

# Quiz on Recent Real Property Cases

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# Quiz on Recent Real Property Cases

2026

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## Irreparable Harm to a (House) Party

### 1. True or False

**A MUNICIPAL ORDINANCE REQUIRING PERMITS FOR HOUSE PARTIES SO LARGE IN SCALE THAT THEY IMPACT SAFETY, TRAFFIC, PARKING OR THE RIGHT TO NEIGHBOR'S DECENT QUALITY OF LIFE VIOLATES FIRST AMENDMENT AND DUE PROCESS RIGHTS**

## ***Hochstein v. City of Miami Beach***

2024 WL 4966598 (S.D. Fla. 2024)



Miami Beach ordinance required permits for large gatherings on Palm, Hibiscus, and Star islands during Art Basel week festivities where commercial vendors employed or safety, traffic, or “character of the neighborhood” potentially impacted

Celebrity cosmetic surgeon negotiated permit limiting party to 850 people after request for 1,500 rejected; then sued seeking preliminary injunction on an emergency basis, claiming, *inter alia*, violation of due process and 1<sup>st</sup> Amendment rights

U.S. District Court for the S.D. of FL found no showing of a likelihood of success on the merits and that plaintiff would suffer no irreparable harm, which could be compensated by money damages

## **Mortgage Myths or True Facts?**

### **2. True or False**

**A MORTGAGE ON HOMESTEAD  
PROPERTY MUST BE WITNESSED BY  
TWO SUBSCRIBING INDIVIDUALS**

## 13110 Investments, LLC. V. Dumerville

413 So.3d 906 (Fla. 4<sup>th</sup> DCA 2025)



Lender brought action against borrowers, a married couple, to foreclose mortgage on their homestead property

Circuit Court judge held mortgage was deficient and invalid because notary signed as sole witness and mortgage lacked two subscribing witnesses

DCA held that, after the 1968 revision of Article X, Section 4 of the Florida Constitution, Florida law no longer requires two witnesses on mortgages

## Flooding the Zone

### 3. True or False



**IN AN AREA PRONE TO FLOODING,  
JOHNSON V. DAVIS DOES NOT REQUIRE  
SELLERS TO FULLY DISCLOSE THE  
SPECIFIC FLOOD HISTORY OF THE  
PROPERTY BEING SOLD**

## ***Smith v. Lynch***

403 So.3d 433 (Fla. 2d DCA 2024)

- Buyers of St. Pete home inquired when flood insurance tripled shortly after purchase due to "severe repetitive loss"
- Sellers' Disclosure described "slight" water damage to carpets; water in garage
- Sellers had filed \$31,000 insurance claim and were aware of 5 floods at the subject property in prior years
- Trial court granted SJ to Sellers relying on *Nelson v. Wiggs*, 699 So.2d 258 (Fla. 3d DCA 1997) holding a seller has no affirmative duty to disclose that a property lies in a flood-prone neighborhood, as this is readily ascertainable from the environment and public records
- On appeal, 2<sup>nd</sup> DCA held *Johnson v. Davis*, 480 So. 2d 625 (Fla. 1985) requires disclosing a home's extensive flood history and \$31,000 insurance claim as "facts materially affecting the property"

## **Who is domiciled?**

### **4. True or False**

**A CHINESE CITIZEN WHO IS DOMICILED  
IN FLORIDA IS PROHIBITED FROM  
PURCHASING OR OWNING CERTAIN  
REAL PROPERTY IN FLORIDA**

***Shen v. Commissioner, Florida Department of Agriculture and Consumer Services, et al*, 158 F.4th 1227 (11th Cir. 2025)**

A Chinese citizen who lives and owns property in Florida, with the intent to stay in Florida and not return to China, is domiciled in Florida and thus is not subject to the Florida law that prohibits a domiciliary of China from owning certain Florida real property

Under Florida law, a person's domicile is the place the person has presence plus an intent to make the place one's home permanently or for an indefinite period

The above is true even if the person does not have permanent immigration status



## Lis Pendens

### 5. True or False

**WHERE A CIVIL COMPLAINT ALLEGES DAMAGES TO PLAINTIFF'S PROPERTY WERE CAUSED DURING CONSTRUCTION OF DEFENDANT'S HOME, A LIS PENDENS MAY BE PROPERLY RECORDED**

## *Trujilo v. Garcia*

50 Fla. L. Weekly D16 (Fla. 3d DCA 2024)

Trial court dissolved L.P., finding that in the absence of a claim of lien or ownership, there was insufficient nexus between defendant's property and the lis pendens.

