

TITLE TOPICS A-Z



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INTRODUCTION



ACCESS

Legal vs. Physical

Title policy only insures legal access

- Legal Access
 - Platted Road
 - Easement
 - County Maintained Road

- Physical Access
 - Either no road to property or
 - Not county maintained
 - Not platted
 - No easement



ACKNOWLEDGEMENTS

Acknowledgement must state:

1. The Signer personally appeared before the Notary,
 2. The Signer acknowledged that the document was freely signed.
 3. The Signer was personally known to the Notary or produced valid identification
- Valid Identification

Jurat is used when the Signer is swearing to the content of the document, “Sworn and subscribed before me...”

F.S. 695.03-Affixing the official seal conclusively established the validity of the acknowledgment.

ACKNOWLEDGEMENTS-UNUSUAL

- **Signing with an X**
 - F.S. 117.05(14)(b)
 - The document signing is witnessed by two disinterested persons;
 - The notary prints the person's first name at the beginning of the designated signature line and the person's last name at the end of the designated signature line; and
 - The notary prints the words "his (or her) mark" below the person's signature mark.

JANE X DOE

Her Mark

ACKNOWLEDGEMENTS-UNUSUAL

- **Physically unable to sign**
 - F.S. 117.05(14)(d)
 - Person with disability directs notary to sign in his/her presence
 - Document signing is witnessed by 2 disinterested persons
 - Notary writes below the signature:
 - *“Signature affixed by notary pursuant to Section 117.05(14) Florida Statutes”* and states the circumstances of the signing in the notarial certificate. (Person is unable to hold a writing instrument)

John Smith

*Signature affixed by Notary pursuant to
F.S.117.05(14)*

ACKNOWLEDGEMENTS-UNUSUAL

- **Person who is blind**
 - F.S. 117.14(a)
 - Notary must read the entire instrument to that person
 - State in acknowledgement that notary read the instrument to the signor

BANKRUPTCY

Question: This judgement was listed in the Seller's bankruptcy, can we delete it?

Answer: NO! The bankruptcy only relieves the personal liability, not the lien of the judgement.

- If it is homestead, can still use a homestead affidavit
- Order from Bankruptcy Court authorizing the sale “free and clear of any liens”
- Order “Stripping” the lien
 - Not available in Chapter 7
 - Need to record motion and order to determine secured status, and proof of no appeal of the order

- In Bankruptcy, all property of the debtor becomes part of Bankruptcy Estate
- We need to make sure property has come out of the Bankruptcy Estate

CLOSING FEE

F.S. 627.7711 Closing Services

Q: Can 3rd party fees be charged as a separate line item?

DFS position:

- Title agencies are permitted to charge the third-party fees as separate line items
- Consumer must be notified that these fees represent responsibilities of the agency, but were contracted to a third party.
- The consumer must understand these fees will be charged to them either as part of the closing services fee, or in addition to the closing services fee.
- The third-party fee should not be charged in a deceptive or misleading manner.
- The title agency and its agent in charge are responsible for the work product of the third party

CODE LIENS

- This code lien is not our property address can I delete it?
- Probably Not
 - Cross attaching liens-attach to all property owned by violator
 - F.S. 162.09 provides that the cross-attaching code lien may not be enforced against homestead property.
- Notice of Violation or Lien
- If get a release but violation not cured, new fines will accrue
- Not covered by Treaty

CURATIVE STATUTES

- Mortgages Expiration-F.S. 95.281
 - If final maturity date is ascertainable from the mortgage, 5 Years after stated expiration date
 - If final maturity is not ascertainable, 20 years after date of the mortgage.
- Witness/Acknowledgement defects
 - F.S.95.231
5 years after recording will or deed, if lack of seal, witnesses, defect in acknowledgement (not lack of)
 - F.S. 694.08
7 years after recording POA or deed executed in a representative capacity, defect in acknowledgement (not lack of)
- As of 1/1/2020 both statutes will cure LACK of Acknowledgment after 5 or 7 years, respectively
- Marketable Record Title Act (MRTA) Chapter 712

DISSOLUTION OF MARRIAGE

- Review of Marital/Property Settlement Agreement
 - Who was awarded the property?
 - Is any money owed?
 - Is a deed required? If so:
- Add Release language in the deed to make it clear that all requirements with respect to the property under the marital/property settlement agreement have been fulfilled.

