

LEGISLATIVE UPDATE – 2018

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COVENANTS AND RESTRICTIONS - MRTA SESSION LAW CH. 2018-55 (HB 617) EFFECTIVE OCTOBER 1, 2018

This law modifies Chs. 712 and 720, F. S. pertaining to the preservation and revitalization of covenants and restrictions upon the use of real property. The law replaces the term “homeowners’ association” with “property owners’ association” within Secs. 712.05, 712.06, 712.11 and 720.403, F.S. extending the ability to preserve covenants and restrictions within 30 years of recordation of a root of title and revitalize the same after expiration from residential owners and homeowners’ associations to property owners’ associations. This law defines property owners’ association to include an entity responsible for the operation of the property in which voting membership is made up of the property owners or their agents with mandatory membership as a condition of ownership or wherein the owners are authorized to enforce a community covenant or restriction. This modification extends the right to preserve and revitalize covenants and restrictions to commercial property owners’ associations and those owners with no association.

Ch. 712, F. S. is officially given the short title “Marketable Record Title Act” in Sec. 712.001.

As modified, Sec. 712.05, F.S. permits preservation of covenants and restrictions by recording either a written notice as set forth in Sec. 712.06 or 720.3032(2), F.S. Although newly created Sec. 712.12 (2)(d), F.S. instructs that “[t]he indexing requirements of Sec. 720.407(3), F.S. may be satisfied by indexing the community name in the covenants or restrictions as grantee and the parcel owners as grantors”, failure of a summary notice of amendment to be indexed to the current property owners or affected property will not affect the validity of the notice. Newly created Sec. 720.3032(2), F.S. sets forth a form for notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record Title Act.

The requirement for approval by at least two-thirds of the members of a board of directors of an incorporated homeowners’ association for the preservation of covenants or restrictions has been removed from Sec. 712.05, F.S.

Newly created Sec. 712.12(2), F.S. provides that parcel owners in a community which is not subject to a homeowners’ association may use the procedures set forth in Secs. 720.403 – 720.407, F.S. to revive covenants that have lapsed. Pursuant to Sec. 712.12(3), F.S. a parcel owner has until October 1, 2019 to commence a judicial action to establish that as of October 1, 2018 a parcel has ceased to be governed by covenants or restrictions and that revitalization as to that parcel would unconstitutionally deprive that parcel owner of rights or property.

Sec. 720.303(2)(e), F.S. requires consideration of the desirability of filing notices to preserve covenants or restrictions affecting a community or an association at the first annual meeting of the board of directors following its organizational meeting.

**COMMUNITY ASSOCIATIONS
SESSION LAW CH. 2018-96 (HB 841)
EFFECTIVE JULY 1, 2018**

This law amends all three of Florida’s major community association statutes – Ch. 718, F.S. (condominiums); Ch. 719, F.S. (cooperatives); and Ch. 720, F.S. (HOA’s). Of note, this law provides:

- Certain condominium association official records must be permanently maintained from the inception of the association;
- Limitation of liability on the part of a condominium association for disclosure of protected or restricted information;

- Guidelines for the electronic publication of notice of condo and co-op board meetings and shareholder meetings. Notices of meetings in which regular or special assessments will be considered must state the estimated cost and purposes of the proposed assessments;
- Procedures for challenges by recalled board members;
- The 75% owner approval for material alterations or substantial additions to condominium common elements or to association property must be obtained before the alterations or additions are commenced;
- Condo declarations or restrictions may NOT prohibit or be enforced so as to prohibit a unit owner from installing an electric vehicle charging station within the owner's limited common element parking area. Conditions for maintenance and use of the charging stations are also provided. Labor performed or materials furnished for the installation of the charging station may not be the basis for a lien against the association – but a lien may be filed against the unit owner;
- Sec. 718.3027, F.S. is amended to provide conditions for approval or cancellation of a contract by the association's board of directors;
- Additional provisions are added to all three statutes regarding the imposition of fines upon unit owners for violations of governing documents and the collection of such fines;
- Membership requirements for certain condo or co-op boards of directors;
- Prohibition on board members using email to vote on association matters;
- A director or officer of a co-op association more than 90 days delinquent in the payment of any monetary obligation due to the association is deemed to have abandoned the office, creating a vacancy;
- Numerous provisions are added to Sec. 720.306, F.S. regarding content and procedure for amendment of HOA governing documents.

