

# Florida Legislative Update – 2008

## I. A. Dissolutions

### **DISSOLUTION OF MARRIAGE SESSION LAW CH. 2008-46 (SB 1474) EFFECTIVE JUL. 1, 2008**

SB 1474 amends Sec. 61.075, F.S. Partial distribution of marital assets and liabilities can be made by interim order after proper motion. All personal property titled jointed by the parties as tenants by the entirety shall be presumed to be a marital asset. The most notable part of this law is that special equity is abolished and must be asserted now as a claim for unequal distribution of marital property and resolved by other factors.

## III. B. Funding

### **ESCROW AGENTS SESSION LAW CH. 2008-200 (HB 1037) EFFECTIVE JUL. 1, 2008**

HB 1037 creates Sec. 877.101, F.S., which prohibits certain actions by unauthorized escrow agents. No person can act as escrow agent except in connection with the purchase and sale of real property. The new law does not affect attorneys, title agents or banks holding money in connection with real estate transactions but is designed to prevent unauthorized persons from acting as escrow agents otherwise. Any person who willfully violates this section commits a misdemeanor of the first degree.

## IV. B. Forms/Rates Regulation/Fees/Commission Splits

### **TITLE INSURANCE SESSION LAW CH. 2008-198 (HB 937) EFFECTIVE JUN. 17, 2008**

HB 937 creates the Florida 2008 Title Insurance Study Advisory Council and has the potential to enable many changes to title insurance law. The new law provides for responsibilities of the council and directs who will make up the council members. The advisory council's goal is to undertake a comprehensive examination of the title insurance delivery system in order to make recommendations for legislation in promoting the safety of real property transfers.

The council will be comprised of 21 members. The Governor shall have a designee that will serve as chair; Florida's Chief Financial Officer, or her

designee shall serve as vice chair. One senator and one representative will serve as members. One member will be the Insurance Consumer Advocate appointed pursuant to Sec. 627.0613, F.S., one member will be the Commissioner of Insurance Regulation or his designee, and one member will be the Commissioner of the Office of Financial Regulation or his designee. There will be three representatives of title insurers appointed by the President of the Senate and there will be four representatives appointed by the Speaker of the House. Additionally, there will be two independent licensed title insurance agents appointed by the President of the Senate and one independent licensed title insurance agent appointed by the Speaker of the House; two members of the Real Property, Probate and Trust Law Section of the Florida Bar who are practicing real estate attorneys not employed by a title insurer; one member of the banking industry; and a member of the real estate industry such as a real estate agent.

The council will examine the title insurance delivery system by considering the history of title insurance industry and the current regulatory structure.

Tallahassee will host the initial meeting no later than Aug. 1, 2008, and the council has until Dec. 31, 2009, to submit a final report to the Governor, President of the Senate, and Speaker of the House.

This bill was supported by the Florida Land Title Association.

**INSURANCE**  
**SESSION LAW CH. 2008-220 (SB 2012)**  
**EFFECTIVE 7-1-08**

Ch. 2008-220 allows for title insurers to petition for a rate deviation as provided by Section 627.783, Florida Statutes, for a Uniform Commercial Code insurance product. The Office of Insurance shall be guided by standards for national rates for the product currently being offered in other states.

IV. F. Limited Liability Companies

**BUSINESS ENTITIES**  
**SESSION LAW CH. 2008-187 (HB 419)**  
**EFFECTIVE JUL. 1, 2008**  
**EXCEPT AS EXPRESSLY PROVIDED**

HB 419 amends and adds various statute sections relating to business entities. Secs. 607.1109(3), 607.1113, 608.4382, 608.4403, 617.1108, 620.2104, 620.2108, 620.8914, and 620.8918, F.S., were added to eliminate duplicative filing requirements for business entities either merging or converting to other business entities.

Sec. 608.439, F.S., is amended to include corporations as one of the business entities that can convert to a limited liability company and to require that

the certificate of conversion must be executed by the other business entity as well as those authorized under Sec. 608.408, F.S.

Sec. 617.1108(3), F.S., is added to provide that a copy of the articles of merger or certificate of merger, certified to the Department of State, may be filed in the recording office of each county in which real property of a party to the merger, other than the surviving entity, is situated.

Sec. 620.1406, F.S., is amended to require that in addition to all general partners, all of the other limited partners also must consent to the expulsion of a limited partner.

Sec. 620.2104(1)(b)(2.), F.S., is amended to require that in a conversion in which the converting organization is not a limited partnership, the certificate of conversion delivered to the Department of State for filing must be signed by each general partner listed in the certificate of limited partnership and by the converting organization.