“The Grantor acknowledges having received all money due under the Marital Settlement Agreement between _____ and _____, with respect to the property conveyed herein. OR

By conveyance herein, all rights under said Marital Settlement Agreement with respect to the property conveyed herein have been satisfied and _____ hereby relinquishes all right, title, and interest that he may have in the Property

- Under F. S. 732.507 treat surviving ex-spouse as having predeceased Decedent.

DOCUMENTARY STAMP TAX

- Effective July 1, 2019
- F.S. 201.02(7)(b)
- Transfer between spouses-
 - 1 spouse to another
 - 1 spouse to both spouses
 - Both spouses to 1 spouse
- Homestead property
 - If not homestead then doc stamps will be due on ½ of the mortgage balance
- No consideration except for mortgage or other lien
- Add note to deed that no doc stamps due under F.S. 201.02(7)(b)
-

ESCROW AGREEMENTS

- Used when holding money post-closing
- Collect 150% of amount due
- Set time frame for curing issue or releasing funds
- Specify what to do with proceeds at end of time frame if issue is not resolved
- Escheat Funds

ESCROW DEPOSIT DISPUTES

- Once contract cancels when can you re-sell property?
 - Not until you have releases
- To whom do you disburse escrow deposit?-
 - Need releases from Buyer and Seller
- Interpleader
 - Sue the buyer and seller and give the money to the court to decide
- Can you withhold your costs?
 - Not unless authorized to do so.

FIRPTA

- Withholding on the sale of US real property by a foreign person
- Foreign person
 - Non-resident alien person-no green card
 - Foreign corporation or partnership
 - US trust with a foreign settlor
- Limited liability company
 - If LLC has 1 MEMBER (not manager) and the member is foreign
 - If LLC has multi members it doesn't matter if foreign
- Buyer or family using as a personal residence

| | Less than \$300,00 | \$300,000 - \$1M | \$1M+ |
|--|--------------------|------------------|-------|
| Buyer (or relative) is using as residence | Exempt | 10% | 15% |
| Buyer (or relative) not using as residence | 15% | 15% | 15% |

HOMESTEAD-JOINDER OF SPOUSE

- Article X of Florida Constitution states that the owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift ...
- If it is the homestead of 1 of the spouses, even if they live separately, the other spouse must join in any conveyance or mortgage.
- If only 1 spouse on title, other must join in the mortgage or deed
- A spouse may not QCD to other spouse to release homestead rights to avoid joinder.
- Homestead may be waived via pre or post nuptial agreement
- Husband and Wife must execute the same deed

INSURED DEFINITION

Under the 2006 Policy Jacket-Insured definition

- Heirs, devisees, personal representatives
- Successors to an Insured by dissolution, merger, or reorganization
- Grantee of an Insured under a deed delivered without payment of actual consideration conveying the Title where:
 - Stock, shares, memberships of the grantee are wholly-owned by the named insured
 - Grantee wholly owns the named insured
 - Grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

JUDGEMENTS : Do they attach?

- Certified? -Judgement becomes a lien on real property when a certified copy is recorded.
- Address? Not a lien unless the address of the person who has the lien is contained in the judgement or an affidavit is recorded with the judgement.
- Tenancy by the Entirety protection. Judgement against 1 spouse will not attach.
 - Need to record a Continuous Marriage Affidavit.
 - Does not apply to Federal Tax Lien
 - If take title before married, must convey to themselves as husband and wife to get the protection.
- Non-id- record a non-id affidavit identifying the judgment, listing address of Seller and last four of SS# or DOB
- Homestead –Judgements cannot be enforced against homestead property.
 - Affidavit of Homestead
 - Statutory Notice of Homestead-F.S. 222.01
 - 45 days period

JUDGEMENTS -EXPIRED?

