



2012 Bulletin 13 Assorted Legislation 5-13-2012

Every year, there are several bills which are of general interest to the title and real estate industry but don't affect us as directly. Here are some of this year's bills:

Insurance, Pension and Other Designations to a Former Spouse. (HB 401, Chapter 2012-148, Laws of Florida)

Generally changes in the law governing life insurance, annuities and retirement plans don't directly impact title, but with more and more property being acquired by pension and profit sharing plans and IRAs, we wanted to mention this change.

Florida law has long provided that a bequest in a will to a spouse is void upon divorce and the ex-spouse is treated as having predeceased. §732.507 Fla. Stat. The Florida Trust Code includes similar provisions for a revocable trust §736.1105. The ex-spouse can, of course, be provided for in a post-divorce will or trust (or amendment) – but the statutory presumption is that if the divorce is final, the intention was to sever all economic ties.

That has not always been the result where an interest passes under an insurance beneficiary designation, a payable on death account or through various pension, profit sharing or IRA type plans. HB 401, adopted during the 2012 session of the Florida Legislature, brings those types of instruments under the same rule as wills and revocable trusts. The ex-spouse is treated as having predeceased as of the date of divorce or annulment. New §732.703.

This law does not apply to situations where the divorce decree directs the decedent to acquire or maintain an asset for the benefit of the former spouse or children, if the decedent could not have unilaterally terminated or modified the ex-spouse's interest (as in an irrevocable trust); where the instrument creating the spouse's interest is governed by the laws of another state; or to JTROS property. The law includes a number of safeguards for the insurer, trustee or custodian of the interest.

This law applies to all designations made by or on behalf of decedents dying on or after July 1, 2012, regardless of when the designation was made.

Recall that the same basic rule applies to powers of attorney §709.2109.

“Bulk Buyer” Extension (HB 517 Chapter 2012-61, Laws of Florida)

In an effort to revitalize the Condominium market, in 2010 the Legislature passed the Distressed Condominium Relief Act. This act relieved bulk buyers and bulk assignees (generally purchasers of seven or more units, with or without an assignment of developer rights), from certain liabilities and obligations as a successor developer. The original Act was scheduled for automatic repeal on July 1, 2012. HB 517 extended the Act until July 1, 2015.

Homestead Protections and Intestate Succession (HB 733 Chapter 2012-109 Laws of Florida)

The first issue addressed in HB 733 is simply bringing the statutes into conformity with judicial interpretations. We have long known that Tenancy by the Entireties properties and properties held as Joint Tenants with Right of Survivorship passed automatically to the survivor upon death and were not subject to the constitutional prohibition on devise. *Ostyn v. Olympic*, 455 So.2d 1137 (Fla. 2d DCA 1984); *see also Marger v. De Rosa*, 57 So.3d 866 (Fla. 2d DCA 2011). The bill amends the current definition of “protected homestead” to expressly state that “real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead.”

The bill also clarifies the timeframes for a surviving spouse, who would normally receive a life estate in homestead property to elect instead to receive an undivided one-half interest in the homestead as a tenant in common.

Currently a natural or adoptive parent whose parental rights have been terminated may still inherit through intestate succession upon the death of the child. The bill creates §732.1081, Fla. Stat. which treats the parent as having predeceased for inheritance purposes upon termination of parental rights.

Natural Guardians (SB 990 Chapter 2012-48, Laws of Florida)

Under §744.301, F.S., the mother and father of a child generally are the natural guardians of the child. The statute gives natural guardians substantial authority to act on the behalf of their minor child in matters of managing assets, transferring real or personal property, and settling of disputes when, in the aggregate, those matters do not exceed \$15,000. SB 990 updates the terminology used to conform with Chapter 61 regarding divorce proceedings, but did not address any of the underlying title ambiguities which existed under §744.301.

Because the underlying ambiguities were not addressed, we strongly recommend contacting your underwriter before relying on the Natural Guardian statute to convey real property without a formal guardianship.

Construction Liens (HB 897 Chapter 2012-211, Laws of Florida)

HB 897 is this year’s amendment to the construction lien act. Among other changes, the bill

1. Completes the fix for the *Everglades Electric* problem. In *Everglades Electric Supply, Inc. v. Paraiso Granite*, 28 So. 3d 235 (Fla 4th DCA, 2010), the court gave a highly technical reading of Florida Statute §713.10 and 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.

