



The Claims Game 2: Claims v. Members

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The Claims Game 2

Claims v. Members

2

Rules of the Game:

- 15 Questions
- Fact Pattern
- A or B
- Explain Why
- Correct Answer = 100 Points
- Opponent's Opportunity to Secure Points
- Highest Total = Winner & Grand Prize

3

Forgery

100 Pts.

4

In 2020, Gary Grantor sold Fundacre to Oscar Owner for \$500,000. Oscar secured a Fund issued owner's policy insuring his purchase. Gary died in 2022. In 2023, Gary's estate sued Oscar alleging the insured deed is a forgery and that the legitimate owner of Fundacre is Gary's estate. During the discovery process, the plaintiff provided an expert handwriting report that concluded the signature on the deed at issue was a forgery. On the other hand, during depositions, the witnesses and notary on the deed all testified that they knew Gary Grantor and he signed it. Dueling motions for summary judgment are filed. Will Oscar win?

5

A

Yes, Oscar Owner wins because the testimony of an expert witness cannot overcome the testimony of the deed witnesses and notary public.

B

No, Gary Grantor's estate wins because the expert witness opinion carries a greater weight than the potentially interested testimony of the witnesses and notary.

6

Correct Answer is “A”

See *Dozier v. Smith*, 446 So.2d 1107 (Fla. 2nd DCA 1984)

7

SCORE

Claims
100

Members
0

8

Adverse Possession

100 Pts.

9

Dad owns a single-family home on 5 acres. Dad dies in 2010 leaving behind two adult heirs. Heir #1 continues to reside on the property until they sell the property to Ben Buyer (a Fund insured) via Warranty Deed in 2012. The deed to Ben states it is in fee simple. Ben possesses the property until 2024 when he is sued by Heir #2 in partition. Part of Ben's defense includes an affirmative defense and counter-claim to quiet title based on the theory of adverse possession with color of title. Heir #2 takes the position that adverse possession does not apply as he is a co-tenant. Who is correct?

10

A

Heir #2 is correct as the doctrine of adverse possession cannot apply to a party who is vested with an undivided interest in the property as a co-tenant.

B

Ben Buyer is correct and is the owner of the entire fee as adverse possession can apply to a co-tenant.

Correct Answer is "B"

See *Morrison v. Byrd*, 72 So.2d 657 (Fla. 1954)

SCORE

Claims
100

Members
100

13

Easements

100 Pts.

14

Bob Buyer owns an insured parcel in rural Big County, Florida. The parcel is adjacent to a public right of way. An aerial photo shows a dirt road traveling from the right of way, over a portion of the insured parcel and ending at landlocked property owned by Paul Plaintiff. Paul brings a lawsuit against Bob. Count 1 is for a Prescriptive Easement and Count 2 is for a Statutory Way of Necessity over the insured parcel. Assuming Paul is going to secure some kind of easement, which easement will Paul end up securing and will Paul have to pay anything for it?

15

A

Paul will secure a prescriptive easement so long as he can establish the elements in support of same. Furthermore, Paul will not have to compensate Ben for the use of such easement.

B

Paul will secure a statutory way of necessity over Bob's property but will have to compensate Ben for the use of such easement.

16

Correct Answer is “B”

See Sapp v. General Development, 472 So.544 (Fla. 2nd DCA 1985)

17

SCORE

Claims
100

Members
200

18

Priority of Liens – Part 1

100 Pts.

19

Big Developer entered into 10 pre-construction contracts with 10 contract vendees collecting \$100K each in deposits for a total of \$1M. Two months later, Big Developer then borrowed \$5M from the insured (Mega Bank). \$2M to purchase the raw land & an additional \$3M for construction. The project fails after which Mega Bank files to foreclose against Big Developer and the 10 contract vendees. The 10 contract vendees band together and allege they have a \$1M equitable lien that is superior to Mega Bank. Will the contract vendees win?

20

A

Yes, the contract vendees will have an equitable lien equal to \$1M and their lien will be superior to Mega Bank's \$5M mortgage.

B

No, Mega Bank's mortgage will have priority over the contract vendees \$1M equitable lien but only as to that portion of the Mega Bank loan that was purchase money in nature (\$2M).

21

Correct Answer is "B"

See *BancFlorida v. Hayward*, 689 So.2d 1052 (Fla. 1997)

22

SCORE

**Claims
200**

**Members
200**

23

Priority of Liens – Part 2

100 Pts.

24

Even though the contract vendees' equitable lien was found to be junior to the first \$2M of Mega Bank's loan, the contract vendees refuse to give up. They are now wanting the court to rule that their \$1M equitable lien is superior to the \$3M designated as funds for construction. Under what circumstances will the contract vendees have priority over the \$3M?

25

A

The contract vendees will not have priority over the \$3M construction component of the loan from Mega Bank if the relevant pre-purchase contracts include language subordinating their claim to any subsequently given mortgages.