- Judgments are good for an initial period of 10 years from date of recording and can be renewed for an additional 10 years
- Mechanics Liens only good for 1 year from date of recording
 - If contested under F.S. 713.22 shortens to 60 days
 - Under F. S. 713.24 can transfer lien to other security
- F.S. 718.116- Condo Assessment liens good for 1 year from date of recording
 - If contested under F.S. 718.116(5)(c) shortens to 90 days
- F.S. 95.11(2) (b) HOA Lien is good for 5 years form date of recording

LEGAL DESCRIPTOINS AND CORRECTIVE DEEDS

- Do not use Property Appraiser's legal description
- Lot 21 Block 2 but should be Block 1
 - If only one Lot 21 and it is in Block 2- Clerk's Affidavit
 - If a Lot 21 in every Block-Corrective Deed
- 2 out of 3- Plat Name; Plat Book; Plat Page
- If a deed needs to be corrected to correct legal description then it must be re-executed, re-acknowledged and then re-recorded.
- **You cannot scratch out and correct and re-record without new execution.**
- Scrivener's Affidavit can be used to correct Grantor or Grantee name misspelling but not legal description.

LIFE ESTATE

- The Life Estate deeds (sometimes referred to as a Ladybird deed) works by dividing ownership of real estate into different time periods.
- Life Tenant-A person who creates a life estate deed transfers property to himself for his lifetime.
- Remainder-Man A life estate deed also names one or more people or trusts, to inherit the property after the life tenant
- When the life tenant dies, the property passes to the remainder beneficiaries by operation of law.
- There is no need for probate
- Just record a death certificate
- Language: “The Grantor reserves a life estate in the Property”
- If the Life Tenant sells or mortgages the property, the remainder-men must join in the conveyance or mortgage
- Judgements against remainder-men will attach to the Property

LIFE ESTATE-ENHANCED

- Enhanced Life Estate -the life tenant retains all of the rights to convey and mortgage the property and keep the proceeds of a sale without joinder of the remainder-man.
- Language creating enhanced life estate:
 - FOR LIFE, without any liability for waste, and with full power and authority in said life tenant to sell, convey, mortgage, lease, or otherwise manage and dispose of property described herein, in fee simple, with or without consideration, without joinder of the remainder-man , and with full power and authority to retain any and all proceeds
- If the Life Tenant sells or mortgages the property, the remainder-men do not need to join in the conveyance or mortgage
- Judgements against remainder-men will NOT attach to the Property while Life Tenant is still alive

LIMITED LIABILITY COMPANY

- LLC governed by its operating agreement
 - member managed or manager managed
 - If multiple managers-how many need to sign
- Statement of Authority F.S. 605.0302
 - Can authorize anyone to be an authorized signer
 - Must be recorded with Division of Corporations AND in the county where the property is located
 - Valid until amended or revoked
- Need an LLC Affidavit authorizing the transaction and who will be signing
- If dissolved add the following
 - a dissolved Florida Limited Liability Company to name in Grantor clause, signature block and acknowledgement
 - The purpose of this deed is to wind-up the business affairs of the grantor.
- Layered Signature Block

Dauids Family LLC, a Florida Limited Liability Company,

By: DDauids, LLC, A Florida Limited Liability Company, its Manager

By: _____

Debra L. Davids, its Manager

MARKING UP A COMMITMENT

- If a change on Schedule A, such as purchase price, loan amount or buyer's name, you can make that change yourself without approval
- If you receive the document to satisfy the requirement, then you mark the requirement as "satisfied." You do not need to delete the requirement.
- If commitment calls for review of a document, like a trust, once reviewed, mark commitment as satisfied, you don't delete the requirement.
- If underwriting tells you that a requirement can be deleted you can delete it yourself or mark it "deleted per underwriting" or deleted because not applicable.
- When closing attorney asks for a "marked up commitment" they want to see what the final policy will include and not include

MUNICIPAL LIEN SEARCHES

- Title policy does not cover unrecorded liens
- If no municipal lien search is done, must add exception for Chapter 159 or 170 on Schedule B
- F. S. 180.135- any unpaid service charges incurred by a former occupant (tenant, not owner) will not be the basis for any lien against the rental property or legal action against the owner to recover such charges
- Failure to obtain a Municipal Lien Search if customary to do may be negligence on the title agent

MUTUAL INDEMNIFICATION AGREEMENT

- Mutual Indemnification Agreement applies if have a prior policy that is more than 6 months old
- Covers over certain title objections-POTENTIAL DEFECTS
- If MIA does not apply need a Letter of Indemnification
 - Provides the new underwriter will be indemnified by the prior underwriter in the event of a claim
 - “With undertaking” requires prior underwriter to fix title issue