**FLORIDA FIRE PREVENTION CODE
HB 529 – EFFECTIVE JULY 1, 2018**

This bill adds a subsection (20) to Sec. 633.202, F.S. in order to create conditions for the safe placement of doorstep refuse and recycling collection containers in the corridors of apartment buildings.

**HOMESTEAD WAIVERS
SESSION LAW CH. 2018-22 (SB 512)
EFFECTIVE JULY 1, 2018**

This law creates the legal ability for a spouse to waive homestead rights with regard to devise restrictions as a surviving spouse under Article X, Sec. 4, Florida Constitution, when specific language (or substantially similar) is included in an inter vivos deed out of that spouse. This law cautions that the waiver language in the deed is neither a waiver of homestead protection against the owner's creditors' claims during the lifetime of the owner nor after death, nor is the language a waiver of the constitutional restriction on alienation of homestead without spousal joinder during the lifetime of both spouses.

**EQUITABLE DISTRIBUTION IN DISSOLUTION
SESSION LAW CH. 2018-56 (HB 639)
EFFECTIVE JULY 1, 2018**

This law may affect real estate practitioners when there is a divorce involved with a real estate transaction. Sec. 61.075, F.S. is amended to redefine marital assets and liabilities by providing a statutory calculation to calculate the marital portion of passive appreciation of a nonmarital asset subject to equitable distribution. It is the same definition used in case law but is now statutory. The parties may still argue use of the formula as inequitable under specific facts.

**TRUSTS
SESSION LAW CH. 2018-35 (HB 413)
EFFECTIVE JULY 1, 2018**

This law revises provisions dealing with electronic posting of notices to persons under the Trust Code. Sec. 736.04117, F.S., entitled "Trustee's power to invade principal in trust" has been reworded to provide for definitions under the statute and provide for distributions from first to second trust or to a supplemental needs trust and limitations to such distributions.

GUARDIANSHIPS
SESSION LAW CH. 2018-68 (HB 1187)
EFFECTIVE JULY 1, 2018

This law amends Sec. 744.2104, F.S. to allow a designee of the Office of Public and Professional Guardians to receive financial audits, medical, financial and mental health records on its behalf in connection with a complaint against a guardian.

In addition, Sec. 744.368, F.S. is amended to permit the clerk of the circuit court to conduct audits and to advise the court of the results of such an audit. In connection with such an audit or a review, a guardian may not seek payment or reimbursement from a ward's assets of fees and costs incurred in responding if a court finds wrongdoing. Further, Sec. 744.3701, F.S. is amended to allow the clerk to disclose confidential information to Department of Children & Families or law enforcement agencies as provided by court order. Lastly, Sec. 744.444, F.S. is amended to expand the powers of plenary and limited guardians to provide confidential information about a ward to certain persons in connection with specific investigations.

OUT- OF- COUNTRY FOREIGN MONEY JUDGMENTS
SESSION LAW CH. 2018-37 (HB 623)
EFFECTIVE MARCH 19, 2018

This law adds two discretionary exceptions to Sec. 55.605, F.S. which would allow a Florida court to refuse to recognize or enforce an out-of-county foreign judgment. The two exceptions are:

- 1) Circumstances where there is "substantial doubt" about the integrity of the court that issued the judgment; and
- 2) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

The above discretionary exceptions were added to make a distinction between systemic corruption in the foreign judiciary and situations where the "fairness" of the instant case is called into question because of prejudicial treatment of the judgment debtor.

