom of contract, especially when the party seeking to avoid the contract is sophisticated and fully capable of protecting itself. *See Nicholson,* 539 So. 2d at 1142 (rejecting, as matter of law, sophisticated businessman's attempt to avoid contract based on fraud). Here, it was Appellee that drafted the contract. All it had to do to avoid this dilemma was to exclude coverage for all defects known by the insured but not disclosed, whether or not the subject of public record. Instead it only excluded that which it could not be expected to find. I see no justification for excusing the performance of the bargained-for contract. There is also the policy that imposes upon title insurers the obligation to make a diligent search of the public record. Had Appellee fulfilled its obligation, it would have discovered the claim. Again, I see no reason why we should shift this duty to Appellant just because he had been given a different opinion that he did not disclose.

I am also concerned that the rule of law announced today is vague and capable of unforeseen havoc. If the holding is as expressed, under what circumstances does knowledge of a claim trigger the duty to disclose that which is discernable from a diligent search of the public record? Does it depend on the quality of the claim? Does it depend upon the identity of the claimant? Does the duty come into play only when a governmental entity, such as the property appraiser, confirms the validity of the claim? Does this case really stand for the proposition that an insured has a duty to disclose any known claims? Does the duty apply only to claims about which the insured has actual knowledge or does it also extend to those about which the insured should have knowledge? Does the insured have some duty to make inquiry? Is the lack of reliance

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the fact that the insured knew of the unresolved claim or the fact that he did not purchase the property in reliance on the policy? What if the insured relies upon the policy to develop the property, rather than acquire it?

Rather than formulate potentially bad law to address the peculiar facts of this one case, I would leave the law alone and let the chips fall where they may here. Appellant still must prove damages measured by the value of the property. I am certain that this title insurer and others can take measures to avoid similar dilemmas in the future.

I would reverse.

Notes:

[1.] Marion County issued a "Certificate of Correction" in October 2005.

[2.] We find no merit to Nourachi's argument that First American lost any right it had to rescind the title policy by failing to promptly seek rescission. Nourachi did not suffer any prejudice from First American's delay in seeking to amend its complaint to add a count for rescission.

[3.] The dissent's suggestion that our decision will somehow cause "unforeseen havoc" is belied by the scarcity of case law involving situations where a party who has procured title insurance subsequent to acquiring a property interest is alleged to have had actual knowledge of an express defect in title at the time the policy was issued. On the other hand, the adoption of the dissent's position would encourage individuals with actual knowledge of their defective title to seek to "remedy" their circumstances by engaging

in a search for a title company that would "hopefully" perform a deficient title search.

[4.] The trial judge also mentioned the duty of good faith, but this theory may not be invoked to vary an express term in a contract, or to supply a missing term. *Ins. Concepts & Design, Inc. v. Healthplan Servs., Inc.,* 785 So. 2d 1232, 1235 (Fla. 4th DCA 2001).

[5.] Judge Lawson argues an alternative basis for affirming the trial judge-the "fortuity" doctrine, which is grounded in the notion that certain insurances are intended to protect against a risk of an accidental loss. It operates to preclude coverage for accidents that occur before the effective date of the insurance because those losses are not "risks," and therefore, not insurable. *Rohm & Hass Co. v. Cont'l Cas. Co.,* 781 A.2d 1172, 1177 (Pa. 2001). The linchpin of this principle is the lack of insurability of the loss, not the lack of disclosure. Judge Lawson does not and cannot cite a single example where this doctrine has been applied in a title insurance case because the doctrine simply has no application outside the context of indemnity, casualty, life or other similar insurances where the premiums are based on actuarial predictions about future occurrences. Title insurance, by contrast, is a "guaranty that the search was accurate and that it expresses the quality of the title shown by the record." *Krause v. Title & Trust Co. of Fla.,* 390 So. 2d 805, 806 (Fla. 5th DCA 1980). Title insurers assume the risk that they overlooked something that occurred prior to the issuance of the policy. They base the premium on the dollar amount of coverage. The "loss" is a "defect" in marketable title, not a potential, future happening. In the case of title insurance, the loss always predates the issuance of the policy. These are not "uninsurable" losses. They are the precise losses contemplated by title insurance. If the concurring opinion is right, then Judge Lawson should not have joined in the reasoning of the majority opinion because the pre-purchase, post-purchase distinction identified by the majority is repugnant to his theory, as are the cases embodying the general rule that the majority opinion accepts as correct. Judge Lawson's view also directly contradicts the policy language because under no circumstances would the exception to the exclusion ever apply.

[6.] The test for at least two of these elements is objective. The test for materiality is whether "a reasonable man would attach importance to [the fact's] existence or nonexistence in determining his choice of action in the transaction in question." Restatement (Second) of Torts § 538. Justifiable reliance, likewise, is an objective standard as the matter must be material for the reliance to be justified. *Id.*

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218 So.2d 451
D.A.D., INC., a Florida corporation, Appellant,
v.
Mattie M. MORING, a single woman, if living, or if dead, her unknown heirs, and Richard A. Roundtree and Ruth Roundtree, his wife, Appellees.
No. 1549.
District Court of Appeal of Florida, Fourth District.
Feb. 6, 1969.

Jeffrey Michael Cohen, of Law Offices of Norman F. Solomon, Miami, for appellant.

James E. Alderman, of Brown & Alderman, Fort Pierce, for appellees Roundtree.

REED, Judge.

The plaintiff in this case, D.A.D., Inc., is a Florida corporation which filed a suit to foreclose a mortgage executed by one of the defendants, Mattie M. Moring, on certain real property in St. Lucie County, Florida. The defendant Richard A. Roundtree and his wife were joined as parties defendant on the basis of an allegation in the complaint to the effect that they had an interest in the real property subject to the mortgage.

This appeal is from a final judgment of the Circuit Court for St. Lucie County, Florida, which held that the lien of the mortgage terminated upon the death of Mattie Moring and denied foreclosure.

