

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1419 Real Property Fraud  
**SPONSOR(S):** Civil Justice Subcommittee, Robinson, W.  
**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 1436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N, As CS	Mawn	Jones
2) Judiciary Committee		Mawn	Kramer

### SUMMARY ANALYSIS

“Real property” is a piece of land and any artificial or natural property permanently attached to it, whether above or beneath, such as a house, barn, or other structure, or sub-surface mineral. Under Florida law, a deed is generally required to transfer title to real property from one person (the “grantor”) to another (the “grantee”). Florida law recognizes several types of deeds, which convey different warranties of title, including a:

- General warranty deed, which must be in a statutorily-prescribed form and provides full warranties as to title and the grantor’s right to convey it; and
- Quitclaim deed, for which there is no statutorily-prescribed form and which provides no warranties as to title, conveying only whatever interest the grantor has in the property, if any.

No deed is effective unless it is properly recorded in the official records of the clerk of the circuit court where the property lies, and the clerks may not record a deed unless certain statutory requirements are met, including that the grantor signed the deed in the presence of a notary public and two witnesses. Recently, there has been an increase in fraudulent real property conveyances in which a fraudster executes and records a deed purporting to convey title to or an interest in real property to himself or herself or a third party without the property owner’s knowledge or consent (“title fraud”). Such fraudulent deeds are legally void *ab initio*, meaning they never have legal effect and thus never actually convey title or any property interest away from the true owner. However, because the clerk serves a ministerial role, the clerk cannot look beyond the four corners of a deed presented to determine its validity; thus, if it appears on the deed’s face that the statutory requirements are met, the clerk must record the deed.

There are several civil remedies available to a title fraud victim, including a quiet title action. The state may also bring certain criminal charges against the fraudster, if such person is apprehended.

CS/HB 1419:

- Requires the clerks of the circuit court to create, maintain, and operate a free recording notification service on or before July 1, 2024, to provide property owners who register for the service with early notice that a land record, such as a deed, has been filed on their property.
- Prescribes the form for a quitclaim deed.
- Modifies Florida law relating to quiet title actions to expressly state that a quiet title action may be based on a title fraud allegation; require the clerks to provide a simplified form for the filing of such action; entitle a petitioner bringing such action to expedited summary procedure timeframes; and require a court hearing such action to quiet title in and award a prevailing plaintiff with the same title and rights to the land that the plaintiff enjoyed before the title fraud.
- Requires real estate licensees and closing service providers to send a fraud prevention notice under specified circumstances.

The bill does not appear to have a fiscal impact on state government but may have an indeterminate fiscal impact on local government. The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Real Property Conveyances

“Real property” is a piece of land and any artificial or natural property permanently attached to it, whether above or beneath, such as a house, barn, or other structure, or sub-surface mineral.<sup>1</sup> Under Florida law, a deed is generally required to transfer title to (that is, an ownership interest in) real property from one person (the “grantor”) to another (the “grantee”).<sup>2</sup> Florida law recognizes several types of deeds, which convey different warranties of title, including a:

- General warranty deed, which provides full warranties to the grantee that the grantor:
  - Holds title to the property and has the right to convey it;
  - Has not contracted to sell the property to another;
  - Promises that there are no encumbrances, such as a lien, on the property, other than those encumbrances previously disclosed;
  - Assures that the grantee and his or her heirs and assigns will enjoy the property without interruption or deprivation of possession;
  - Promises to defend the grantee against anyone who later claims title to the property after its conveyance; and
  - Assures that he or she will take any necessary affirmative steps to further cure any defects and protect the buyer, even from title defects dating back to before the grantor’s ownership of the property to be conveyed; and
- Quitclaim deed, which provides no warranties as to title and conveys only that interest which the grantor has in the property, if any.<sup>3</sup>