TITLE INSURANCE
SESSION LAW CH. 2018-131 (HB 465)
EFFECTIVE MARCH 30, 2018

This law deals with several different types of insurance. Of relevance to title insurance agents, the law amends various aspects of Ch. 627, F.S.:

- Subsection (4) is added to Sec. 627.416, F.S. to allow an insurer to elect to issue a policy that is not executed by an officer, attorney in fact, employee or representative – and the policy may not be rendered invalid by reason of its execution in that manner;
- A third-party assignee of policy benefits is added to Sec. 627.7015, F.S. as a proper person to request mediation of a claim resolution, but the insurer is not required to participate in any mediation requested by such an assignee of policy benefits;
- The term “insured” is changed to “policyholder” in various subsections;
- Under a revision to Sec. 627.728(5), F.S., mailing using the Intelligent Barcode or similar tracking method approved by the U.S. Postal Service is added to the list of sufficient proof of notice in the context of cancellation or non-renewal of policies.

INSURANCE
SESSION LAW CH. 2018-102 (HB 1073)
EFFECTIVE JULY 1, 2018

This law mainly concerns life insurance. However, of interest to real estate practitioners in certain real estate transactions, is that the law clarifies and expands the circumstances in which a life agent may serve as trustee, guardian, or act as agent under a power of attorney for his own insured.

UNFAIR INSURANCE TRADE PRACTICES
HB 483 – EFFECTIVE JULY 1, 2018

Of interest to real property practitioners and title insurance agents, this bill amends Sec. 626.9541, F.S. to clarify that a title insurance agent or insurer may give to insureds or prospective insureds or others (for advertising purposes) any item of merchandise having a value not exceeding \$25.

ACTIONS FOR POSSESSION OF REAL PROPERTY
SESSION LAW CH. 2018-94 (HB 631)
EFFECTIVE JULY 1, 2018

This law amends various provisions of Chs. 66, 82 and 163, F.S. dealing with actions to recover possession of real property. Among other things, this law:

- Amends Sec. 66.021, F.S. to define the right of action for “ejectment”, clarifies that circuit courts have exclusive jurisdiction in ejectment actions and that pre-suit notice or demand to a defendant may not be required;
- Mandates that copies of the instruments making up the chain of title must be attached to the complaint in an action for ejectment or in the answer, as applicable;
- Clarifies that the remedies provided under Sec. 66.021, F.S. are cumulative to remedies provided under other Florida law;
- Amends Sec. 82.01, F.S. to provide new definitions for “Forcible entry”, “Real property”, “Record titleholder”, “Unlawful detention” and “Unlawful entry”;
- Clarifies that Ch. 82, F.S. does not apply to residential tenancies under Part II of Ch. 83, F.S. nor to the possession or real property under Chs. 513 or 723, F.S.;
- Amends Sec. 82.03, F.S. to provide specific remedies in actions for possession of real property;
- Amends Sec. 82.04, F.S. to provide that the court shall determine only the right to possession and damages, not questions of title - unless necessary to determine the right to possession;
- Amends Sec. 82.05, F.S. dealing with service of process;
- Creates Sec. 163.035, F.S. to set the criteria for the establishment of “recreational customary use.”

TRANSIENT OCCUPATION
SESSION LAW CH. 2018-83 (SB 566)
EFFECTIVE JULY 1, 2018

This law amends Sec. 82.045, F.S. concerning transient occupancy of a residence to define a transient occupant as one who cannot produce identification, documentation or correspondence from any government agency which shows that the person used the property address as an address of record within the last 12 months. It further amends the section to consider termination of the transient occupancy when the transient surrenders the key to the dwelling, resides elsewhere or is directed by law enforcement with an affidavit from the court or the party entitled to possession. Transient occupancy is not extended by presence of belongings of the transient.

