

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 995 Conveyances of Real Property

SPONSOR(S): Civil Justice Subcommittee; Broxson

TIED BILLS: None **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Ward	Bond
2) Judiciary Committee	17 Y, 0 N	Ward	Havlicak

SUMMARY ANALYSIS

Currently the statutory requirements for the conveyance of real estate in Florida require that deeds and wills conveying real estate be signed in the presence of two witnesses. When a power of attorney, which has its own execution requirements of two witnesses, is used to transfer real estate, it is recorded with the deed.

Wills and deeds must be witnessed and sometimes notarized to effectively transfer property. These instruments may have some technical defect that escapes notice, such as a missing witness or notary seal, rendering the transfer arguably ineffective. Florida law currently provides that such technical defects in deeds and wills may be cured by the mere passage of time on the rationale that a failure to raise any objection means the the transfer is legitimate, and the technical defects are immaterial. While these curative provisions exist for deeds and wills, there is no analogous provision to cure the power of attorney with execution defects over time.

A 5-year limitations period currently acts to cure defective deeds or wills that are missing required seals or signatures of witnesses. The bill expands the scope of the statute to cure defects in any instrument, including a power of attorney, when it is used in connection with the transfer of title to real property. The bill limits the curative effect to the purposes of the transfer and thus does not cure all recorded powers of attorney.

The bill also provides a savings clause to allow any person who is adversely affected by the bill's changes to bring a claim within the specified period of time to protect his or her interest.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill has an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In general, s. 689.01, F.S., provides the statutory requirements for the conveyance of real estate in Florida. It provides that deeds and wills conveying real estate must be signed in the presence of two witnesses. In some instances, if an instrument such as a deed or will is not acknowledged or defectively acknowledged or is missing a required witness, the defective instrument may be cured over time.¹

Sometimes a power of attorney is used to convey real estate, and if so, the power of attorney is recorded with the deed, forming a part of the chain of title. Powers of attorney must be signed in the presence of two witnesses and a notary.²

The Legislature may cure defective deeds or wills that have technical deficiencies by enacting curative statutes.³ The Florida Legislature has enacted a number of these.⁴ Curative statutes make the process of owning and conveying real property easier.⁵ "By a curative statute the Legislature has the power to ratify, validate and confirm any act or proceeding which it could have authorized in the first place."⁶

Section 95.231, F.S., cures the defects of missing witnesses and defective acknowledgements in deeds or wills conveying a fee simple interest⁷ in real estate.

The purpose of such statute is to "cure" or clear an existing title to real estate or an interest in it, of formal irregularities, that is, of clouds, doubts and suspicions against the title resulting from technical defects in the form or execution of deeds and wills executed by the person owning the property by limiting the time within which such defects can be asserted to a stated time as measured from some event, such as their recording.⁸

A person claiming an interest in the affected property has 20 years from the recording of the deed or the probate of the will to assert any claim to the property against the claimants under the deed or will.⁹ Easements, powers of attorney, restrictions, and declarations which are very common instruments do not have the benefit of s. 95.231, F.S.¹⁰

Effect of Proposed Changes

In addition to deeds and wills, the bill expands the scope of s. 95.231(1), F.S., to include "an instrument required" in the conveyance of real estate in Florida and a power of attorney accompanying and used for such instrument. A power of attorney cured by the bill is valid only for the purpose of effectuating the

¹ See 1 FLA. JUR. 2D Acknowledgments s. 23 (2013).

² Section 709.2105, F.S.

³ *Dover Drainage District v. Pancoast*, 102 Fla. 267, 135 So. 518 (1931).

⁴ See 19 FLA. JUR. 2D Deeds s. 21 (2013). See also ss. 694.01, F.S., *et seq.* and 1 FLA. JUR. 2D Acknowledgments s. 23 (2013).

⁵ See 19 FLA. PRAC. Florida Real Estate s. 5:14 (2012 ed.).

⁶ *Coon v. Board of Public Instruction of Okaloosa County*, 203 So.2d 497, 498 (Fla. 1967).

⁷ An absolute or fee simple estate is one in which the owner is entitled to the entire property with the unconditional power of disposition during his life." Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 9:2 (2009 ed.).

⁸ *Holland v. Hattaway*, 438 So.2d 456, 462 (Fla. 5th DCA 1983). The stated time in the statute is 5 years for curing defects in acknowledgements, and 20 years acts as an absolute bar to contesting the document. Section 95.231, F.S.

⁹ Section 95.231(2), F.S.

¹⁰ Real Property, Probate, and Trust Law Section of The Florida Bar, White Paper: In Support of Amending Section 95.231, F.S. (2013) (on file with the House Civil Justice Subcommittee).

instrument with which it is recorded. In other words, the bill only cures powers of attorney conveying real estate, not general powers of attorney, which may or may not be recorded in the public records.¹¹

A person claiming an interest in property other than a fee simple interest which was defectively conveyed before October 1, 2013, must file a claim or defense of that interest in court before October 1, 2014, to have the validity of the instrument determined under existing law. Otherwise, the 5-year limitations period governing such claims and defenses will apply.

The bill takes effect October 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 95.231, F.S., regarding limitations where deed or will on record.

Section 2 provides for applicability.

Section 3 provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because the bill cures defects in the execution of instruments other than deeds or wills, individuals engaged in real estate transactions may save legal fees and other associated costs to cure technical defects of missing witnesses and defective acknowledgements in instruments conveying real property.¹²

D. FISCAL COMMENTS:

The Office of the State Courts Administrator completed a judicial impact statement for the bill and found that the bill may result in a possible, though likely insubstantial, near-term increase in court workload based on civil filings before the October 1, 2014, deadline for matters to be determined under current law. The fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantify the near-term impact on judicial workload.¹³

¹¹ See s. 28.222, F.S.

¹² Real Property, Probate, and Trust Law Section of The Florida Bar, supra note 10.

¹³ Office of the State Courts Administrator, 2013 Judicial Impact Statement, SB 736 (Feb. 28, 2013) (on file with the House Committee on Judiciary).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected cross-references in Section 2 of the bill without changing the effect of the bill. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.