While Florida law prescribes a form for warranty deeds, it does not prescribe a form for quitclaim deeds.<sup>4</sup> Thus, quitclaim deeds filed in the state lack uniformity. However, the grantor of any deed must sign the instrument in the presence of and have the instrument acknowledged by a notary public or other statutorily-designated officer vested with the authority to acknowledge legal instruments.<sup>5</sup> The grantor must also sign the deed in the presence of two subscribing witnesses,<sup>6</sup> who in turn must sign the deed in the presence of and have their signatures proved by a notary or other officer vested with the authority to prove signatures.<sup>7</sup> No acknowledgment or proof may be taken by any notary or other officer unless such person knows, or has satisfactory proof, that the person:

- Making the acknowledgment is the individual described in, and who executed, the deed; or
- Offering to make proof is one of the subscribing witnesses to the deed.<sup>8</sup>

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<sup>1</sup> Legal Information Institute, *Real Estate*, [https://www.law.cornell.edu/wex/real\\_estate](https://www.law.cornell.edu/wex/real_estate) (last visited April 17, 2023).

<sup>2</sup> Real property may also be transferred in probate after the owner’s death.

<sup>3</sup> Legal Information Institute, *Deed*, <https://www.law.cornell.edu/wex/deed> (last visited April 17, 2023).

<sup>4</sup> S. 689.02, F.S.

<sup>5</sup> For a full list of persons who may legalize or authenticate an instrument conveying real property, see s. 695.03(1)-(3), F.S.

<sup>6</sup> A subscribing witness is a person who witnesses the grantor sign a document and signs it thereafter to indicate that he or she witnessed the grantor’s signature thereon. Legal Information Institute, *Subscribing Witness*, [https://www.law.cornell.edu/wex/subscribing\\_witness#:~:text=A%20subscribing%20witness%20is%20a.person%20has%20witnessed%20those%20signatures](https://www.law.cornell.edu/wex/subscribing_witness#:~:text=A%20subscribing%20witness%20is%20a.person%20has%20witnessed%20those%20signatures) (last visited April 17, 2023).

<sup>7</sup> Ss. 689.01(1) and 695.03(3), F.S.

<sup>8</sup> S. 695.09, F.S.

## Recording Real Property Conveyances

No conveyance of title to or an interest in real property is effective unless it is properly recorded in the official records of the clerk of the circuit court<sup>9</sup> where the property lies, and the clerks may not record any such instrument unless:

- The name of each of the instrument's executors is legibly printed, typewritten, or stamped upon such instrument immediately beneath the executor's signature and such person's post office address is legibly printed, typewritten, or stamped upon such instrument;
- The name and post office address of the person who prepared the instrument are legibly printed, typewritten, or stamped upon such instrument;
- The name of each witness to the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath his or her signature;
- The name of any notary public whose signature appears on the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath his or her signature;
- A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for the Clerk's use; and
- In any instrument other than a mortgage conveying or purporting to convey an interest in real property, the name and post office address of each grantee in such instrument are legibly printed, typewritten, or stamped upon such instrument.<sup>10</sup>

All deeds recorded in the clerk's office are deemed to have been accepted by the clerk, and officially recorded, at the time the clerk or his or her deputy affixed on the deed the official register numbers<sup>11</sup> required under Florida law.<sup>12</sup>

## Fraudulent Real Property Conveyances

In recent years, there has been an increase in fraudulent real property attempted conveyances in which a fraudster executes and records a deed purporting to convey title to or an interest in real property to himself or herself<sup>13</sup> or a third party<sup>14</sup> without the property owner's knowledge or consent ("title fraud").<sup>15</sup> Such fraudulent deeds are legally void *ab initio*, meaning they never have legal effect and thus never actually convey title or any property interest away from the true owner.<sup>16</sup> However, because the clerk serves a ministerial<sup>17</sup> role, the clerk and his or her employees cannot look beyond the four corners of a deed presented for recording to determine its validity.<sup>18</sup> Thus, if it appears on the deed's face that the above-mentioned statutory requirements are met, the Clerk must record the deed. Once such a deed is recorded, it appears valid, and others may purchase the property from the fraudster or the third party named as grantee in the deed in the belief that such person owns and has the right to sell the property. To assist property owners in uncovering title fraud, many clerks throughout the state offer a free notification service that alerts a property owner who registers for the service whenever an instrument

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<sup>9</sup> The State Constitution mandates that there be an elected clerk of the circuit court ("clerk") in each of Florida's 67 counties to perform specified functions, including official records recorder. Art. V., s. 16 and Art. VIII, s. 1, Fla. Const.