Sec. 620.8105(4), F.S., is amended to provide that a certificate of conversion or merger may be filed with the Department of State only if the partnership has filed a registration statement pursuant to Sec. 620.8105(1), F.S.

Sec. 620.8914(1)(b)(2.), F.S., is amended to require that in a conversion where the converting organization is a partnership, the certificate of conversion delivered to the Department of State for filing must be signed by a general partner of the partnership and by the converting organization.

Sec. 620.8914(2)(b), F.S., is amended to provide that a certificate of conversion acts as a cancellation of any registration statement for a converting partnership for purposes of Sec. 620.8105, F.S., and the cancellation shall be deemed filed upon the effective date of the conversion.

Sec. 620.8918, F.S., is amended to provide that each constituent partnership in a merger shall also file a registration statement in accordance with Section Sec. 620.8105, F.S., if it does not have a currently effective registration statement filed with the Department of State.

Sec. 620.2204(3)(c), F.S., is amended to correct a clerical oversight in prior legislation by changing the date from Jul. 1, 2005, to Jan. 1, 2006.

Sec. 621.06, F.S., relates to limitations on the rendition of professional services and is amended to delete the words "within this state" and thereby remove the requirement that only persons licensed or legally authorized in Florida to render professional services may render such services on behalf of professional corporations and limited liability companies.

Sec. 621.10, F.S., is amended to delete the words "within this state" and thereby provide that any person rendering professional service on behalf of a professional corporation or limited liability company must sever employment with, and financial interests in, the organization if the person has become legally disqualified to render such professional services.

Sec. 621.13, F.S., is amended so that a Florida professional corporation or limited liability company is not prohibited from merger with an out-of-state professional corporation or limited liability company.

#### IV. J. Deceptive Trade Practices/Anti-Kickback Laws

**FORECLOSURE FRAUD  
SESSION LAW CH. 2008-79 (HB 643)  
EFFECTIVE OCT. 1, 2008**

HB 643 creates Sec. 501.1377, F.S., relating to the regulation of mortgage rescue companies and prevention of mortgage fraud. It requires mortgage rescue companies to make certain disclosures to homeowners and gives the homeowners a three-day right to cancel the transaction. The disclosures must state the true nature of the transaction such as notice that the owner is giving up ownership in the property and must specifically state what terms are used for any lease back option. It also requires a warning to the owner that he/she is giving up any equity in the property. If the owner has a right to repurchase, the monthly payment must not exceed 60 percent of the borrower's monthly income. All costs, and who pays for them, must be disclosed to the owner. The law also provides for penalties for violation of the act of \$15,000 per violation. By this law, Sec. 501.2078, F.S., is repealed.

#### IV. A. Taxes – Real Estate

**MORTGAGE FRAUD  
SESSION LAW CH. 2008-80 (HB 743)  
EFFECTIVE JUL. 1, 2008**

Sec. 193.133, F.S., is created by HB 743. When there is a finding of probable cause for mortgage fraud, as defined in Sec. 817.545, F.S., or any other fraud involving real property that has or could have artificially inflated the value of the property, the arresting agency must notify the property appraiser, and the property appraiser may adjust the assessment.

Sec. 817.545, F.S., regarding mortgage fraud is amended to state that any person who commits mortgage fraud and the loan value exceeds \$100,000 commits a second degree felony.

**PROPERTY TAXATION  
SESSION LAW CH. 2008-173 (SB 1588)  
EFFECTIVE JUN. 17, 2008  
EXCEPT AS OTHERWISE PROVIDED**

Florida caps the increase of assessed value for homestead property. SB 1588 permits a homeowner to transfer the reduction in assessed value to a new homestead. This law applies to 2008 and subsequent tax years.

**AD VALOREM TAXATION  
SESSION LAW CH. 2008-197 (HB 909)  
EFFECTIVE SEP. 1, 2008**

Sec. 193.011, F.S., is amended by HB 909 to clarify factors that a property appraiser must consider in deriving just valuation. In determining the highest and best use of the property, the property appraiser must consider the legally permissible use, zoning changes, concurrency requirements, as well as other factors that may affect the highest and best use of the property.

This law also amends Secs. 194.035 and 194.037, F.S., specifying requirement for the Department of Revenue in relation to the value adjustment board and also amends sections in Ch. 195, F.S..

