

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 Committee on Community Affairs

BILL: CS/SB 404

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Real Property Liens and Conveyances

DATE: March 9, 2013 REVISED: _____

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

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

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

The bill also provides that a lien 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 a creditor or subsequent purchaser only if the lien is properly recorded in the county in which the property is located and contains:

- 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.

This bill amends sections 689.02 and 695.01, Florida Statutes.

II. Present Situation:

Statutory Warranty Deed Form

A warranty deed is a “deed containing one or more covenants of title; esp[ecially], a deed that expressly guarantees the grantor’s good, clear title and that 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.”¹ In Florida, the common law warranty deed has been supplanted by the statutory warranty deed form.² The use of the statutory warranty deed conveys good title with all the covenants granted under common law.³ A conveyance executed substantially in the statutory form required under s. 689.02, F.S., also conveys good title with all the covenants granted under common law.⁴

The statutory warranty deed form includes 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 mortgages, construction liens, and other liens authorized by statute. Mortgages are liens on the property mortgaged.⁸ Construction liens are authorized by statute.⁹

Florida has a recording statute which states:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.¹⁰

¹ BLACK’S LAW DICTIONARY (9th ed. 2009).

² 19 FLA. PRAC. SERIES s. 383:8 (2012-2013 ed.) and s. 689.02, F.S.

³ Section 689.03, F.S.

⁴ *Id.*

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 Section 695.01, F.S.

Section 695.01, F.S., is a notice recording statute and “Florida courts over time have described and applied Florida’s recording statute in a manner that is consistent with a ‘notice’ type of recording statute.”¹¹ Under a notice type of recording statute, “a subsequent mortgagee of real property for value and without notice (actual and constructive)¹² of a prior mortgage of the real property will prevail against the prior mortgagee.”¹³

Under Florida law, a mortgage is a specific lien on the property and not a conveyance of the legal title or the right to possession.¹⁴ As a “lien theory” state, with a notice type recording statute, liens are generally afforded precedence based on whether subsequent purchasers have notice of the lien. The act of recording an instrument in compliance with s. 695.01, F.S., provides constructive notice of a prior encumbrance on the property which is the subject of the instrument.¹⁵ Grantees by quitclaim are deemed and held to be bona fide purchasers without notice within the meaning of the recording acts.¹⁶

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 existences of possible liens.¹⁷

Local governments may impose liens on real property for improvements, services, costs of repairs and associated penalties levied in accordance with local building code enforcement.¹⁸ The state government may also file a notice of a lien on real property in some instances.¹⁹ 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.²⁰ This may be characterized as a “hidden lien” because the owner or other affected parties do not have actual 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.

¹¹ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).

¹² “Actual notice” means “notice expressly and actually given, and brought home to the party directly.” BLACK’S LAW DICTIONARY 550 (Abridged 5th. ed.1983). The term, “constructive notice” means “information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it.” *Id.*

¹³ *Argent Mortg. Co.*, 52 So. 3d at 799.

¹⁴ Section 697.02, F.S.

¹⁵ *Lafitte v. Gigliotti Pipeline, Inc.*, 624 So. 2d 844, 845 (Fla. 2d DCA 1993). *See also*, 37 FLA. JUR. 2D *Mortgages* s. 133 (2011).

¹⁶ Section 695.01(2), F.S.

¹⁷ 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).

¹⁸ *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.

¹⁹ *See e.g.*, ss. 589.13, 589.14, 589.15, and 589.16, F.S.

²⁰ *See Dade County v. Certain Lands*, 247 So. 2d 787, 789-90 (Fla. 3d DCA 1971).

III. Effect of Proposed Changes:**Statutory Warranty Deed Form**

The bill removes the requirement from the statutory warranty deed form to include a blank space for the grantee's social security number.

Hidden Liens

The bill amends s. 695.01, F.S., to provide that a lien 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 a creditor or subsequent purchaser only if the lien is properly recorded in the county in which the property is located and contains:

- 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.

The bill takes effect October 1, 2013.

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:**

None.

B. Private Sector Impact:

The bill may have a positive impact on the private sector through 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. To date, the Revenue Estimating Conference has not scheduled the bill for a determination of its potential impact.

The clerks of court may experience increased revenue attributed to increased filings of 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.