<sup>10</sup> Ss. 695.01 and 695.26, F.S.

<sup>11</sup> The "register numbers" are the filing numbers assigned to and affixed on each instrument filed for record, which numbers the clerk must enter in a register available at each office where official records may be filed. S. 28.222.

<sup>12</sup> Ss. 28.222 and 695.11, F.S.

<sup>13</sup> See, example, Mike DeForest, *Florida Man Accused of Using Fake Deeds to Take Ownership of Two Homes*, Click Orlando (Sept. 12, 2022), <https://www.clickorlando.com/news/investigators/2022/09/12/florida-man-used-fake-deeds-to-take-ownership-of-2-homes-court-records-claim-heres-how/> (last visited April 17, 2023).

<sup>14</sup> See, example, Mike DeForest, *'Be Aware:' Identity Thief Uses Fraudulent Deed to Take Orange County Man's Property*, Click Orlando (May 16, 2022), <https://www.clickorlando.com/news/investigators/2022/05/16/be-aware-identity-thief-uses-fraudulent-deed-to-take-orange-county-mans-property/> (last visited April 17, 2023).

<sup>15</sup> Joseph M. Bialek, *Florida Focus: Protect Yourself from Identity Thieves Using Fraudulent Deeds*, Law Alert (Nov. 9, 2022), <https://www.porterwright.com/media/florida-focus-protect-yourself-from-identity-thieves-using-fraudulent-deeds/> (last visited April 17, 2023).

<sup>16</sup> Legal Information Institute, *Ab Initio*, [https://www.law.cornell.edu/wex/ab\\_initio](https://www.law.cornell.edu/wex/ab_initio) (last visited April 17, 2023).

<sup>17</sup> "Ministerial" means taking actions in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the actions taken. S. 112.312(17), F.S.

<sup>18</sup> See s. 28.222, F.S., providing that the Clerk of the Circuit Court "shall record the following kinds of instruments presented to him or her for recording, upon payment of the service charges prescribed by law: (a) Deeds..."; Art. V, s. 16, Fla. Const.

purporting to convey title to the owner's real property, such as a deed, is recorded in the county's official records.<sup>19</sup> This service does not prevent the recording of the deed, but rather puts the property owner on notice that he or she may need to contact an attorney or law enforcement to report the fraud and take steps necessary to undo the fraudulent conveyance. However, such a service is not currently mandated by or standardized in Florida law.

### Available Civil Remedies

A title fraud victim has several civil remedies available to him or her, which are not necessarily exclusive remedies; in other words, the plaintiff may pursue multiple civil remedies where not otherwise prohibited from doing so by law.

#### *Quiet Title Action*

A real property owner who believes that he or she has been the victim of title fraud can file a lawsuit asking the court to quiet title to the property – that is, determine who is the property's true owner.<sup>20</sup> In such a lawsuit, known as a quiet title action, the plaintiff must generally prove his or her title (that is, right of ownership) from the original source for a period of at least seven years before filing the complaint and set forth in the complaint the official records book and page number of the instrument allegedly affecting the plaintiff's title.<sup>21</sup> If, based on the evidence, it appears that the plaintiff is the property's rightful owner, or if a default is entered against the defendant (in which case no evidence need be presented), the court must enter judgment removing the alleged cloud from the title and quieting title in the plaintiff.<sup>22</sup> Such final judgment is then recorded in the official records of the county where the property lies, overriding the fraudulent deed.<sup>23</sup>

#### *Declaratory Judgment*

As an alternative to a quiet title action, a real property owner who believes that he or she has been the victim of title fraud may petition the court for a declaratory judgment, which is a binding judgment defining the legal relationship between specified parties and their rights in a specified matter, whether or not further relief is or could be claimed, which judgment has the force of a final judgment.<sup>24</sup> The test for a declaratory judgment claim is not whether the evidence shows that the plaintiff will prevail, but whether there is a bona fide dispute such that the plaintiff is entitled to a declaration of his or her rights.<sup>25</sup> A plaintiff must also show a bona fide, actual, present, and practical need for the declaration, but these requirements may be met if the plaintiff shows that "ripening seeds of controversy" make litigation in the immediate future seem unavoidable.<sup>26</sup>

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<sup>19</sup> See, example, Clerk of the Court & Comptroller, Lee County, Florida, *Property Fraud Alert*, <https://www.leeclerk.org/services/property-fraud-alert> (last visited April 17, 2023).

