



SUTTON LAND TITLE AGENCY

MEMORANDUM - LEGAL SERVICES UPDATE

To: Sutton Land Title Agency Clients
From: Howard J. Kopel
Date: August 8, 2006
Subject: 2006 Florida Legislature – Laws Impacting Florida Real Property

Attached is an overview of the Florida Legislature's 2006 major bills that were passed and have become law. We have prepared a summary of a number of the significant real property related laws that may be of interest to our Florida, New York and national clients.

Florida continues to be an increasingly important market for most our clients. Our Stuart/Jacksonville Florida offices, as well as our New York and New Jersey offices, can provide a wide range of commercial and residential title searches, examinations, title insurance and closing services for all counties within in the State of Florida. Sutton's staff has extensive knowledge of Florida laws, unique title and closing practices and we are available to assist our clients with a wide range of services.

Please feel free to contact our Valley Stream headquarters at 877.656.9952 , or any of our branch offices with any questions or service needs.

The foregoing notice contains merely a summary of the important subject discussed. It is not intended as a legal opinion or as a comprehensive discussion of this matter, and you are accordingly encouraged to contact our legal department regarding this subject matter.

2006 FLORIDA LEGISLATIVE SESSION SUMMARY

SB 264 - Homestead Assessments.

This bill alters Section 193.155 of Florida Statutes by defining what will be considered to a "change of ownership". The new language provides that there is no change in ownership of the homestead property if a change or transfer is made by an instrument which lists the owner(s) both as grantor and grantee of the property and one or more individuals are additionally named as grantee. Accordingly, a change or transfer which only adds an additional person or persons to the title does not trigger a change in ownership for purposes of just value assessment. However, if any individual additional grantee applied for homestead exemption the application is in fact considered a change of ownership and reassessment of value is required.

HB 1141 - Conveyance of Land.

This bill creates a new section 689.072 and specifies how retirement investment plans and other qualified plans may accept, hold and transfer title to real property. The bill also provides for the validation of a conveyance to a custodian or trustee of an IRA or a qualified plan which was recorded before July 1, 2006, but was within the scope of Section 689.072. This language is intended to cure previous conveyances into an IRA or other qualified plan which may not otherwise be honored if the statute of frauds had been interpreted to prohibit an IRA or other qualified plan investments in real property. These provisions take effect July 1, 2006. This bill specifically provides that the section does not apply to any instrument to which Section 689.071 applies.

SB 1948 - Coastal Property Sale Disclosures.

This bill amends Section 161.57 Florida Statutes and prescribes additional disclosure requirements for sellers of coastal real property that are seaward of a coastal construction control line. The seller is required to make the following disclosures at or prior to the time a seller and a purchaser execute a contract for the sale and purchase of real property:

- That the property may be subject to coastal erosion and certain local, state or federal environmental laws and regulations that govern coastal property including but not limited to the delineation of a coastal construction control line, rigid coastal protection structures, beach nourishment and the protection of marine turtles;
- Additional information can be obtained from the Department of Environmental Protection including whether there are significant erosion conditions associated with the shoreline of the property purchased. The disclosure may be set forth in the contract or in a separate wilting.

The bill also provides that a seller's failure to deliver the disclosure affidavit or survey that these provisions require will not affect the enforcement of the sale and purchase contract, create a right of recession or impair title to the property.

SB 1170 - Florida Trust Code.

This bill creates a new chapter 736 and repeals many sections of Chapter 737. It also confirms the probate guardianship and investment statute to comport with the new trust provisions. The new code is based in part on the uniform trust code with revisions to account for Florida Statutory and Case Law. The changes set forth in the code will affect trust administration as follows:

Trust Presentation

- Expands the provisions dealing with the presentation by a holder of a power of appointment and adds a new provision allowing a trust settler or the person who creates the trust to designate a trust protector or a representative for the trust.

Trust Creation

- Affirms the requirement that a trust containing land be evidenced by a signed writing while limiting the unique Florida requirement that the testamentary aspects of trust be executed with the same formality as are required for a will or revocable trust and specifies that the capacity needed to create a revocable trust is the same as that required for the execution of a will.

