



## **2010 Legislative Bulletin 1 Government Affairs Committee**

Alan B. Fields Chairman  
November 12, 2009

The Land Title Industry is highly regulated and the core functions we perform of searching and clearing title are directly impacted by the statutory and case law framework established for Florida Real Property. Therefore, legislative changes are always of great interest to title agents and insurers.

What we do is very technical, and well intentioned changes to certain laws can have dramatic unintended impacts on conveying real property. FLTA and the various underwriters have always been on the front lines, monitoring and attempting to head off legislative proposals which would adversely impact the title industry or inadvertently impede real property transactions.

And we had a tremendously successful 2009 Florida Legislative Session. Thanks to the hard work of our executive director, Lee Huszagh, our lobbyist, Julie Myers and the support of our underwriters and their very capable governmental affairs teams, FLTA swept the boards last year. EVERY bill on which FLTA took a position reached the desired outcome.

In any political process, compromise is a critical part of the process, so achieving a 100% success rate is VERY unusual, and not something we can realistically hope for in future years. But through careful monitoring of proposals, the hard work of Lee, Julie and your board, the support of our underwriters and the ACTIVE participation of our members, FLTA can continue to protect our interests in Tallahassee.

But 2010 is another year, and bills affecting us are already being filed. As is the case most years, some bills are good and merit our support. Some bills, while well intentioned, have technical issues that we can help fix. Other bills would devastate the title industry and must be opposed.

One such bill, Senate Bill 260, would radically restructure the economics of all title agents. Among other changes, it would eliminate promulgated rates in favor of each underwriter having a different, actuarially validated rate (imagine the impact if you didn't represent the lowest cost underwriter), would provide for treble damages in the case of any negligence in underwriting or closing, and provides that NO PORTION of the premium would be paid to agents. Your FLTA board is opposing this bill.

As the Title Insurance Study Advisory Council completes its work, we expect the 2010 legislative session to deal with a number of major proposals for restructuring our industry. And in each case, the FLTA will be carefully monitoring the bills and amendments which are filed, and working to protect your interests.

1. At last week's convention, the FLTA board reviewed the bills which had already been filed (and which we knew of from other sources) and took formal positions on a number which have the potential to affect our industry. A summary of those bills and the FLTA position is attached. During the course of the legislative session, many more bills will be filed and reviewed by FLTA.

## 1. RPPTL Bill on Hidden Liens

The RPPTL Section conducted a non-scientific survey of local governments which indicated a substantial number had types of liens which were not being recorded in the official records, creating a substantial impediment to identifying liens prior to mortgages and property purchases and to properly advise clients.

Local governments have a significant problem regarding the maintenance of foreclosed and abandoned properties and are responding with inconsistent and problematic local ordinances, some of which purport to alter statutory conveyancing mechanisms and foreclosure procedures.

In response to these problems, they have drafted a bill which amends s. 695.01 and ch. 162 to reduce problems regarding hidden liens by (i) requiring all governmental liens (other than taxes, special assessments and those for utility services) to be recorded in the official records and to state their priority; (ii) clarifying and requiring a statement of the priority of liens asserted by local governments on the face of the filed lien; and (iii) expanding the homestead determination mechanisms of s. 222.01 to apply to other types of lien.

**FLTA Position:** FLTA supports the work of the RPPTL Section in their proposed hidden lien bill.

## 2. RPPTL Bill on Electronic Recording

Several of the state's clerks of the court and county recorders were accepting electronic recordings prior to the 2006 adoption of the Uniform Real Property Electronic Recording Act, §695.27 (URPERA) and others began accepting electronic documents for recording before the rules contemplated in the Act were formally adopted. Because of the complexity of the rules governing the mechanisms for electronic filing, it is often difficult if not impossible to prove strict compliance with the rules.

In response to this, the RPPTL Section drafted a bill retroactively and prospectively ratifying the validity of all electronic documents submitted to and accepted by a county recorder for recordation, whether or not such electronic documents were in strict compliance with the statutory or regulatory framework then in effect and that all such filings be deemed to provide constructive notice.

**FLTA Position:** FLTA supports the work of the RPPTL Section in their proposed bill addressing glitches resulting from the Uniform Real Property Electronic Recording Act.

## 3. HB 73 SB 346 Tax Limitation on Working Waterfront (H: Robaina (CO-SPONSORS) Abruzzo; Evers; Ford; Holder; Porth; Waldman S: Dean)

Similar to SB 1468 (2009)

Provides mechanism for implementing constitutional provision allowing lower assessment of working waterfront property. Provides for annual registration of exemption & notification of Tax Assessor of changes in use or ownership. Provides for lien

This bill may be construed to impose a duty on the closer to notify, and due to ambiguous drafting creates a possible springing lien for unpaid taxes.