CORAL REEFS
SESSION LAW CH. 2018-30 (HB 53)
EFFECTIVE JULY 1, 2018

This law establishes the “Southeast Florida Coral Reef Ecosystem Conservation Area.” The Conservation Area consists of the sovereignty submerged lands and state waters offshore from Broward, Martin, Miami-Dade and Palm Beach counties from the St. Lucie Inlet to the northern boundary of the Biscayne National Park.

GULF OF MEXICO
SR 550 (SJ 315)
ADOPTED BY THE SENATE FEBRUARY 8, 2018

This is a Senate Resolution which is not subject to action by the Governor and does not have the effect of law. However, it is a pronouncement of great concern that the legislature has in a certain area of interest. Here the concern is supporting an indefinite extension of the current moratorium on drilling in the Gulf of Mexico. The Florida Senate feels that oil and gas leases in certain areas would adversely affect the training missions and access to sea and land of NAS Pensacola, NAS Whiting Field, Hurlburt AFB, Duke Field, Eglin AFB, NAS Panama City, Tyndall AFB, MacDill AFB, and NAS Key West.

STATE ASSUMPTION OF FEDERAL DREDGE AND FILL PERMITTING AUTHORITY
SESSION LAW CH. 2018-88 (HB 7043)
EFFECTIVE MARCH 23, 2018

New Sec. 373.4146, F.S., establishes legislative authority intended to enable the Department of Environmental Protection to assume and implement the federal Sec. 404 dredge and fill permitting program in conjunction with the environmental resource permitting program. The state’s assumption application requires approval of the United States Environmental Protection Agency. Federal law will apply but the state may impose regulations that do not conflict. A permit granted by the state under this authority shall not have a term greater than 5 years. Expedited review shall apply for renewal applications. Federal waterways regulated by the state under this authority shall be known as “state assumed lands.”

LANDS USED FOR GOVERNMENTAL PURPOSES HB 1173 – EFFECTIVE UPON BECOMING LAW

This bill amends various provisions of Chs. 253, 259, 288 and 380, F.S. dealing with requirements for lands used for governmental purposes including lands under the Military Base Protection Program, lands designated as areas of critical state concern and projects under the Florida Forever Act. Of particular interest, the bill:

- Provides specified appraisal standards in connection with the acquisition of lands for the purpose of buffering military installations against encroachment;
- Following acquisition of military installation buffer land, authorizes the Board of Trustees of the Internal Improvement Trust Fund (TIIF) to lease or convey such land at less than appraised value to military installations;
- Provides requirements for such leasing and conveyancing including reversion of the land conveyed at less than appraised value back to TIIF where such land is not used for its intended purposes as a military installation buffer or where the military installation closes;
- Authorizes the use of certain funding sources for the immediate acquisition of lands that prevent or satisfy private property rights claims within areas of critical state concern;
- Authorizes TIIF to waive certain procedures for land acquisition on an immediate basis for lands within areas of critical state concern and provides procedures for estimating the value of such lands under certain conditions;
- Authorizes the Department of Environmental Protection to acquire certain conservation and recreation lands to prevent or satisfy private property rights claims within areas of critical state concern and provides procedures for estimating the value of such lands under certain conditions;
- Adds natural disasters and flood mitigation as criteria for assessing certain projects and land acquisitions under the Florida Forever Act; and
- Authorizes land authorities to contribute tourist impact tax revenues to counties to pay for project costs relating to the construction, redevelopment and preservation of certain affordable housing.

**SURPLUS LANDS
HB 705
EFFECTIVE JULY 1, 2018, PROVIDED HB 703 ALSO BECOMES LAW**

This bill focuses on Ch. 373, F.S. and the confidentiality of written valuations of surplus lands owned by water management districts. Except as provided in the bill, the Legislature deems it a public necessity that the written valuations of surplus lands and their related documents be made confidential and exempt from disclosure under Sec. 119.07(1), F.S. The efficacy of this bill is tied to the adoption of HB 703.