3d DCA agreed, finding lawsuit was only for damages and could not affect title; therefore no nexus; dissolution of L.P. was not an abuse of discretion

## ADA claim?

### 6. True or False

**AN AMERICANS WITH DISABILITIES ACT (ADA) CLAIM CAN BE BROUGHT AGAINST A LANDLORD OF A RESIDENTIAL PROPERTY.**

**Marc v. Hartwig** 2025 WL 3136222 (S.D. Fla. Nov. 10, 2025)



Tenant with alleged permanent disability brought action against landlord, who allegedly failed to remedy a lack of electricity and water in his residence, asserting, among other things, discrimination in violation of the ADA



Court held the ADA provides a cause of action for disability discrimination in public accommodations only



Private residential facilities are not public accommodations within the purview of Title III of the ADA

## You call that an “effective date?”

### 7. True or False

**PARTIES’ DISAGREEMENT AS TO WHETHER THE “EFFECTIVE DATE” WAS WHEN SELLER INITIALED KEY PAGES OR WHEN SELLER SIGNED FULL CONTRACT SUFFICIENT TO PRECLUDE SUMMARY JUDGMENT.**

**CNJ Realty  
Associates,  
LLC vs.  
Yankiv**

50 Fla. L. Weekly D117  
(Fla. 2d DCA 2025)

FR/Bar contract contingent on buyers obtaining financing w/in 20 days of effective date

Loan fell through; Buyer sent release and cancellation believing it fell within the time allowed to recover their deposit. Buyer also believed they had earlier waived the financing contingency by notice they would pay cash

Seller argued for an earlier effective date based on having initialed some pages before later signing the full contract. Did not sign or initial dispute resolution page.

Trial court awarded Buyers their deposit via summary judgment

2d DCA reversed, finding that the Seller initialing some pages before signing others and correspondence from the Buyer showed a genuine dispute of material fact regarding the effective date

## Easements

### 8. True or False

**THE MARKETABLE RECORD TITLE ACT  
CAN ELIMINATE A LONG-HELD AND  
CONTINUOUSLY USED LICENSE TO  
ACCESS ADJOINING PROPERTY**

## ***Perrin v. Department of Transportation***

**421 So. 3d 755 (Fla. 1st DCA 2025)**

- Perrin owns land adjacent to property owned by FDOT - root of title was FDOT 1958 vesting deed
- Perrin claimed FDOT's property is encumbered by an easement in favor of lot owners in their subdivision, platted in 1912
- But a recorded 1917 instrument stated the subdivision's common property was dedicated to "Company's stockholders" and the lot owners' rights were at the pleasure of the Company's stockholders
- Court held Perrin's use was pursuant to a license or trespass, not easement, and therefore could not be preserved by MRTA



## **Patently Absurd?**

### **9. True or False**

**OWNERS OF LAND SUBJECT TO A PATENT DEED OFFER OF PUBLIC DEDICATION MAY REVOKE THE OFFER 20 YEARS AFTER LOCAL GOVERNMENT BUILDS A BOARDWALK ON THE LAND, SO LONG AS THE OFFER HAS NOT BEEN "PUBLICLY ACCEPTED"**

## **CBHIV LLC v. Walton County,**

*CBHIV LLC v. Walton County,  
405 So.3d 536 (Fla. 1<sup>st</sup> DCA 2025)*

Owners of properties traversed by a beach-access boardwalk built in 1996 sued Walton County to terminate what they deemed permissive use. Boardwalk was constructed along an area reserved as a right of way in a 1955 U.S. Patent Deed.

Trial court found that the ROA amounted to a common law public dedication giving the County the right to use the property, and that County was entitled to a laches defense based on the long-term use of the land. The trial court also found the County had a right to a prescriptive easement

On appeal, the 1st DCA reversed as to the prescriptive easement but otherwise affirmed, holding that common law dedication requires offer and acceptance, that building of the boardwalk some 20 years prior constituted gov't acceptance of the dedication, and that the County was also entitled to a laches defense

## **Easements 2**

### **10. True or False**

**AN EASEMENT CANNOT DEPRIVE THE  
SERVIENT PROPERTY OWNER OF THE  
REASONABLE USE OF ITS LAND**

***AK Land Title, LLC v. Hurd, 50 Fla. L. Weekly D1780 (Fla. 1st DCA 2025)***



- Vacant lot burdened by an easement for “beach privileges” by virtue of a recorded restrictive covenant
- AK Land Title purchased the land and sought to construct a residence on the property
- Circuit Court permanently enjoined AK from interfering with beach privileges and from building ANY house on the lot
- 1<sup>st</sup> DCA held the injunction against building a house unreasonably deprived AK of the use of its property