The pertinent facts are undisputed. Mattie M. Moring and the defendant Richard A. Roundtree became joint tenants with right of survivorship by virtue of a deed from Mattie Moring to Mattie Moring and Richard A. Roundtree providing that on the death of either the estate would survive

to the other. The deed was dated and recorded in the public records of St. Lucie County, Florida, on 25 September 1961. Subsequent to the recording of the deed, Mattie Moring executed a mortgage to the plaintiff which purported to impose a lien on the real property described in the deed. The execution of the mortgage and the promissory note thereby secured was without the knowledge or consent of the defendant Roundtree.

The plaintiff filed a suit to foreclose the mortgage on 12 October 1965. The defendant Mattie Moring died on 25 March 1966 prior to the cause coming at issue. The answer of the defendant Roundtree alleged the death of Mattie Moring and his interest in the property under the aforementioned deed.

The question on appeal is whether or not the lien of the mortgage executed by Mattie Moring under the circumstances above described is enforceable after her death against the undivided one-half interest in the property owned by her prior to her death. We answer this question in the negative and affirm the final decree.

A joint tenancy with a right of survivorship in real property is recognized by statute in the State of Florida. Section 689.15, F.S.1941, F.S.A.; Kozacik v. Kozacik, 1946, 157 Fla. 597, 26 So.2d 659. The principle incident of the tenancy is the right of survivorship by which the entire interest of one tenant, upon his death, remains to the other. Florida National Bank of Jacksonville v. Gann, Fla.App.1958, 101 So.2d 579. It necessarily follows from the right of survivorship that the interest of a joint tenant terminates upon his death prior to the other joint tenant. For this reason, a mortgage on the interest of a joint tenant imposes a lien upon a defeasible interest, and the lien, of necessity, terminates when, by reason of the mortgagor's death, his interest in the tenancy terminates.

Joint tenants in real property may, of course, sever the joint tenancy and extinguish the right of survivorship by any act which destroys any one of the four unities which are considered to be essentials of a joint tenancy, namely, the unity of

interest, title, time and possession. As stated in Kozacik v. Kozacik, supra:

'* * * (A) joint tenancy may be terminated by any act which destroys one or more of its unities, provided the act of the joint tenant who severs his interest is such as to preclude him from claiming by survivorship any interest in the subject matter of the joint tenancy. * * * Accordingly, it is settled that a joint tenancy will be terminated by the alienation or conveyance by a joint tenant of his interest in the realty to a stranger, for by such act the unity of title is destroyed and the unity of possession is gone. * * *'

In Florida, because a mortgage is recognized as only a lien on real property and not as a conveyance thereof or a transfer of the right of possession, Section 697.02, F.S.1967, it would not appear that the execution of a mortgage destroys any of the unities, the joint tenancy, and, with it, the right of survivorship.

The appellant urges us to hold that although the mortgage did not terminate the right of survivorship in the joint tenancy, the undivided one-half interest of the mortgagor, Mattie Moring, survived to the other joint tenant subject to the lien of the mortgage. While there is an argument that can be made to support the logic and the fairness of the appellant's conclusion, it is our opinion that the same is at variance with the essence of a joint tenancy in real property, namely, the right of survivorship and its concomitant, a defeasible interest in the fee. Since this tenancy is recognized and authorized by the statutory law of this state, it is our view that the rule suggested by the appellant is more appropriate for adoption by the legislature than by the court.

The issue before this court has been considered by the District Court of Appeal for

the Second District in the State of California in the case of People v. Nogarr, 1958, 164 Cal.App.2d 591, 330 P.2d 858. The California court on facts almost identical to those in the present case reached the conclusion we adopt. A contrary view on similar facts has been taken by the Supreme Court of Indiana in the case of Wilken v. Young, 1895, 149 Ind. 1, 41 N.E. 68.

For the foregoing reasons, the final judgment is affirmed.

Affirmed.

WALDEN, C.J., and MURPHREE, JOHN A.H., Associate Judge, concur.

898 So.2d 250

COUNTRYWIDE HOME LOANS, INC., Appellant,
v.
Sook Hyung KIM, unknown spouse of Sook Hyung Kim, Sook Hyung Kim, Unknown Tenant I, Unknown Tenant II, Pine Bay Homeowners' Association, Inc., Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Aegis Mortgage Corporation d/b/a New America, Ltd., Capital One, F.S.B., and any unknown heirs, devisees, grantees, creditors, and other unknown persons or unknown spouses claiming by, through and under any of the above named Defendants, Appellees.

No. 4D04-929.

District Court of Appeal of Florida, Fourth District.

March 16, 2005.

Alaine S. Greenberg of Greenberg, Traurig, P.A., Ft. Lauderdale, for appellant.

Mitchell D. Adler and Danielle L. Rosen of Abrams Anton, P.A., Hollywood, for appellee Sook Hyung Kim.

KLEIN, J.

Countrywide initiated this mortgage foreclosure against Kim, asserting that the prior owners, a married couple, had executed a mortgage in favor of Countrywide which was in default. Because Countrywide had inadvertently failed to obtain the wife's signature on the mortgage, the trial court held that the mortgage was void as a matter of law. We reverse.

The owners of the property prior to Kim were Michael and Tricia Abdulahad, husband and wife. The facts as reflected by the record, when the trial court entered this summary judgment, showed that when the mortgage was executed, the property was owned by Michael and Tricia, as tenants by the entirety, but the mortgage was signed only by Michael. The fact that Tricia had not signed the mortgage was due solely to inadvertence, as she attended

[898 So.2d 251]

the closing, knew that the proceeds of the mortgage were being used to pay for the property, and would have signed the mortgage if requested to do so. She assumed the mortgage would be paid from the proceeds of the sale to Kim.