**WATER MANAGEMENT DISTRICTS
HB 703 – EFFECTIVE JULY 1, 2018**

This bill supplements existing law regarding the sale of surplus lands by water management districts. Notice of intention to sell such lands must now be made on the respective district's website. Adjacent property owners are entitled to purchase surplus lands worth \$25K or less, but if no such sale occurs, the district may sell the lands to the general public for the highest price obtainable.

**TAXATION
SESSION LAW CH. 2018-118 (HB 7087)
EFFECTIVE JULY 1, 2018**

This comprehensive legislation provides for a wide range of tax reductions affecting members of the military, families and businesses. It further provides for revisions to Chs. 20, 28, 125, 159, 163, 193, 194, 196, 197, 201, 202, 205, 206, 210, 212, 213, 218, 220, 318, 320, 376 and creates new Ch. 451, F.S. Of particular interest to real estate practitioners, this law provides for:

SPOUSAL TRANSFERS OF HOMESTEAD: Amends Sec. 201.02(7), F.S. to provide an exemption from documentary stamp taxes for a deed or other instrument that transfers or conveys homestead property, or any interest therein, between spouses if: the only consideration for the conveyance is the amount of a mortgage or other lien encumbering the homestead property at the time of the conveyance; and the deed or other instrument is recorded within 1 year after the date of the marriage. This exemption applies regardless of whether the conveyance is from one spouse to another, from one spouse to both spouses or from both spouses to one spouse.

HOMESTEAD ASSESSMENTS-ABANDONMENT AFTER TROPICAL

STORMS/HURRICANES: Sec. 193.155, F.S. concerning homestead assessments, is amended to allow owners of homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane to elect to have the homestead property deemed abandoned as of the date of such storm or hurricane. This election is available only if the owner establishes a new homestead by January 1 of the second year immediately following the storm or hurricane and is only applicable to homestead property damaged or destroyed on or after January 1, 2017.

HOMESTEAD ASSESSMENTS-UNINHABITABILITY AFTER TROPICAL

STORMS/HURRICANES: New Sec. 197.318, F.S. is created to provide a tax relief credit for homestead properties on which certain defined residential improvements were damaged or destroyed by hurricanes Hermine, Matthew and Irma. If a residence was rendered uninhabitable for at least 30 days due to one of the foregoing named hurricanes, a tax credit against the property taxes levied in 2019 may be available. Sec. 194.032(1)(b), F.S. is amended to provide that value adjustment boards may hear appeals pertaining to such tax abatements under newly created Sec. 197.318, F.S.

TAX EXEMPTION-HFA MORTGAGES: Sec. 159.621, F.S. is amended to exempt any note or mortgage given in connection with a loan made by or on behalf of a housing finance authority (HFA) pursuant to Sec. 159.608(8), F.S. from documentary stamp taxes under Ch. 201, F.S. under certain conditions.

TAX EXEMPTIONS FOR CERTAIN LOANS: New Sec. 201.25, F.S. is created to provide a tax exemption for loans made by the Florida Small Business Emergency Bridge Loan Program in response to a disaster that results in a state of emergency and loans made by the Agricultural Economic Development Program pursuant to Sec. 570.82, F.S.

SALES TAX ON RENTAL OF COMMERCIAL REAL ESTATE (BUSINESS RENT TAX):

Sec. 212.031 (1), F.S. is amended to reduce the state sales tax rate on rental of commercial real estate from 5.8 percent to 5.7 percent.

INSTRUMENTS SURVIVING TAX DEED SALES: Sec. 197.572, F.S. is amended to provide that easements supporting improvements that may be constructed above lands survive tax deed sales. In addition, technical changes are made to Sec. 197.573(2), F.S.

MULTIPLE PARCEL BUILDING - AD VALOREM TAXATION: By this law, Sec. 193.0237, F.S. is created to address ad valorem tax assessments in connection with multiple parcel buildings. Of particular importance:

Subsection. (1)(a) defines a “multiple parcel building” (“MPB”) as a building, other than a building consisting entirely of a single condominium, timeshare or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.