## Mobile Home Harm?

### 11. True or False

**HOA BOARD NEED NOT PROVE  
IRREPARABLE HARM IN ORDER TO  
ENJOIN A STRUCTURE DISALLOWED IN  
THE COMMUNITY’S DECLARATION**

## ***Fowler v. Burnham***

*Fowler v. Burnham* 50 Fla. L. Weekly D427 (Fla. 1st DCA 2025)

Local Maintenance association voted to amend Dec to permit mobile homes. Board member Burnham immediately placed a mobile home on his lot. Board withdrew amendment after community pushback. Burnham had mortgaged the property and refused to remove the mobile home. Board seeks injunction for immediate removal

Trial court finds the mobile home is a violation of the Dec, but holds no permanent injunction can be granted without a showing of irreparable harm

1<sup>st</sup> DCA reverses, finding that once a clear violation of a covenant has been established, there is no burden of proof on the plaintiff to establish irreparable harm.

## ***This neighborhood's gone to the birds***

### **12. True or False**

**EVEN WHERE THE INJURED PARTY IN A NUISANCE CASE SUFFERS NO PHYSICAL DAMAGES, HE/SHE CAN RECOVER DAMAGES FOR PERSONAL DISCOMFORT, INCONVENIENCE & ANNOYANCE.**

***Shaw v. Calles*, 50 Fla. L. Weekly D1099a (Fla. 3d DCA 2025)**

- Shaw owned property when Calles moved in next door with more than 100 exotic birds
- Shaw filed suit for nuisance – was granted injunctive relief but denied money damages, and appealed
- 3d DCA held Shaw was entitled to injunction and damages for personal discomfort, inconvenience & annoyance as a result of the nuisance



***Do the facts care about your fee-fees?***

**13. True or False**

**PLAINTIFF IN AN INTERPLEADER ESCROW  
DISPUTE IS ENTITLED TO FEES EVEN ABSENT  
FACTS DEMONSTRATING AN ACTUAL DISPUTE  
OVER THE ESCROWED FUNDS**

***The Firm Law Group Inc. v. Cordero, et al.***, No. 3D25-0292  
(*Fla. 3d DCA, Jan. 21, 2026*)

- Buyers failed to obtain financing w/in 30 day period provided in Contract
- Gave timely written notice to the Seller seeking refund of deposit
- Contract provided Escrow Agent could interplead funds upon competing demands or “good faith doubt”
- Escrow Agent filed interpleader; submitted affidavit of dispute by its own corporate representative, but no affidavit from Seller or evidence of communication of competing demands
- Trial court granted Buyer’s summary judgment and denied Escrow Agent fees
- 3d DCA affirmed

## **Takings**

### **14. True or False**

**TRUST BENEFICIARIES HAVE STANDING TO  
BRING A TAKINGS CASE WHEN PROPERTY IS  
TITLED IN A TRUST**

## *Scarpaci v. United States*, 178 Fed.Cl. 536 (2025)



- US Army Corps of Engineers constructed a beach berm to control beach erosion on the south side of Coney Island in New York – also added 3 million cubic yards of sand in the area
- Within 2 years the north side of Coney Island started experiencing accretion and deposits of additional sand, caused by the Coney Island project
- On the issue of standing: court held that where title is vested in a trust only the trustee had standing to bring a takings claim, not the beneficiaries



## Homestead Waiver Wavered?

15. True or False

**HUSBAND'S POA DEED ON BEHALF OF WIFE  
QUIT-CLAIMING PROPERTY TO HUSBAND AND  
ANOTHER IS INSUFFICIENT TO WAIVE WIFE'S  
HOMESTEAD WITHOUT EXPLICIT LANGUAGE  
TO THAT EFFECT**

## ***Rogers v. Guardianship Program of Dade County***

*James E. Rogers v. Guardianship Program of Dade County, Inc.*,  
50 Fla. L. Weekly D616  
(Fla. 3d DCA 2025)



H & W owned property as TBE. In 2021, husband Stephen executes QCD to himself for life; remainder to James by POA given by wife Sharyn. Stephen dies in 2022. Guardian program sues on behalf of Sharyn based on her homestead rights as a spouse

At trial James argues he paid for the remainder interest and contributed \$230,000 to the property while living with and assisting Sharyn and Stephen

Trial court grants SJ to Guardianship program, finding lack of specific homestead waiver language means QCD fails.

On appeal, 3d DCA affirms based on the clear and undisputed requirement of language waiving homestead rights in the deed.