Trust Modification

- Revises provisions relating to trust creation and termination but retains Florida's existing trust modification provisions.

Charitable Trusts

- Extends the standing to enforce charitable trust to the settlers who create the trust and to a charitable organization designated in the instrument to receive distributions from the trust. A charitable trust is one in which the beneficiary is unable voluntarily or involuntarily to transfer his interest in the trust, thus he cannot sell or give away his right to future income or capital and his creditors are thus unable to collector attach to these rights. The modifications provide for trusts which are created after the effective date of the code spendthrift clause must restrain both voluntary and involuntary alienation. The bill slightly modifies the last resort principle which allows the garnishment of trust proceeds from a spendthrift trust to enforce orders such as child support and alimony as the last resort for fulfilling these financial obligations.

Revocable Trusts

- Provides that trusts are revocable by default and that an express method of revocation in an instrument is exclusive and while a trust is revocable the trustee owes duties only to the settler. The duties of a trustee to the settler also apply to the beneficiaries who have a right of withdrawal over trust property.

Miscellaneous

- Replaces the existing anti lapse statute for intervivos trust with a new provision more broadly applicable to the defend ability of future interest in both testamentary and intervivos trusts. Creates a new provision to allow for the fiduciary investment of funds and investment interest which are owned by the trustee or its affiliates. Abolishes worthier title doctrine.
- Section 736.1303 provides that this new code will apply retroactively to all trusts whenever created except where stated otherwise in this specific text of the bill. There

are some sections that provide for differing dates of application to address issues which may arise if all provisions of a new code were to apply retroactively. In addition the court is provided with discretion in its retroactive application with this code in situations where the retroactive application might interfere with judicial proceedings or prejudice the rights of many of the parties involved with the proceedings. These provisions will take effect July 1, 2007.

SB 1956 - Land Trust.

This bill amends the Land Trust Statute 689.071, now entitled Florida Land Trust Act, by including definitions and clarifications of existing provisions regarding land trust. The bill specifically provides that:

- A trustee of land is no longer required to be qualified to act as a fiduciary;
- The beneficiaries of the land trust will not have personal liability except by the terms of the trust agreement;
- That the authority of a trustee of a land trust is not affected by encumbrances of a beneficiaries interest;
- The power of direction of a land trust can be vested in a person other than a beneficiary;
- A persons principle residence held in a land trust is entitled to homestead exemption;
- Procedures for the appointment of a successor trustee to the land trust to be created.

The Act specifically states that it is intended to clarify existing law and it will apply to all land trust whether created before or after the effective date of October 1, 2006.

HB 65 - Foreclosure Proceedings.

Under existing law the surplus funds, which may exist if the property is sold for more than required by the Court at foreclosure sale, belong to the property owner at the time of the foreclosure sale. This bill creates a presumption that surplus funds indeed belong to the owners of the real property on the date of the filing of the lis pendens. This presumption can be rebuffed with a properly executed assignment of the funds. The bill requires that specific information regarding the details of the surplus funds be included in the final judgment, certificate of sale, and certificate of disbursement. Accordingly, any surplus funds will be paid to the former owner of the property unless another person files a claim for the funds within 60 days after a foreclosure sale. If a person that is not the owner of record as of the date of the filing of the lis pendens makes a claim on these funds a court must determine who would be entitled. The bill also creates the position of "surplus trustee" to determine who was the owner of the real property should no claim for the surplus be made. Once a court order has been obtained disbursing the surplus funds to the owner of record the surplus trustee is thereby entitled to twelve percent of the total surplus. These provisions are effective as of July 1, 2006.

SB 152 - Property Appraiser Assessments.

Under Florida Statutes 193.023 County Property Appraisers must physically inspect property at least once every three years. Accordingly as of Mary 30, 2006 the statute the county appraiser must physically inspect the property once every five years. The bill also authorizes the review of imaged technology is assessing the value of the property.

HB 1039 - Miami Dade County Lake Belt Area.

