

2009 FLORIDA REAL PROPERTY STATUTORY UPDATE SUMMARY

MICHAEL J. GELFAND, ESQ.

GELFAND & ARPE, P.A.

Bills adopted during the 2009 Florida legislative session deemed significant to Florida real property practitioners are listed below. The portions of those Bills appropriate for presentation are then summarized. Copies of the Bills, and for Bills signed by the Governor, the laws, are posted at www.gelfandarpe.com and are accessible by clicking the "Statutory Update" area. The website is anticipated to be updated with additional laws as the Bills are signed by the Governor. Please note that the text that follows is merely summary in nature and the exact text should be referred to before taking action.

1. **Temporary Accommodations/Timeshares.** Ch. 2008-_____, *Fla. Laws*, (HB 61), effective July 1, 2009.

§125.0104. Tourist Development Tax. Timeshare resorts are included within property subject to the tax. The tax is due on regulated short-term products as defined in §21.005 for agreements to purchase a right, even if signed outside of the state. Occupancy pursuant to a timeshare or exchange program is not subject to tax under the section; however, consideration paid to purchase a timeshare license in a timeshare plan is rent subject to taxation.

§125.0108. Areas of Critical State Concern. Regulated short-term products defined in §721.005 are subject to taxation in a similar manner as taxation for the Tourist Development Tax.

§212.03. Transient Rentals Tax. Timeshares are subject to taxation in a similar manner as taxation for the Tourist Development Tax.

§212.0305. Convention Development Tax. Timeshares are subject to taxation in a similar manner as taxation for the Tourist Development Tax.

§624.605. Casualty Insurance. Defined "debt cancellation products" include products sold by sellers defined in §721.05 and related entities.

§721.05. Timeshare Definitions. A "facility" is limited to a permanent amenity.

§721.07. Public Offering Statement. Prospectus must explain an owners, and heirs, liability to pay assessments.

§721.20. Licensing Requirement. Resale service providers must disclose fees and costs relating to the past two years of services which if not disclosed becomes an unfair trade practice.

2. **Impact Fees.** Ch. 2008-_____, *Fla. Laws* (HB 227), effective July 1, 2009.

§163.31801. Impact Fees. In a challenge, the burden of proof is shifted to the government by a preponderance of the evidence that the imposition of a fee is legal. Differential standards are prohibited.

3. **Growth Management.** Ch. 2008-_____, *Fla. Laws* (SB 360), effective upon becoming a law.

{See Act for extensive provisions amending Chapters 163 and others.}

4. **Service of Process.** Ch. 2009-_____, *Fla. Laws* (SB 412), effective July 1, 2009,

§30.231. Fees. Sheriffs' fees for most services are increased, doubling for many.

§48.021. Process. Criminal witness subpoenas and criminal summons may now be served by a special process server. Witness subpoenas may be served pursuant to the *Rules of Civil Procedure* only for civil witness subpoenas.

§56.041. Execution. Unsatisfied executions docketed before October 1st, 2009, or twenty years after issuance of the final judgment upon which the execution was issued, may be returned to the court issuing the execution.

§56.21. Execution Sales. Procedures for providing notice of sale concerning personal property are extended to real property sales, requiring proof of notice by affidavit to the real property owner and lienholders.

§56.27. Executions. The priority for disbursement of funds held by the Sheriff is based upon Chapter 55 *Fla. Stat.* If the affidavit of priority required to be provided by the creditor or creditor's attorney of record, shows that there are claims junior in priority to the creditors judgment lien, other than another judgment lien, then the court shall retain the funds in its registry for further disposition.

§939.185. Court Costs. The Clerk of the Circuit Court shall record a certified copy of court orders imposing costs, and the record shall be a lien against any real and personal property owned by such person subject to the constitutional homestead provision.

5. **Water Conservation/Landscaping.** Ch. 2008-_____, *Fla. Laws* (SB 494), effective July 1, 2009.