MUTUAL INDEMNIFICATION AGREEMENT

POTENTIAL DEFECTS:

1. Doubt as to whether the spouse of a prior grantor has a homestead interest in the Land,
2. Doubt as to whether a recorded judgment, federal tax lien or state tax lien or warrant constitutes an unsatisfied lien against the Land,
3. Doubt as to whether a recorded mortgage has been satisfied or released as a lien against the Land,
4. Doubt as to whether due process was afforded to certain defendants in court cases involving probate, foreclosure, quiet title or other proceedings
5. Doubt as to whether a trustee or attorney-in-fact or purported representative of a legal entity had the requisite authority to convey or mortgage title to the Land to a bona fide 3rd party purchaser for value,

MUTUAL INDEMNIFICATION AGREEMENT

6. Doubt as to whether an individual in the chain of title, who did not convey his or her entire interest in the Land while alive, is deceased,
7. Doubt as to whether there is a potential lien outstanding in favor of the state or federal government arising from the death of an individual in the chain of title,
8. Possible invalidity of any deed in the chain of title to the Land due to a lack of subscribing witnesses,
9. Possible failure of any deed or mortgage in the chain of title to the Land to be accorded the protections and benefits of Section 695.01, Florida Statutes, otherwise known as the recording statute, due to an insufficient or incomplete acknowledgment for one or more of the grantors or makers of the deed or mortgage, as set forth in Section I below; however this does not apply to the absence of an acknowledgement or an acknowledgement taken remotely not expressly authorized by Florida Statutes and Rules; or
10. Doubt as to the validity of any deed in the chain of title to the Land or the insured mortgage due to a lack of a corporate seal affixed thereon

NOTARY- FOREIGN

- Documents can be signed in a foreign country before a notary of that Country
- Notary has a Seal and the Seal indicates that the person is a notary with words such as Notare or similar language
- If the acknowledgment is done in a foreign language, the acknowledgement must be translated.
 - the translation must say 3 things:
 - (1) that the signor appeared before the notary;
 - (2) that the signor acknowledged his signature on the document; and (3) that the signor provided ID or was personally known to the Notary.
- The Translation is recorded with the original document.
- Must include copies of the signor's ID with the document.

NOTICE OF COMMENCEMENT

- Expire after 1 year from recording, unless extended or stated otherwise
- Must terminate prior to recording Mortgage
- Record:
 - Notice of Termination
 - Contractor's Final Payment Affidavit
- Indemnity from homeowner since termination not effective for 30 days
- Sufficient Funds Affidavit from Association.

PACE LOANS

- PACE Green Corridor Assessment –Paid as part of Non Ad Valorem Taxes
- F.S. 163.08
- Paid off otherwise it has priority over the mortgage

PERMITS

- Disclose any open permits to the Buyer
- New Statute F.S. 553.79 –new sections 15 and 16
 - to close a permit a replacement contractor can be used and is not liable for defects in the work performed by the original contractor.
 - The Property owner may assume the role of owner-builder.
 - An owner-builder status requires that the owner must occupy the property for at least 1 year after completion of the project before selling it.
 - This requirement is waived for closing an open permit.
 - Building department may close building permits 6 years after permit was issued, even in the absence of a final inspection, if the building department determines that no apparent safety hazards exist.

POWERS OF ATTORNEY

- F.S. 709.2105(2) requires all POAs to have 2 witnesses and be Acknowledged
- Specific authority to sell/convey or execute deeds or mortgage
- It does not need to be property specific
- F.S. 689.11 requires POA for homestead to be executed in same manner as a deed-2 witnesses and acknowledged
- F.S. 709.2106 exception for out of state POA
 - Do not need 2 witnesses if the state of execution doesn't require
 - Need the statute or legal opinion confirming this
 - Does not apply if homestead property
- A POA cannot be used for a trustee-F.S. 709.2201 (e)
- Record an Attorney in Fact Affidavit with original POA
 - Confirms the POA is still valid and principal is still alive
 - Principal was competent when executed
 - No guardianship proceedings