This bill amends Section 373.4149(3) to expand the Lake Belt planning area, and further amends Section 373.4149(2) to increase the per ton mitigation fee on lime rock and sand over the next three years and to impose a new water treatment plant upgrade fee. The provisions of this bill take effect January 1, 2007.

HB 1359 - Hazard Mitigation and Coastal Redevelopments.

This bill amends Section 161.085 Florida Statutes to clarify the authority of political subdivisions and municipalities to authorize the installation of rigid coastal armoring structures during an emergency. The Department of Environmental Protection is authorized to review such an action by a governing body and if it determines that harm or interference is occurring to the protection of the beach dune system, adjacent properties, public beach access, and coastal vegetation or nesting marine turtles, the Department may revoke the authority to install such systems. It also amends Section 163.3178 of the Florida Statutes to require that the Department of Emergency Management manage and update the regional hurricane evacuation studies. Such studies must be done in a consistent manner using the National Hurricane Center's methodology and storm surge model. The bill revises the definition of a coastal high hazard area to incorporate the storm surge predicted accuracy of the storm surge model used by the National Hurricane Center. The bill provides a process by which local governments shall adopt levels of service relating to the capacity of the infrastructure to ensure timely evacuation. The bill amends Section 163.336 regarding the coastal resort area redevelopment pilot project and amends Section 181.0065(4) regarding the regulation of onsite sewer treatments systems and to require a permit for any work that is done on these systems. These provisions took effect on June 1, 2006.

HB 1567 - Eminent Domain.

This bill expands upon the safeguards of private property rights by providing sharing restrictions on the use of eminent domain and limiting the transfer of property that has been taken by eminent domain. This bill repeals Section 163.375 Florida Statutes which granted broad power to counties, municipalities or community redevelopment agencies delegated with the authority of eminent domain. The bill eliminates the authority to take property for the purpose of abating or eliminating a public nuisance. The bill also prohibits a county municipality from delegating the power of eminent domain to a community redevelopment agency. The bill also prohibits the transference of any property which is acquired by eminent domain to another private entity for ten years after the taking occurred subject to certain exceptions. These exceptions include transfers for:

- Private entities engaged in common carrier services;
- Roads open to the public for transportation;
- Operating a public or private utility or public infrastructure.

The bill also has an exception for transferring surplus property. The bill provides for public notice and competitive bidding for the disposition of any property which is taken by eminent domain.

House Joint Resolution 1569 - Eminent Domain.

This joint resolution proposes to amend the Florida State Constitution to limit the conveyance of private property which is taken by eminent domain to a natural person or private entity. The limitation would apply prospectively to any property taken by eminent domain if the property was taken pursuant to a petition of taking filed on or after January 2, 2007. The legislature may provide exceptions to this limitation if passed by a 3/5th vote of the membership of each house. If this bill is approved by a majority of the voters participating in the November 2006 General Election this amendment will become effective within 60 days thereafter.

SB 1620 - Warranty Associations.

This bill amends Chapter 634 Florida Statutes which regulates warranty associations which also includes home motor vehicles and service warranty associations. This bill provides several changes to existing laws governing warranty associations including:

- Prohibits an association from investing or lending association funds to any officer, director or controlling shareholder;
- Allows home warranty contract holders to cancel the contract within 10 days with a refund of at least 95% of the premium and to cancel at any time after the 10 days with a refund of at least 90% of the unearned pro-rata premium. Current law allows for cancellation within 10 days without penalty but only for contracts offered in connection with a home equity loan, not contracts offered in connection with the sale of a home;
- Provides that if a home warranty association elects to use a contractual liability insurance policy instead of establishing an unearned premium reserve the policy must cover all home warranty contracts issued during the policy period whether or not the premium has been remitted to the insured;
- Allows a home warranty association to renew a home warranty more than nine times the current statutory limit and charge a higher rate to renew a warranty than the current cost to purchase a new warranty for the same home which is currently prohibited;
- Exempt an affiliate of a licensed motor vehicle service agreement company which is domiciled in Florida while it uses contractual liability insurance to meet reserve requirements from licensure if the affiliate does not issue or market motor vehicle service agreements to Florida residents and does not administer such agreement originally issued to Florida residents.