<sup>20</sup> Ch. 65, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> S. 86.011, F.S.; Legal Information Institute, *Declaratory Judgment*,

[https://www.law.cornell.edu/wex/declaratory\\_judgment#:~:text=A%20declaratory%20judgment%20is%20a,means%20to%20resolve%20this%20uncertainty](https://www.law.cornell.edu/wex/declaratory_judgment#:~:text=A%20declaratory%20judgment%20is%20a,means%20to%20resolve%20this%20uncertainty) (last visited April 17, 2023).

<sup>25</sup> *Rigby v. Liles*, 505 So. 2d 598 (Fla. 1st DCA 1987).

<sup>26</sup> *Kelnerv. Woody*, 399 So. 2d 35 (Fla. 3d DCA 1981); *So. Riverwalk Invs., LLC v. City of Ft. Lauderdale*, 934 So. 2d 620 (Fla. 4th DCA 2006).

## Available Protections for Third-Party Purchasers

### *Title Search*

A title search is an in-depth examination of a property's history, including the public records pertaining to the property, typically conducted by a real estate attorney or title agent ("title examiner") before a property's sale to determine who holds title to or has an interest in the property and whether any claims or encumbrances might affect the transfer of ownership.<sup>27</sup> After the examination concludes, the title examiner will issue a title report disclosing his or her findings.

Lenders issuing mortgage loans to real property buyers generally require a title search before closing to protect their investment, as will title agencies issuing title insurance. However, Florida law does not otherwise require a title search, and a buyer who does not have such a search performed runs the risk of purchasing property with clouds on the title, including title fraud. Thus, a person wishing to buy property, even if purchasing with cash or a privately-sourced loan, would benefit from having a title search performed in case the sale stems from discoverable title fraud.

### *Title Insurance*

Title insurance is a product provided by a title agency which insures a real property buyer (an "owner's policy") or a lender granting a mortgage loan to the buyer secured by the real property (a "lender's policy") against losses arising out of defective titles and the existence of other legal claims against title.<sup>28</sup> An owner's policy, which is purchased through a one-time premium payment at closing, does not expire; rather, it remains in effect for as long as the insured or any of his or her heirs owns the subject property.<sup>29</sup> Similarly, a lender's policy is purchased through a one-time premium payment at closing but expires when the mortgage loan is paid in full.<sup>30</sup>

A federally-insured lender generally requires the buyer to purchase a lender's policy; thus, a buyer can rarely obtain a mortgage loan without purchasing such a policy. However, Florida law does not require that a buyer purchase an owner's policy. A buyer who does not purchase such insurance runs the risk of losing his or her investment if title defects are discovered, including title fraud. Thus, a person wishing to buy property would benefit from purchasing an owner's policy to protect himself or herself in the event title fraud is uncovered and the property's title is restored to its true owner.

## Available Criminal Penalties

Florida law provides certain criminal penalties which may apply to title fraud.<sup>31</sup> The State may bring such claims where the fraudster is apprehended.

### *Unlawful Filing of False Documents*

Florida law provides that a person who files or directs another to file, with the intent to defraud or harass another, any instrument containing a materially false, fictitious, or fraudulent statement or representation that purports to affect an owner's interest in the property described in the instrument commits a third-degree felony.<sup>32</sup> A person who commits such a violation a second or subsequent time commits a second-degree felony.<sup>33</sup> Further, if the property owner suffers a financial loss due to the

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<sup>27</sup> The title examiner will look for liens and encumbrances on the property, any evidence of title fraud, and other clouds on title that may prevent or limit the title's transfer to the buyer.