B

The contract vendees will always have priority over any portion of a competing mortgage not designated as purchase money in nature irrespective of any contract language to the contrary.

26

Correct Answer is “A”

See *Posnansky v. Breckenridge Estates Corp.*, 621 So.2d 736 (Fla. 4th DCA 1991)

27

SCORE

Claims
300

Members
200

28

Fraud in the Inducement

100 Pts.

29

Ed Evildoer and Bill Borrower are roommates. Ed has expensive habits but is low on cash. In order to raise funds to subsidize his lifestyle, Ed convinces that he and Bill should go into business together. In furtherance of his scheme, Ed presents Bill with various documents that Ed says are needed to start the business, including a \$500K mortgage to the Insured Lender encumbering Bill's otherwise free and clear property. Ed absconds with the proceeds and defaults thereafter. In response to a foreclosure suit, Bill counterclaims to quiet title based on the alleged fraud perpetrated on him by his "ex-roommate" Ed. Who will win the issue of the mortgages validity?

30

A

Insured Lender wins so long as there is no evidence that the Insured Lender was part of the fraudulent scheme.

B

Bill Borrower wins because a mortgage that is procured by fraudulent misrepresentations is void.

31

Correct Answer is “A”

- See *JAK Capital, LLC v. Adams*, 306 So. 3d 1285 (Fla. 2nd DCA 2020)

32

SCORE

Claims
300

Members
300

33

Witness Requirements

100 Pts.

34

Dad has two children, Adult Child 1 and Adult Child 2. While still alive, Dad gives a deed to Fundacre to Adult Child 1. Two witnesses were present but they did not sign the deed until 2 weeks after Dad died. Adult Child 1 subsequently sells to Insured Owner. Feeling slighted by Dad, Adult Child 2 brings a lawsuit challenging Insured Owner's title. Specifically, Adult Child 2 alleges the deed from Dad is void because it did not comply with Florida Statute 689.01. If correct, title would be vested in the Estate of Dad and Adult Child 2 would be entitled to $\frac{1}{2}$ of Dad's Estate, including Fundacre. Dueling motions for summary judgment are filed as to the validity of the deed from Dad. Who wins?

35

A

Insured Owner wins because the deed from Dad was properly executed in compliance with Florida Statute 689.01.

B

Adult Child 2 wins because strict compliance with Florida Statute 689.01 is required.

36

Correct Answer is “A”

See *Sweat v. Yates*, 463 So.2d 306 (1st DCA 1985)

37

SCORE

Claims
400

Members
300

38

Standing

100 Pts.

39

In 2010, Bill Borrower gave a \$250K first mortgage to Insured Lender. Bill subsequently lost the property in a small HOA lien foreclosure to a third-party bidder. The third-party bidder subsequently flipped the property to Al Adverse. Bill defaults under the mortgage after which Insured Lender brings a foreclosure action against the insured property, naming Bill Borrower and Al Adverse as party defendants. Bill rolls over and doesn't put on a defense, while Al alleges that the insured mortgage is void because it was the product of a forgery. Will Al be successful in his defense?

40

A

No, Al Adverse will not be able to maintain his forgery defense because only parties to the note and mortgage have standing to challenge the insured mortgage.

B

Yes, Al Adverse will be able to maintain his forgery defense because any party can challenge the validity of a lien based on an alleged forgery.

41

Correct Answer is “A”

See *Wells Fargo v. Rutledge*, 230 So.3d 550 (2nd DCA 2017)

42

SCORE

Claims
400

Members
400

43

Title Defects

100 Pts.

44

Oscar Owner secures ownership of a large tract of land next to a public park. As part of his development plans, Oscar discovers that the eastern 1/3 of the property is not owned by him, but is actually public lands. Subsequent to his discovery, Oscar purchases an owner's policy of title insurance from The Fund. Oscar then files a claim over the partial failure of title to the eastern 1/3 of the insured property. Does The Fund have to extend coverage?

45

A

No, Title Insurer does not have to extend coverage to the named insured because, although the defect was of record, the named insured knew of the defect prior to procuring the policy.

B

Yes, the Title Insurer has to extend coverage to the named insured as the defect was readily available from the official records.

46

Correct Answer is “A”

See *Nourachi v. First American Title Ins. Co.*, 44 So.3d 602 (5th DCA 2010)

47

SCORE

Claims
500

Members
400

48

Joint Tenancies

100 Pts.

49

Abbott and Costello own Fundacre as JTWROS. In 2010, Abbott (alone) gave a \$250K mortgage to Adverse Bank. Abbott dies in 2019. In 2020, Costello sells to the Fund insured owner. For reasons unknown, the mortgage goes unpaid. In 2024, Adverse Bank files a suit to foreclose against a $\frac{1}{2}$ interest in the property, naming the insured owner as a defendant. Adverse Bank files a motion for summary judgment seeking the entry of a FJ of foreclosure as to a $\frac{1}{2}$ interest which is opposed by the Insured Owner. Will Adverse Bank be successful with their motion?