## **To BNB or not to BNB ...**

### **16. True or False**

**AN ORDINANCE PROHIBITING SHORT TERM RENTALS IN CERTAIN DISTRICTS VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FLORIDA CONSTITUTION.**

***Nichols v. City of Miami Beach, 2025 WL 2787674 (S.D. Fla. 2025)***

- Property owner challenged city ordinances prohibiting short-term rentals in single-family districts
- Claimed the ordinances violated equal protection clause of the FL Constitution
- Court held the city ordinances satisfied the “rational basis” test



*Thank You!*  
for attending



# SELECTED RECENT REAL PROPERTY CASES

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1. ***Hochstein v. City of Miami Beach*, 2024 WL 4966598 (S.D. Fla. 2024)**

Temporary injunction against limitation on party size not warranted because City's ability to mitigate chaos and the strain on the City's resources outweighed Plaintiff's interest in throwing lavish parties.

2. ***13110 Investments, LLC v. Dumerville*, 413 So.3d 906 (Fla. 4th DCA 2025)**

1968 revision of Article X, Sec. 4 of Florida Constitution eliminated requirement for two witnesses on mortgage.

3. ***Smith v. Lynch*, 403 So. 3d 433 (Fla. 2d DCA 2024)**

*Johnson v. Davis* requires sellers to fully disclose specific flood history of property being sold, even in a "flood-prone" area.

4. ***Shen v. Commissioner, Florida Department of Agriculture and Consumer Services, et al.*, 158 F.4th 1227 (11th Cir. 2025)**

A Chinese citizen who lives and owns property in Florida, with the intent to stay in Florida and not return to China, is domiciled in Florida and thus is not subject to the Florida law that prohibits a domiciliary of China from owning certain Florida real property.

5. ***Trujillo v. Garcia*, 50 Fla. L. Weekly D16 (Fla. 3rd DCA 2024)**

Where there is no nexus between litigation and Plaintiff's property, dissolution of a Lis Pendens is proper.

6. ***Marc v. Hartwig*, 2025 WL 3136222 (S.D. Fla. Nov. 10, 2025)**

The Americans with Disability Act provides a cause of action for disability discrimination in public accommodations only, which does not include private residential facilities

7. ***CNJ Realty Associates, LLC v. Gennadiy Yankiv and Elvira Yankiv*, 50 Fla. L. Weekly D117 (Fla. 2nd DCA)**

A Seller initialing some pages before signing others and correspondence from the Buyer shows a genuine dispute of material fact regarding the effective date in a FR/Bar contract.

8. ***Perrin v. Department of Transportation*, 421 So. 3d 755 (Fla. 2025)**

Use of property pursuant to a license or trespass rather than an easement, could not be preserved by MRTA.

9. ***CBHIV LLC v. Walton County*, 405 So.3d 536 (Fla. 1st DCA 2025)**

Common law dedication requires offer and acceptance, and government building a boardwalk constitutes government acceptance of the dedication.

10. ***AK Land Title, LLC v. Hurd*, 50 Fla. L. Weekly D1780 (Fla. 1st DCA 2025)**

An easement burdening land for public “beach privileges” does not support an injunction against building “any” house on the property.

11. ***Fowler v. Burnham* 50 Fla. L. Weekly D427 (Fla. 1st DCA 2025)**

Once a clear violation of a covenant has been established, there is no burden of proof on the plaintiff to establish irreparable harm.

12. ***Shaw v. Calles*, 50 Fla. L. Weekly D1099a (Fla. 3rd DCA 2025)**

Neighbor complaining about resident maintaining 100 exotic birds in the home next door entitled to injunction and damages for personal discomfort, inconvenience & annoyance as a result of the nuisance.

13. ***The Firm Law Group Inc. v. Cordero, et al.*, No. 3D25-0292 (Fla. 3d DCA Jan. 21, 2026)**

Escrow agent was not entitled to fees for filing interpleader where there was no evidence of actual competing demands.

14. ***Scarpaci v. United States*, 178 Fed.Cl. 536 (2025)**

Only the trustee has standing to bring a takings claim when title is vested in a trust. The trust beneficiaries do not have standing.

15. ***James E. Rogers v. Guardianship Program of Dade County, Inc.*, 50 Fla. L. Weekly D616 (Fla. 3rd DCA 2025)**

Husband’s QCD to himself for life; remainder to another via POA given by wife insufficient to waive wife’s homestead rights in the property.

16. ***Nichols v. City of Miami Beach*, 2025 WL 2787674 (S.D. Fla. 2025)**

City ordinance prohibiting short-term rentals in single-family districts not violative of the equal protection clause of the FL Constitution; passed “rational basis” test.