<sup>28</sup> Ss. 627.7711-627.798, F.S.; Florida Office of Insurance Regulation, *Title Insurance*, <https://www.flair.com/sections/pandc/title/default.aspx#:~:text=Title%20insurance%20insures%20owners%20of%20similar%20coverage%20regarding%20personal%20property> (last visited April 17, 2023).

<sup>29</sup> Florida Department of Financial Services, *Title Insurance Overview*, <https://www.myfloridacfo.com/division/consumers/understanding-insurance/title-insurance-overview> (last visited April 17, 2023).

<sup>30</sup> *Id.*

<sup>31</sup> This is not an exhaustive list, but rather a sampling of criminal charges which may apply.

<sup>32</sup> A third-degree felony is punishable by up to a \$5,000 fine and a term of imprisonment not exceeding five years. Ss. 775.082, 775.083, and 817.535(2)(a), F.S.

<sup>33</sup> A second-degree felony is punishable by up to a \$10,000 fine and a term of imprisonment not exceeding 15 years. Ss. 775.082, 775.083, and 817.535(2)(b), F.S.

unlawful filing, including costs and attorney fees incurred in correcting, sealing, or removing the false instrument from the official records, the offense is reclassified as follows:

- A third-degree felony becomes a second-degree felony; and
- A second-degree felony becomes a first-degree felony.<sup>34</sup>

### *Grand Theft*

A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or use, the property of another with the intent to, either temporarily or permanently:

- Deprive the other person of a right to or a benefit from the property; or
- Appropriate the property to his or her own use to the use of any person not entitled to the property's use.<sup>35</sup>

If the property stolen is valued at:

- \$750 or more but less than \$20,000, the offender commits third-degree grand theft, punishable as a third-degree felony.<sup>36</sup>
- \$20,000 or more but less than \$100,000, the offender commits second-degree grand theft, punishable as a second-degree felony.<sup>37</sup>
- \$100,000 or more, the offender commits first-degree grand theft, punishable as a first-degree felony.<sup>38</sup>

### *Scheme to Defraud*

A person who engages in a systematic, ongoing course of conduct with intent to defraud one or more persons, or with intent to obtain property from one or more persons by false or fraudulent pretenses, and who thereby obtains property commits a "scheme to defraud," punishable as a:

- Third-degree felony if the amount of the property obtained has an aggregate value of less than \$20,000.<sup>39</sup>
- Second-degree felony if the amount of the property obtained has an aggregate value of at least \$20,000 but less than \$50,000.<sup>40</sup>
- First-degree felony if the amount of property obtained has an aggregate value of \$50,000 or more.<sup>41</sup>

### *Identity Theft*

A person who willfully and without authorization fraudulently uses another's personal identification information commits a third-degree felony.<sup>42</sup> However, if the fraudster's pecuniary benefit, the victim's injury, or the fraud perpetrated amounts to:

- At least \$5,000 but less than \$50,000, the offender commits a second-degree felony.<sup>43</sup>
- \$50,000 or more, the offender commits a first-degree felony.<sup>44</sup>

## **Effect of Proposed Changes**

### Recording Notification Service

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<sup>34</sup> A first-degree felony is punishable by up to a \$10,000 fine and a term of imprisonment not exceeding 30 years, or, where provided by statute, by up to a \$15,000 fine and a term of imprisonment not exceeding life imprisonment. Ss. 775.082, 775.083, and 817.535(5), F.S.

<sup>35</sup> S. 812.14(1), F.S.

<sup>36</sup> S. 812.014(2)(c), F.S.

<sup>37</sup> S. 812.014(2)(b), F.S.

<sup>38</sup> S. 812.014(2)(a), F.S.

<sup>39</sup> S. 817.034(4)(a)3., F.S.

<sup>40</sup> S. 817.034(4)(a)2., F.S.

<sup>41</sup> S. 817.034(4)(a)1., F.S.

<sup>42</sup> S. 775.082(2)(a), F.S.

<sup>43</sup> Florida law sets a mandatory minimum sentence of 3 years' imprisonment for this offense. S. 775.082(2)(b), F.S.