VII. A. Eminent Domain & Dedication

**CEMETERY LANDS  
SESSION LAW CH. 2008-834 (HB 853)  
EFFECTIVE JUL. 1, 2008**

HB 853 prohibits the taking of cemetery land by eminent domain if the area is equal or greater than 1 contiguous acre except for road system or rights-of-way purposes. It amends Sec. 497.270, F.S.

**LAND ACQUISITION AND MANAGEMENT  
SESSION LAW CH. 2008-229 (SB 542)  
EFFECTIVE 7-1-08**

Ch. 2008-229 amends various sections in Chapters 201, 253, 259, 343, 373 concerning management, conservation, use, sale, and acquisition of state lands. By this law, the Florida Forever state land-buying program has been extended to 2020.

VIII. C. Covenants, Conditions & Restrictions

**REAL ESTATE CONVEYANCES  
SESSION LAW CH. 2008-35 (SB 464)  
EFFECTIVE JUL. 1, 2008**

SB 464 creates Sec. 689.28, F.S., dealing with transfer fee covenants. Transfer fee covenants placed in a recorded instrument of conveyance impose a fee or charge payable upon every subsequent transfer of an interest in the real property and payable to the prior owner or at the prior owner's direction. Under new Sec. 689.28(3), F.S., transfer fee covenants recorded on or after Jul. 1, 2008 will not run with the title to real property or be binding on or enforceable

against any subsequent owner, purchaser, or mortgagee. Any liens purporting to secure the payment of a transfer fee under a transfer fee covenant recorded on or after Jul. 1, 2008 are void and unenforceable. Transfer fee covenants or liens recorded prior to Jul. 1, 2008, however, are not necessarily presumed valid and enforceable through the new law. The act contains exclusions for condominium and homeowner associations.

**HOMEOWNERS' ASSOCIATION LIENS  
SESSION LAW CH. 2008-175 (SB 1986)  
EFFECTIVE JUL. 1, 2008**

Ch. 2008-175 makes a number of alterations to Sec. 720.3085, F.S., which became effective in 2007. Many of the changes are designed to bring the statute more in line with the analogous provisions of the Condominium Act, Ch. 718, F.S.

Sec. 720.3085(1), F.S., was amended to indicate that, when authorized by the governing documents, the HOA has a lien on each parcel to secure the payment of assessments. The lien is effective from and relates back to the recording of the original declaration of the community. However, with respect to first mortgages of record, the HOA's lien is effective only from and after the recording of a claim of lien in the public records. These provisions are not designed to afford any lien or mortgage of record as of Jul. 1, 2008, or HOA assessment lien any priority that such lien did not have before that date.

Subsection (1) was also amended to include provisions for the procedure to contest an HOA assessment lien and to supply a sample form for a Notice of contest of Lien.

Sec. 720.3085(2), F.S., was supplemented with terms limiting the exposure (for prior unpaid HOA assessments) of a first mortgagee who has taken title to a parcel through foreclosure or deed in lieu of foreclosure. That exposure is limited to the lesser of unpaid assessments for the 12 months preceding acquisition of title or one percent of the original mortgage debt, **provided** that the HOA was joined as a defendant in the mortgage foreclosure action.

Sec. 720.3085(6), F.S., was supplemented with provisions dealing with the "Qualifying Offer," available to be made by a parcel owner to stay an HOA lien foreclosure action. The revised statute now provides a suggested form for the Qualifying Offer.

VIII. G. Condominiums

**COMMUNITY ASSOCIATIONS  
SESSION LAW CH. 2008-28-HJ 01820 (HB 995)  
EFFECTIVE OCT. 1, 2008**

HB 995 adds various provisions to Secs. 718.113 and 718.115, F.S.,

regarding the allocation of responsibility for installation, maintenance, repair, and replacement of hurricane shutters or other such protection.

Sec. 718.121(4), F.S., is created to provide that, except as otherwise provided in Ch. 718, F.S., the condominium association may not record a claim of lien for unpaid assessments until 30 days after a notice of intent to file a lien has been delivered to the delinquent unit owner by certified mail, return receipt requested and by first class U.S. Mail at the last known address of the owner per the records of the association.

Sec. 718.1224, F.S., is created to prohibit "SLAPP" suits, which is litigation against association members arising out of appearances by association members before governmental entities on matters related to condominium associations.

Sec. 718.1265, F.S., is created to grant specific emergency powers to the condominium association, including without limitation implementation of disaster plans, agreements with local governments regarding debris removal, and required evacuation of the condominium property.