§73.62. Automatic Irrigation Systems. Licensed contractors working on an automatic landscape irrigation system must test inhibiting and interrupting devices and switches, including moisture detectors, and repair or install as necessary. Model ordinances are to be drafted to require reporting of non-compliance and providing for penalties. Because of water wastage, a uniform variance process based on soil moisture sensor control systems is

adopted.

§403.9337. Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes. Counties and municipalities are required to adopt a proposed model ordinance addressing fertilizer use as a contributor to water quality degradation, exempting the farms located on land classified as agricultural lands.

§42.021. Definitions. The term “commercial fertilizer application” means the application of fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer or the employer or the applicator. “Urban landscape” include pervious areas on residential, commercial, industrial, institutional, highway right-of-way, or other non agricultural lands that are plated with turf or horticultural plants.

§482.1562. Certification. A limited certification for urban landscape commercial fertilizer application shall begin January 1, 2014. Certification prerequisites include training and a fee. Certification does not authorize pest control use. Application to individual residential properties is exempted if the fertilizer and equipment is provided by the residential property owner or its residents.

6. **Ad Valorem Assessments**. Ch. 2008-_____, *Fla. Laws* (HB 521), effective for assessments in 2009.

§194.301. Challenges. The Property Appraiser’s assessment is presumed correct if the appraiser proves by a preponderance of the evidence, compliance with statutory requirements. A tax payer challenging an assessment is entitled to a determination by the value adjustment board of the appraisal methodology. Challengers must provide proof by a preponderance of the evidence in three areas which then shifts the burden to the property appraiser.

7. **Condominiums**. Ch. 2009-_____, *Fla. Laws* (SB 714), effective July 1, 2009.

§627.714. Loss Assessment Coverage. Each residential condominium unit owner’s property insurance policy issued or renewed on or after July 1, 2009, shall include property loss assessment coverage of at least \$2,000.00 with a maximum \$250.00 deductible per direct property loss.

§633.0215(13). Alarms. Condominiums of less than three stories in height with an exterior means of egress corridor are exempt from certain fire alarm system requirements.

§718.111(11). Insurance. Condominium association insurance is significantly amended, including the following:

Group Coverage. Policies or programs providing coverage to multiple condominium associations issued before January 1, 2000 and which have continued uninterrupted may not continue after July 1, 2010.

Approvals. Special notice requirements for condominium association board of directors' meetings where policies are approved with a deductible, are deleted.

Property Coverage. Insurance coverage of personal property within a condominium unit serving just that unit and excluded from the condominium association's insurance coverage, is the responsibility of the unit owner.

Unit Coverage. The statutory requirement that condominium unit owners insure their units, and that the condominium association enforce coverage, is deleted.

§718.112(2)(d)1. Elections. If there are not a sufficient number of candidates to fill all open condominium association directors' terms, then the existing directors are eligible for reappointment. In a condominium of more than ten units, co-owners of a unit may now serve as directors at the same time if they own more than one unit and are not co-occupants of a unit. A unit owner is not eligible to be a candidate if removed from office by the Division of Condominiums, or if delinquent in the payment of any fee, fine, special assessment or regular assessment.

§718.112(2)(d)3. Certification. A condominium association director's certificate of reading and upholding the association's documents and policies no longer is to be provided with the notice of intent of candidacy information, but shall be provided within ninety days after election. Alternatively, a director may provide proof of satisfactory completion of a Division of Condominium's approved condominium education provider program. Failure to provide the certification or educational proof disqualifies a director from service.

8. **Community Development Districts.** Ch. 2008-_____, *Fla. Laws* (HB 821), effective July 1, 2009.

§190.003. Definitions. Provides a definition for "compact urban mixed use district" as a basis for providing exemptions elsewhere, and retroactive to such districts established before July 1, 2009.