When Kim purchased from Michael and Tricia, through further inadvertence, the mortgage to Countrywide was not paid off or satisfied and, when it went into default, Countrywide filed this foreclosure suit.

Countrywide relies on *Schmidt v. Matilsky,* 490 So.2d 237 (Fla. 1st DCA 1986) to support its argument that the mortgage is valid even though Tricia neglected to sign it. In *Schmidt* the husband signed an option to sell land in the presence of his wife, and the court upheld the option against the wife, who had not signed, because her husband signed with her knowledge and assent. *Accord, Douglass v. Jones,* 422 So.2d 352 (Fla. 5th DCA 1982) (wife did not acquiesce). *See also Smith v. Royal Auto. Group,* 675 So.2d 144 (Fla. 5th DCA 1996) (missing signature to a contract can be supplied by the courts through reformation); *Spear v. MacDonald,* 67 So.2d 630 (Fla.1953) (reformation should be applied to correct deed and mortgage containing wrong legal description due to surveyor's errors).

This mortgage is accordingly not void, and the summary judgment is reversed.

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HON REALTY CORP., a Florida corporation, Plaintiff-Appellant
v.
FIRST AMERICAN TITLE INSURANCE CO., a California corporation, Defendant-Appellee.
No. 07-15844.
United States Court of Appeals, Eleventh Circuit.
September 4, 2008.

Appeal from the United States District Court for the Southern District of Florida; D. C. Docket No. 07-20494-CV-KMM.

Before TJOFLAT, ANDERSON and BLACK, Circuit Judges.

PER CURIAM.

Plaintiff-appellant Hon Realty Corp. ("Hon Realty") appeals from the grant

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of defendant's motion for summary judgment and the denial of its cross-motion for summary judgment in the instant declaratory judgment action arising out of a title insurance policy appellant purchased from defendant-appellee First American Title Insurance Co. ("First American"). At issue on appeal is whether the term "public records" used in an applicable exclusion term of the insurance contract includes public records that were not filed with the "Official Records" of Florida, pursuant to Fla. Stat. § 695.11,[1] the state's recording statute for encumbrances and liens against real property. For the following reasons, we conclude that the contractual term "public records" includes only those records filed under the state's recording statute to obtain constructive notice of a particular encumbrance or lien pursuant to Fla. Stat. § 695.11. Accordingly, we affirm the judgment of the district court.

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The facts are straightforward and undisputed. Hon Realty purchased a property, against which the City of Miami had an encumbrance because of the prior landowner's violations of several city ordinances. First American warranted title on the property as of the closing of the property, the effective date of the title insurance contract. The enforcement order for the encumbrance was issued prior to the purchase of the property—and, importantly, prior to the effective date of the title insurance—but the order was not recorded under Florida's recording statute, Fla. Stat. § 695.11, with the Miami-Dade County clerk of court until two weeks after Hon Realty closed on the property and after the effective date of the insurance policy. The district court determined—and the parties do not dispute on appeal—that the title insurance policy would warrant the title against (thus insuring against) said encumbrance, but only if the enforcement order with respect to the encumbrance "ha[d] been recorded in the public records at Date of Policy." Because the enforcement order was available in the City's public records but was not recorded in Miami-Dade's statutory "Official Records" until after Hon Realty recorded the warranty deed on the property, we must decide whether the insurance contract's provision that would cover encumbrances "recorded in the public records" by the date of the policy would include the City's public records or only the "Official Records" described in the state's recording statute.

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We review de novo the district court's grant of summary judgment. Burton v. Tampa Hous. Auth., 271 F.3d 1274, 1276-77 (11th Cir. 2001). Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Celotex v. Catrett, 477 U.S. 317, 323-24, 106 S. Ct. 2548, 2553 (1986). The parties agree that this case presents only a question of law requiring the Court to interpret the parties' title insurance contract under Florida law. Flintkote Co. v. Dravo Corp., 678 F.2d 942, 945 (11th Cir. 1982) (recognizing that courts sitting in diversity apply the substantive law of the

forum); see State Farm Fire & Cas. Co. v. Metro. Dade County, 639 So. 2d 63, 65 (Fla. Dist. Ct. App. 1994) (stating that contract construction is a question of law).

Florida law construes insurance policy exclusions narrowly, and any ambiguity in the contract should be resolved in favor of coverage and construed against the drafter. State Farm Fire & Cas. Co., 639 So. 2d at 65. However, "where the language of a policy is clear and unambiguous on its face, the policy must be given full effect." Am. Motorists Ins. Co. v. Farrey's Wholesale Hardware Co., Inc., 507 So. 2d 642, 645 (Fla. Dist. Ct. App. 1987).

We conclude that the policy is clear and unambiguous on its face and resolves the issue presented. The policy itself defines "public records" as follows:

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"records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters related to real property to purchasers for value and without knowledge." District Court Order at 4 (emphasis added). It is clear that the "public records" definition contemplated only the inclusion of those records filed under a state recording statute and not those general public records that may be available from, for example, a public records request with the state or a local municipality.

Notably, the enforcement order of the encumbrance at issue here specifically contemplated that the City's order be recorded with the county in order to be recorded as a lien against the property, which evinces the fact that the purported record of the enforcement order itself was not effective as an encumbrance to subsequent purchasers for value without knowledge prior to recording under Fla. Stat. § 695.11. See also Fla. Stat. Ann. § 162.09(3) (West 2000) (providing same). If the order itself was not effective against Hon Realty until its recording under Fla. Stat. § 695.11, the order cannot be reasonably considered a "public record" within the meaning of the contract.