<sup>44</sup> Florida law sets a mandatory minimum sentence of 5 years' imprisonment for this offense for amounts of at least \$50,000 but less than \$100,000 and of 10 years' imprisonment for amounts of at least \$100,000. S. 775.082(2)(c), F.S.

CS/HB 1419 creates s. 28.47, F.S. to require the clerks of the circuit court to, on or before July 1, 2024, create, maintain, and operate a free recording notification service, open to all persons wishing to register for the service, to provide property owners with early notice that a land record has been filed on their property. Under the bill:

- “Recording notification service” means a service which sends automated recording notifications.
- “Recording notification” means a notification sent by electronic mail indicating to a registrant that a land record associated with the registrant’s monitored identity has been recorded in the county’s public records.
- “Registrant” means a person who registers for a recording notification service.
- “Land record” to mean a deed, mortgage, or other document purporting to convey or encumber real property.
- “Monitored identity” means a personal or business name or a parcel identification number submitted by a registrant for monitoring under a recording notification service.

Registration for the recording notification service must be made possible through an electronic registration portal, which portal must:

- Be accessible through a direct link on the home page of the clerk’s official public website;
- Allow a registrant to subscribe to receive recording notifications for at least five monitored identities per valid electronic mail address provided;
- Include a method by which a registrant may unsubscribe from the service;
- List a phone number at which the clerk’s office may be reached for questions related to the service during normal business hours; and
- Send an automated electronic mail message to a registrant confirming his or her successful registration for or action to unsubscribe from the service, which message must identify each monitored identity for which a subscription was received or canceled.

Further, when a land record is recorded for a monitored identity, the bill requires that a recording notification be sent within 24 hours of the recording to each registrant who is subscribed to receive recording notifications for that monitored identity. Such notification must contain:

- Information identifying the monitored identity for which the land record was filed;
- The land record’s recording date;
- The official records book and page number or instrument number assigned to the land record by the clerk;
- Instructions for electronically searching for and viewing the land record using the assigned official record book and page number or instrument number; and
- A phone number at which the clerk’s office may be contacted during normal business hours with questions related to the recording notification.

Finally, the bill provides that:

- There is no right or cause of action against, and no civil liability on the part of, the clerk with respect to the creation, maintenance, or operation of a recording notification service.
- Nothing in this section may be construed to require the clerk to provide or allow access to a record or information which is confidential and exempt from s. 119.071 and s. 24(a), Art. I of the State Constitution or to otherwise violate Florida’s public record laws.
- This section applies to county property appraisers that adopt an electronic land record notification service, but where a land record is recorded for a monitored identity, notice through the property appraiser’s service must be sent within 24 hours of the instrument being reflected on the county tax roll by the property appraiser.
- A county property appraiser may adopt a verification process for persons wishing to register for the electronic land records notification service to ensure integrity of the process.

### Quiet Title Actions

The bill creates s. 65.091, F.S., to expressly state that an action to quiet title based on a title fraud allegation may be maintained under chapter 65, F.S. Further, the bill:

- Requires the clerks of the circuit court to provide a simplified form for the filing of a quiet title action based on a title fraud allegation and instructions for completing such form.
- Entitles a petitioner bringing a quiet title action based on a title fraud allegation to the expedited summary procedure timeframes set out in s. 50.011, F.S.<sup>45</sup>
- Requires a court hearing a quiet title action to quiet title in and award a prevailing plaintiff with the same title and rights to the land that the plaintiff enjoyed before the title fraud.

### Fraud Prevention Notice

The bill creates s. 475.5025, F.S., to require a real estate licensee<sup>46</sup> to, within five business days after entering into a brokerage relationship with the potential seller of property, send a notice by first class mail to the potential seller at the mailing address shown in the tax collector's online records, which notice must be in substantially the following form:

(Brokerage Letterhead)

To help prevent real estate fraud and identity theft, the State of Florida requires us to notify you that (name of real estate broker) has been engaged by (potential seller) to market and sell the property at (address, city, and state). If you believe this is in error, or still claim an interest in this property, please notify us immediately at (phone number and e-mail).