POWER OF ATTORNEY

- Fiduciary Responsibility when a POA is being used
 - Why do they need to use a POA?
 - If possible, confirm that principal is still alive and is aware of and has approved transaction
 - Agent is a fiduciary under the law
 - Duty to only do acts authorized under POA
 - Act in Principal's Best Interest
 - Avoid Conflicts of Interest and Self Serving Acts
 - POA cannot be used for a Trustee or a PR
 - Keep Property Separate-funds still go to principal, not agent
 - Don't use a POA for Affidavits

PROBATE

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- If there was no Will, we need to record certified copies of the following in the County where the property is located:
 1. Letters of Administration
 2. Petition for Administration
 3. Affidavit of No Estate Taxes Due
 4. Death Certificate
 5. Order Authorizing Personal Representative to Convey

 - If there was a Will, you need to record certified copies of the following in the County where the property is located:
 1. Letters of Administration
 2. Will
 3. Order Admitting Will to Probate
 4. Affidavit of No Estate Taxes Due
 5. Death Certificate, unless already recorded

 - If it is homestead, PR has no authority to convey. Need deeds from heirs.
 - Need Order Determining Homestead

PROCEEDS-ACTUAL VS DISBURSED

- Closing Disclosure Statement-Actual vs Disbursed Proceeds
 - Rule 69B-186.008 requires the Settlement Agent to certify in writing that they agree to disburse the escrow funds in accordance with the transaction and Florida Law.
 - Disbursing realtor funds to realtor vs to broker
 - If have written authorization to disburse to realtor
 - You must disclose amount disbursed
 - Disbursing funds to someone other than the Seller, i.e. members of LLC, Settlers of the Trust
 - Get disbursement instructions in writing and notarized
 - Disclose on the CD actual person receiving the funds
 - 1099 still shows Seller, not party receiving the funds.
 - Lender's Closing Instructions and CPL-WFG's Insured Closing Protection Letter indemnifies the lender for loss incurred in connection with a closing when the loss is cause by the failure of the Agent to comply with the closing instructions as they relate to the disbursement of Funds.

PROOFREAD, PROOFREAD, PROOFREAD!!!

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- Our examiners are human, they do make mistakes.
 - Check legal description against property appraiser-for rough idea
 - Check name of subdivision
 - If lot and block confirm it is correct including PB and Page of Plat or pages of Condominium Declaration
 - Read metes and bounds legal with a partner
 - Proofread your deed for spelling of names
 - Example-Grantor's name left off of deed
 - Is there an "s" at the end of the name
 - Corporate/LLC name correct and state of incorporation
 - Compare legal in commitment against the survey legal against legal in the deed
 - Make sure there is marital status or non-homestead language on deed
 - Legal Description errors are not covered under the treaty and require corrective action.

REMOTE ON LINE NOTARIZATION (RON)

- New law goes into effect in January 2020
- Bulletin 6/10/2019 FL2019-04
- In the first quarter of 2020, Amanda Hersem will be presenting a webinar covering all of the details.
- Need to Register as a Florida Online Notary Public
- Take a 2 hour training course
- Pay fees including obtaining a \$25,000 bond and E&O minimum of \$25,000.
- Identity confirmation requirements
- Credential Analysis using commercially available automated software
- Identity Proofing Standards
- Audio-video recording
- Electronic Journal

STANDARD EXCEPTIONS

- **You are required to remove these exceptions if you have the documentation to do.**
 - **Gap.** F.S. 627.7841
 - Time between closing and recording. This exception must be removed after you have closed and disbursed. OBTAIN UPDATE PRIOR TO CLOSING
 - **Parties in Possession.** F.S. 627.7842 (2)(b)
 - Seller signs an affidavit confirming that nobody is in possession except the seller
 - **Unrecorded Easements.**
 - If you have a survey and it does not show any un-recorded roads or easements running through the property.

STANDARD EXCEPTIONS

- **Survey exception** F. S. 627.7842 (1) (a)
 - With a survey this general survey exception must be removed. However, you would add exceptions to the policy for encroachments and other matters shown on the survey. If you don't have a survey, it has to stay in.
- **Mechanics' Lien Exception.** F.S. 627.7842)(1) (c)
 - Seller signs an affidavit confirming that no improvements have been made to the property within the past 90 days for which payment has not been made in full

SURVEYS

- Use of prior survey with survey affidavit confirming no changes
- Prior owner policy without survey exception can also be used
- List all Encroachments found on survey
- If encroachment is severe we will not give Form 9 coverage
 - “Notwithstanding the issuance of a Form 9, there is no coverage for this matter”
- FF9 without survey
 - “Notwithstanding the issuance of an ALTA Form 9-06 with this policy, the provisions of paragraphs 1(b)(1), 1(b)(3), 1(b)(4), 3(a), 4, and 5 of said Form9 are hereby deleted.”