§190.012. Special Powers. A CDD may adopt rules concerning deed enforcement with consent of the county or municipality in which the property is located; however, concerning homeowners' associations under membership control, a CDD may directly enforce covenants and restrictions pursuant to a written enforcement agreement. CDD rules may not be enacted for residential districts where twenty-five percent or more of the units are in a homeowners' association. Owners of property outside a district may elect an advisor to a CDD board to review policies and make recommendations concerning proposed enforcement actions. In the case of inter-local aggrievements, an elected landowner within the jurisdiction of the entities but not within the boundaries of the district shall be elected by the landowners whose land is subject to enforcement but not within the district. Fractional interests less than one acre shall be treated as one acre for voting purposes.

§190.046. Termination, Contraction or Expansion. Procedures for changing districts are extensively amended.

9. **Lis Pendens.** Ch. 2009-_____, *Fla. Laws* (SB 1552), effective July 1, 2009, including current litigation, but not appeals.

§48.23. Lis Pendens. The effectiveness of lis pendens is limited to the period before expiration, being withdrawn or discharged. An expired, withdrawn, or discharged lis pendens shall not provide actual or constructive notice of the proceeding. The notice of lis pendens no longer must state the time of the institution of the action. The case number of the action may substitute for the date of institution of the action. A clerk's notation of the date of receipt shall certify the date of institution statement. The effectiveness of a lis pendens for a year is based upon the pleading that is pending, not the initial pleading.

10. **State Court Systems.** Ch. 2009-_____, *Fla. Laws*, (SB1718), effective July 1, 2009, except as otherwise provided.

§28.2401. Service Charges on Probate Matters. Formal administration, guardianship, ancillary curatorship and conservatorship proceedings filing fees are based on a sliding fee schedule from \$280.00 to \$2,000.00, effective June 1, 2009.

§28.241. Residential real property foreclosures shall also pay graduated filing fees between \$295.00 and \$2,000.00. Many circuit filing fees are increased to \$295.00 to \$395.00. Evictions are reduced to \$180.00. Effective June 1, 2009.

11. **Construction Defects.** Ch. 2009-_____, *Fla. Laws* (SB 2064), effective October 1, 2009.

§558.002. Definitions. The term "completion of a building or improvement" is defined, to include the issuance of a certificate of occupancy or equivalent, or if no certificate is available, substantial completion according to plans and specifications. Service is defined to be by certified mail, hand delivery or courier with evidence of delivery.

§558.003. Action. If the statutory notice is not provided, then the court shall stay instead of abating an action. The notice requirement shall not interfere with an owner's efforts to complete a project. Notice is not required for a project that has not been completed.

§558.004. Notice. Triggers for action are based on service rather than receipt of notice. No construction lien rights shall accrue for destructive testing pursuant to the chapter unless the owner contracts for the work. Required destructive testing is limited to that which is reasonable. Notices pursuant to the subsection are not admissions. The duty to exchange information if citing to the appropriate subsection, shall occur within a thirty day window and include items such as specifications as as-built plans, photographs and expert reports.

§558.005. Contract. Unless there is express opt-out between a claimant and potential

defendant, the chapter shall apply to all improvements contracted for after October 1, 2009. An educational notice is to be contained in agreements after October 1, 2009.

12. **Court Funding.** Ch. 2009-_____, *Fla. Laws* (SB 2108), effective upon becoming law.

Chapter 28 is extensively revised concerning the clerk's budget. The budget is subject to legislative control. Numerous other changes regarding court funding.

13. **Mortgage Brokering.** Ch. 2009-_____, *Fla. Laws* (SB 2226), except as otherwise provided, effective October 1, 2009.

Mortgage brokering regulations are extensively revised. Section 501.1377 exempts from residential foreclosure consultant regulations an attorney licensed to practice law in the State who provides foreclosure rescue related services as an ancillary matter to the attorney's representation of a homeowner as a client.

14. **Not-for-Profit Corporations Act.** Ch. 2009-_____, *Fla. Laws*, (SB 2330) effective October 1, 2009, except as otherwise provided.

The Not-for-Profit Corporations Act is extensively revised, including the following:

§617.01201. Filing. Electronic transmission formats are specified, allowing documents to be executed by a director.

