**2019 LAW UPDATE**

**Legislation & Regulations Affecting Title and Title Insurance**

A Webinar

**I. Legislation Affecting Title and Title Insurance**

A. Remote On-line Notary Bill – CS/CS/HB 409 1. WFG Bulletin FL2019-04

 2. Effective Jan. 1, 2020

3. F.S. 117.021(7) Electronic Notarizations

a. DOS adopt Rules establishing Standards

b. All Electronic notarizations after 1-1-20 must comply

 with Standards

 4. F.S. 117.05 Notarial Certificate/Seal must:

 a. (4)(c) - State whether person appeared before notary physically

 or by audio-video communication technology

 b. (12)(a)(b) - Notary may supervise the making of a copy of an electronic

 record or the printing of an electronic record. Also, see FS 28.222(3)(h)

 and 695.28(1)(d).

5. F.S. 117.107(9) Prohibited Act

 a. Signor must appear before the notary by physical presence of by

 means of audio-video communication technology

6. F.S. 117.225 Registration as Online Notary

 a. Current notary public complete registration as online notary with DOS

 certifying:

 1. Currently a Florida Notary

2. Completed 2-hour course regarding online notaries

3. Pay registration fee

4. Identifying the RON Service Provider whose audio-video

 communication technology will be used for credential analysis

 and identity-proofing

5. Obtain a Surety Bond in the amount of $25,000 payable any

 individual harmed by the Registrant’s breach of duties as an

 online notary. Bond approved and filed with DOS.

6. Obtain E&O policy coverage in the amount of $25,000

 7. F.S. 117.245 - Electronic Journal

 a. Online Notary must keep an electronic journal of all online

 notarizations

 b. Online Notary must keep an uninterrupted and unedited copy of the

 recording of the audio-video communication

 c. Maintain a backup of the electronic journal and protect both

 d. Electronic journal and the audio-video communication must be

 maintained for 10 years after notarial act. The copy of the audio-video

 involving the signing of a Will must be maintained by a qualified

 custodian under Chapters 731 and 732.

8. F.S. 117.265 - Online Notarization Procedures

 a. Online Notary must be located in Florida

 b. Online notarization is deemed performed in Florida. Florida law

 applies.

 c. Online Notary must:

 1. Confirm identity of principal and witnesses appearing online

 2. Use audio-video communication technology

 3. Record the two-way audio-video session

 4. If principal located outside of Florida, confirm that principal

 desires the notarial act be performed by a Florida online notary

 5. Confirm Identity of principal by:

 (a) Personal knowledge

 (b) Remote presentation of government issued identification

 credential

 (c) Credential analysis of government issued credential

 (d) Identity proofing in the form of knowledge-based

 authentication

 (e) Online notary or his/her RON service provider must take

 reasonable steps to ensure audio-video communication

 technology used is secure from unauthorized interception

 (f) The electronic notarial certificate must include a notation

 that the notarization was an online notarization

9. F.S. 117.295 - Standards for Electronic and Online Notarization

 a. F.S. 117.295(1). Department of State (“DOS”) may adopt rules and

 set standards for online notarizations including:

 1. Technology and methods assuring the identity of principals

 and security of an electronic record including tamper-evident

 technologies.

 2. Education requirements for online notary publics and terms of

 Bonds and E&O insurance.

3. Identity proofing, credential analysis, unauthorized

 interception, audio-video communication technology,

 retention of electronic journals and copies of audio-video

 communications recordings in secure depositories.

 b. F.S. 117.295(2). January 1, 2020, DOS shall adopt forms, processes,

 and interim/emergency rules to accept applications and register

 online notaries public.

 c. F.S. 117.295(3). Until DOS adopts rules setting standards, the following

 minimum standards apply to any online notary public and his/her RON

 Service Provider:

 1. Use of Identity Proofing by means of knowledge-based

 Authentication:

 (a) Principal provided 5 or more questions drawn from a

 3d party provider identified to the principal’s SS#.

 (b) Responses to questions must be done in 2-minutes.

 (c) Principal must get 80% correct i.e. 4 correct.