Appellant argues that the record of the enforcement order was itself created under the City's authority granted by state statute permitting it to enforce local ordinances and is therefore a record "established under [a] state statute[ ]" that

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provides notice with respect to real property. Appellant's argument is without merit. The statute granting the City the authority to enforce its ordinances through encumbrances has nothing to do with a record filed under a statute "for the purpose of imparting constructive notice of matters related to real property . . . ." The purpose of Chapter 162 of the Florida Statutes, relied upon by Appellant, is to provide a mechanism for enforcing local ordinances and not a mechanism for imparting constructive notice of matters related to real property. Moreover, Fla. Stat. § 162.09(3) expressly contemplates that a "certified copy of an order imposing a fine, or a fine plus repair costs, may be recorded in the public records" in order to effect a lien under the state's recording statute.

For the foregoing reasons, we conclude that the judgment of the district court is due to be

AFFIRMED.[2]

Notes:

1. This statutory provision reads as follows:

All instruments which are authorized or required to be recorded in the office of the clerk of the circuit court of any county in the State of Florida, and which are to be recorded in the "Official Records" as provided for under s. 28.222, and which are filed for recording on or after the effective date of this act, shall be deemed to have been officially accepted by the said officer, and officially recorded, at the time she or he

affixed thereon the consecutive official register numbers required under s. 28.222, and at such time shall be notice to all persons. The sequence of such official numbers shall determine the priority of recordation. An instrument bearing the lower number in the then-current series of numbers shall have priority over any instrument bearing a higher number in the same series.

Fla. Stat. Ann. § 695.11 (West 2000).

2. Appellee's request for oral argument is denied.

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201 So.3d 109

BCML HOLDING LLC, Appellant,
v.
WILMINGTON TRUST, N.A., etc.,
Appellee.

No. 3D14–1627.

District Court of Appeal of Florida, Third District.

Sept. 24, 2015.

[201 So.3d 110]

Todd L. Wallen, Miami, for appellant.

Lerman & Whitebook and Carlos D. Lerman, Hollywood, for appellee.

Before SUAREZ, C.J., LAGOA and EMAS, JJ.

EMAS, J.

BCML Holding, LLC ("BCML") appeals a final summary judgment in favor of Wilmington Trust, N.A. ("Wilmington") on BCML's counterclaim. For the reasons that follow, we affirm.

FACTS

On July 11, 2007, Gonzalo and Daniela Malesich ("Malesich") executed a note and purchase money mortgage which conveyed an interest in a condominium unit at the Murano Grande on Miami Beach to MERS, the nominee of the lender, American Brokers Conduit ("ABC"). The mortgage instrument contained a provision in which Malesich "covenants the Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property...." However, at the time the mortgage was executed, Malesich did not own the subject property; it was owned by RSV Corp. ("RSV").

Five days later, on July 16, 2007, RSV conveyed the property to Malesich via warranty deed. The mortgage and deed

[201 So.3d 111]

were recorded in the public records on August 1, 2007.

Thereafter, MERS assigned the mortgage to Citibank, N.A. In 2010, the Murano Grande Condominium Association ("Murano") initiated foreclosure proceedings on Malesich's unit due to unpaid condominium assessments. Murano obtained summary judgment in its favor and proceeded to the foreclosure sale, at which Murano was the highest bidder. After the certificates of sale and title were issued to Murano, it sold the property to BCML in 2012.

On April 3, 2013, Wilmington, successor trustee to Citibank, filed a foreclosure complaint against Malesich for default of the July 11, 2007 mortgage. BCML, Murano, and others were also named as defendants in the foreclosure complaint, which alleged a default date of October 1, 2008 (prior to Murano's foreclosure complaint).

BCML answered the complaint, asserting several affirmative defenses, including that Wilmington was estopped from bringing the action. BCML also asserted a two-count counterclaim for declaratory relief and to quiet title, alleging that because Malesich did not own the property on July 11, 2007, when it conveyed an interest in that property, the mortgage was void ab initio.

The parties filed cross-motions for summary judgment on BCML's counterclaim for declaratory relief and to quiet title. Following a hearing, the trial court held that the after-acquired title doctrine applied and granted summary judgment in favor of Wilmington. In its order granting summary judgment, the trial court stated:

> Pursuant to principles of after acquired title, the conveyance by RSV Corp. to Malesich cured any deficiency in the Mortgage arising from the lack of ownership by Gonzalo Malesich of the Property at

> the time of execution and delivery of the Mortgage. See, *Florida Land Co. v. Williams,* 84 Fla. 157, 92 So. 876 (1922) ; *Walters v. Merchants & Manufacturers Bank of Ellisville,* 218 Miss. 777, 67 So.2d 714 (1953) ; *Cook v. Katiba,* 152 So.2d 504 (Fla. 1st DCA 1963).

The trial court denied BCML's motion for reconsideration, dismissed BCML's counterclaims with prejudice, and entered final judgment in favor of Wilmington on BCML's counterclaims.[1] BCML appealed, and we review the issue de novo. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.,* 760 So.2d 126 (Fla.2000).

ANALYSIS

Under the doctrine of after-acquired title "if a grantor purports to transfer ownership of real property to which he lacks legal title at the time of the transfer, but subsequently acquires legal title to the property, the after-acquired title inures, by operation of law, to the benefit of the grantee." *Ackerman v. Abbott,* 978 A.2d 1250, 1254 (D.C.2009). This doctrine

> is a species of estoppel by deed, the principle that a grantor may not deny the truth of a deed against one in whose favor he executed it. Having conveyed title he did not have, when the grantor finally does acquire title, the doctrine operates to vest title automatically in the grantee.

Id. (internal citations omitted). As the Supreme Court of Florida observed in *Trustees of Internal Imp. Fund v. Lobean,* 127 So.2d 98, 102 (Fla.1961) :

> Legal estoppel or estoppel by deed is defined as a bar which precludes a party to a deed and his privies from asserting

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> as against others and their privies any right or title in derogation of the deed, or from denying the truth of any material fact asserted therein. In other words legal estoppel contemplates that if I execute a deed purporting to convey an estate or land which I do not own or one that is larger than I own and I later acquire such estate or land, then the subsequently acquired land or estate will by estoppel pass to my grantee.