TAX DEEDS

- F.S. 95.191 and 95.192 –Tax deed of record for 4 years or quiet title action
- All Liens and mortgages have been satisfied/released
- Notice to Lender at address in Mortgage AND to registered agent

- Title Standard 15.1

STANDARD: A TITLE BASED UPON A TAX DEED ISSUED BY THE CLERK OF THE CIRCUIT COURT IS MARKETABLE IF IT AFFIRMATIVELY APPEARS THAT:

(1) THE TAX DEED HAS BEEN OF RECORD FOR MORE THAN FOUR YEARS;

(2) THE TAXES HAVE BEEN PAID BY THE TAX DEED GRANTEE, OR SUCCESSORS, FOR THAT PERIOD OF TIME; AND

(3) SUBSEQUENT TO THE TAX DEED THERE HAS BEEN NO ADVERSE CLAIM ASSERTED OF RECORD AND NO POSSESSION ADVERSE TO THE TAX DEED GRANTEE OR SUCCESSORS

TRUSTS

- To vest title need 3 things:
 - Trustee name,
 - Name of Trust
 - Date of Trust
- Merger of Title
 - When person is both a Trustee and a Beneficiary.
 - Legal title held as trustee merges with the beneficial interest
 - Deemed to be in title in their individual capacity
 - Convey out individually and as trustee
- Successor Trustee
 - Attach pages appointing successor trustee to trust certificate
- Passive Trust
 - Trustee has no real authority
 - Mickey Mouse as trustee for Minnie Mouse
 - Title is considered to be vested in the beneficiary
 - Deed from Trustee and Beneficiary

TRUSTS-LAND TRUSTS

- Powers must be in the deed or it to be treated as a Land Trust
- “Hereby confer on the trustee the power and authority to protect, to conserve, to sell, to lease, to encumber, or otherwise to manage and dispose of the real property described in the recorded in recorded instrument
- F.S. 689.071 and 689.073
- Merger of Title does not apply
- Judgements against the trustee, in his/her individual capacity or against the beneficiary, do not attach
- If homestead, must convey out individually
- Do not need to review the trust agreement

UNIFORM TITLE STANDARDS

<https://rpptl.org/DrawCommittees.aspx?GroupCommitteeTypeID=5&GroupCommitteeID=73>

Reference for common title issues.

They are interpretations of existing law and practice.

Each Title Standard begins with a statement of the standard, followed by examples of the application of the Standard.

UNMATCHED DATES

- Title Standard 3.6

STANDARD: THE FACT THAT AN INSTRUMENT SUCH AS A DEED OR MORTGAGE IS UNDATED, BEARS A DATE DIFFERENT FROM THE DATE OF THE ACKNOWLEDGMENT, OR BEARS AN IMPOSSIBLE DATE, DOES NOT AFFECT THE VALIDITY OF THE INSTRUMENT AS A MUNIMENT OF TITLE

- After Acquired Title

- Executes a deed or mortgage before they actually have title
- Warrant that they have good title
- When they obtain good title, that flows to their grantee or lender
- In a transaction if deeds are recorded out of order
 - As long as they are warranty deeds
 - No need to re-record

VESTING

- Don't use "OR" between names
- Always specify if JTWRORS or Tenants in Common or husband and wife
- Same Sex marriage-
 - A and B, a married couple or
 - A and B, as tenants by the entireties
 -
- On deed don't use "joined by spouse"
- If party is on deed, have to be on the mortgage as well

WIRE FRAUD

- Use secure e-mail-VPN
 - 60% of fraud comes from parties not using secure wifi
 - Example-Realtor e-mailing from Panera wifi
- Use precautions for wiring instructions
- Quicker you report wire fraud, more likely to reverse wire
- Long Passwords-change frequently

ZONING

- In Florida the zoning of the property is not insured
- The zoning endorsement is not available in Florida