 (d) One additional attempt may be offered.

 (e) On 2d attempt, principal may not be presented with

 more than 3 questions from 1st attempt.

 2. Use of credential analysis via commercial software to

 verify the authenticity of the credential: integrity of the visual,

 physical, or cryptographic security features of the credential.

 3. Use of audio-video communication technology to perform

 online notarizations that is:

 (a) Secure from interception, access or viewing

 (b) Of sufficient audio clarity and video resolution to

 enable notary to communicate with principal and any

 witness and to confirm the identity of the principal and

 any witness.

 4. E&O insurance coverage by a RON service provider of not less

 than $250,000 for errors and omissions relating to the

 technology or processes provided by the RON service provider.

 5. A 2-hour in-person or online course regarding the duties,

 obligations and technology requirements for serving as an

 online notary public offered by the FLTA, RPPTL, Florida Legal

 Education Association, or DOS.

B. Related Statutes Revised in the RON Bill:

 1. FS 95.231(1) and 694.08(1). Revisions effective Jan. 1, 2020. With changes

 the lack of an acknowledgment not just a defective acknowledgment is cured

 after 5 years and 7 years, respectively.

 2. FS 695.03. Revised to add subparagraph (4) which provides that upon affixing

 a seal or electronic equivalent “conclusively establishes that the

 acknowledgment was made in full compliance with Florida law, laws of

 another state, or foreign country governing notarial acts.

3. FS 695.28(1). Revised subparagraph “(1)” to provide that a document

 submitted to the Clerk by electronic or other means and recorded is deemed

 validly recorded and provides notice to all persons notwithstanding:

 a. Document recorded before DOS adopts standards

 b. Defects in or deviations or failure to strictly comply with statutes,

 rules, or procedures as to electronic signatures, electronic witnesses,

 electronic notarization, or online notarization.

 c. That the document was signed, witnessed, or notarized electronically,

 and that the document was notarized by an online notary outside the

 physical presence of signor by audio-video communication technology.

 d. That the document recorded was a printout of a document to which

 one or more electronic signatures have been affixed.

 4. FS 28.222(3)(h). Revised subparagraph “(h)” requiring the Clerk to record

 copies of electronic documents certified to be a true and correct paper

 printout by a notary public per Chapter 117 if the County is not prepared to

 record electronic documents electronically.

C. Lis Pendens Bill – CS/CS/HB 91

 1. Ober v. Town of Lauderdale-By-The-Sea, 218 So.3d 952 (4th DCA 2017)

 Lis pendens effective through the judicial sale

 2. F.S. 48.23(1)(d) – Lis Pendens is effective through the recording of any

 instrument transferring title pursuant to the final judgment.

 3. Changes by law were intended to clarify existing law and apply to actions

 pending on effective date of June 7, 2019.

 D. Exemption from Transfer Taxes on Conveyances of Homestead

 between Spouses – CS/HB 7123

 1. Effective July 1, 2019

 2. Revised FL 201.02(7)(b) - to remove limitation that the transfer of

 homestead be within one year of marriage.

 3. Explain Exemption – no doc stamps due on conveyance of homestead

 from one spouse to other spouse, or both spouses to one spouse for no

 consideration.

 E. Open And Expired Permits – CS/CS/HB 447

 1. Effective July 1, 2019

2. FS 553.79(1)(c). Local Government provide notice to owner of

 expiration of permit no later than 30 days of expiration.

 3. FS 553.79(15)(a). Owner may close permit retaining original contractor

 to complete job or hire a different contactor to satisfy the conditions

 of the permit. The new contractor is not liable for any defects for

 performed by original contractor.

 4. If permit is expired and requirements substantially completed, the

 permit may be closed without obtaining a new permit. The work

 required to close the permit may be done per the building code in

 effect when original permit was applied for.

5. F.S. 553.79(15)(c). A building permit may be closed 6 years after

 issuance if the local enforcement agency determines that no apparent

 safety hazards exist.