Subsections (2) and (3) prohibit separate assessments against the land upon which an MPB is located, regardless of ownership, and requires the property appraiser to allocate all of the just value of the land among the parcels in the MPB in the same proportion that the just value of the improvements in each parcel bears to the total just value of all the improvements in the entire MPB.

Each parcel in an MPB must be assigned a separate tax folio number.

This law further provides that a condominium, timeshare or cooperative may be created within a parcel in an MPB. However, where a condominium or cooperative is created within a parcel of an MPB, a separate tax folio number must be assigned to each condominium or cooperative unit.

Subsection (6) provides that all provisions of a recorded instrument affecting a parcel in an MPB, which parcel has been sold for taxes or special assessments, survive and are enforceable.

Pursuant to subsection (7), newly created 193.0237, F.S. applies to any land on which an MPB is substantially completed as of January 1 of the respective assessment year and to assessments beginning in the 2018 calendar year.

**SUPER MAJORITY VOTE FOR STATE TAXES OR FEES
HJR 7001
FILED WITH THE SECRETARY OF STATE MARCH 16, 2018**

This is Joint Resolution proposing the creation of Sec. 19 of Article VII of the Florida State Constitution to provide that no state tax or fee be imposed or raised without the approval of 2/3 of the membership of the entire legislature and presented to the Governor for approval. The new section will not apply to any tax or fee imposed by a county, municipality, school board, or special district. This Joint Resolution will be put on the ballot as a Constitutional Amendment. "Fee" is interpreted as "user fees" that are used to recover costs of goods and services provided by the government such as highway tolls, parks admissions, and university tuition or as "regulatory fees" for the costs of licensing or permitting. If the voters approve this proposed Constitutional Amendment, it will become effective as of January 8, 2019.

**TAX DEED SALES
HB 1383 – EFFECTIVE JULY 1, 2018**

This bill amends and supplements the existing provisions of Secs. 197.502, F.S., 197.522, F.S. and 197.582, F.S. Of particular interest to real estate practitioners, this bill:

- Requires a certificate holder applying for a tax deed to pay the costs to bring the property to sale, including property information searches and mailing costs, and further requires cancellation of a tax deed application if the certificate holder fails to pay said costs after notice from the clerk's office;
- Provides for taxes and costs associated with a cancelled tax deed application to earn interest at the bid rate for the certificate on which the tax deed application was based;
- Requires that for financial institution lienholders and mortgagees, the address on file with the Department of State be used for notice;
- Requires each tax collector to contract with a title company or an abstract company to provide a property information report, defined in Sec. 627.7843(1), F.S.;
- Requires the clerk to record a notice of tax deed application in the official records and makes further provisions in connection with such recorded notice;

- Provides that sending the notice of the application for tax deed as required under Secs. 197.512 and 197.522, F.S., to the persons entitled to receive notice under Sec. 197.502(4), F.S. is deemed conclusively sufficient to provide adequate notice of the application and sale at public auction;
- Adds current taxes and certain other fees or costs incurred by the clerk to the list of costs required to be added to the opening bid for all tax deeds;
- Provides that for notice to owner, the clerk may rely on the addresses provided by the tax collector based upon the certified tax roll and property information reports with no further duty to inquire;
- Revises procedures for the disbursement of surplus funds and related service charges by the clerk;
- Provides for procedures and limitations in connection with claims to surplus proceeds, including limitations on claimants other than the property owner, holders of certain governmental liens and ad valorem tax liens; and
- Applies to tax deed applications filed on or after Oct. 1, 2018.

**LIMITATIONS OF ACTIONS
SESSION LAW CH. 2018-97 (HB 875)
EFFECTIVE JULY 1, 2018**

This law changes Sec. 95.11 (3) (c) F.S. by extending the four year statute of limitations for actions founded on the design, planning or construction of an improvement to real property to allow compulsory counterclaims, cross-claims and third-party claims to be filed up to one year after the filing of a pleading to which such claims relate, even if such claim would otherwise be time barred. (Normally such claims are time barred if not filed within 20 days of the filing of the pleading triggering the claim.)