While this doctrine has been described as a species of estoppel by deed, it has also been characterized as a doctrine grounded in the covenant or warranty of title made by the grantor when conveying the property. *See, e.g., Pitts v. Pastore,* 561 So.2d 297 (Fla. 2d DCA 1990) (observing that "a mortgage with covenants of warranty, such as the mortgage involved in this case, permits any title acquired by the mortgagor, after the execution of the mortgage, to inure to the benefit of the mortgagee."). In the instant case, the grantor Malesich, when conveying the property, expressly warranted that he was fully seised of the property at the time of conveyance, and had the right to mortgage, grant and convey the property.

The doctrine of after-acquired title applies to mortgages. *See Rose v. Lurton Co.,* 111 Fla. 424, 149 So. 557, 558 (1933) (noting "[i]t is now undoubtedly well settled in this jurisdiction that when it is appropriately so worded, a mortgage on after-acquired property of the mortgagor will be held valid, and enforceable between the parties to it, by a suit for foreclosure"); *Florida Land Inv. Co. v. Williams,* 84 Fla. 157, 92 So. 876, 877 (1922) (noting the general doctrine that "where a mortgage upon real estate contains full covenants of warranty, title acquired to the mortgaged property the mortgagor after the execution of the mortgage inures to the benefit of the mortgagee"); *Pitts,* 561 So.2d at 301 (Fla. 2d DCA 1990) (noting "[i]t is well established that one can enter into a mortgage agreement to create a lien against property which the mortgagor will only acquire in the future. Such a mortgage lien simply fails to

attach until the property is purchased" (internal citations omitted)).

BCML argues that the after-acquired title doctrine does not apply as against a non-party to the original mortgage and subsequent purchaser of the subject property. BCML contends it is not a privy or successor in interest and that it cannot be bound by Malesich's covenant or his act in acquiring title after execution of the mortgage. BCML asserts in essence that, as to it, the mortgage was and remains void. We disagree, and conclude that BCML is bound, as a successor in interest, and estopped to deny the existence of title acquired by Malesich after the mortgage was executed.

It has long been settled that:

> Where a grantor sets forth on the face of his conveyance by averment or recital that he is seised of a particular estate in the premises and which estate the deed purports to convey, the grantor and all persons in privity with him are estopped from ever afterwards denying that he was seised and possessed at the time he made the conveyance. *The estoppel works upon the estate and binds an after-acquired title as between parties and privies.*

Moralis v. Matheson, 75 Fla. 589, 79 So. 202, 203–04 (1918) (emphasis added). *See also Lobean,* 127 So.2d at 102 (holding that the doctrine precludes a party to a deed *and his privies* from asserting as against others *and their privies* any right or title in derogation of the deed) (emphasis added); *Murray v. Newsom,* 111 Fla. 193, 149 So. 387, 388–89 (1933) (holding that the

[201 So.3d 113]

"doctrine of the inurement to the grantee of an after-acquired title by his grantor rests on the principle of estoppel and the question is one of intention. Where it appears to have been the object of the covenant to assure to the grantee the full and absolute enjoyment of the property without any right of the grantor to divest or interfere with the possession at any time thereafter, the deed operates as an estoppel against the claim of the grantor to a subsequently acquired estate, whether a present right passes or not."); *Meyers v. American Oil Co.,* 192 Miss. 180, 5 So.2d 218, 220 (1941) ("To suggest that a grantor who conveys property without title thereto may afterwards maneuver himself, or those in privity with him, into a more advantageous position as respects that property than he could have occupied had he had complete right and title at the time of the conveyance, would be to propose that which upon its face carries its own refutation.")

It is clear from the case law that the after-acquired doctrine "inures to the benefit of the grantee,[2] "—here Wilmington[3] —and that the covenant also "runs with the land," *Moralis,* 75 Fla. at 593, 79 So. 202 binding those who are successors in interest to the grantor as well as the grantee. *See also Taylor v. Fed. Farm Mortg. Co.,* 141 Fla. 703, 193 So. 758, 758 (1940) (applying after-acquired title doctrine to the "successor to the original mortgagee"); *Smith v. Urquhart,* 129 Fla. 742, 176 So. 787, 789 (1937) (noting that "the term 'privity' denotes mutual or successive relationship to the same rights or property") (quoting *Coral Realty Co. v. Peacock Holding Co.,* 103 Fla. 916, 138 So. 622, 625 (1931)); *Key West Wharf & Coal Co. v. Porter,* 63 Fla. 448, 58 So. 599 (1912) (holding that a party claiming title under one who is estopped will also be bound by the estoppel); *Ackerman,* 978 A.2d at 1255 ; *Jacobsen v. Nieboer,* 299 Mich. 116, 299 N.W. 830 (1941) ; *Horowitz v. People's Sav. Bank,* 307 Mass. 222, 29 N.E.2d 770 (1940) ; 22 Fla. Jur. 2d *Estoppel and Waiver* § 10 (2015) (noting that the rule applying estoppel to privies includes privies in blood, privies in estate, and privies in law). Thus, once Malesich mortgaged the property, with an express recital that he was "lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey" the property, and thereafter acquired the property described in the mortgage, there existed a valid mortgage inuring to the benefit of the mortgagee

(and its successors in interest) and as against the original mortgagee (and its successors in interest). This construction is logical, as it would surely make little sense to permit BCML to thwart the mortgage lien by claiming it was an "innocent" purchaser, especially when it was on notice of the mortgage and deed, which were recorded together two weeks after the property was conveyed, three weeks after the mortgage was executed, and five years before BCML purchased the property. *U.S. Bank Nat. Ass'n v. Bevans,* 138 So.3d 1185 (Fla. 3d DCA 2014).

