**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.