Last year, we passed a bill effectively reversing the ruling of that case, stating that after 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 of the lease. So there were some traps for the unwary.

Unfortunately, a key clarifying provision was inadvertently omitted from last year's bill and had to be added this year. That has now been done.

The law is a substantial improvement over where we were following *Everglades Electric*, but because a lien can be blocked and then re-attach without record notice, please discuss this with your underwriter before closing in reliance on §713.10's limitation of lien liability for tenant improvements.

2. Eliminated parenthetical language in the statutory form notice of commencement which implied that the Notice of Commencement continued in effect until completion of construction and final payment – regardless of the date specified in the NoC. NOTE: While the bill title describes this as a clarification (implying retroactivity), the body of the bill does not clearly establish that intent.
3. Makes some technical changes to the process for a Notice of Termination under §713.132 and the content of a Demand for Sworn Statement of Account under §713.16 and details of serving notices under §718.18 and for making claims on a payment bond in §713.23.

Timeshare Resale Disclosures (HB 1001 Chapter 2012-76, Laws of Florida)

This bill regulates various persons providing assistance or advertising for the resale of timeshare condominiums, specifies information which must be provided to the seller, makes certain contracts with brokers and advertising services voidable and makes them subject to the courts and penalties imposed in Florida.

Construction Warranties (HB 1013 Chapter 2012-161 Laws of Florida)

The common law implied warranty of fitness and merchantability or habitability related to the purchase of improved real estate purchased from the builder applies to buildings and other improvements which are affixed to the real property. *Gable v. Silver*, 264 So.2d 418 (Fla. 1972) adopting opinion of 4th DCA at 258 So.2d 11.

Lakeview Reserve Homeowners v. Maronda Homes, Inc., 48 So.3d 902 (Fla. 5th DCA 2010) expanded the common law implied warranty of fitness and merchantability or habitability to off-site improvements, such as roads and drainage areas within a subdivision. This bill reverses that result and expressly provides that the implied warranty of fitness and merchantability or habitability does not extend to off-site improvements. The bill expressly does not alter or limit the existing rights of purchasers of homes or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including, but not limited to, §§718.203 and 719.203.

This act takes effect July 1, 2012, and applies to all cases accruing before, pending on, or filed after that date.

Submerged Land Leases (HB 13 Chapter 2012-202 Laws of Florida)

This bill overrides parts of current DEP rules concerning submerged land leases for private residential docks as follows:

1. Extends the maximum term for an initial standard lease and for successive renewal to 10 years from the 5 years maximum currently provided by rule
2. Requires inspection by the DEP at least once every 10 years instead of every 5 years.
3. Requires standard lease contracts to disclose all applicable lease fees as established by the Trustees of the Internal Improvement Trust Fund. (“TIIF”)
4. Exempts multi-family docks and structures that require a lease from paying a fee on minimal amounts of sovereignty submerged lands that are leased to reflect the same size-based exemption currently in place for single-family docks.
5. Specifies that upland property owners with a homestead exemption are not required to pay a lease fee on revenue derived from the transfer of fee simple or beneficial ownership.
6. Prohibits TIIF and the DEP from imposing additional application fees, regulatory permitting fees, or other lease requirements unless authorized by law.

Additional Tax Exemptions (HJR 93, HJR 169, HJR 1003 (2012) and HJR 381 (2011))

These joint resolutions propose constitutional amendments which will appear on the ballot in November to:

1. Allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty.
2. Allow the Legislature, by general law, to permit counties and municipalities to grant an additional homestead tax exemption equal to the assessed value of homestead property worth less than \$250,000 to certain low income seniors, 65 or over, having an annual household income of less than \$27,030 (subject to future cost of living adjustments).
3. Allow individual counties to increase the amount of tangible personal property exempt from taxes from the current \$25,000 to \$50,000.
4. HJR 381 passed during the 2011 legislative session creates the highly promoted amendment 4. Among other things, this proposed constitutional amendment will
 - a. Stop future “true ups” of Save Our Homes Caps for years in which the just property valuation declines.
 - b. For home buyers who have not claimed homestead in the past 3 years, creates an additional 50% exemption (not to exceed the median home price in the county) from all taxes except school levies. This exemption phases out over a 5 year period.
 - c. Reduces annual valuation adjustment cap for non-homestead properties from 10% per year to 5%.

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