BCML also asserts that the doctrine of after-acquired title does not apply because the original transaction was a purchase money mortgage. Under Florida law, a "purchase money mortgage given as part of the transaction in which the premises were purchased is an exception to the general rule that, where a mortgage contains

[201 So.3d 114]

full covenants of warranty, title acquired by the mortgagor after the execution of the mortgage inures to the benefit of the mortgagee." *Nelson v. Dwiggins,* 111 Fla. 298, 149 So. 613, 614 (1933). However, this exception does not apply to the instant transaction. While this mortgage was entitled a "purchase money mortgage" it did not represent the type of transaction contemplated by the Florida Supreme Court when it established this exception to the doctrine of after-acquired title. In a typical purchase money mortgage, the mortgage is given by the buyer of the property to the seller of the property to secure the unpaid balance of the purchase price, and the conveyance and mortgage are executed simultaneously. BCML concedes this describes the type of transaction involved in *Dwiggins,* and further concedes this was not the type of transaction involved in the instant case. Nonetheless, BCML asserts that because courts recognize the type of mortgage at issue as a purchase money mortgage, the exception is applicable and the after-acquired title doctrine should not apply. However, application of the *Dwiggins* exception is not talismanic. We must first consider the underlying purpose of the exception, and then, in determining its applicability, consider not merely the title or label given to the document, but all of the relevant facts and circumstances surrounding the transaction.

As the Florida Supreme Court explained in *Dwiggins,* 149 So. at 614, this exception "is based on the idea that it would be unjust to allow a purchase-money mortgage to be foreclosed on any greater title than the seller had conveyed, merely because it contained a covenant of warranty." In other words, because the mortgagee of the property is also the seller of the property, that individual knows whether he is in fact lawfully seised of the property and able to convey full title. Upon foreclosing, this mortgagee should not be permitted to obtain greater title than he could originally have conveyed. The *Dwiggins* Court further explained:

> [T]he purchase-money mortgage, being foreclosed, should be held limited to the exact interest in the land *that had been simultaneously conveyed to the mortgagor by the mortgagee bank's deed,* the original vendor's lien of the bank having, as we have held been waived by the new form the transaction took, when the vendor elected to take a mortgage security on the particular interest in the mortgaged property that had been conveyed to the mortgagor by the mortgagee's deed.
>
> *Id.* (Emphasis added.)

In so holding, *Dwiggins* cited to *Williams,* 92 So. at 877, wherein the Court, in discussing after-acquired title, acknowledged "there is a generally recognized exception of purchase-money mortgages *given as a part of the transaction in which the premises mortgaged are purchased.* " (emphasis added). Thus, this exception is limited to those purchase money mortgages involving a simultaneous sale of the property by the mortgagee to the mortgagor. The Court in *Williams* expounded on the reason for such an exception:

> It would be manifestly unjust to hold that one selling and conveying property which he does not own may, by taking from his grantee contemporaneously with the conveyance to him a purchase-money mortgage, containing the usual covenants of warranty, for a part of the agreed consideration and afterwards, by foreclosing such purchase-money mortgage, acquire title to an ownership of the property, the purchaser in the meantime having in order to protect himself, acquired title to the property by purchase

[201 So.3d 115]

> from the owner, the original grantor having refused to purchase such outstanding paramount title.
>
> *Id.* at 877–78.

The doctrine of after-acquired title is predicated on the notion that an uninformed grantee should not be penalized if the grantor did not own the property at the time of the conveyance, yet subsequently acquired it. 23 Am. Jur. 2d *Deeds* § 278 (2015). Obviously, as in the case of the purchase money mortgage presented in *Dwiggins,* where the mortgagee is also the one conveying the property to the mortgagor, the mortgagee is fully aware of the nature and extent of the interest being conveyed, and is foreclosed from relying upon the after-acquired doctrine to thereafter acquire greater title than that which it originally conveyed. Such are not the circumstances of the underlying transaction in this case. The original lender, ABC, loaned money to Malesich in exchange for a mortgage on property which Malesich thereafter purchased from a third-party in a subsequent transaction. We conclude that the purchase money mortgage exception to the after-acquired title doctrine does not apply to the instant case.

CONCLUSION

We hold that the doctrine of after-acquired title applies to the instant case, inuring to the benefit of Wilmington (and against BCML) as successors in interest. We further hold that the exception for purchase-money mortgages is inapplicable given the nature of the original transaction. The trial court was correct in entering summary judgment in favor of Wilmington.

Affirmed.

Notes:

[1] The foreclosure case remains pending below.

[2] *Murray,* 149 So. at 388 ; *Williams,* 92 So. at 877.

[3] We find no merit in BCML's additional argument that Wilmington cannot claim the benefit of the doctrine because it is not the original mortgagee. The record establishes that Wilmington is ABC's successor in interest.

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368 So.3d 1081

Gregory MAKI and Elizabeth Maki, Appellants,
v.
NCP BAYOU 2, LLC, Appellee.

Case No. 6D23-643

District Court of Appeal of Florida, Sixth District.

June 16, 2023

Gregory-Eugene Maki and Elizabeth-Ann Maki, Punta Gorda, pro se.

Ben H. Harris, III, of Jones Walker LLP, Miami, for Appellee.

MIZE, J.

Appellants Gregory and Elizabeth Maki (collectively, the "Makis") appeal the final judgment of foreclosure entered by the trial court in favor of Appellee NCP Bayou 2, LLC ("NCP").[1] We reverse.

Background and Procedural History

The Makis obtained two loans that were secured by mortgages on their home (the "Property"). In 2002, the Makis took out a mortgage (the "First Mortgage Loan"). In 2005, the Makis obtained a home equity line of credit (the "HELOC Loan"). To obtain the HELOC Loan, the Makis signed a Home Equity Line of Credit Agreement and Disclosure (the "HELOC Note") and a mortgage (the "HELOC Mortgage") to secure repayment of the HELOC Note. Both the First Mortgage Loan and the HELOC Loan were assigned to different lenders over the years, with the First Mortgage Loan ultimately being assigned to Wilmington Savings Fund Society ("Wilmington"), and the HELOC Loan ultimately being assigned to Multibank 2009-1 RES-ADC Venture, LLC ("Multibank").