§617.01401. Definitions. "Distribution" includes the payment of a dividend or any part of the income or profit of a corporation to its members, directors or officers. A "mutual benefit corporation" is a newly defined term but excluding associations organized under Chapter 718, 719, 720, 721 or any corporation where membership in the corporation is required pursuant to a document recorded in the county property records.

§617.0501. Registered Office and Registered Agent. The prohibition upon the Department of State charging for telephone requests is deleted.

§617.0505. Distributions. Not-for-profit corporations may not make distributions except as authorized in §617.1302. Corporations regulated by Chapter 718, 719, 720, 721 or Chapter 723 or a corporation where membership in such a corporation is required pursuant to a document recorded in the county property records may make refunds, credits, disburse insurance proceeds, and pay settlements to its members without violating this section.

§617.0605. Members: Transfers. Procedures are stated for transferring memberships.

§617.0606. Members: Resignation. Procedures are stated for members' resignations.

§617.0607. Members: Termination. Procedures for punishment are provided.

§617.0608. Members: Purchase. Procedures for purchasing memberships are provided.

§617.0701. Members: Meetings. Provisions Sections 1 and 3 of the members' meetings section do not apply to corporation regulated under Chapter 718, Chapters 719, Chapter 720, Chapter 721 or Chapter 723 or a corporation where membership in such a corporation is required pursuant to a document recorded in the county property records.

§617.0721. Members: Voting. Votes may be rejected by a secretary, officer or agent authorized to tabulate votes if acting in good faith and with a reasonable basis for doubting the validity of a signature on a vote, proxy, consent or waiver. Electronic attendance at meetings may be authorized by the board of directors.

§617.07401. Members: Derivative Actions. Derivative actions are provided.

§617.0802. Directors: Qualifications. A director may be fifteen years of age or older as permitted in the articles or by-laws or by resolution by the board of directors, except for corporations regulated by Chapter 718, Chapters 719, Chapter 720, Chapter 721 or Chapter 723.

§617.0808. Directors: Removal. Removal provisions are revised, including the potential of removal by directors vote.

§617.0809. Directors: Board. Filling of vacancies of a class elected director is restricted to that class or the directors elected by that class. A director appointed to fill a vacant term serves only until the next annual meeting, not until the end of the term.

§617.0824. Directors: Quorum. Directors younger than 18 years of age may not be counted towards a quorum.

§617.0832. Directors: Conflict. A conflict of interest transaction may be binding if authorized, approved or ratified by a vote of more than one director and the directors are not interested or have a relationship to the transaction, or by a majority of the members entitled to vote.

§617.1422. Dissolution: Reinstatement. Forms for reinstatement after administrative dissolution are specified. A dissolved corporation's name may be available after one year from the effective date of dissolution.

§617.1430. Dissolution: Judicial. Fifty members or ten percent of the voting interests, whichever is less, may petition for dissolution upon specified grounds.

§617.1703. Application. If there is a conflict with Chapter 718, Chapter 719, Chapter 720, Chapter 721 or Chapter 723, the particular chapters shall apply. Sections 617.0605 through 617.0608 do not apply to such corporations or other corporations where a membership in the corporation is required pursuant to a document recorded in the county property records.

15. **Documentary Stamp Taxes.** Ch. 2009-_____, *Fla. Laws*, (SB 2430), effective July 1, 2009.

Crescent. Except as otherwise provided. *Crescent Miami Center, LLC v. Florida Department of Revenue*, 857 So.2d 904 (Fla. 3rd DCA 2003) is determined to be consistent with the Legislature's intent, and the Florida Supreme Court's decision at 903 So.2d 913 (Fla. 2005) is inconsistent.

§201.02. Stamps. Real property transactions undertaken in arm's length through a conduit entity within three years of a conveyance is taxed for documentary stamp purposes. An intent is stated to tax transfers in beneficial interests in real property. Emergency rules are authorized to implement these provisions.

16. **Real Property for Conservation Purposes.** (HB 7157), effective for property tax assessments made on or after January 1, 2010.

§704.006. Conservation easements must abide by the MRTA, Chapter 712.

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