This law also provides that once a government authority issues a certificate of completion or occupancy, action to correct defects or deficiencies or warranty items do not extend the time to bring an action by delaying the starting of the statute of limitations.

This law also adds the term “*completion of the contract*” to the conditions which commence the running of time to file an action.

BUSINESS ORGANIZATIONS- FRAUDULENT BUSINESS FILINGS
SESSION LAW CH. 2018-58 (HB 661)
EFFECTIVE JULY 1, 2018

This law provides a solution to fraudulent and abusive business filings with the Department of State ("Department") and amends Chs. 605, 607, 617 and 620, F.S. Among other things, this law provides that a person on whose behalf a filed record was delivered to the Department for filing may correct the record if the record contains false, misleading or fraudulent information. Such a corrective filing is not subject to a fee if delivered within a specified time. In addition, the notice provisions which require the Department to notify a company of any filings are amended to include notice by email.

PUBLIC BUSINESS - CORPORATIONS - BANKS AND TRUST COMPANIES
SESSION LAW CH. 2019-139 (HB 1285)
EFFECTIVE JULY 1, 2018

Among other things, this law amends Secs. 658.23 and 607.612, F.S. to allow state banks and trust companies to form as social purpose or benefit corporations and allows the omission of certain confidential information from annual benefit reports. This law also amends Sec. 288.9625, F.S. to create the Institute for Commercialization of Florida Technology which will continue to offer seed and early stage investment capital in Florida, without requiring an ongoing state expenditure for such support.

MORTGAGE REGULATION
SESSION LAW CH. 2018-61 (HB 935)
EFFECTIVE JULY 1, 2019

This law modifies the General Provisions of Ch. 494 F.S. regulating Loan Originators and Mortgage Brokers. New subsection (4) of Sec. 494.001, F.S. provides for a definition of "Business purpose loan" and aligns it with the same definition found in Regulation Z at 12 C.F.R. Sec. 1026.3(a). This law further clarifies the exemption given to individuals in Sec. 494.00115(2)(e) F.S. by providing examples in new subsection (4) of what it means to "hold himself or herself out to the public as being in the mortgage lending business." Finally, Sec. 494.0025(4)(d) F.S. makes it a felony to misrepresent a residential mortgage loan as a business purpose loan.

CONSUMER FINANCE
SESSION LAW CH. 2018-17 (SB 386)
EFFECTIVE JULY 1, 2018

By this law, Sec. 516.36, F.S. is amended to permit consumer finance loans made pursuant to Ch. 516, F.S. to be repaid in periodic installments due every 2 weeks, semimonthly or monthly, rather than only monthly under the current statute. Further amendment requires repayment of such loans in periodic installments as nearly equal as mathematically practicable, but allows the final payment to be less than the amount of the prior installments. In addition, this law revises provisions of Sec. 516.031, F.S. to establish the maximum delinquency charge for payments in default for at least 10 days.

MORTGAGE BROKERING
SESSION LAW CH. 2018-44 (HB 193)
EFFECTIVE JULY 1, 2019

This law creates a limited exemption for a securities dealer, investment advisor or associated person registered under Ch. 517, F.S. to engage in mortgage brokering activities on behalf of securities clients provided any such solicitation or referral activities otherwise comply with state and federal law.

UTILITIES
SESSION LAW CH. 2018-34
EFFECTIVE MARCH 19, 2018

Real estate practitioners who are involved in land development may be interested in this new law. Sec. 163.3221, F.S. is amended to exclude within the definition of “development” the work done by certain utility providers on infrastructure on certain rights-of-way. But the amendment will not affect the Public Service Commission’s exclusive jurisdiction to require transmission lines to be located underground.