The Makis failed to make the payment due on the HELOC Note in June 2013 and failed to make all the subsequent payments that came due thereafter. In October 2014, Multibank sent default letters to each of the Makis. The default letters informed the Makis that Multibank was exercising its right under the HELOC Note to accelerate all amounts due under the note and that, therefore, the entire principal and all other amounts due under the note were immediately due and payable. In each of the default letters, Multibank demanded that the Makis pay all principal and all other amounts due under the HELOC Note within thirty days of receipt of the letters.

In December 2014, after the Makis failed to pay the amount owed on the HELOC Note, Multibank filed a complaint against the Makis to recover the amounts owed under the HELOC Note (the "Prior Lawsuit"). Multibank only sought a monetary judgment for the amounts due under the HELOC Note. Multibank did not assert a claim to foreclose the HELOC Mortgage. Multibank later amended its complaint to add a claim for unjust enrichment.

After conducting a trial, the trial court in the Prior Lawsuit entered a final judgment in favor of Multibank and against the Makis for all amounts due under the HELOC Note. The final judgment was entered on January 3, 2017. In March 2018, Multibank filed notice that it had assigned the final judgment to NCP. Multibank subsequently assigned the HELOC Mortgage to NCP as well.

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In November 2019, Wilmington filed an action against the Makis to foreclose its mortgage securing the First Mortgage Loan. Wilmington included NCP as a defendant as the junior lien holder. In December 2019, NCP responded by filing a counterclaim against Wilmington and a crossclaim against the Makis seeking to foreclose the HELOC Mortgage due to the Makis' failure to pay the final judgment entered in the Prior Lawsuit in January 2017. The Makis responded with an answer asserting various affirmative defenses.

NCP filed a motion for summary judgment. The motion was initially heard before a trial judge that was not the judge assigned to the division in which the case was pending.[2] That judge denied the motion without prejudice so that the motion could be reset for hearing before the judge assigned to the case. Before the motion for summary judgment was scheduled for another hearing, the Makis filed a motion to amend their answer to assert a statute of limitations defense under section 95.11(2)(c), Florida Statutes, which the trial court granted.[3] The Makis followed up that motion with a motion for summary judgment based on, among other things, the statute of limitations defense.

After a hearing on both parties' motions for summary judgment before the judge assigned to the case, the trial court issued an order granting NCP's motion and denying the Makis' motion. The trial court subsequently entered a final judgment of foreclosure ordering the Property to be sold at a foreclosure sale. The Makis filed a motion for rehearing, which the trial court denied. This appeal followed.[4]

Analysis

The Makis raise five issues on appeal, including that NCP's foreclosure action was barred by the statute of limitations set forth in section 95.11(2)(c), Florida Statutes. We agree with the Makis on this point.[5]

Whether NCP's foreclosure action was barred by the applicable statute of limitations is a question of law that we review de novo. *Snow v. Wells Fargo Bank, N.A.* , 156 So. 3d 538, 541 (Fla. 3d DCA 2015).

Section 95.11(2)(c), Florida Statutes, mandates that an action to foreclose a mortgage shall be commenced within five years. "The statute of limitations on a mortgage foreclosure action does not commence until a default in payment of the final installment, unless the mortgage contains an acceleration clause." *Snow* , 156 So. 3d at 541. When a mortgage secures a promissory note that contains an optional acceleration clause, and the holder of the note exercises its right to accelerate all future payments due under the note, the statute of limitations for the action to foreclose the mortgage begins to run on the

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date that the lender exercises its right to accelerate the payments due under the note. *See id.* ; *Greene v. Bursey* , 733 So. 2d 1111, 1114–15 (Fla. 4th DCA 1999) ; *Monte v. Tipton* , 612 So. 2d 714, 716 (Fla. 2d DCA 1993).[6]

In this case, NCP's predecessor in interest, Multibank, exercised its option to accelerate all payments due under the HELOC Note in October 2014. Therefore, the statute of limitations on the action to foreclose the HELOC Mortgage began to run in October 2014 and expired in October 2019, approximately two months before NCP filed its action to foreclose the HELOC Mortgage in December 2019.

In its Answer Brief, NCP argues that the HELOC Note required a final payment of all sums due and owing under the note on the maturity date of January 15, 2016 and that, therefore, the statute of limitations did not begin to run until that date. However, as noted above, when a lender exercises its option to accelerate all future payments due under a note, those payments then become due immediately upon the acceleration – not when the payments would have otherwise been due had the lender not accelerated the future payments. Accordingly, the statute of limitations on an action to foreclose a mortgage securing an accelerated debt begins to run when the lender exercises its right to accelerate the debt. *See Snow* , 156 So. 3d at 541 ; *Greene* , 733 So. 2d at 1114–15 ; *Monte* , 612 So. 2d at 716.

NCP also argues that a creditor holding a note secured by a mortgage is not required to pursue a monetary judgment on the note and a foreclosure of the mortgage simultaneously. A lender is entitled to elect its remedies and an unsatisfied monetary judgment on the note does not bar a subsequent action to foreclose the mortgage. This is correct, but it does not change the fact that the

statute of limitations on a mortgage foreclosure action begins to run when the lender accelerates the debt secured by the mortgage. A lender may choose to initially bring only an action on the promissory note without sacrificing its right to later bring a mortgage foreclosure action, but there is simply no legal authority for the proposition that the lender bringing an action solely on a note and obtaining a final judgment for the amount owed under the note extends the statute of limitations period for a later filed action to foreclose the mortgage.

