



# Florida Land Title Association



## Government Affairs Committee 2011 Legislative Bulletin 4 SB 1196 – Fix for Everglades Electric

May 18, 2011

FLTA worked with the Real Property, Probate and Trust Law Section of the Florida Bar to support a statutory cure for the title difficulties caused by a highly technical reading of Florida Statute §713.10 in Everglades Electric Supply, Inc. v. Paraiso Granite, 28 So. 3d 235 (Fla 4<sup>th</sup> DCA, 2010). This case held that the landlord had no lien protection based on a recorded notice that the landlord was not responsible for tenant improvement liens UNLESS every lease on the property included the exact limitation language contained in the notice.

That ruling was substantially more restrictive than the industry considered it, and created substantial additional work at the time of every refinancing or sale of rental property. It also deprived many landowners of the protections long provided by the statute simply because of a highly technical “error.”

SB 1196 effectively reverses that ruling. After its effective date on October 1, 2011, the notice need not exactly match the language of the lease, and is effective so long as (a) the tenant improvements are in a unit for which the lease provides the limitation on liability and (b) the “majority” of the leases contain have such limitations.

In an effort to maintain a balance of interests, the contractor has the right to demand a copy of the provision of the lease limiting liability. A verified copy under §92.525, Florida Statutes, must be provided within 30 days, or the landlord may lose the protection against tenant improvement liens, provided that contractor or lienor has otherwise complied with the construction lien statute and did not have actual notice that the landlord’s interest was not subject to a lien for tenant improvements. The same loss of protection occurs if the landlord were to provide a false or fraudulent copy.

The possibility of a landlord “losing” the protection of the recorded notice will likely trigger additional affidavit requirements. Please look to your underwriters for updated standards.

This bill has not been signed by Governor Scott. It will take effect October 1, 2011.

[SB 1196](#)