GROWTH MANAGEMENT
HB 1151 – EFFECTIVE UPON BECOMING LAW

This bill may be of interest to real estate practitioners who are involved with certain developers. This bill, if signed into law, will have an effect on the Developments of Regional Impacts (DRIs), defined as any development which, because of its character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of citizens of more than one county. The bill eliminates state and regional review and transfers those responsibilities to the local governments where the developments are located.

BANKRUPTCY MATTERS IN FORECLOSURE PROCEEDINGS
SESSION LAW CH. 2018-15 (SB 220)
EFFECTIVE OCTOBER 1, 2018

By this law, Sec. 702.12, F.S. is created to allow lenders foreclosing a mortgage in Florida state courts to use the filings of a borrower in federal bankruptcy court in the state proceedings.

Pursuant to Sec. 702.12(1), F.S. a plaintiff lender may submit any documents filed under penalty of perjury by the borrower / debtor in the bankruptcy case for use in the foreclosure case as admissions against the interest of the borrower/debtor.

In addition, a rebuttable presumption that the borrower has waived any defense to the foreclosure is created if: the borrow has filed an intention to surrender the property being foreclosed to the lender as part of the bankruptcy; such filings have not been withdrawn; and a final order has been entered in the borrower/debtor's bankruptcy which discharges the debts or confirms the debtor's repayment plan that provides for the surrender of the property.

Sec. 702.12(2), F.S. provides that the foreclosure court is required to take judicial notice of any orders entered in the bankruptcy court upon request of the lender.

Sec. 702.12(3), F.S. clarifies that the borrower still retains defenses to the foreclosure based on the lender's action or inaction after such bankruptcy filings.

CLERK OF COURTS, FORECLOSURE AND SURPLUS FUNDS
SESSION LAW CH. 2018-71 (SB 1361)
EFFECTIVE JULY 1, 2019

This law repeals Sec. 43.19, F.S. which provides for the disposition of unclaimed funds which remain in the registry of the court for 5 years or more and conflicts with the 1 year provision in Sec. 717.113, F.S. By this law, the conflict between the two statutes is resolved and Sec. 717.113, F.S. will apply to funds in the court registry.

In addition, this law amends procedures relating to the disbursement of surplus funds after a foreclosure. Of particular importance, Sec. 45.034, F. S., concerning appointment of a surplus trustee in foreclosure actions, is repealed along with other statutory provisions regarding surplus trustees which will no longer be appointed in foreclosure actions as of the effective date, July 1, 2019.

Sec. 45.032(3)(c), F.S. is revised to require the clerk of court to hold an unclaimed foreclosure surplus for one year, after which it is turned over to the Department of Financial Services ("DFS") pursuant to Secs. 717.117 and 717.119, F.S., unless there is a pending court proceeding regarding entitlement to the surplus, at which time the clerk will hold the funds pending the outcome of the proceeding and instructions provided in the court order.

This law ends the 60 day limitation on making claims on surplus foreclosure proceeds by junior lien holders by extending the surplus claim period up to one year before the Clerk is required to transmit any remaining unclaimed surplus to DFS, after which only the foreclosed property owner can make a claim to the surplus funds.

Among other things, this law also amends statutory notices concerning the foreclosure final judgment, the notice of sale and the certificate of disbursement to conform to all revisions.

DAYLIGHT SAVING TIME
SESSION LAW CH. 2018-99 (HB 1013)
EFFECTIVE JULY 1, 2018

Of interest to all persons residing in Florida is the newly formed Sunshine Protection Act. Since Florida is known as the “Sunshine State”, the legislature thought it only proper to observe Daylight Saving Time all year-round in Florida, not just during certain months. But this will only happen if the United States Congress amends the Uniform Time Act of 1966 to permit states to take such action. The Uniform Time Act was the Act which created the nine standard time zones. Most of Florida is in the Eastern Time Zone (Zone 2). Northwest Florida is in the Central Time Zone (Zone 3).

This summary is effective as of April 3, 2018. 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 at least passed both houses at the time of printing. 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.

Both the House and Senate have Facebook and Twitter as their official social channels.