Such notice may include a letter thanking the potential seller for the listing and such other additional information as the licensee may deem appropriate. However, where the tax collector's records show a different owner of the property in the preceding year's tax bill, the real estate licensee must, within five business days after entering into a brokerage relationship with the potential seller, also send a notice by first class mail to the prior owner at the mailing address shown in the tax collector's online records. Such notice must be in substantially the following form:

(Brokerage Letterhead)

To help prevent real estate fraud and identity theft, the State of Florida requires us to notify you that (name of real estate broker) has been engaged by (potential seller) to market and sell the property you formerly owned at (address, city, and state). If you believe this is in error, or still claim an interest in this property, please notify us immediately at (phone number and e-mail).

The bill similarly creates s. 627.799, F.S., to require a party scheduled to provide closing services<sup>47</sup> to, within five business days of opening an order to ensure a sale of real property or refinance of a mortgage encumbering real property, send a notice by first class mail to the seller or borrower at the

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<sup>45</sup> Under summary procedure, the defendant's answer to the plaintiff's initial pleading must be filed five days after service of process, and the plaintiff's answer to the defendant's counterclaims, if any, must be served within five days after service of the counterclaim; however, no other pleadings are allowed, and all defensive motions must be heard by the court before trial. Further, though depositions may be taken at any time, other discovery may be had only by court order, and no discovery may postpone the trial except for good cause shown or by stipulation. If a jury trial is authorized by law, any party may demand it in any pleading or by a separate paper served no later than five days after the action comes to issue, and if a jury is present at the close of pleadings or when trial is demanded, the action may be tried immediately; otherwise, the court must order that a special jury panel be summoned. After a verdict is rendered or a judgment entered, a motion for a new trial must be filed and served within five days, and notice of appeal must be filed and served within 30 days. However, summary procedure is only applicable to those causes of action specified by statute or rule.

<sup>46</sup> "Real estate licensee" includes a real estate broker, broker associate, or sales associate (commonly referred to as a real estate agent), as regulated by ch. 475, F.S.

<sup>47</sup> "Closing services" means services performed by a licensed title insurer, title insurance agent, or attorney agent in the agent's or capacity as such, including, but not limited to, preparing documents necessary to close the transaction, conducting the closing, or handling the disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued. Under the bill, s. 627.799, F.S., applies to title insurance agents and agencies and to title insurers only to the extent any of the foregoing are actually engaged in providing closing services for a particular transaction. S. 627.7711(1), F.S.



mailing address show in the tax collector's online records.<sup>48</sup> Such notice must be in substantially the following form:

(Letterhead of closing service provider)

To help prevent real estate fraud and identity theft, the State of Florida requires us to notify you that (name of closing service provider) has been engaged to (handle the sale of) (coordinate the closing of a mortgage in favor of (name of lender) secured by) the property located at (address, city, and state). If you believe this is in error, please notify us immediately at (phone number and e-mail).

The mailing may include a letter thanking the seller or borrower for selecting the sender and such other additional information as the sender deems appropriate. However, where the tax collector's records show a different property owner in the preceding year's tax bill, the party to provide closing services must, within five business days after opening an order to ensure a sale of real property or refinance of a mortgage encumbering real property, send a notice by first class mail to the prior owner at the mailing address shown in tax collector's online records. Such notice must be in substantially the following form:

(Letterhead of closing service provider)

To help prevent real estate fraud and identity theft, the State of Florida requires us to notify you that (name of closing service provider) has been engaged to (handle the sale of real property) (coordinate the closing of a mortgage against property) you formerly owned at (address, city, and state). If you believe this is in error, or still claim an interest in this property, please notify us immediately at (phone number and e-mail).