50

A

No, Adverse Bank will lose because its mortgage ceased being a lien against the insured property when Abbott died.

B

Yes, Adverse Bank will win because the giving of the mortgage severed the JTWROS and the mortgage lien survived Abbott's death.

51

Correct Answer is "A"

See *D.A.D. v. Moring*, 218 So.2d 451 (Fla. 4th DCA 1969)

52

SCORE

Claims
600

Members
400

53

Reformation

100 Pts.

54

Title to Fundacre has been in Harry Husband and Wilma Wife, as TBE since 2010. The property is Harry & Wilma's homestead and is owned free and clear. In 2023, they gave a \$500K mortgage to Insured Lender. Although Wilma was at the closing, only Harry signed the mortgage. In 2024, Insured Lender filed a foreclosure suit against Harry and Wilma. Count 1 of the suit sought to reform the insured mortgage and "add" Wilma's signature. Harry and Wilma opposed the lawsuit, taking the position that the insured mortgage was void due the homestead nature of the property as well as a lack of spousal joinder. Can the insured mortgage be successfully reformed which would preserve the mortgage lien as insured?

55

A

No, unfortunately the insured mortgage is void due to a lack of spousal joinder and is not subject to reformation.

B

Yes, the insured mortgage can be reformed to add the missing signature.

56

Correct Answer is “B”

See *Countrywide Home Loans v. Kim*, 898 So.2d 250 (Fla. 4th DCA 2005)

57

SCORE

Claims
600

Members
500

58

Definition of Public Records

100 Pts.

59

In 2020, Iris Insured purchased 123 Main Street and secured a Fund owner's policy of title insurance. Iris got a good deal on the property because it was a fixer-upper. Unknown to her, at closing, there were three active code violation cases according to local City Code Compliance Records. Iris subsequently received various demand letters from the City regarding the violations which demanded immediate cures and the payment of delinquent fines or else face possible foreclosure. In response, Iris submitted a claim under her owner's policy as the violations were not listed on Schedule B. Does Iris have a viable claim?

60

A

No, code violations of this nature are excluded from coverage under an owner's policy of title insurance.

B

Yes, code violations are one of the Covered Risks associated with an owner's policy of title insurance.

Correct Answer is "A"

See Hon Realty Corp. v. First American Title Ins. Co., 291 Fed. Appx. 951 (S.D. Fla. 2008)

SCORE

**Claims
700**

**Members
500**

63

After-Acquired Title

100 Pts.

64

On January 2, 2020, Bill Borrower gave a \$200K mortgage to Insured Lender. Although Bill gave the mortgage on January 2, 2020, he did not secure title until he secured a deed on January 15, 2020. On February 10, 2020, Bill gave a \$250K mortgage to Adverse Lender. Bill subsequently defaulted on both mortgages. Insured Lender filed a foreclosure suit and joined Adverse Lender as a junior lienholder. Adverse Lender then filed affirmative defenses and a Counter-Claim attempting to foreclose its mortgage including against the Insured Lender. Dueling motions for summary judgment are filed. Whose motion will succeed?

65

A

Insured Lender's motion wins because the doctrine of after acquired title applies to mortgages, thus preserving the insured lender's priority.

B

Adverse Lender's motion wins because the insured mortgage is void and the doctrine of after acquired title does not apply to mortgages.

66

Correct Answer is “A”

See *BCML Holding, LLC v. Wilmington Trust, N.A.*, 201 So.3d 109 (Fla. 3rd DCA 2015)

67

SCORE

Claims
700

Members
600

68

Statute of Limitations

100 Pts.

69

Gary Grantor gave Adverse Bank a \$100K note and mortgage in 2000. Gary subsequently defaulted in 2005. Instead of foreclosing, Adverse Bank declared a default in 2005 and sued under the note, securing a final money judgment in 2006. Adverse Bank recorded a 55.10 compliant judgment that same year (2006) but never foreclosed or re-recorded its judgment. Gary sold the property to Insured Owner in 2023. Neither the judgment, nor the mortgage were addressed at closing. Adverse Bank filed an action to foreclose its mortgage in 2024. Will Adverse Bank be able to successfully foreclose its mortgage?

70

A

No, Adverse Lender cannot successfully foreclose because the statute of limitations has run.

B

Yes, Adverse Lender can successfully foreclose because it is not barred by any applicable statute of limitations.

Correct Answer is “A”

See *Maki v. NCP Bayou 2, LLC*, 368 So.3d 1081 (Fla. 6th DCA 2023)

SCORE

Claims
700

Members
700

73

Fund History

100 Pts.

74

The Fund was founded in what year?

75

A

1948

B

1947

76

Correct Answer is “A”

1948

77

FINAL SCORE

Claims
700

LOSER!

Members
800

WINNER!

78

The logo consists of the letters 'FA' in a blue, serif font, centered within a white square. This white square is itself centered within a larger blue rectangle that has a thin black border.

FA