**FLTA Position:** While recognizing the importance of implementing the Constitutional provision regarding Working Waterfront Properties, the FLTA has concerns about certain technical aspects of this bill and will work in concert with the Real Property, Probate and Trust Law Section of the Florida Bar to recommend amendments to the bill.

#### 4. **HB 75 Homestead Property Foreclosure Bill of Rights.** (H: Soto)

Similar to HB 653 SB 2524 (2009)

This bill establishes a homestead “Foreclosure Bill of Rights” Bill adopts homestead for property tax exemption defs in ch. 196. Plaintiff would be required to include notice of rights under the Bill of Rights as part of foreclosure service. The bill sets forth requirements for appraisals and requires mediation and that the bank make a good faith effort to settle, including the renegotiation of the loan at principal equivalent to actual FMV.

The Lender will receive a recorded “Forebearance Lien” in addition to docs on refinancing the loan at reduced principal balance. On sale, lender entitled to proceeds after only the renegotiated loan balance. No transaction costs, fees, etc. apparently to be deducted from proceeds.

The bill presents problems to the title industry in three areas: (a) the need to confirm compliance with the new requirements during the foreclosure process; (b) the statute does not address priority of the forbearance lien relative to existing subordinate mortgages and liens, leaving a potential ambiguity in priority; and (c) on a subsequent resale, refi or transfer by operation of law, the forbearance lien may be foreclosed – so the purchaser of property from this person is effectively taking “subject to.” This negates the purpose of renegotiating principal balances and will impair the ability to close on a short sale.

**FLTA Position:** The FLTA believes there are unintended consequences resulting from the proposed provisions regarding the Forebearance Lien in that, as drafted, no rational purchaser would acquire a property subject to a Forebearance Lien of the type described. This would immediately stop all short sales of properties, which is clearly not the intention of the bill. The FLTA will work in concert with the Real Property, Probate and Trust Law Section of the Florida Bar to recommend amendments to the bill.

#### 5. **HB 109/SB 234 Doc Stamp on Short Sales (H. Jenne & Hudson, S. Ring)**

Provides that forgiven indebtedness in arms length short sale is not part of taxable consideration for doc stamp purposes.

**FLTA Position:** The FLTA supports clarification of the statute to correspond with the Florida Department of Revenue’s interpretation that no documentary stamp taxes are due with regard to indebtedness forgiven in a short sale.

#### 6. **SB 216 Backdoor Services Tax (S. Lynn)**

This bill modifies the procedures to be followed in the periodic sunset review process of all sales tax exemptions. Among other things this bill tilts the procedure in favor of a “services tax” which would be applied to both closing services and title premium.

**FLTA Position:** FLTA strongly opposes the imposition of a sales tax on services as to title insurance premiums or escrow and closing services as title insurance is already subject to a separate premium tax and the overall real estate transaction being consummated is already heavily taxed in the form of documentary stamp taxes and intangible taxes.

## 7. SB 260 Title Insurance (S. Bennett)

This bill is substantially the same as last year's SB 444, which FLTA opposed. The bill:

1. Establishes an Underwriter only rate
2. Removes the current statutory duty to set rates considering maintaining the solvency of agents
3. Sets rates based on a "file & use" model.
  - a. Burden on each underwriter to justify their rates
  - b. Annual rate Filing Required
  - c. Deemed approved after 90 days
4. Agents may charge for "primary title services" – a concept that was eliminated in HB 111 two years ago – and title searches and closing services or parts thereof actually performed.
  - a. Not clear on passing through of other charges/costs
  - b. Must submit those charges to OIR to be published on the internet
  - c. Must charge at least actual cost to provide the service.
5. No portion of premium would be paid to the agent.
6. If Insurer or Agent is negligent in performing any of the activities required in this section, the insurer is liable for damages up to 3x policy limits.

**FLTA Position:** The FLTA strongly opposes the adoption of SB 260 and recommends that any significant restructuring of the current business model of title insurance in Florida structured in accord with our recommendations to the Title Insurance Study Advisory Council.

## 8. SB 518 MRTA Exception for WMD/TIIF/USA

This bill would create a new exception to effect that MRTA would not eliminate any interests held by a Water Management District, the Trustees of the Internal Improvement Trust Fund or the United States of America. The amendment is NOT retroactive.

**FLTA Position:** The FLTA opposes the adoption of any additional exemptions to the applicability of the Marketable Record Title Act as being detrimental to the fundamental goal of certainty of real property ownership and likely to increase the costs of all title searches in Florida and creating another matter likely to be routinely excepted out of title policies delivered to consumers.