Further, the bill provides that:

- A real estate licensee's or closing service provider's failure to comply with these notice requirements does not impair the validity or enforceability of any listing agreement, escrow instructions, purchase and sale agreement, deed, mortgage, or other instrument or agreement made or delivered in connection with a real estate transaction.
- No real estate licensee or closing service provider has any liability to the actual or claimed property owner solely because of his or her failure to strictly comply with these notice requirements but that any non-compliance may be introduced as evidence:
  - To establish statutory violations;
  - As an indication of possible fraud, forgery, impersonation, duress, incapacity, undue influence, illegality, or unconscionability; or
  - For other evidentiary purposes.
- An actual property owner's failure to respond to the mailings does not:
  - Preclude or limit such owner's ability to establish possible fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, or unconscionability or any other challenges or defenses to any real estate transaction; or
  - Limit such owner's remedy in a quiet title or declaratory judgment action.
- These requirements do not alter or limit a title insurer's obligations under any title insurance policy issued in connection with a real estate transaction.

### Quitclaim Deed

The bill creates s. 689.025, F.S., to prescribe a statutory form for quitclaim deeds. Specifically, the bill provides that a quitclaim deed must be in substantially the following form:

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<sup>48</sup> Under the bill, no separate notice is required for a person who is both purchasing and placing a mortgage on a piece of real property in the same closing.

This Quitclaim Deed, executed this (date) day of (month, year) by first party, Grantor (name), whose post-office address is (address), to second party, Grantee (name), whose post-office address is (address).

Witnesseth, that the said first party, for the sum of \$(amount), and other good and valuable consideration paid by the second party, the receipt whereof is hereby acknowledged, does hereby remise, release, and quitclaim unto the said second party forever, all the right, title, interest, claim, and demand which the said first party has in and to the following described parcel of land, and all improvements and appurtenances thereto, in (county), Florida:

(Legal description)

The bill also requires that a quitclaim deed include:

- The legal description of the property the instrument purports to convey, or in which the deed purports to convey an interest, which description must be legibly printed, typewritten, or stamped on the document.
- A blank space for the parcel identification number assigned to the property the instrument purports to convey, or in which the deed purports to convey an interest, which number, if available, must be entered on the deed before it is presented for recording.

However, the bill provides that the:

- Failure to include such blank space for the parcel identification number does not affect the conveyance's validity or the deed's recordability.
- Parcel identification number is not part of the property's legal description otherwise set forth in the deed and may not be used as a substitute for the legal description.

The bill provides an effective date of July 1, 2023.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 28.47, F.S., relating to recording notification service.

**Section 2:** Creates s. 65.091, F.S., relating to quieting title; fraudulent conveyances.

**Section 3:** Creates s. 475.5025, F.S., relating to fraud prevention notice on listing.

**Section 4:** Amends s. 626.8411, F.S., relating to application of Florida Insurance Code provisions to title insurance agents or agencies.

**Section 5:** Creates s. 627.799, F.S., relating to fraud prevention notice upon opening order.

**Section 6:** Creates s. 689.025, F.S., relating to form of quitclaim deed prescribed.

**Section 7:** Amends s. 695.26, F.S., relating to requirements for recording instruments affecting real property.

**Section 8:** Provides an effective date of July 1, 2023.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local governments where the clerk of the circuit court for a particular county does not already maintain and operate the recording notification service required by the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it reduces title fraud in the state.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires the clerks of the circuit court to create, maintain, and operate a recording notification service. However, an exemption may apply, as the clerks who do not already have such a service in place may be able to absorb the costs within existing resources and, thus, the bill may have an insignificant fiscal impact.

2. Other:

Under the separation of powers doctrine enshrined in the State Constitution, the legislative branch has the authority to enact substantive laws and the judicial branch has the authority to create procedural rules applicable to court proceedings. To the extent the bill touches on any procedural matters, the Florida Supreme Court may decide but is not required to adopt such provisions.<sup>49</sup>

B. RULE-MAKING AUTHORITY:

Not applicable.

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<sup>49</sup> See *In re Florida Evidence Code*, 372 So. 2d 1369 (Fla. 1979).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Specified that the clerks must create, maintain, and begin operating the recording notification service contemplated by the bill by July 1, 2024.
- Authorized the county property appraisers to choose to adopt an electronic land record notification service which sends notice to subscribers to a monitored identity within 24 hours of a land record being reflected on the property appraiser's county tax roll for such monitored identity.
- Modified the notice a party to provide closing services must send to a prior owner shown in the tax collector's online records.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.