NCP cites *Klondike, Inc. v. Blair* , for the proposition that:

> [U]ntil the mortgage debt is actually satisfied, the recovery of a judgment on the obligation secured by a mortgage, without the foreclosure of the mortgage, although merging the debt in the judgment, has no effect upon the mortgage or its lien, does not merge it, and does not preclude its foreclosure in a subsequent suit instituted for that purpose.

211 So. 2d 41, 43 (Fla. 4th DCA 1968) (quoting 37 Am. Jur. *Mortgages* , § 523). This proposition of law is correct, but it does not help NCP's case. As the Fourth District Court of Appeal noted, the recovery of a judgment on a promissory note secured by a mortgage, without foreclosure of the mortgage, merges the promissory

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note in the judgment, *but it has no effect on the mortgage* . When a judgment is obtained on a note secured by a mortgage without a foreclosure of the mortgage, the mortgage is *not* merged into the judgment. The judgment does not preclude a subsequent action to foreclose the mortgage, but neither does it extend the statute of limitations period on a mortgage foreclosure action that exists separate and apart from the judgment.

NCP also argues that a lender satisfies the statute of limitations for a mortgage foreclosure action by showing separate and continuing defaults, some of which fall within five years of the filing of the complaint. *See Bank of Am., N.A. v. Graybush* , 253 So. 3d 1188, 1192 (Fla. 4th DCA 2018) ("Alleging and proving separate and continuing defaults, some of which fall within five years of the filing of the complaint, satisfies the statute of limitations."). NCP asserts that the Makis' failure to pay the judgment was a continuing default under the HELOC Note that continued after the initial default on the note. But that is not correct. The note having been extinguished and merged into the judgment, the obligation to pay the judgment was a new and different obligation than the original note. The Makis' failure to pay the judgment was a failure to pay the judgment, not a default under the note. This conclusion is apparent from section 95.11, which creates a separate statute of limitations period of twenty years for "an action on a judgment or decree of a court of record in this state," while the statute of limitations period for an action to recover on a promissory note is five years. *Compare* § 95.11(1), Fla. Stat. (2018)*with* § 95.11(2)(b), Fla. Stat. (2018). There is a separate statute of limitations for an action to collect a judgment because such an action is not the same cause of action as the action that was brought to obtain the judgment.

NCP also points to cases in which it contends that courts allowed subsequent foreclosure actions on new defaults on a debt that occurred after a prior lawsuit to collect the debt was dismissed. *See e.g. Bartram v. U.S. Bank Nat'l Ass'n* , 211 So. 3d 1009 (Fla. 2016) ; *Deutsche Bank Tr. Co. Americas v. Beauvais* , 188 So. 3d 938, 944 (Fla. 3d DCA 2016). Based on these cases, NCP asserts that an initial acceleration does not bar a subsequent action based on subsequent payment defaults. However, as the Florida Supreme Court found, when a lender accelerates an installment debt and brings an action to collect it, and the action is dismissed, the dismissal revokes the acceleration and places the parties back in the same contractual relationship they had before the acceleration "where the mortgage remains an installment loan and the [debtor] has the right to continue to make installment payments without being obligated to pay the entire amount due

under the note and mortgage." *Bartram* , 211 So. 3d at 1019 ; *see also Beauvais* , 188 So. 3d at 946. In such a case, where an acceleration was revoked and the debtor's right and obligation to make installment payments was put back in place, there can be a subsequent default on that reinstituted obligation that starts the running of a new statute of limitations period. However, none of that happened in this case. In this case, the action on the note brought by NCP's predecessor in interest was not dismissed, the acceleration was never revoked, the parties were never put back in their original contractual relationship with the Makis having the right and obligation to make installment payments on the HELOC Note, and there was no "subsequent default" on such reinstituted installment payments. The opposite happened here. NCP's predecessor in interest succeeded on its claim for a judgment on the HELOC Note and the note was then merged into the final judgment. The statute of limitations

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on the action to foreclose the mortgage – which is a separate action from an action to collect the amounts owed on a note or an action to enforce a judgment – began to run in October 2014 and no event occurred that tolled or reset the statute of limitations.

Conclusion

NCP's mortgage foreclosure action was barred by the statute of limitations contained in section 95.11(2)(c), Florida Statutes. The trial court erred as a matter of law by concluding otherwise and granting NCP's motion for summary judgment. The final judgment of foreclosure is reversed and this case is remanded to the trial court for further proceedings consistent with this opinion.

REVERSED and REMANDED.

NARDELLA and SMITH, JJ., concur.

Notes:

[1] This case was transferred from the Second District Court of Appeal to this Court on January 1, 2023.

[2] It appears that a senior judge covered the initial hearing on NCP's motion for summary judgment.

[3] NCP asserts in its Answer Brief that the trial court should not have considered the statute of limitations defense in deciding its motion for summary judgment because that defense was not included in the Makis' answer that was pending at the time NCP filed its motion for summary judgment. However, the trial court granted the Makis' motion to amend their answer to assert the statute of limitations defense and did consider the defense in deciding the motion for summary judgment. NCP did not file a cross-appeal. Therefore, the trial court's decision to allow the Makis to argue the statute of limitations defense in opposition to NCP's motion for summary judgment is not at issue in this appeal.

[4] The Makis did not seek a stay of the foreclosure sale pending appeal. The foreclosure sale occurred on September 1, 2022. NCP submitted the winning bid and currently holds title to the Property.

[5] We find no merit to the other arguments raised by the Makis.

[6] The HELOC Note at issue in this case contained an optional acceleration clause. A debt instrument may also include an automatic acceleration clause by which the entire indebtedness automatically becomes due immediately upon default without any action by the lender. "Such an acceleration is self-executing, requiring neither notice of default nor some further action to accelerate the debt." *Snow* , 156 So. 3d at 541. In a case involving a debt instrument containing an automatic acceleration clause, the statute of limitations to foreclose a mortgage securing such debt instrument begins to run immediately upon the default. *See id.*

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