Sec. 718.503(2), F.S., is amended to require that *on and after Jan. 1, 2009*, a prospective purchaser of a condominium unit from a non-developer seller is also entitled to receive from the seller a "governance form." The content of this form will be provided by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation prior to January 2009 and will include a description of the role of the board of directors in conducting the day to day affairs of the association, the rights of owners to speak at board meetings, and the responsibilities of the owners to pay assessments and otherwise abide by the condominium documents.

**COMMUNITY ASSOCIATIONS**  
**SESSION LAW CH. 2008-202 (HB 1105)**  
**EFFECTIVE JUL. 1, 2008**

HB 1105 amends the Condominium Act, Ch. 718, F.S., and also makes analogous amendments to the Cooperative Act, Ch. 719, F.S.

Sec. 718.1124, F.S., is amended to add provisions dealing with the appointment of a receiver to manage the affairs of a condominium unit. A form is provided for a unit owner's notice of intent to apply for a receivership when vacancies on the condominium board have not been filled sufficiently to comprise a quorum.

Sec. 718.117(7), F.S., is amended and Sec. 718.127, F.S., is created to require a receiver to provide written notice of his/her appointment to all unit owners within 10 days of appointment.

Sec. 718.121(4), F.S., is created to indicate that a condominium association may not file a claim of lien for unpaid assessments until 30 days after notice of intent to file a lien has been delivered to the affected unit owner. The notice must be sent by registered mail or certified mail, return receipt requested and by first class U.S. mail to the last known address for the owner as reflected in the records of the association.

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
SESSION LAW 2008-28 (HB 601)  
EFFECTIVE 7-1-08  
EXCEPT AS EXPRESSLY PROVIDED**

Ch. 2008-28 is a comprehensive law dealing with many different subjects pertaining to DBPR (Department of Business and Professional Regulation). Of particular note are amendments to Section 718.111, Florida Statutes. This act, however, will prevail over any conflicting amendments that pertain to the aforementioned statute section contained in HB 995 , now Session Law Ch. 2008 –HJ-01820, and enacted during the 2008 regular session.

The law amends Chapter 718 by requiring adequate hazard insurance, regardless of any requirement in the declaration of condominium, based on the replacement cost. Certain expenses regarding fire safety and sewer service, regardless of what the declaration of condominium states, will be considered common expenses.

It also amends Chapter 720 regarding estoppel certificates. Estoppel certificates must be provided within 15 days of the request and there may be a charge associated with such request. If the sale does not take place, the estoppel fee shall be refunded within 30 days upon request.

This law changes the name of the Division of Land Sales, Condominiums, and Mobile Homes within DBPR. The new name is Division of Condominiums, Timeshares, and Mobile Homes.

VIII. H. Trusts

**TRUST ADMINISTRATION  
SESSION LAW CH. 2008-76 (HB 435)  
EFFECTIVE JUL. 1, 2008**

HB 435 amends certain sections of Ch. 736, F.S., dealing with trust administration. Sec. 736.0703, F.S., is amended to allow one trustee of several co-trustees to do specified acts if the trust instrument directs. The excluded trustees do not have obligation to review, inquire, make recommendations or evaluations of the trustee with the power.

Sec. 736.0802, F.S., is amended concerning defenses based upon a breach of trust of a trustee and allows the qualified beneficiaries to prevent trust assets from being used to pay for attorney's fees and costs for such claim and defense.

Sec. 736.1008, F.S., is amended to clarify the limitations of actions by a beneficiary against a trustee but is based on claims and actions after Jul. 1, 2008.

IX. D. Foreclosures

**JUDICIAL SALES**  
**SESSION LAW CH. 2008-194 (HB 773)**  
**EFFECTIVE JUL. 1, 2008**

HB 773 amends Sec. 45.031, F.S., to allow the clerk of the court to use electronic means to conduct sales, require an advance deposit by bidders using electronic means to bind, and to accept electronic payments and deposits related to the sales. The clerk is allowed now to charge \$60 for conducting the electronic sale pursuant to amendment of Sec. 45.035, F.S. Sec. 197.542, F.S., is amended to allow the clerk of the court to do similar procedures electronically with tax deed sales.

X. C. Recording Requirements

**REAL PROPERTY TRANSFER RETURNS**  
**SESSION LAW CH. 2008-24-HJ 00790 (HB 7019)**  
**EFFECTIVE JUN. 1, 2008**

HB 7019 deleted the requirement to complete a DR -219 Form and submit it to the clerk of court when recording a deed. The DR-219 identified the consideration paid for the transaction. At this time, there is also no requirement to disclose the full consideration on the deed. County clerks should be contacted to determine what they will accept for evidence of consideration for documentary stamp purposes.