

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

BILL: CS/SB 404

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Real Property Liens and Conveyances

DATE: March 27, 2013 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Munroe | Cibula | JU | Fav/CS |
| 2. | Toman | Yeatman | CA | Favorable |
| 3. | Babin | Diez-Arguelles | AFT | Favorable |
| 4. | | | AP | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 404 removes the requirement that warranty deeds include a blank space for the grantee's social security number.

The bill also provides that a lien by a governmental or quasi-governmental entity for an improvement, service, fine, or penalty is valid against a creditor or subsequent purchaser only if the lien is properly recorded in the county in which the property is located. The bill specifies information that must be included in a lien by a governmental or quasi-governmental entity. The bill excludes liens for taxes, non-ad valorem or special assessments, or utilities from the recording requirement.

The bill has no fiscal impact on state government; however, it may cause a local government to incur additional filing fees, which may be offset by more effective lien collections.

The bill substantially amends sections 689.02 and 695.01, Florida Statutes.

II. Present Situation:

Warranty Deeds

There are three types of deeds in general use in the United States: a general warranty deed, a special warranty deed, and a quitclaim deed.¹ A general warranty deed (warranty deed) contains certain warranties concerning the nature and quality of the title being conveyed. A special warranty deed contains limited warranties, while a quitclaim deed contains no warranties.² Under common law, a warranty deed expressly guarantees the grantor's good, clear title and the deed contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims.³

In Florida, the common law warranty deed has been supplanted by the statutory warranty deed, which is required to contain certain language. The use of the statutory warranty deed conveys good title with all the covenants granted under common law.⁴

Florida requires a statutory warranty deed to include a blank space for the social security number of the individual acquiring the real property (the grantee).⁵ The failure to include the social security number on a warranty deed does not affect the validity of the conveyance or the recordability of the deed.⁶

Hidden Liens

A lien is a charge or encumbrance upon property.⁷ Liens include mortgages⁸, construction liens⁹, and other liens authorized by statute.

Local governments may impose liens on real property for improvements, services, costs of repairs and associated penalties.¹⁰ State laws also create liens in favor of the government under certain situations.¹¹

Florida has a “notice” type of recording statute – meaning that liens are generally only effective against subsequent purchasers of the property that is subject to the lien when the purchaser has notice of the lien.¹² The act of recording an instrument in compliance with Florida’s recording statute provides constructive notice of a lien.¹³

¹ Dukeminier & Krier. *Property*. New York: Aspen (4th ed. 1998).

² *Id.*

³ See generally BLACK’S LAW DICTIONARY (9th ed. 2009).

⁴ Section 689.03, F.S.

⁵ Section 689.02(2), F.S.

⁶ *Id.*

⁷ BLACK’S LAW DICTIONARY (9th ed. 2009).

⁸ Section 697.02, F.S.

⁹ See chapter 713, F.S.

¹⁰ See e.g., s. 162.09(3), F.S., which authorizes local governments to file a lien in the public records against land upon a valid order imposing a code enforcement fine.

¹¹ See e.g., ss. 589.13, 589.14, 589.15, and 589.16, F.S. (relating to liens for the cost of fire control),

¹² Section 695.01, F.S.

¹³ *Lafitte v. Gigliotti Pipeline, Inc.*, 624 So. 2d 844, 845 (Fla. 2d DCA 1993). See also, 37 FLA. JUR. 2D *Mortgages* s. 133 (2011).

A lien, in some cases, may be legally enforceable although it is not recorded in the public records of the county in which the property is located.¹⁴ An unrecorded lien may be characterized as a “hidden lien” because the owner or other affected parties do not have notice and may not discover the existence of the lien through proper diligence by searching the public records in the county where the property is located.

According to the Real Property, Probate, and Trust Law Section of The Florida Bar (RPPTL Section), liens assessed and maintained by a municipality or branch of a municipality often go undetected because:

- They are often unrecorded;
- Confusion often arises over determination of which branch of government has the right to impose the lien; and
- Confusion arises as to whom to contact to determine the existence of possible liens.¹⁵

III. Effect of Proposed Changes:

Warranty Deeds

The bill removes the requirement to include a blank space for the grantee’s social security number on a warranty deed.

Hidden Liens

The bill amends s. 695.01, F.S., to provide that a lien by a governmental or quasi-governmental entity for an improvement, service, fine, or penalty is valid against a creditor or subsequent purchaser only if the lien is properly recorded in the county in which the property is located. These governmental and quasi-governmental liens must include:

- The name of the owner of record;
- A description or address of the property; and
- The tax or parcel identification number applicable to the property as of the date of recording.

Liens for taxes, non-ad valorem or special assessments, or utilities are excluded from the recording requirement.

The bill takes effect October 1, 2013.

¹⁴ See *Dade County v. Certain Lands*, 247 So. 2d 787, 789-90 (Fla. 3d DCA 1971).

¹⁵ The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Fair Notice of Government of Governmental Liens* (2009) (on file with the Senate Committee on Judiciary).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill may cause local governments to incur additional filing fees.

B. Private Sector Impact:

The bill provides the private sector with greater certainty and notice of governmental liens. Committee staff does not have data specifying the number of governmental entities that are not currently recording all liens on real property or how many additional liens may be filed as a result of the requirements of the bill. Private parties that are buying and selling real property may benefit to the extent the bill provides additional information to such parties prior to entering into these transactions.

C. Government Sector Impact:

Committee staff does not have data specifying the number of governmental entities that are not recording all liens on real property that will be required to do so by the bill. Any additional costs associated with recording liens as required by the bill may be negated to the extent the governmental entities may more effectively enforce collection of such liens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 6, 2013:

The committee substitute made the following changes (*italics*) to the bill:

“A lien by a governmental entity or quasi-governmental entity that attaches to real property for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities, is valid and effectual *in law or equity* against creditors *or* subsequent purchasers for a valuable consideration only if the lien is recorded in the official records of the county in which the property is located.”

The committee substitute changes the word “and” to “or,” such that certain liens are valid and effectual *in law and equity* against a creditor *or* subsequent purchaser only if the lien is recorded as required by the bill.

- B. **Amendments:**

None.