6. F.S. 553.79(16)(a). A local enforcement agency may not deny issuance

 of a building permit, issue a notice of violation, fine, penalize, sanction,

 or assess fees against an arms-length purchaser for value solely because

 the permit of a prior owner was not closed.

7. F.S. 553.79(16)(b). The local enforcement agency may not deny the

 Issuance of a building permit solely because the contractor is listed on

 permits that were not closed.

 F. Public Records Exemption – CS/CS/CS/SB 248

 1. F.S. 119.071(1)(a)-(c). Custodian of public record shall permit the

 record to be inspected and copied unless exemption asserted under

 F.S. 119.071(1)(d)-(f).

3. Effective per Bill is July 1, 2019 [statute says Oct. 1, 2019].

 4. F.S. 119.071(4)(d)1a. Definition of “home address” was expanded to

 Include: legal description, mailing address, parcel ID #, plot #,

 neighborhood name and lot #, GPS coordinates, and any other

 Information that would reveal the home address.

 3. F.S. 119-071(4)(d)4. Person asserting the exemption can later waive

 it by submitting a written request for the release of the exempt information

 to the custodial agency. Upon written request, the custodial agency

 shall release the specified information.

 G. Rights of Entry – CS/CS/HB 767

 1. Effective 7-1-2019

 2. F.S. 270.11(1). In a sale by TIIF, any local government, water management

 district, other agency of state ¾ interest and title in phosphate, minerals,

 metals and ½ interest in all petroleum is reserved

 3. F.S. 270.11(3). Rights of entry automatically released for any property

 that is or has been a continuous tract of less than 20 acres of land under

 the same ownership.

 4. F.S. 270.11(3) revised to make the automatic release apply to “a local

 government, a water management district, or any agency of the state”.

H. County Court Jurisdiction - CS/CS/HB 337

 1. Effective July 1, 2019

 2. F.S. 34.01. Jurisdiction of County Courts increased:

 a. $30,000 on Jan. 1, 2020

 b. $50,000 on Jan. 1, 2023

 3. The changes apply to all causes of action filed on or after the date changes

 regardless of when the cause of action accrued.

4. F.S. 26.012(1)(a). If the amount in controversy exceeds $15,000, the appeal is

 to the DCA and not the Circuit Court.

I. Construction Bonds CS/CS/HB 1247

 1. Effective Oct. 1, 2019

 2. Notice of Nonpayment F.S. 713.23(1)(d) and F.S. 255.05(2)(a)2:

 a. Must be under oath

 b. Fraudulent Notice:

 (1) Lienor forfeits rights under bond.

 (2) Service of a fraudulent Notice of Nonpayment is a complete

 defense to the lienor’s claim under the bond.

 (3) Notice of Nonpayment is fraudulent if:

 (a) Lienor willfully exaggerated amount unpaid;

 (b) Willfully included a claim for work not performed or materials

 not furnished; or

 (c) prepared the notice with such gross negligence as to amount

 to a willful exaggeration.

 (4) A minor mistake or error in a Notice of Nonpayment or a good

 faith dispute as to amount unpaid does not constitute a willful

 exaggeration.

3. Notice of Nonpayment must be in substantially the form provided in the

 statutes.

J. Uniform Interstate Deposition & Discovery Act. - CS/HS 7006

 1. Effective July 1, 2019

 2. Applies to requests for discovery in all proceedings pending or

 commenced on or after July 1, 2019.

 3. F.S. 92.251(3)(a). To request a subpoena, a party from foreign

 jurisdiction [another state, DC, Puerto Rico, and US Virgin Islands]

 must submit a foreign subpoena to Clerk in County of Florida

 where discovery is sought.

4. F.S. 92.251(3)(b). Florida court shall promptly issue a subpoena for

 service on the person to which the foreign subpoena is directed.

5. F.S. 92.251(4). After issuance, the subpoena is served the same as

 any other Florida subpoena.

**II. Regulations and Other Matters**

 A. Miami-Dade Ordinance – Special Taxing District

 1. Explain Miami-Dade Ordinance 18-20.2

 2. Provide Notice of Special Taxing District in Real Estate Contract

 or addendum to contract.